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Project „Improving access to justice for Roma and other vulnerable groups. An integrated approach”

Access to justice for vulnerable groups in Romania

2014
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Project “Improving access to justice- An integrated approach with a focus on Roma and other vulnerable groups”

The Romanian Superior Council of Magistracy is the promoter of the project “Improving access to justice. An integrated approach with a focus on Roma and other vulnerable groups” developed in collaboration with the Norwegian Courts Administration and the Council of Europe. The project involves institutional liaison with the National Agency for Roma and the National Institute of Magistracy.

The Superior Council of Magistracy (SCM) acts as guarantor of the justice independence in Romania. The Superior Council of Magistracy defends the independence, impartiality and professional reputation of judges and prosecutors, ensures the observance of law, of professional ethics and competence criteria in performing the magistrates’ career, contributes to the efficient organization and functioning of courts and prosecutor's offices, decides with respect to the magistrates’ career and approves the search, detention or preventive arrest of judges and prosecutors.

The Superior Council of Magistracy elaborates and adopts secondary legislation regarding the judiciary and endorses draft normative acts that refer to the activity of the judicial authority, as well as draft orders and regulations approved by the minister of justice, in the cases provided by the law. Through its sections, the Superior Council of Magistracy fulfils the role of a court in the field of the disciplinary liability of judges, prosecutors and assistant magistrates. The SCM Plenum settles the appeals brought by judges and prosecutors against the decisions rendered by its sections. The Superior Council of Magistracy also coordinates the activity of the National Institute of Magistracy and of the National School of Clerks.

The Norwegian Courts Administration (NCA) is the central administration for all the courts in Norway. NCA acts as a support and service agency for the courts and plays an important part in developing strategic plans that enable the courts to meet the challenges presented before them. The NCA seeks to make conditions favourable for the courts in order to ensure reasonable and efficient operation.

The Council of Europe (CoE) is an international organization with 47 European member states. Its core objective is to promote and protect human rights, democracy and the rule of law in Europe. CoE action revolves around the complete cycle of standard setting, monitoring and co-operation activities. In its areas of expertise, the CoE sets recognized international standards, including over 200 international treaties, and identifies best practices. Compliance with a number of these standards is then assessed and monitored by specific Council of Europe bodies and mechanisms. The CoE also has significant experience in managing and implementing technical assistance and capacity-building activities based on these standards and, where appropriate, on the results of the various monitoring exercises.

The Nation Agency for Roma (NAR) is the Romanian governmental structure having as objective the representation of the Roma minority at national level. It functions as a specialized institution of the central public administration, subordinated to the Government and it applies, coordinates, monitors and evaluates the
measures included in the Romanian Government Strategy for Inclusion of Romanian citizens belonging to the Roma minority for the period 2012-2020. The NAR participates in projects meant to improve the situation of Roma and it ensures the complementarity of various public actions and policies for Roma, initiated at national or international level.

The National Institute of Magistracy (NIM) performs the initial training of future magistrates - judges and prosecutors – and equally provides for the continuous training of all magistrates in service.

**Aims and objectives of the project “Improving access to justice- An integrated approach with a focus on Roma and other vulnerable groups”**

The overall objective of the project is to improve the access to justice for Roma and other vulnerable groups of the population, by carrying out a cluster of activities aiming at addressing the knowledge on and the use of their rights. That is why this project aims for an increased awareness, knowledge and assertion of the vulnerable population, especially of the Roma people, of their rights and obligations, as mandatory steps for a better access to justice, according to the European standards. In this regard, the project responds to the Romanian Constitution principle that foresees an equal treatment before the law for all citizens.

The Project is in line with the Romanian national policy for Roma which is based on the “Strategy of the Government of Romania for the inclusion of the Romanian citizens belonging to the Roma minority for the period 2012 – 2020” adopted through the Government Decision 1.221/2011 and it follows the principles consecrated by the EU in the document “10 Common Basic Principles on Roma Inclusion”.

The current project does not address a problem pertaining solely to the Roma population – they are an explicit, but not exclusive target group but it is open for other socially vulnerable groups as well. Therefore, the integrated approach “aiming for the mainstream” is applied to all activities. Thus, the principle of active participation of vulnerable groups including Romanian citizens belonging to the Roma minority that contributes to the success of implementing the governmental policies for social inclusion of persons at risk is going to be observed.

This approach is in line also with the objectives of the Government Strategy for the inclusion of the Romanian citizens belonging to the Roma minority which calls for the development of certain measures that, through the services provided, respond to the social needs of disadvantaged groups, including the members of Roma minority in the fields of community development, child protection, justice and public order.

Furthermore, the project is in line with the SCM Multiannual Plan 2011-2016, adopted by SCM in December 2011, which provides that one of the Council’s objective is to promote dialogue between citizens/society and justice.

Different stakeholders such as the representatives of the National Council for Combating Discrimination, the Ombudsman, central authorities, local authorities, the bar associations, courts, civil society organizations and other institutions are involved in the activities organized in the framework of this project. The collaboration with
the National Agency for Roma is meant to ensure the coordination of the project activities with the measures included in the Romanian Government Strategy for Inclusion of Romanian citizens belonging to the Roma minority.

**Main activities organized within the overall framework of the project “Improving access to justice. An integrated approach with a focus on Roma and other vulnerable groups”**

**Feasibility study**
A feasibility study on the justice of vulnerable groups, with a special focus on the Roma is aimed to assess the state of access to justice in general and in particular for Roma and other vulnerable groups of the population. The conclusions of the feasibility study are supposed to be a baseline for taking the necessary actions to improve the assistance policy for Roma and other vulnerable groups of the population, as well.

**Legal assistance offices**
Legal assistance offices to be set up within the project framework are aimed to support the Roma and other vulnerable groups of population in order to better assert their rights, considering the specific problems these categories of citizens are facing. The cases, if not of legal nature, are going to be referred to competent authorities and public services. These offices are not meant to perform tasks related only to enforcement of legal rights, but also to assess the problems existing in the communities (such as possible discrimination cases, including multiple discrimination) and referring them to competent institutions. Lawyers/experts shall be mobilized in the project framework to undertake missions in the Roma communities to this end.

**Awareness raising and improved knowledge of rights**
Awareness raising campaigns at local level are aimed to the popularization of the activities provided by the legal assistance offices and other vulnerable categories of population as well as to improve the knowledge and awareness of the Roma and other vulnerable categories of population on their legal rights and opportunities.

**Improved capacity of legal professionals**
Specialized training on managing and addressing discrimination cases is envisaged to be performed aimed to improve the legal capacity of the professionals such as lawyers, prosecutors and judges.

**Awareness and publicity**
Public events, debates and specialized workshops are aimed at presenting to stakeholders, the civil society, and the media, and to the public the activities, the achievements and the results of the project.
A feasibility study on the access to justice of vulnerable groups, with a special focus on the Roma

A team of experts, proposed by the Council of Europe (Maria Marinova and Katerina Shojikj), the Norwegian Courts Administration (Ada I. Engebrigsen), joined by a Romanian expert (Dezideriu Gergely) subcontracted by the Superior Council of Magistracy has been tasked to assess the needs and obstacles for Roma and other vulnerable groups to access justice. The conclusions of the feasibility study are supposed to be a baseline for taking the necessary actions to improve the assistance policy for Roma and other vulnerable groups and for outlining modalities for setting up offices offering primary legal aid, information, advice and orientation for these groups.

Methodology for elaborating the feasibility study

The expert team has used a combination of qualitative and quantitative methods to assess the access to justice of vulnerable categories with a focus on Roma. The team applied three approaches:

<table>
<thead>
<tr>
<th>Documentation</th>
<th>Survey</th>
<th>Interviews with target groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research of existing studies, reports, evaluations, statistics, guidelines etc. relevant for access to justice</td>
<td>Questionnaire applied to selected stakeholders concerning their experiences on the access of justice for vulnerable groups with a focus on Roma</td>
<td>Fact finding missions to discuss with selected representatives and stakeholders in different regions</td>
</tr>
</tbody>
</table>

Survey addressing stakeholders relevant for access to justice

The expert team developed separate questionnaires, with common core-questions targeting various groups such as: Court, lawyer’s bodies, national human rights institutions, relevant Ministries, probation services and non-governmental organizations.

<table>
<thead>
<tr>
<th>Surveyed groups</th>
<th>Lawyer bodies</th>
<th>National institutions</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts</td>
<td>National Union of the Bar Associations in Romania, Bar associations</td>
<td>Relevant Ministries, National Council for Combating Discrimination, Ombudsmen, Agency for Roma, Probation services etc.</td>
<td>Human rights organizations, Roma non-governmental organizations</td>
</tr>
<tr>
<td>Tribunals, first instance courts (Judecătorie)</td>
<td></td>
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</table>

All questionnaires were based on the same basic topics related to the efficiency of the justice system in providing human rights for all, affordability/accessibility of the justice system, fairness of the justice system, issues of concern related to vulnerable groups including Roma and perspectives on advisory centres.
### Common issues included in the surveys

<table>
<thead>
<tr>
<th>EFFICIENCY OF THE JUSTICE SYSTEM</th>
<th>Detailed aspects</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Perspective over the human rights protection</td>
</tr>
<tr>
<td></td>
<td>Perspective over vulnerable groups</td>
</tr>
<tr>
<td></td>
<td>Quality of legal services</td>
</tr>
<tr>
<td></td>
<td>Trust of vulnerable groups including Roma</td>
</tr>
<tr>
<td>AFFORDABILITY/ACCESSIBILITY OF</td>
<td>Affordability by vulnerable groups of legal related costs</td>
</tr>
<tr>
<td>THE JUSTICE SYSTEM</td>
<td>Availability of information</td>
</tr>
<tr>
<td></td>
<td>Factors impacting the ability to access justice</td>
</tr>
<tr>
<td></td>
<td>Most significant obstacles for vulnerable groups and Roma</td>
</tr>
<tr>
<td>FAIRNESS</td>
<td>Equal treatment of vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Same respect for vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Complaints addressed duly and fairly</td>
</tr>
<tr>
<td>ISSUES OF CONCERN</td>
<td>Most pressing issues facing vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Level of awareness of discrimination against vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Needs for information, consultation, advice for vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Frequency of addressing legal institutions by vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Aspects related to legal aid</td>
</tr>
<tr>
<td></td>
<td>Aspects related to discrimination</td>
</tr>
<tr>
<td>ADVISORY CENTRES</td>
<td>Factors to increase access to justice</td>
</tr>
<tr>
<td></td>
<td>Aspects to be considered when establishing advisory centres</td>
</tr>
<tr>
<td></td>
<td>Type of function of advisory centres</td>
</tr>
<tr>
<td></td>
<td>Ways to function most effectively of advisory centres</td>
</tr>
</tbody>
</table>

### Surveyed groups and answers

<table>
<thead>
<tr>
<th>Courts</th>
<th>Lawyer bodies</th>
<th>National institutions</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>41 Tribunals</td>
<td>41 Bar associations</td>
<td>41 Probation services</td>
<td>36 NGOs</td>
</tr>
<tr>
<td>51 Tribunals and first instance courts responded all together</td>
<td>9 Bar associations responded</td>
<td>29 Probation services responded</td>
<td>12 NGOs responded</td>
</tr>
</tbody>
</table>

### Representativeness of the survey

In part due to a number of factors such as the relatively limited number of institutions receiving the questionnaires (Courts, Probation Services, Bar associations, human rights institutions and NGOs), in some
cases the low percentage of respondents (in the case of Bar associations 9 out of 41, in the case of NGOs 12 out of 36), the limited knowledge about the actual respondent and to what extent the answers represent the actual perception or the experience of the respondent, the current study cannot hold a standing for introducing representative data. Nevertheless, it is the view of the expert team that the study presents a consistent picture of the viewpoints and experiences of the stakeholders concerning the access to justice for vulnerable categories (including Roma) in Romania.

Fact finding missions at local level

The Superior Council of Magistracy based on input from the expert team organized 3 fact-finding missions aimed at discussing with various stakeholders at local level issues related to vulnerable groups and Roma and access to justice. Five different locations have been selected on the basis of a variety of factors among other the number of Roma population, the presence of human rights and Roma NGOs projects addressing vulnerable groups, active partnerships at local level etc. Interview topics followed the questionnaires, but the objective of the team was to tease out personal experiences, viewpoints and practical solutions.

### Fact-finding missions

<table>
<thead>
<tr>
<th>Mission</th>
<th>I</th>
<th>II</th>
<th>III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Bucharest</td>
<td>Buzău, Călărași</td>
<td>Cluj-Napoca, Craiova</td>
</tr>
</tbody>
</table>

### Interviewed Stakeholders at local level

<table>
<thead>
<tr>
<th>Courts</th>
<th>Lawyer bodies</th>
<th>Public institutions</th>
<th>Municipalities</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tribunal Bucharest, Buzău, Călărași, First instance court in Cluj, Craiova, Bucharest</td>
<td>Bucharest, Buzău, Călărași, Craiova and Cluj Bar associations</td>
<td>Probation services in Bucharest, Craiova, Buzău, and Călărași.</td>
<td>Local municipality in Buzău, Călărași, Cluj and Craiova.</td>
<td>NGOs in Bucharest, Cluj and Craiova.</td>
</tr>
</tbody>
</table>

### Stakeholders at national level

<table>
<thead>
<tr>
<th>Lawyer bodies</th>
<th>Public institutions</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Union of the Bar Associations</td>
<td>Ministry of Justice, Probation Services, Ministry of Interior and Administration, Ministry of Regional Development, National Agency for Roma, National Council for Combating Discrimination, Ombudsmen, National Institute of Magistracy, Governmental Agent to ECHR</td>
<td>NGOs in Bucharest working national wide</td>
</tr>
</tbody>
</table>

In total the expert team carried out 49 interviews with different stakeholders concerning the following topics:
<table>
<thead>
<tr>
<th><strong>Vulnerable groups</strong></th>
<th>Which categories of population are considered vulnerable in their community? How would they consider access to justice and to welfare services for these categories?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Barriers</strong></td>
<td>What are the main barriers for their access to justice in a broad sense? What measures have been taken to counteract such barriers?</td>
</tr>
<tr>
<td><strong>Equal access</strong></td>
<td>What measures are needed to assure equal access to civil and criminal justice? What statistics exist on legal aid applications and rejections? Which experts (translators, psychologists etc.) are available for support of clients in vulnerable positions?</td>
</tr>
<tr>
<td><strong>Advisory canters</strong></td>
<td>How do they assess the relevance of the advisory centres? What services should they provide? Where should they be situated?</td>
</tr>
</tbody>
</table>

Most interviews/discussions assembled several participants, especially with national institutions and municipalities where up to 15 persons with different positions, such as politicians, case-workers and sometimes counsellors and experts were present. This enabled discussions on a wide range of topics. The team also visited one Roma settlement in Cluj-Napoca, evicted from the city and forcibly moved to the municipality’s garbage plot. The expert team discussed with the Roma representatives their viewpoints on access to justice and establishment of the advisory centres.
AN INSIGHT INTO VARIOUS DIMENSIONS OF VULNERABILITY

CHAPTER 1
AN INSIGHT INTO VARIOUS DIMENSIONS OF VULNERABILITY

The concept of vulnerability and vulnerable categories

The terms ‘vulnerability’ or ‘vulnerable categories’ are commonly used, but often with different meanings by different stakeholders, practitioners, organisations or researchers. Although the word “vulnerable” is nowadays widely used in various spheres of life such as health, social care, human rights, the precise definition of this notion remains elusive.

The vulnerability approach is a theoretical and philosophical reconceptualization of the basis for the society and the relations between the state and its citizens and challenges the view of the individual as free and autonomous, as commonly expressed in most other theories of justice and jurisprudence. While originating from the human rights thinking, in relation with the “human” rather than the “rights” perspective of the human rights scope and conceptualisation one could argue that states have been more responsive to the vulnerability of global corporations in the financial sector than to the vulnerabilities of individuals and households.

Some of the academic definitions falling under the scope of “vulnerable categories” in literature date back to the mid 90’s and vary considerably. In the health context, some emphasize the emotional dimension of vulnerability, e.g., ‘vulnerability is generally held to refer to those individuals or categories who, due to age, ill health, infirmity, minority status or their otherwise disempowered position in society may be open to exploitation (whether physical, emotional or psychological)’. The literature indicates that persons belonging to categories that are regarded as vulnerable are more likely to have multiple vulnerabilities than discrete vulnerabilities. Others use the concept of vulnerable categories as a synonym for disadvantaged categories or socially/economically excluded categories.

The policy literature also variously describes them as ‘disadvantaged’, ‘marginalized’, and ‘socially excluded’ categories. Therefore, the criteria used when determining what categories may be considered as vulnerable are interlinked with the extent to which these categories are marginalized, socially excluded, have limited opportunities and income, suffer any kind of abuse, prejudice, discrimination etc. Such categories may include people with disabilities, elderly, certain ethnic minorities, children, homeless people, asylum seekers, refugees, mentally disabled etc. Recent developments in the use of the term vulnerable categories see vulnerability foremost as a relationship between individuals and categories, and their historical, political, cultural and social environments. This use of the term places the cause of vulnerability, not in the persons and categories per se, but in the forces that impede these categories’ access to equal opportunities. In this sense physical, economic, social and political factors determine people’s level of vulnerability. Poverty is one of the major contributors to vulnerability.

1 Margunn Bjornholt, Vulnerability as a basis for Justice and equality in the Nordic countries, Nordic Women’s University, Norway, 2013.
2 Martha Albertson Fineman, Presentation to research group Rights, Individuals, Culture and Society, Faculty of Law, University of Oslo, 16 May 2013.
6 “What is Vulnerability?” Official website of the International Federation of Red Cross and Red Crescent at: http://goo.gl/oUqibP.
context, vulnerability is described as the decreased “capacity of an individual or group to anticipate, cope with, resist and recover from the impact of a natural or man-made hazard”7. Thus, vulnerability is often associated with poverty, but it can also appear when people are isolated, insecure and defenceless in the face of risk, shock or stress.8

Poverty, risk related vulnerability and vulnerable categories are interrelated concepts and realities. Poverty encompasses more than low income or consumption alone as it may also stem from a lack of access to public facilities, services and programs (such as health or education) or from the denial of political, civil and economic liberties9.

Exposure to risk may be seen as one of the many dimensions of poverty. Poor households are typically more exposed to risk and least protected from it. This exposure has a direct bearing on well-being. Perhaps even more important is how risk exposure causes poverty or increases the depth of poverty. Another dimension here is that the direction of causation can also be reversed so that poverty causes exposure to risk. For instance, to avoid extreme income poverty or food insecurity a household may be forced to cultivate in insecure areas (infested land) or to live in an unhealthy or unsafe environment (landslides, railroad track, industrial areas, garbage waste areas)10.

Examples of categories that may be seen as vulnerable and more exposed to risk situations are disabled people, orphans, HIV infected, elderly, ethnic minorities, certain casts, IDPs, women headed-households, or households headed by children. These categories are often described as ‘vulnerable’ in the common usage of the term, but (uninsured). But in line with the vulnerability-as-a-relationship view the extent of vulnerability must be understood contextually and not as properties of these categories.

**Vulnerable categories in human rights sense**

In a human rights sense, certain population categories often encounter discriminatory treatment or need particular attention to avoid potential exploitation. Several categories may be structurally discriminated against and have difficulties defending themselves and are therefore in need of special protection. These populations make up what can be referred to as vulnerable categories or categories. There is no exhaustive list of persons in need of particular protection, as it is largely a question of context, but among them are generally listed categories such as: women and girls; children; national minorities; disabled persons; elderly persons; persons with HIV-AIDS persons; Roma persons, indigenous peoples, refugees; internally displaced persons; stateless persons; lesbian, gay and transgender people, migrant workers etc.

Firstly, **women** may be subject to discrimination in various spheres of life, such as income, education, health and participation in society, and they are particularly vulnerable to specific violations such as gender-based violence, trafficking and sex discrimination. Various international bodies have been established with the aim of

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7 Ibid.
8 Ibid.
10 Ibid.
eradicating policies, actions and norms that perpetuate discrimination against women and violate women's human rights\textsuperscript{11}.

One of the most important instruments for the protection of women is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Other universal instruments relating to the rights of women include the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the UN Convention on the Political Rights of Women and the UN Convention on the Nationality of Married Women. Important provisions relevant for women's rights are included in the European Convention on Human Rights and the European Social Charter and respective Protocols. While the ECHR does not explicitly regulate women's rights, per se, it does, under Article 14, prohibit any ‘distinction’ based, inter alia, on grounds of sex, in relation to the rights protected under the Convention. Furthermore, the principle of equality between spouses with regard to their rights and responsibilities in marriage has been added to the Convention in Protocol No. 7. Protocol No. 12 to the Convention sets out a general prohibition on discrimination by any public authority, inter alia, on the grounds of sex, regarding not only rights and freedoms protected by the ECHR, but of any right set forth by law.

Secondly, women’s limited access to justice is a complex social phenomenon that combines a series of inequalities at the legal, institutional, structural, socio-economic and cultural levels. Ensuring access to justice for this group implies providing women of all backgrounds with access to fair, affordable, accountable and effective remedies so that women and men can enjoy both equal rights and equal chances to assert them. The concept of access to justice covers contact with, entry to and use of the legal system. It is more than simply ensuring the efficiency of justice systems. Rather, it is about ensuring the sensitivity and responsiveness of such systems to the needs and realities of women, as well as empowering them throughout the justice chain. Reducing the impact of obstacles faced by women not only facilitates greater accessibility, but is also an essential step towards achieving substantive gender equality\textsuperscript{12}.

Furthermore, children need special protection because of their fragile stage of development. Children are readily susceptible to abuse and neglect and often do not have means to defend themselves against these wrongs. In its Convention on the Rights of the Child, the United Nations states that the “child, by reason of his physical and mental maturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”\textsuperscript{13}. Clearly, children’s rights are closely tied to women’s rights; even before being born a child’s survival and development is dependent on the mother’s health and opportunities. Women are still primary care-givers for children, so ensuring women’s rights is positively linked to children’s enjoyment of human rights\textsuperscript{14}.

The European Social Charter sets out special protection for children with regard to social, legal and economic protection. Other legal instruments include protecting the rights of children are the European Convention on the Adoption of Children, the European Convention on the Legal Status of Children born out of Wedlock, the European Convention on the Exercise of Children’s Rights, and the European Convention on Contact

\textsuperscript{11} Iceland Human Rights Centre, the human rights protection of vulnerable groups, women and girls, available at: http://www.humanrights.is/the-human-rights-project/humanrights/casesandmaterials/humanrights-concepts/ideas-and/fora/Undirflokkurur/womenandgirls/.
\textsuperscript{12} Council of Europe, Equal access of women in justice, Gender Equality Commission, 2013.
\textsuperscript{13} Un Convention on the Rights of the Child
\textsuperscript{14} Iceland Human Rights Centre, the human rights protection of vulnerable groups, Children.
concerning Children (2005). The European Convention of Human Rights while not directly addressing children’s rights, affords broad protection of their civil and political rights.

Frequently the most vulnerable persons in need of protection may belong to categories or minorities that in one way or another distinguish themselves and are distinguished from the rest of society, e.g., by means of language, religion, ethnicity and culture. Throughout history stigmatized minorities have suffered at the hands of oppressive majorities, enduring discrimination, land seizures, expulsion, forced assimilation and even genocide, and active repression by governments aiming at cultural unity has often resulted in loss of identity and culture 15.


Discrimination against persons with disabilities has a long history of exclusion from participation in society. Discrimination can take many forms, ranging from limited educational opportunities to more subtle forms, such as segregation and isolation because of physical and social barriers in the majority society. Children with disabilities may suffer discrimination due to multiple grounds for example, age, state of their disability impairment and ethnic origin.

The UN Convention on Rights of Persons with Disabilities has been adopted to ‘ensure the full, effective and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and to promote respect for their inherent dignity’. The European Social Charter (revised) stipulates that disabled persons have the right to independence, social integration and participation in the life of the community and sets out steps that states shall undertake to this end, such as promoting access to employment and education. The EU Framework Directive, 2000/78/EC prohibits discrimination on the grounds of disability in employment. Under the European Convention of Human Rights the Court in Strasbourg has dealt with cases concerning discrimination and disability, concerning disability benefits, access to education as well as the legal capacity of individuals with mental disabilities.

Persons aged 60 and older often find themselves in circumstances that render them less active within society. Recently the attention has been drawn to the social, economic and political issues related to the phenomenon of ageing on a massive scale. Being physically dependent on private and institutional care the elderly may be increasingly vulnerable to abuse and various forms of negative stereotyping and discrimination.

15 See http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightscorresponds/Undirflokkur/nationalminorities/
In general, the rights stipulated for the elderly in international instruments stem from the principles of dignity and non-discrimination. The Revised European Social Charter sets out the right to social protection for the elderly. The Charter on Fundamental Rights of the European Union prohibits discrimination on the grounds of age and sets out the right to social security for older persons and the rights of the elderly ‘to lead a life of dignity and independence and to participate in social and cultural life’. In the context of the European Convention of Human Rights, the European Court has dealt with cases involving elderly as victims of failure of state’s obligation to fulfil their procedural duties or the protection against discrimination.

Recently the prevalence of persons with HIV/AIDS has become a major concern over the world. HIV positive persons and AIDS victims are often subject to violations of rights, economic and social, such as work-related rights and access to health care facilities, but also in relation to the enjoyment of civil rights, such as the right to privacy and freedom of movement.

Human rights principles essential for effective protection of people with HIV/AIDS are to be found in existing international instruments, such as the ICESCR, ICCPR, CEDAW, CAT, CERD, CRC and CRPD. The European Convention also enshrines general state obligations which are applicable to persons affected by HIV/AIDS. The Court in Strasbourg has dealt with cases concerning HIV/SIDA with regard to absence or withdrawing medical treatment as well as expulsion.

Common barriers facing vulnerable categories

In the context of this report, vulnerable categories consist of people found in vulnerable life-situations either permanently or accidently. People in these life-situations shall not be regarded as passive victims of their circumstances. Individuals belonging to a category regarded as vulnerable may or may not be in a vulnerable situation, as the context and the circumstances are decisive. For instance being a Roma does not mean you are vulnerable in all life situations and in relation to all institutions. Women are not per se vulnerable, neither are physically impaired people vulnerable. And further, vulnerability does imply passivity. Individuals and categories that are regarded as vulnerable for political purposes, may not see themselves as such and may have a variety of strategies to counteract their vulnerable position. While developing policy measures and implementing strategies to remove barriers to justice, peoples’ own ideas and strategies should be taken into consideration.

Poverty, minority position, lack of basic education, illiteracy, disability, lack of identity documents and the stigma attached to such circumstances may cause discrimination that can impede people’s access to justice remedies, setting them in a vulnerable position. Their vulnerability can be further exacerbated if they do not receive the necessary support when approaching institutions to assist them in addressing their grievances.

To increase these vulnerable categories’ access to justice it is not enough to ensure them the same rights as other categories have, measures must be taken to remove the impeding. Barriers, be they structural, in organisation, cultural or personal.

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16 Case of Dodo v. Bulgaria the Court considered that the local system, faced with an arguable case of negligent acts endangering human life, failed to provide an adequate and timely response consonant with the state’s procedural obligations under Article 2 (right to life). In Runkee and White v. The United Kingdom the Court ruled in favour of the applicants who claimed a violation of the prohibition of discrimination in conjunction with the right to the protection of property.

17 In D. v. The United Kingdom the European Court established that withdrawing medical treatment from the applicant would hasten his death. The Court ruled that expelling the applicant to Saint Kitts and Nevis, where there were no facilities to treat his illness, ‘would amount to inhuman treatment by the respondent State in violation of article 3’. In Khodobin v. Russia the Court held that the absence of medical assistance for an HIV-positive prisoner, in the given context, amounted to degrading treatment.
Each vulnerable category faces different barriers in access to justice, but may have similarities in obstacles as well in approaching judicial system. For example, the costs of court fees, lawyer fees, form fees etc. may be too high for vulnerable categories. In addition, transportation costs, food and living expenses, and accommodation during a trial can be costly, especially if there are court delays. The potential for loss of income/livelihood when involved in a trial is also a deterrent for many disadvantaged categories. Such costs add up and may prevent people with limited financial means from going through the formal court systems.  

Laws may discriminate against vulnerable categories, too. Legislation may ignore the special needs of certain categories or else actively discriminate against them, preventing them from seeking justice through the formal system. Even when laws are not discriminatory, systematic or de facto biases and discrimination against vulnerable categories may result in unfair rulings, inappropriate conduct or inadequate services.

What is more, even when disadvantaged categories are able to access the formal system, they may not receive the services they require or may be mistreated by legal professionals or law enforcement officials. Legal personnel may not be aware of the particular needs of disadvantaged categories or the institutions may not be equipped to provide disadvantaged categories with the services they need.

The formal justice system may be far too remote from the realities of many vulnerable categories who may not even be aware of their rights or how to seek justice when their rights have been violated. It is part of the duty of the formal justice system to provide vulnerable categories access to information through legal awareness programmes so that they know what services are available and how to seek remedies for their grievances.

Here, alternative mechanisms might include civil society organizations, as well as formal and informal alternative dispute resolution methods. Civil society organizations can be effective in targeting and reaching vulnerable categories, especially when working at the grassroots level. While formal and informal alternative dispute resolution methods can provide easier access for disadvantaged categories, it is necessary to make sure that monitoring mechanisms are put in place to oversee these alternative mechanisms in order to protect the rights of vulnerable categories.

Many members of disadvantaged categories may be illiterate which poses a huge obstacle when court procedures require forms to be filled out. Language and literacy is, in general, a significant barrier for most vulnerable categories who may be not only be intimidated by formal court processes and legal language, but they also may not be able to communicate in the official language. In addition court language is a specialized language that is not even well understood by the average citizen.

In addition, because of existing or perceived discrimination, vulnerable categories often do not trust the formal justice systems. Fear and the lack of trust in formal institutions may cause them to not exercise their right to remedy even when their rights have been violated.

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19 Ibid.
20 Ibid.
22 Ibid.
Social stigma can be a significant barrier for many disadvantaged categories. While they are already in a vulnerable position in society, they fear that if they make a complaint or seek redress for a grievance through the formal justice system, they may face further social pressure or ostracism, or threats of reprisal. In addition, they may be ostracized by their community or they may be accused of destroying ‘social harmony’

Physical access to formal justice systems is another difficulty for members of some vulnerable categories. Courts can be far away and claimants may need to travel long distances to get to them. Further, for people with disabilities, physically getting into the courthouse may prove to be difficult.

Vulnerable categories in the case law of the European Court of Human Rights: Roma, disability, HIV and asylum seekers

The concept of vulnerable categories was introduced by the European Court of Human Rights in the Chapman v. the United Kingdom case, and it referred initially to the Roma minority. The case involved a Roma woman who was evicted from her own land because she stationed her caravan there without a planning permission. The Court rejected the applicant's alleged violation of the right to respect for her minority lifestyle (Article 8 ECHR). It also dismissed her discrimination complaint (Article 14 ECHR). The applicant's argument was that the UK government prevented her from pursuing a lifestyle that she viewed as central to her cultural tradition: living and travelling in a caravan. The Court's Grand Chamber held that as intimated in the Buckley case, the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases.

In this early formulation, the vulnerability of Roma seems to arise primarily from the group's minority status and from the lack of consideration of its minority lifestyle in the planning and decision-making processes. In fact, Ms Chapman lost the case, mostly as a result of the large margin of appreciation left to states when it comes to the implementation of planning policies, in this case, environmental regulations. Notwithstanding this, Chapman's articulation of vulnerability already puts in place the elements that will shape the Court's later formulations of “vulnerable categories”: belonging to a group (in this case, the Roma minority) whose vulnerability is partly constructed by broader societal, political, and institutional circumstances (in this case, power differentials and a planning framework unresponsive to the needs arising from a way of life different from that of the majority).

In the years following the Chapman case, the European Court has broadened and refined the concept's content and scope. The Court has not only reaffirmed the vulnerability of Roma in different contexts but has also extended the list of “vulnerable categories” to persons with mental disabilities, people living with HIV, and asylum seekers. In all the cases, the Court draws on European or international human rights reports and

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23 Ibid.
24 Ibid.
26 The Court refers to the Buckley v. the United Kingdom judgment from 1996, but in that judgment the Court did not actually use the term “vulnerable” to describe Roma.
28 Ibid.
resolutions to determine what it is that makes categories vulnerable which seems serving to confirm rather than to establish group vulnerability.\textsuperscript{29}

As already indicated in \textit{Chapman} case, the Court locates vulnerability not in the individual alone but rather in her wider social circumstances. The Court's notion of vulnerable categories is thus \textit{relational} because it views the vulnerability of certain categories as shaped by social, historical, and institutional forces. In other words, the Court links the individual applicant's vulnerability to the social or institutional environment, which originates or sustains the vulnerability of the group she is (made) part of. The emphasis on context inherent in the relational character of the Court's understanding of group vulnerability is in line with contemporary analyses that use vulnerability as a critical tool. They all insist on the need to explore the role of societal or institutional arrangements in originating and maintaining vulnerability.\textsuperscript{30}

The Court tends to talk of “particularly vulnerable categories”\textsuperscript{31} which underlines the idea that people belonging to these categories are simply “more” vulnerable than others. These points to a second characteristic of the Court's account of vulnerability: it is \textit{particular}. By “particular,” it is to understand that the Court's vulnerable subject is a group member whose vulnerability is shaped by specific group-based experiences.\textsuperscript{32}

Another characteristic of the Court's formulation of group vulnerability is its focus on \textit{harm or disadvantage}. The indicators that the Court has employed to determine group vulnerability show that harm features centrally in the Court's account of group vulnerability. This is (historical) prejudice and stigmatization. These indicators have played out in the Court's group-vulnerability analysis, most notably in the context of discrimination.

In its case law, the European Court has preserved the original designation of the Roma minority as “vulnerable” and adopted different connotations. In cases concerning the discrimination of Roma pupils in education (Article 14 ECHR together with Article 2 of Protocol No.1 of the Convention), the Court acknowledged the vulnerability of Roma against a different background: prejudices. These are well-known school segregation cases: \textit{D.H. and Others v. the Czech Republic} (2007), \textit{Sampanis and others v. Greece} (2008), and \textit{Oršuš and others v. Croatia} (2010).\textsuperscript{33} In all these cases, the Court found that the Roma children were discriminated against in the enjoyment of the right to education. The Grand Chamber held in \textit{D.H.} that: [A]s a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority.\textsuperscript{34}

The extensive reference in these judgments to Council of Europe documents reporting prejudices against Roma pupils in several parts of Europe indicates that such prejudices have informed the Court's understanding of Roma's vulnerability. Moreover, the factual background of some of these cases shows non-Roma parents' negative and hostile attitudes towards Roma children.\textsuperscript{35} Most recently, the Court has recognized prejudice more explicitly as a source of group vulnerability in \textit{Horváth and Kiss v. Hungary}, a case concerning the placement

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\textsuperscript{30} Lourdes Peroni, Alexandra Timmer, Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law.

\textsuperscript{31} Ibid.


\textsuperscript{33} Lourdes Peroni, Alexandra Timmer, Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law.


\end{flushleft}
of Roma children in special schools following the systematic misdiagnosis of mental disability. The Court notes that many students were misdiagnosed because of their socio-economic disadvantage or cultural differences and acknowledges the “bias in past placement procedures.”

The Court has also viewed negative social attitudes as the main source of vulnerability of Roma in V.C. v. Slovakia (2011), a case concerning the forced sterilization of a Roma woman. The Court recognized that forced sterilization has affected vulnerable individuals of different ethnic origins. The Court also admitted that Roma are at particular risk “due, inter alia, to the widespread negative attitudes towards the relatively high birth rate among the Roma compared to other parts of the population, often expressed as worries of an increased proportion of the population living on social benefits.”

The Court has similarly grounded its vulnerability assessment on (historical) prejudice—and, additionally, on the resulting social exclusion—in cases concerning other categories. One example is Alajos Kiss v. Hungary (2010). The case deals with the blanket disenfranchisement of people with mental disabilities in Hungary. The Court found a violation of the applicant’s right to vote (Article 3 of Protocol 1 to the Convention). The Court’s view of people with mental disabilities as a “particularly vulnerable group” rests on the considerable discrimination they have experienced in the past. The group, the Court affirms, was “historically subject to prejudice with lasting consequences, resulting in their social exclusion.” With this approach the Court takes the first steps towards embracing a “social model” of disability: this way of framing disability recognizes the built environment and society’s negative attitude towards people with impairment as the main factors disabling and excluding people.

Contrary to the “medical model” of disability, the hallmark of a social approach to disability emphasizes social prejudices and stereotypes, rather than individual impairments. The Court has continued along these lines with Kiyutin v. Russia (2011), another case concerning the indiscriminate exclusion of a group historically subject to prejudice. This time, the group in question is people living with HIV and the exclusion at issue the refusal of a residence permit. The applicant, a man from Uzbekistan married to a Russian national with whom he had a daughter, was denied a residence permit on the ground that he was HIV-positive. The Court found that the applicant was discriminated against in the enjoyment of his private and family life (Article 14 ECHR together with Article 8 ECHR).

In the Kiyutin judgment, the Strasbourg Court refers to Alajos Kiss and explains in considerable detail how it came about that people living with HIV have suffered from widespread stigma and exclusion from the 1980s till the present. The Court therefore holds that “people living with HIV are a vulnerable group with a history of prejudice and stigmatization.”

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38 Ibid, para. 116.
40 Ibid.
42 Ibid, para. 42.
43 Ibid.
Two other indicators of group vulnerability are emerging in the case law of the European Court: social disadvantage and material deprivation. Yordanova v. Bulgaria (2012) concerned a planned mass eviction of Roma inhabitants from their decades-old settlement. The applicants had built their homes on state land in Sofia without authorization. The government, however, de facto tolerated the unlawful settlement for decades. It did not take any action until the matter became “urgent,” following neighbours’ complaints “about the Roma families’ behaviour.” Indeed, neighbours had requested that the Roma inhabitants be removed and “returned to their native places,” holding them responsible for littering, stealing, drug abuse, and aggressive behaviour. The Court found a violation of the applicants’ right to respect for home, private, and family life (Article 8 ECHR). In stopping the eviction that would have rendered the applicants homeless, the Court held that the Bulgarian state failed to recognize “the applicants’ situation as an outcast community and one of the socially disadvantaged categories.”

The Yordanova case differs from the other Roma cases—school segregation and forced sterilization—in that the focus of the Court’s group vulnerability lies on poverty rather than on prejudice and discrimination. The Court holds, for example, that the authorities should have taken into account the disadvantaged position of the group to which the applicants belonged in assisting them with the eligibility for social housing. Nevertheless, the Court did not explore the links between the group’s disadvantaged status and the social prejudices against them, even though the facts of the case clearly show that prejudices played a role.

The case that has significantly broadened the Court’s notion of group vulnerability is M.S.S. v. Belgium and Greece (2011). The applicant, an Afghan asylum seeker, was returned by Belgium to Greece under the “Dublin II Regulation” of the EU. One of the main questions was whether the detention and living conditions of M.S.S. in Greece amounted to inhuman and degrading treatment under Article 3 ECHR. In analysing the applicant’s conditions of detention—more precisely, in examining the Greek government’s argument that the duration of his detention was insignificant—the Court observes: “In the present case the Court must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously.” Furthermore, the Court holds that “[T]he applicant’s distress was accentuated by the vulnerability inherent in his situation as an asylum seeker” and “as such, a member of a particularly underprivileged and vulnerable population group in need of special protection.”

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48 Lourdes Peroni, Alexandra Timmer, Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law.
50 Ibid. para. 93.
51 Ibid. para. 129.
52 Ibid. para. 132.
53 Ibid. para. 20, 21, 23, 45, and 46.
55 Ibid. at 101.
56 Ibid. para. 233.
57 Ibid. para. 251.
Dimensions of vulnerability in the Romanian context

Interestingly, the public policies of the European Union do not provide for a formal definition of vulnerable categories but in spite of this omission the concept is often used in relation with social inclusion which involves the access of individuals to opportunities and resources necessary for a full participation to social, economic and cultural life and for enjoying a normal and desirable standard of living in their societies: promoting equality and social inclusion involves making efforts so that all individuals, including vulnerable categories, play an active role in employment and society and enjoy equal opportunities in this regard.

EU social policies aim for eradicating child poverty and social exclusion of certain categories, e.g. EU Directives prohibit discrimination on the ground of racial or ethnic origin, disability, age, sexual orientation, religion or belief and sex. In addition, 2010 was declared European year for combating poverty and social exclusion aiming to raise awareness about the challenges faced by vulnerable categories.

According to the European Commission those most at risk of poverty include older people, large and single-parent families, children and young people, people with disabilities, immigrants and those from ethnic minorities (including Europe’s 10 to 12 million strong Roma communities). Across all these categories, women are more often exposed to poverty and social exclusion than men.

Compared to the majority of Europeans, people from vulnerable categories are far more likely to have to cope with poor housing, homelessness, unemployment, low educational attainment, financial exclusion and overindebtedness. The reason why some sections of society are more at risk depends on a number of factors and circumstances. For example, not earning enough despite being in paid employment can result in large and single-parent families living at or below the poverty line. Having limited or no access to adequate child-care can make it difficult for parents to meet the demands of both work and family life. This situation contributes to the fact that about 19 million children in the EU live in poverty. At the other end of the age scale, about 19% of EU residents aged 65 and over are at risk of poverty and social exclusion. This is often because their pensions do not adequately cover their living costs. Older people are also at great risk of social isolation, especially if they live alone.

Developed and approved by the European institutions with impact at national level, the concept of social inclusion is defined as a set of measures and multidimensional actions in the areas of social protection, employment, housing, education, health, information and communication, mobility, security, justice and culture, aiming at combating social exclusion. In the Romanian institutional language, the concept of social development has been initially used starting with 2001, with the approval of the Government Decision no. 829/2002 regarding the National Anti-poverty and development of Social Inclusion Plan.

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60 European Commission, Employment, Social Affairs and Inclusion, Features, European Year helps reveal who most is at risk of poverty, at: http://ec.europa.eu/social/main.jsp?catId=370&langId=ro&featuresId=114&furtherFeatures=yes.

61 Ibid.

62 Ibid.

In accordance with the Partnership Agreement of Romania with the EU, the Romanian Government developed with the European Commission the Joint Inclusion Memorandum (JIM). The Inclusion Memorandum refers to vulnerable categories and enumerates children in risk situation, youth over 18 years old outside the protection system of children without family, persons with disabilities, and Roma persons in risk situation. Similarly, the Romanian National Plan for Development refers to human resources and promotion of social inclusion as regards the Roma population, persons with disability, youth over 18 years old outside the child protection system, children with special educational needs, families with more than 2 children, single-parent families, children at high risk, persons with a Court conviction, drug addicted persons, homeless persons, victims of domestic violence etc.

The Romanian anti-discrimination law does not explicitly refer to vulnerable categories but to disadvantaged category of persons. In Article 4 the law defines the disadvantaged category as “the category of persons which are in an unequal position in comparison with the majority of citizens due to identity differences or they confront themselves with marginalization and exclusion behaviour”. Law no. 116/2002 on preventing and combating social marginalization, the legislator explicitly defines marginalization in relation with individuals or categories "having a social peripheral position, of isolation with limited access to economic, political, educational and communicational resources of the collectivity, manifested through absence of a minimum of social life conditions".

The implementing program of the National Anti-poverty Plan and development of Social Inclusion refers to marginalized and socially excluded individuals as “those confronting with one or more cumulative social deprivation such as: lack of a job, of a house, of improper housing, lack of access to water, heating, electricity, lack of access to education or health services”. The law on establishing the Romanian social development fund refers generally to poor rural communities, poor Roma categories and disadvantaged categories. According to the law, poor rural communities are those households and families living in a village or in isolated human settlement; disadvantaged categories comprise poor elderly people, without family support, certain sick people, homeless people, women victims of domestic violence, poor women, poor parents with children, street children, poor pregnant youth, and other similar categories; poor Roma categories comprise individuals from rural or urban settlements with a majority of Roma members.

<table>
<thead>
<tr>
<th>Concept</th>
<th>Description</th>
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<tr>
<td>Vulnerable groups</td>
<td>Children in risk situation, Children without family, Youth over 18 years old outside the protection system of Persons with disabilities Roma persons in risk situation</td>
<td>Joint Inclusion Memorandum, 2006</td>
</tr>
</tbody>
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64 Ibid.
65 Ibid.
68 Article 3, law no. 116/2002 on preventing and combating social marginalization
69 Governmental Decision no. 1827 for approving the Program for implementing the national Anti-poverty Plan and development of social inclusion for 2006-2008, Official Journal of Romania, no. 64 from 24 January 2006.
71 Article 2, paragraph 1, letter a-e, Law no. 129 from 25 June 1998 republished 8 June 2005.
### Disadvantaged groups

- Elderly in risk situation, Homeless people
- Poor elderly people, without family support
- Certain sick people, homeless people, women victims of domestic violence, poor women, poor parents with children, street children, poor pregnant youth, other similar categories

**Law no. 129/1998, Art 2, para. 1, letter c**

### Categories at risk

- Unemployed persons, Children, Elderly, Youth
- Persons living in rural areas
- Roma
- Persons with disabilities

**Gov. Decision no. 829/2002, annex, section I, chapter II principles, point 8**

### Priority categories in preventing poverty and social exclusion

- Children in risk situation (abandoned, victims of negligence, domestic violence, sexual exploitation, extreme poverty); Women at risk of domestic violence, sexual exploitation
- Poor Roma population, with chronic lack of opportunities and victims of discrimination

**Gov. Decision no. 829/2002, annex, section I, chapter II**

### Social groups in difficulty or risk generating marginalization and social exclusion

- Children, elderly, persons with disability, homeless people, people with HIV, people with chronic disease, with incurable diseases
- Drug/Alcohol/other toxic substances addicted persons,
- Persons leaving penitentiaries
- Single parent families, Persons affected by violence in family, Victims of human trafficking, Persons without income or with small income, Immigrants

**Gov. Emergency Ordinance no. 68/2003, Art. 1, para. 1, Art. 23 and 25.**

### Families with high vulnerability

- Families with many children, single parent families, families with issues of social disorganization, poor Roma families, families living in inhuman conditions

**Implementing program of the PNAinc (2006-2008), Chapter 1, objective 7.3**

### Vulnerable groups, social categories at risk of social marginalization

- Children within the child state protection system, youth over 18 years old leaving the child protection system, families with more than 2 children and single parent families, Roma population, Persons with disabilities, Persons released from detention

**National development plan 2007-2013, priority area 4, developing human resources, employment, social inclusion, administrative capacity**

### Vulnerable groups

- Roma population, Persons with disabilities, youth over 18 years old leaving the child protection system and other categories mentioned in JIM,
- Women, families with more than 2 children, single parent families, children in risk situations, convicted persons and former delinquents, Drug and alcohol addicted persons, homeless persons, victims of domestic violence, and persons with HIV, persons affected by professional diseases, refugees, and asylum seekers.

**Operational sectorial programs, developing human resources 2007-2013, Priority axis 6, promoting social inclusion**

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The socio-economic situation of the Roma community in EU and Romania

Specialised literature indicates that Roma community in several EU member states is a population that could reasonably be argued is vulnerable at a group level, as for example, its health status is much worse than that
of the general population and even socio-economically matched comparators and levels of educational attainment, school exclusions, absences from school, and eligibility for free school meals clearly place the group as an outlier. Moreover, the group probably has the most severe and consistent experiences of racism of any group. One of the main determinants of vulnerability and poor health outcomes relates to the housing situation as well as the financial deprivation in the Roma community that may contribute as well to vulnerability72.

According to research by the EU Fundamental Rights Agency, the United Nations Development Program (UNDP) and the World Bank, in Romania, Bulgaria and Slovakia the majority of the Roma surveyed live in households that do not have at least one of these basic amenities, in contrast to the non-Roma households surveyed73.

In all EU Member States significant differences exist in the proportion of Roma and non-Roma living in households that are at-risk-of poverty. In Romania over 80% of Roma interviewed live at risk of poverty in comparison with 40% of the non-Roma74.

Between 70% and 90% of the Roma surveyed reported living in conditions of severe material deprivation. The proportion of non-Roma in such conditions is significantly lower with substantive differences between the EU Member States. In Romania 90% of the Roma interviewed live in such conditions in comparison with over 50% of non-Roma75.

Important differences in school attendance are recorded between Roma and non-Roma children. At least 10% of Roma children aged 7 to 15 in Greece, Romania, Bulgaria, France and Italy are identified in the FRA survey as not attending school, meaning that they are either still in preschool, not yet in education, skipped the year, stopped school completely or are already working76.

Results for young adults aged 20 to 24, who are entering the labour market, show significant differences between Roma and non-Roma in all EU Member States. In five out of 11 EU Member States, Portugal, Greece, Spain, France and Romania, fewer than one out of 10 Roma is reported to have completed upper-secondary education77.

There are high unemployment rates for the Roma across all EU Member States where they were surveyed. In Romania the number of Roma saying that they are unemployed is almost double than the number of non-Roma78.

75 Ibid.
76 Ibid.
77 Ibid
There are noticeable differences when comparing Roma and non-Roma responses in Greece, Romania and Bulgaria in particular, where only around 45% of the Roma said they have medical insurance in contrast to around 85% for the non-Roma.\(^79\)

### The experience of discrimination of Roma communities in EU and Romania

In all EU Member States, a significant proportion of Roma said they have experienced discriminatory treatment because of their ethnic origin in the 12 months preceding the survey. The proportions range from more than 25% in Romania to around 60% in the Czech Republic, Greece, Italy and Poland\(^80\).

When asked if they knew of any law that forbids discrimination against ethnic minority people results reveal important differences between EU Member States. In general, a larger proportion of non-Roma is aware of such laws in comparison with a lower proportion of Roma. A similar situation relates to identifying an organization that may support victims of discrimination whereby Roma are less knowledgeable as well\(^81\).

Another relevant aspect concerning discrimination and the members of the Roma community relates to reporting and complaining to State authorities for redressing the situation.

According to the European Union Minorities and Discrimination Survey published by the EU fundamental Rights Agency\(^82\) between 66% and 92% of Roma respondents in seven Member States (Bulgaria (92%), Greece (90%), Hungary (82%), Romania (81%), Slovakia (80%), Poland (71%) and Czech Republic (66%)) did not report their experiences of discrimination to any organisation or office where complaints can be made, or at the place where the discrimination happened\(^83\).

According to the same report, Roma who were victims of assault, threat or serious harassment experienced on average 4 incidents over a 12 month period\(^84\). Between 69% and 89% of respondents did not report in person crime. (89% in Greece, 88% in Bulgaria, 85% in Hungary, 76% in Czech Republic, 75% in Romania, 72% in Poland and 69% in Slovakia)\(^85\)

The FRA report findings indicate that a great deal of work needs to be done to instil the Roma’s confidence and trust in the police so that they feel able to report their experiences of victimisation\(^86\).

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\(^79\) Ibid.
\(^81\) EU FRA, UNDP, World Bank, The situation of Roma in 11 EU Member States, Survey results at a glance, 2012. All table in this section are reproduced from the FRA, UNDP, World Bank report.
\(^83\) Ibid.
\(^84\) Ibid.
\(^85\) Ibid.
\(^86\) Ibid.
Structural and behavioural sources of discrimination in Romania

The most recent report of the World Bank entitled “Diagnostics and policy advice for supporting Roma inclusion in Romania”\(^\text{87}\) notes that a primary mechanism of discrimination of Roma in Romania is the belief of mainstream society that the Roma do not want to lift themselves out of poverty. A range of constraints and disadvantages, including the lack of opportunities, resources, and information, experienced by the Roma are often reflected in their values (e.g. attitudes, preferences, aspirations) and behaviour (e.g. decisions and actions), which might have poverty-perpetuating properties. Some of these values and behaviours make the Roma, as a group, vulnerable to becoming the subject of ethnic stereotyping, which casts them as “having a negative attitude towards work and life, wasting money on unproductive activities, and adopting poor and unhealthy lifestyles with no motivation to break out of the poverty cycle”\(^\text{88}\). Such ethnic stereotyping leads to disapproval and contempt, resulting in disrespectful and discriminatory treatment of Roma.\(^\text{89}\)

Discrimination is also induced by poverty profiling, or service providers’ profiling of Roma through as assumptions on their lack of financial resources or high risk of default. Social status and the perception of ability to pay are important factors in the accessibility of health facilities and quality of treatment. Similarly, bankers often perceive slum-dwellers and informal sector workers, particularly the Roma, to be a high-risk group of default and do not provide loans to them. Housing providers often perceive the Roma to be a high-risk group that “does not play by the rules” and therefore do not lease property to them.\(^\text{90}\)

The historical mistrust between Roma and non-Roma people in Romania is argued to be another major source of discrimination. Attempts to encourage non-discrimination have been unsuccessful, because they fail to address meaningfully the animosity and mistrust between Roma and Non-Roma categories deeply rooted in the history of Roma segregation.\(^\text{91}\) Scapegoating of Roma, for example, is a form in which such historical mistrust is manifested. In Romania, the public and some political authorities have been reported to blame the Roma community for economic and social unrest.\(^\text{92}\)

Mistrust towards Roma by mainstream society is often a result of a popular understanding (or lack of understanding) of elements of Roma culture and “Gypsy law”. The cultures and norms of the dominant group in society could often actively disrespect categories they consider subordinate. The dominant group could prevent the subordinate group from fully taking part in society, by harming their dignity through disrespectful treatments, including (intentional and unintentional) stereotyping and contempt for their cultures and practices.\(^\text{93}\)

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\(^{89}\) Ibid, p. 206.

\(^{90}\) Ibid.

\(^{91}\) Ibid.

\(^{92}\) Ibid.

Prejudices, poverty-profiling, and historical mistrust are perpetuated by socialization and the reproduction of negative stereotypes of Roma including by the media through television, movies, and advertising—reproducing negative images and stereotypes about the Roma, which has been well documented in research.\(^4\)

Existing data reveals a need to raise awareness and information to alleviate Roma feelings of injustice. As shown in the EU FRA, UNDP and World Bank research on the situation of Roma in 11 EU Member States\(^5\) a large majority of the Roma population in Romania (69 percent of all surveyed Roma) is unaware of the existence of any organizations that can offer support or advice to people who have been discriminated against.

The knowledge of the possibilities of grievance redress, and examples of successful cases or at least of other Roma who have reached out to public bodies for help, might also induce active citizenship and reduce the feelings of helplessness and resignation that are seen among many Roma caught in a cycle of discrimination and poverty.\(^6\)


\(^5\) EU FRA, UNDP, World Bank, The situation of Roma in 11 EU Member States, Survey results at a glance, 2012

\(^6\) World Bank, “Diagnostics and policy advice for supporting Roma inclusion in Romania”,
FUNDAMENTAL ELEMENTS IN THE PROCESS OF ACCESS TO JUSTICE FOR VULNERABLE CATEGORIES

CHAPTER II
The meaning of ‘justice’ in a broad sense

Justice, in a more traditional or narrow view, is associated as deriving from the adjudication under the formal legal system. Basically, the achievement of justice depends on due legal process and public evaluation of a dispute against the external standard of law. Consequently, in this view a “just outcome” is a decision made on the merits in relation to the parties legal rights. In a broader view, justice is not only inextricably linked with law but also includes reforms promoting more than access to the formal legal system.

We may argue that access to justice (commonly understood as access to courts, lawyers, law firms) presupposes a “just outcome” and the engagement of the public interest. This means that the outcome must contribute to achieving and maintaining those public interest elements of society that are regarded by citizens as essential to their common security and well-being.

This engages the rule of law, the stability of the society, and reliable relationships; it is achieved in part through maintaining civil and criminal justice systems. Subsequently the resolution of claims and disputes are in accordance with the infrastructure of civil and criminal justice systems.

As argued by specialised legal institutes the public interest in justice lies in maintaining the fabric of society (in part through the rule of law) and in facilitating the legitimate participation of citizens in society through reliable and enforceable relationships based on their legal rights and duties. Reliability and enforceability are underpinned by law and the rule of law ultimately relies on judicial determination – judges are the final arbiters of legitimacy and enforceability.

Access to justice and the link to human rights

Under the human rights treaties and conventions, States have an obligation to ensure access to justice for all without discrimination. The legal and institutional frameworks that facilitate access to effective judicial and adjudicatory mechanisms should not discriminate either directly or indirectly against any individual or group, and should ensure a fair outcome for those seeking redress. They must also ensure effective enforcement and compliance with judicial rulings or adjudicatory decisions.

To ensure that vulnerable categories of persons can benefit from the law and enjoy equal access to justice the legal and institutional framework should address the improving of legal information and education, implementing human rights training as well as to tackle the multidimensional causes of social exclusion and lack of access to basic rights (e.g. access to education, housing, health or employment).

99 Legal Services Institute, Improve access to justice: scope of the regulatory objective, Interim discussion paper, December 2012, (I need to add the link here)
Specific interventions should be focused on the legal and judicial system, including reform of the normative framework, improving the capacity of institutions to provide justice remedies without discrimination and creating the conditions to ensure that the process and final outcome are fair. It also requires taking specific measures to empower the vulnerable categories, not limited to legal awareness and legal aid but rather increasing their social and political participation overall to ensure a just outcome. Thus, the ability to enforce a right becomes central to transforming fundamental rights from theory into concrete reality. Access to justice is not only a right in itself but also an enabling and empowering right since it allows individuals to enforce their rights and obtain redress, including insufficient knowledge about the different avenues available to access justice.

UN bodies consider that access to justice can be divided into different stages starting from the moment a grievance occurs (causing a dispute) to the moment redress is provided (providing a remedy). Full access is ensured when the process is completed. The essential element of the process is given by the “capacity” of the system. UNDP defines “capacity” as the ability to solve problems, perform functions, set and achieve objectives. It further states that there are 3 major dimensions of capacity development:

**NORMATIVE PROTECTION** – Refers to individual, institutional and collective capacities to ensure that justice remedies to vulnerable people are legally recognized, either by formal laws or by customary norms.

**SUPPLY OF REMEDIES** – Includes capacities enabling adjudication of decisions, enforcement of remedies and accountability of the process through civil society and parliamentary oversight.

**DEMAND FOR REMEDIES** – Relates to the key skills people need to seek remedies through formal and informal systems, including legal awareness, legal aid, and other legal empowerment capacities.

The element of risk is a major obstacle to effective access to justice. The process of seeking or delivering justice often brings risks with it – risks of economic loss, physical threats, social ostracism, etc. Therefore, even when people and institutions have sufficient capacities in terms of awareness, expertise, or resources, they may not be willing to pursue the justice remedies due to the inherent risks they entail. The role of risk is particularly important for marginalized categories, as they often live in situations of high insecurity (economic, social, environmental, etc.).

As the justice system is entrusted with a public service mission to serve the interests of the public, the rights of court users must therefore be protected. Correct and sufficient information is essential for effective access to justice. It is not only important to provide general information on the rights and proceedings via websites, but also to provide court users with information, in accordance with their expectations, concerning the foreseeability of procedures, i.e. the expected timeframe of a court procedure. This specific information, provided in the interests of the users, but not yet general across Europe, can only be given by states which have set up an efficient case management system within their jurisdictions.

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103 Ibid

104 Ibid

105 Ibid

In addition, all court users should have the right to apply to a national court for compensation for the damage he/she has suffered due to a dysfunction of the judicial system. This dysfunction may consist of excessive length of proceedings, non-enforcement of court decisions, wrongful arrest or wrongful conviction. In Romania, for example, there is no formal mechanism for calculating compensation. The Courts take into consideration the national case law as well as the jurisprudence of the European Court of Human Rights in similar cases.  

**Fundamental elements in the process of access to justice**

As stated above, access to justice involves the moment a grievance occurs (causing a dispute) to the moment redress is provided (providing a remedy). These two stages presuppose a number of fundamental elements related to access to justice.  

<table>
<thead>
<tr>
<th>GRIEVANCE</th>
<th>Action NEEDED</th>
<th>Capacity ENHANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>People perceive to have suffered a gross injury or loss</td>
<td>Leads to DISPUTES among people or among people and State authorities</td>
<td></td>
</tr>
<tr>
<td>Grievance is recognised within the scope of the justice system giving entitlement to remedies through formal and informal mechanisms</td>
<td>RECOGNITION</td>
<td>LEGAL PROTECTION</td>
</tr>
<tr>
<td>People know remedies are available and whom to demand them from</td>
<td>AWARENESS</td>
<td>LEGAL AWARENESS</td>
</tr>
<tr>
<td></td>
<td>Involves the development of capacities to ensure that the rights of vulnerable people are recognized within the scope of justice systems.</td>
<td>Determines the legal basis for all other support areas on access to justice process.</td>
</tr>
</tbody>
</table>

107 Ibid.

<table>
<thead>
<tr>
<th>Action NEEDED</th>
<th>Capacity ENHANCE</th>
</tr>
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<tbody>
<tr>
<td><strong>ADJUDICATING</strong></td>
<td><strong>ADJUDICATION</strong></td>
</tr>
<tr>
<td>Involves the development of capacities to determine the most adequate type of redress or compensation. Means of adjudication can be regulated by formal law, as in the case of courts and other quasi-judicial and administrative bodies, or by traditional legal systems.</td>
<td>Determines the capacities for investigation, prosecution, decision, appeal (formal system) and settlements, appeal (informal system)</td>
</tr>
<tr>
<td><strong>ENFORCEMENT</strong></td>
<td><strong>ENFORCEMENT</strong></td>
</tr>
<tr>
<td>Involves the development of capacities for enforcing orders, decisions and settlements emerging from formal or traditional adjudication. It is critical to support the capacities to enforce civil court decisions and to institute reasonable appeal procedures against arbitrary actions or rulings.</td>
<td>Determines the capacity to enforce remedies, minimize impunity and prevent injustice</td>
</tr>
<tr>
<td><strong>OVERSIGHT</strong></td>
<td><strong>CIVIL SOCIETY OVERSIGHT</strong></td>
</tr>
<tr>
<td>Involves the development of civil society’s watchdog and monitoring capacities, so that it can strengthen overall accountability within the justice system.</td>
<td>Strengthens overall accountability of the justice system</td>
</tr>
<tr>
<td><strong>REMEDY</strong></td>
<td></td>
</tr>
<tr>
<td>Injury or loss is redressed through settlement, restitution, compensation, penalties etc.</td>
<td>Solves <strong>DISPUTES</strong> among people or among people and State authorities</td>
</tr>
<tr>
<td><strong>CLAIMING</strong></td>
<td><strong>LEGAL AID AND COUNSEL</strong></td>
</tr>
<tr>
<td>Involves the development of the capacities that people need to enable them to initiate and pursue justice procedures. Legal aid and counsel can involve professional lawyers, paralegals, legal advisors etc.</td>
<td>Determines expertise and representation for access to justice</td>
</tr>
</tbody>
</table>
Access to justice and normative protection

Normative or legal protection refers to individual, institutional and collective capacities to ensure that justice remedies to vulnerable people are legally recognized, either by formal laws or by customary norms. That is why normative protection is derived both by a State’s legal system and the international framework. They complement each other, i.e. the international framework lays down principles to be incorporated into the national normative framework.

In terms of normative protection, the elements of legal systems include:

- **The Rules**, which can be international or domestic, constitutional or ‘ordinary’, procedural or substantive, formal or informal in nature;
- **The Processes** through which rules are made, applied, interpreted and enforced in practice (i.e. rule-making, rule-enforcing and rule-changing); and
- **The Relevant Actors** and institutions involved in legal frameworks and procedures/processes.\(^\text{109}\)

To the extent that human rights are recognized and formalized within the normative framework, they offer legal protection of vulnerable categories.

However, formal recognition within the normative framework alone may not be sufficient for the protection and enjoyment of rights of the most vulnerable categories. In some cases additional or more specific laws need to be enacted to flesh out the contents of the right, claim holders and duty bearers\(^\text{110}\).

The enactment of statutes protecting judicial independence, the establishment of judicial oversight bodies and watchdogs such as ‘Councils of Magistrates’, or the development of additional systems such as Ombudsman, Human Rights Commissions, Equality bodies etc., are additional tools provided by the law to ensure proper application of the law and professionalism within the judiciary\(^\text{111}\).

Acting as the link between the normative framework and the individual, the decisions of courts and tribunals form part of the framework of legal protection. Court decisions can provide protection through the application of national and international human rights standards. They can also develop further or elaborate on existing human rights standards. In cases where the national statutory framework is lacking basic standards for rights protection, a progressive judiciary can expand domestic normative protection to protect vulnerable categories.

Challenges in achieving normative protection

Barriers that hinder achieving the full benefits of normative protection may be actively or passively created or sustained and may be (a) legal, (b) institutional, (c) political or (d) social/cultural\(^\text{112}\).

**Implementation of international law.** There are several barriers related to international law including non-ratification of treaties; ratified treaties that are not incorporated into national law or improperly transposed; and lack of knowledge on how to apply international law to the domestic legal and judicial framework.

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\(^{111}\) Ibid

Gaps in the legal framework. Legal gaps in the protection of fundamental rights are commonplace and may be due to many factors, including:

- **Non-recognition of the rights** (e.g., non-recognition of right of members of vulnerable categories)
- **Omission or refusal to provide protection** (e.g., in some countries, there might be objection towards affirmative action for some vulnerable categories)
- **Constitutional and legal discrimination** (Laws can discriminate against vulnerable categories either directly or indirectly, adding to their marginalization. At the formal legal text level, there may not be any discrimination against the vulnerable categories. However, due to cultural or social attitudes towards the vulnerable categories and the structural level of discrimination experienced by them, they may be unable to access and enjoy the benefits of a neutral legislation. Hence, specialized legislation is required and failure to provide such legislation can be an obstacle to accessing justice).
- **Laws that contradict human rights standards** (For example, not providing people with mental disabilities with the proper health care and refusing standing in courts to redress their grievances).

A number of barriers relate to institutional capacities required for drafting, reviewing, interpreting and implementing legislation.

- **Lack of understanding human rights norms.** The lack of conceptual clarity on issues of discrimination may pervade. Often there is little understanding of human rights norms, especially on complex and new issues in relation to international standards. Opportunities to create such understanding and conceptual clarity are also few.
- **Lack of independence.** Independence of the legislature and the judiciary creates an environment for participation and inclusion of vulnerable categories as well as human rights-consistent laws and jurisprudence.\(^{114}\)
- **Weak capacities to develop statutes and case law.** Another barrier can be the lack of capacity in the technical aspects of developing law. Difficulties in implementing laws can reflect defects in drafting.
- **Weak capacities to apply international norms.** Judges may rarely exercise their ability to create jurisprudence due to their weak capacity in developing creative arguments in favour of access to justice norms. Often, domestic judges are reluctant to apply international norms for they are simply not familiar with their content and thus uncomfortable in referring to them, though legally binding\(^ {115}\).
- **Lack of channels for participation of vulnerable categories.** Vulnerable categories are often times excluded from participating in norm-making because they are considered not be able to understand the process or not have an interest in the process. This assumption shifts blame from the State who is obligated to ensure that vulnerable categories are provided with the tools, opportunities and environment to participate. Obstacles to participation may arise from the absence of adequate channels to bring vulnerable people’s voices into legal drafting processes – e.g., through public consultations, awareness campaigns, etc. These categories may also not have the necessary critical capacities for participation, such as organization, information and policy advocacy skills due to state omissions\(^ {116}\).

For vulnerable people (children witnesses/victims, victims of domestic violence, ethnic minorities, disabled persons, juvenile offenders), special mechanisms may be used to protect and to strengthen their rights during

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\(^{114}\) Ibid

\(^{115}\) Ibid

\(^{116}\) Ibid
court proceedings, for example by introducing specific information mechanisms (telephone hotlines, Internet, leaflets, etc.) for the various vulnerable categories\textsuperscript{117}.

**Discriminatory social and cultural norms or attitudes toward vulnerable categories.** Although customary practices can provide protection for vulnerable categories, they can also be a source of discrimination. The second-class status given to women, persons with disabilities, HIV, or certain members of minority categories in the social and customary norms of many societies is one such example. Vulnerable categories are often viewed through the lens of stereotypes and false notions of hierarchy\textsuperscript{118}.

**Lack of development of capacities for vulnerable categories.** State fails to raise the capacity of vulnerable categories to ensure their full understanding of their rights. In many instances, the capacity of vulnerable categories to claim their rights will depend on understanding the content and attributes of rights, including the principle of holding the State liable for acts of commission and omissions knowledge of the appropriate tools and methodology necessary to claim rights, including the channels for participation, venues for redress of grievance, etc.\textsuperscript{119}

**Access to justice and legal empowerment**

Legal empowerment is essential to people’s ability to seek and demand remedies from the justice system. Empowering people by strengthening their capacity to demand justice remedies can have a substantial impact on poverty reduction and on overall institutional accountability. Legal empowerment helps to mobilize vulnerable people’s participation in development and decision-making processes. This in turn helps to improve responsiveness and accountability in the system\textsuperscript{120}.

Having a right doesn’t translate into having the capacity to use it. While international treaties and national laws may guarantee a range of human rights, this does not guarantee the capacity of people to exercise these rights\textsuperscript{121}. Inequality in access to justice is a complex social phenomenon that results from the existence, and often the combination, of inequalities at the legal, institutional, structural, socio-economic and cultural levels. Such barriers may affect access at all stages of the justice chain.

Improving people’s capacity to seek a remedy through education and training alone is not sufficient to develop effective capacities to demand justice remedies. Education must go hand-in-hand with other strategies, such as community development, advocacy, mediation and litigation. Education is an important component in legal empowerment and can increase awareness, but it needs to be part of a broader legal empowerment strategy.

Vulnerable people’s capacity to seek remedies is affected by a number of factors that need to be addressed through an integrated approach. For example, a legal awareness campaign that does not take into account the constraints of the formal legal system, or the difficulty of obtaining an institutional response, or the insecurity in which vulnerable people live, is likely to have a very limited effect at best. Integration can be strengthened in two ways: 1. Linking actors at different levels, from government institutions, non-


\textsuperscript{118} Ibid

\textsuperscript{119} Ibid

\textsuperscript{120} Chapter on Capacity to demand justice remedies, Programming for Justice: Access for All A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice, 2005, UNDP

\textsuperscript{121} Amartya Sen, Development as Freedom, Oxford University Press, 1999.
governmental organizations and communities; 2. Building on development activities, such as improving access to housing, employment, education or healthcare services. Obstacles at the community level are the most immediate factors preventing people from seeking justice. That is why strategies should target at addressing such obstacles and strengthening the capacities at community level. Expanding legal infrastructure for vulnerable people is essential and non-government organizations and community-based categories can be highly effective in supporting the development of legal infrastructure.

Challenges to enhancing legal empowerment

A number of obstacles are affecting vulnerable people’s capacity to seek remedies beyond legal aid and awareness. Some of these obstacles are generated by external factors and some by internal factors.

**External factors** can be found at the institutional level or within the economic, social and political structures in which people and institutions operate. Distinguishing institutional obstacles from structural obstacles is often difficult, as they are closely related.

**Normative/institutional bias and discrimination.** Institutions and legal and policy frameworks may be inadequate for the specific needs and circumstances of vulnerable people.

**Inadequacy of formal structures.** Even when vulnerable categories may be aware of their rights, they may be unwilling to claim those using formal structures. These structures may often seem alien and intimidating to them, as well as distant, corrupt and costly.

**Weak accountability systems.** Accountability mechanisms within the justice system are sometimes weak or even on occasions, non-existent. This lack of accountability may be aggravated by poor coordination among agencies and a culture of corruption, patronage or nepotism.

**Growing inequalities, invisibility and disempowerment.** Social, political and economic structures at national level neglect the vulnerable, resulting in further disempowerment. Inequality reinforces vulnerable people’s exclusion from, or invisibility in, government programmes and activities and from the development process. They are often excluded from decision-making processes that impact on their lives, seen as “others,” or only paid lip service in participatory forums. Because of existing or perceived discrimination, disadvantaged categories often fear formal justice systems. Fear and the lack of trust in formal institutions may cause them to not exercise their right to remedy even when their rights have been violated. Despite enduring grievances, they may fear that if they turn to the formal system, not only will they not receive remedies for their grievances, they may face additional violations.

**Social discrimination.** Many people find themselves excluded from access to justice without necessarily being poor. They may be discriminated against for reasons that have more to do with the attitudes and beliefs of those around them – e.g., discrimination against people living with HIV/AIDS, with disabilities, members of Roma minority.

**Culture of impunity.** A prevailing culture of impunity discourages vulnerable people from seeking justice. Sometimes a single conviction may be more effective than a large-scale training in obtaining attitudinal change within the system.

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122 Ibid
Corruption. Corruption may occur at any level of governance, justice or legal enforcement. Corruption within the justice system is a powerful impediment to people seeking remedies for grievances and further alienates those who do not have the resources or networks to engage in corruption and benefit from it. Sometimes the nature of their situation can prevent vulnerable categories from actively seeking justice, even when they may be aware of their right to do so.

Internal factors/obstacles reflect psycho-social factors and may include:

Internalization of public prejudice. This internalization of discrimination towards one’s own community, with the resultant loss of confidence and self-esteem can prevent people from pursuing formal mechanisms.

Historical traditions of oppression and exclusion. This alienates vulnerable categories from the formal institutions of the State. Such categories may be reluctant to engage with the formal institutions of justice as a consequence of deep, long-established distrust.

Physical distance. The majority of the poor live in rural areas at great distance and remoteness from justice remedies.

Illegality. Sometimes a contradiction exists between the ideal of the rule of law and the reality of poverty. As a result, poor and vulnerable categories often find themselves in situations of “illegality”, for example, informal labour, immigration, indigenous practices, that alienate them further from the justice system. Illegality also makes them vulnerable to abuses in the context of campaigns to counter criminality and strengthen national security. This can, in turn, aggravate existing social conflicts.

Insecurity. Vulnerable people often live in situations of high insecurity (physical, psychological, social and economic), in which they cannot afford to take risks or require immediate benefits when they do so. Insecurity also makes them vulnerable to risks resulting from asserting their rights, such as threats, job dismissal, lawsuits, and cancelation of social benefits.

Weak organizational capacities. Because of historical oppression, vulnerable categories may lack a culture of self-organization for collective claims. They may also mistrust outsiders and have low expectations of the benefits of participation. Although informal structures of self-organization may exist, these too may also be hampered by discrimination, patronage and nepotism. Lack of networking with other organizations at the local, national levels can limit organizational effectiveness as well.

Technical and financial constraints. Technical and financial limitations are powerful impediments to seeking access to justice, and often result in denials of justice for those who do not understand or cannot afford long, costly, complex and cumbersome processes of justice.

Relevance of legal awareness

Legal awareness is critical to seeking justice. Vulnerable people often do not make use of laws, rights and government services because they simply do not know about them. The degree of a person’s legal awareness can affect their perception of the law and its relevance to them, as well as influencing their decisions on
whether and how to claim their rights. Access to legal counsel and other forms of legal aid can increase an individual’s legal awareness and assist them to make informed decisions and choices.130

Governments have an essential role to play in making information available. Strategies to promote legal awareness may be undertaken by both government and non-government actors. In the case of government, ensuring timely access to legal information when it is sought is a fundamental duty of all agencies and departments at all levels (local, regional and national) and in all branches of government (legislative, executive and judicial). However, such a fundamental duty is often not defended at constitutional or legislative levels. In contrast, some institutions have specific mandates to promote awareness on laws and rights, for example, National Human Rights Institutions, Equality bodies but sometimes these agencies have inadequate capacities to carry out their functions in this regard.131

Non-government actors undertake legal awareness activities in different ways. They may establish legal clinics or legal aid centres, or they may conduct awareness raising campaigns at the community level, or through the use of mass media. Although they may be able to provide information targeted explicitly at vulnerable categories, non-government actors face substantial challenges such as uncoordinated efforts, weak sustainability of initiatives, and limitations on large-scale impacts.132 Promoting consciousness of legal culture to ensure that usage of remedies and the ability to enforce rights is a precondition for a just system. And vice versa raising awareness of the providers of justice about the needs of disadvantaged categories is influencing the development of the judicial system.

Challenges to Enhancing Legal Awareness

A lack of sound communication policies and procedures within government agencies can be an obstacle that prevents citizens from understanding their entitlements regarding government services. It also reduces their awareness of new laws and legislation which may be relevant to them. Governments may be reluctant to assist access to information on issues that they do not consider in the public interest or regard as sensitive information, for example, data on the jail population, HIV/AIDS and so forth.133

If legal awareness campaigns stop at the middle level and do not reach down to the grassroots and community levels, they will be unable to reach the entire community especially the most vulnerable. Awareness programmes should, therefore, be applied consistently, and with sufficient resources so as to reach all levels within the community. Even when legal information is available, it may be inaccessible in physical or economic terms. It also may be incomprehensible to poor and vulnerable people. Geographic distance, poverty and illiteracy pose serious obstacles for vulnerable categories.134

Legal aid and counsel

Legal awareness can help people understand they have a right to claim remedies against infringements of their rights – such as protection from forced evictions, not to be forced to work without pay, not to be tortured or not to be discriminated against. Nevertheless, people do not always know how to reach these remedies.

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131 Ibid.
132 Ibid.
133 Ibid.
134 Ibid.
or may require professional help to do so. When seeking remedies through the justice system, legal counsel may assist them in making informed decisions and choices.\textsuperscript{135} However, inability to pay for litigation costs, or to communicate effectively, or the risk of traumatic consequences are all critical concerns when navigating the legal process. Legal aid relates to all necessary capacities in this regard, including not only legal counsel, but also financial options and various forms of psycho-social support.

### Challenges to Accessing Legal Aid and Counsel

Legal aid services are usually concentrated in downtown/urban areas and are not easily accessible to those in suburban or rural areas. Pre-trial counselling and appropriate advice to avoid unnecessary processes might be unavailable. Those who need legal aid services can find themselves denied support if they do not meet the court's criteria. Therefore, it is important that the criteria's are carefully established. Scarcity of resources requires applying certain restrictions for access. Alternatives to free, state-provided legal counsel are usually beyond reach of poor and vulnerable people. The quality of legal assistance has traditionally been related to the payment of lawyers' fees, and legal fees increase with delays in justice.\textsuperscript{136}

Long-term, sustained, and permanent state funding for essential legal services for vulnerable categories is necessary. While civil society organizations can provide additional legal aid services and can target specific vulnerable categories, the State should be responsible for providing basic legal aid services to those who need it but cannot afford it.\textsuperscript{137}

Under international law, usually free legal counsel is required in criminal cases. The reality for poor and vulnerable categories however, is that to access their rights, they require legal counsel to be expanded to other areas as well, from civil and commercial matters to administrative and labour relations. Legal aid should provide not only financial support but also other forms of support to navigate the legal process. Other support may include gaining exemptions for clients from legal and court fees, subsidies for bail, or provision of refuge and psycho-social support, such as in domestic violence cases. Such components of legal aid systems are often weaker than legal counsel services, placing an unnecessary burden on individual legal support providers.\textsuperscript{138}

### Capacity to provide justice remedies (adjudication and enforcement)

If the rule of law is to be maintained and litigants' trust in the judicial system is to be ensured, enforcement activities must be proportionate, fair and effective.\textsuperscript{139} The effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is essential to ensure the trust of the public in the authority of the judiciary. Judicial independence and the right to a fair trial is in vain if the decision is not enforced.\textsuperscript{140}

\textsuperscript{135} Chapter on Capacity to demand justice remedies, Programming for Justice: Access for All A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice, 2005, UNDP
\textsuperscript{136} Ibid
\textsuperscript{137} Ibid
\textsuperscript{138} Ibid
\textsuperscript{139} Opinion No.13 on the Role of Judges on the Enforcement of Judicial Decisions, Consultative Council of European Judges, CCJE, Council of Europe, 2010
\textsuperscript{140} Ibid
Ministries of Justice are often responsible for the policies and procedures that affect the management and administration of the national justice system. Quasi-judicial institutions, such as National Human Rights Institutions, Ombudsman offices or Equality bodies complement the Courts and undertake oversight, advocacy and investigative functions.

In addition, the important role of civil society and parliamentary oversight must be taken into account, as they can play a critical role in strengthening institutional accountability for the provision of remedies. Police and prisons complete the cast of actors in the justice system, providing the enforcement mechanisms, which are key to access to justice and a precondition for the elimination of impunity.

The Ministry of Justice plays an important role in strengthening normative protection, as well as implementing and enforcing justice. The Ministry is a service provider dispensing information and services to other government departments, legal professionals and the population at large. Therefore, it is important that the Ministry ensures that these services are sensitive to the needs of vulnerable categories. The Ministry should endeavour to ensure that access to justice for the vulnerable as a core standard for the justice system.

At a local level, dissemination of legal information to increase the awareness of people about their rights, providing legal aid for those who can’t afford it, and ensuring access to mediation as an alternative to lengthy and costly court processes are some ways that the Ministry of Justice can improve the ability of people to access justice.

Court reform strategies traditionally focus on enhancing operational efficiency and developing human resource capacity. While these approaches are critical, if the court system is approached from an access to justice perspective, additional principles, which underpin the provision of access to justice by the court system will need to be addressed. These principles are accountability, accessibility and independence.

Accountability

The essence of an independent and impartial judgement depends on each judge’s personal integrity. Further, an essential element of the right to a fair trial is an independent and impartial tribunal. In the absence of integrity, independence and accountability, corruption and corrupt practices are likely to take root. If the judicial system is corrupt, access to, and the outcome of, judicial decisions are likely to be affected. Corruption of the judiciary disproportionately impacts the poor and vulnerable, as by definition they are less likely to be politically influential, affluent or have personal connections. Corruption can be perceived by the public as a number of different actions, including delays in the executing of court orders and delivery of judgements, unjustifiable issuance of summonses, conflicts of interest, lack of public access to records of court proceedings, unusual variation in sentencing, appointments perceived as resulting from political patronage and so on.

Challenges to Ensuring Integrity and Accountability in the Court System

- Lack of political will to combat corruption or tolerance of corruption
- Lack of proper case tracking, monitoring and accountability within the courts
- Low salary levels of the judiciary/prosecutors
- Lack of legal knowledge of prevailing laws and regulations
- Non-transparent adjudication procedures and pervasive use of closed door trials

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• Public perception of corruption is a disincentive to engage in judicial reform
• Inadequate data/statistics on the extent of judicial corruption
• Lack of effective mechanisms for employee selection, promotion and discipline
• Lack of external review mechanisms by state and non-state actors

Independence
Judicial independence means that both the institution of the judiciary and individual judges are free from interference from other institutions and individuals. Judicial independence lies at the heart of a well-functioning judiciary and is a fundamental principle in ensuring access to justice and upholding the rule of law. The law can only guarantee people’s rights and freedoms when it is interpreted and applied by independent and impartial judges. An independent judiciary functions as a mechanism of checks and balances on the legislative and executive branches of government, and a watchdog against corruption and abuse of power.

There are three general principles informing the independence of the judiciary: Courts and individual judges within judicial systems must be (and publicly perceived to be) impartial in rendering their decisions; Judicial decisions must be accepted by the contesting parties and the larger public; Judges must be free from undue interference from other branches of government as well as from private powers and higher court judges within a national judiciary.

Challenges to the Independence of Courts
• Inadequacy of constitutional provisions for judicial power and independence
• Inadequate budgets for the judiciary and inadequate control over expenditures
• Inadequate mechanisms for judicial appointment
• Lack of security of tenure and unclear disciplinary mechanisms
• Deficient law school training, judicial training and continuing legal education
• Strong opposition against judicial reform aimed at strengthening judicial independence
• The tension between independence and accountability

Accessibility
Accessibility refers to the right of every person to access an independent and impartial court and the opportunity to receive a fair and just trial with a view to providing an effective remedy to a grievance. Impediments to such access can be numerous, including high court costs, delays, inadequate normative framework and improperly narrow interpretation of laws by the judiciary, restrictive jurisdictional rules, overly complex regulations, language barriers, geographical proximity, ineffective enforcement mechanisms, security of would-be litigants and corruption. It is also linked to judicial independence and legal literacy. Accessibility is a pre-requisite to justice for all.

Challenges to Ensuring Accessibility of the Court System

• Court fees and costs are too high for people to seek a remedy
• The lack of clarity in the normative framework on the justice dimensions of social, economic and cultural rights
• Restrictive rules of ‘standing’ act as a barrier to accessing justice
• Complex regulations and procedures are alien and off-putting to the majority of the population
• Geographical and physical barriers
• Cultural and linguistic barriers

Oversight by human rights institutions and civil society

Accountability is one of the key principles of the rights-based approach, and to ensure that the justice system is accountable it is necessary to set up oversight mechanisms. Key actors that can play a role in external oversight of the justice system to ensure that it respects and promotes the rights of all people but especially those who are vulnerable are human rights institutions or specialised bodies and civil society. Accountability may be regarded as a process aiming to turn human rights into capabilities and opportunities for people to exercise their rights under the law, to monitor and evaluate both the process and the impact of justice, as duty bearers are accountable to right’s holders and the public as well.

Human Rights Institutions, including national human rights commissions, Ombudsman offices, thematic commissions, equality bodies investigate human rights abuses and make recommendations with regard to improving law and implementation of legislation that protect people from human rights violations. Civil society, including the media, can investigate abuses, publicize irregularities and advocate for changes within the justice system. Parliamentary oversight of the justice system is also necessary to ensure that the system functions properly and to address discrepancies in the system.

National Human Rights Institutions are established with a view to promote and protect human rights at the national level. They might be quasi-judicial or statutory bodies whose mandate generally includes investigation of complaints in cases of human rights violations, promotion of human rights education, and review of potential legislation. These institutions facilitate access to justice by monitoring human rights situations and providing the means through which members of society can seek redress for violations of their human rights.

Challenges in Ensuring Access to Justice through human rights institutions

• Deficient legal frameworks ensuring minimum standards for the institution and relevant law
• Unsatisfactory performance
• Perception of insufficient legitimacy
• Limited political commitment
• Inadequate budgets
• Lack of efficient, qualified and experienced staff

Civil Society oversight

Civil society organizations and the media can act as watchdogs over the justice sector and function as a force for accountability. Civil society is a crucial agent for limiting authoritarian practices, strengthening the empowerment of the people and improving the quality and inclusiveness of the justice sector. Several international instruments state the importance of civil society involvement in ensuring transparent and

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146 Ibid
148 Ibid
accountable governance processes in all sectors of society. In addition, two international legal instruments guarantee freedom of association and thus, define the parameters within which a government may restrict or regulate civil society organizations – the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

For example the United Nations Development Programme considers that civil society actors have a five-fold function in improving access to justice:

- As campaigners and advocates **pressing for reform**.
- As monitors, **fostering accountability** within the justice sector.
- As disseminators and communicators of **information**.
- As educators through **legal empowerment and legal literacy** initiatives.
- As direct agents **helping people** access justice through legal aid and representation services\(^{149}\).

Experience shows that without considerable public pressure, governments and other state institutions are unlikely to foster the transparency and accountability needed to curb malfeasance by officials. Therefore, it is important that civil society actors engage in dialogue to pressure and negotiate with justice institutions and political authorities to change practices in the justice system and to ensure that regional and international systems of protection are given effect in national justice systems and institutions\(^{150}\).

Civil society actors can improve access to justice through systematic independent observation, monitoring and evaluation of the justice system and sustained reporting back to actors within and outside of the justice system about procedures, behaviours, and practices. Scrutiny applied by the media and civil society can aid the successful and just resolution of disputes and strengthen overall accountability within the justice system\(^{151}\).

**Challenges in ensuring access to justice through civil society oversight**

- Civil and political rights may not be legally protected
- No accountability or enforcement mechanisms
- No effective media or very law interest in human rights
- Few civil society actors prepared to advocate for justice and legal reform
- Unable to form coalitions to champion reform agendas
- Misuse of the principle of ‘judicial independence’

Other capacity constraints faced by civil society organizations

- Lack of internal capacity to fulfill their role, including limited resources, knowledge and technical skills, and as a result they often lack the necessary legitimacy and credibility required to meet their objectives.
- Lack of sustainable funding; perception in lacking transparency and accountability due to limited capacity for proper financial and administrative management.
- More accountable to donors than their constituents and criticized for being donor-driven.
- The way in which governments and civil society react to each other can be an obstacle.
- Government institutions may not respond positively to reform initiatives. Civil society organizations can also view the Government as the main obstacle to achieving their objectives.

\(^{150}\) Ibid
\(^{151}\) Ibid
LEGAL BENCH-MARKS ON ACCESS TO JUSTICE AND LEGAL AID AT INTERNATIONAL AND NATIONAL LEVEL

CHAPTER III
International framework and standards on access to justice and legal aid

Access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights. In the Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels, adopted in September 2012, Member States of the United Nations reaffirmed the right of equal access to justice for all, including members of vulnerable categories.\textsuperscript{152}

Human rights norms and standards relevant to ensuring access to justice are set out in a series of legally binding international and regional human rights instruments including the European Convention for the Protection of Human Rights and Fundamental Freedoms.\textsuperscript{153} Under the UN International Covenant on Civil and Political Rights States are required to ensure that their domestic legal framework is consistent with the rights and obligations provided, including the adoption of appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice.\textsuperscript{154}

Article 2(3) of the International Covenant on Civil and Political Rights provides for the right to an effective remedy. In its General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, the Human Rights Committee emphasized that “in addition to effective protection of Covenant rights, States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person”.\textsuperscript{155} Article 2 (3) of the International Covenant on Civil and Political Rights also requires the availability of adequate reparations to individuals whose rights have been violated.\textsuperscript{156}

The United Nations General Assembly recently adopted an international instrument dedicated to the provision of legal aid. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems\textsuperscript{157} (“the UN Principles and Guidelines”) were approved on 20 December 2012. They enact global standards for legal aid, and invite States to adopt and strengthen measures to ensure that effective legal aid is provided across the world: “Recognizing that legal aid is an essential element of a functioning

\textsuperscript{152} UN General Assembly Resolution 67/1, paras. 14 and 17.

\textsuperscript{153} All core international human rights treaties are relevant in this context. Regional human rights treaties such as the American Convention on Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms; Charter of Fundamental Rights of the European Union; Arab Charter on Human Rights; African Charter on Human and Peoples’ Rights guarantee relevant human rights to ensure access to justice.

\textsuperscript{154} Article 2 of the International Covenant on Civil and Political Rights; see also: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, article I.2.b.

\textsuperscript{155} General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Para. 15.

\textsuperscript{156} Human Rights Committee, General Comment No. 31, para. 16.

criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.\textsuperscript{158}

The right to legal aid is established explicitly in Article 6(3) (c) of the European Convention on Human Rights ("ECHR") and in Article 14(3) (d) of the International Covenant on Civil and Political Rights ("ICCPR"). The European Court of Human Rights ("ECtHR") has developed detailed rules about how legal aid should be provided, many of which have been affirmed by the UN Human Rights Committee applying the ICCPR.

**Access to justice and equality in the administration of justice**

Access to justice and equality in the administration of justice lie at the heart of the rule of law. They demand that all persons have equal rights of access to the courts and that justice is administered in a way that achieves fairness for all, regardless of the identity of the parties to the proceedings or the nature of the proceedings themselves.\textsuperscript{159} The UN Human Rights Committee has referred to the right to equality before courts and tribunals, including equal access, as a "key element" of human rights protection and as a procedural means to safeguard the rule of law.\textsuperscript{160} The European Court of Human Rights has similarly expressed the right of access to court as essential "in view of the prominent place held in a democratic society by the right to a fair trial".\textsuperscript{161}

Article 10 of the Universal Declaration of Human Rights speaks of the right of everyone to be entitled "in full equality" to a fair and public hearing. The right to equality before the court is also spelled out in Article 14(1) of the ICCPR, whereas the ECHR refers in Article 6 only to the general prohibition of discrimination and in the preamble of Protocol 12 to the fundamental principle of equality before the law. As for the right of access to court, both the ICCPR and ECHR imply this right from the overarching entitlement to a fair and public hearing. The rights of access and equality apply equally to criminal and non-criminal proceedings. They apply whenever the domestic law entrusts a judicial body with a judicial task including, for example, in the case of disciplinary proceedings against a civil servant.\textsuperscript{162}

The European Court of Human Rights stated that the right of access to court is an inherent element of Article 6(1) of the ECHR.\textsuperscript{163} In Golder v the United Kingdom, the European Court of Human Rights acknowledged this principle: "It would be inconceivable, [...] that article 6(1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. [...] It follows that the

\textsuperscript{158} The UN Principles and Guidelines, Principle 1.
\textsuperscript{159} OSCE/ODIHR, Legal Digest of International Fair Trial Rights, OSCE 2012, p. 40-41.
\textsuperscript{160} UN Human Rights Committee, CCPR General Comment 32 (2007), para 2.
\textsuperscript{161} Steel and Morris v the United Kingdom [2005] ECHR 103, para 59.
right of access constitutes an element which is inherent in the right stated by article 6(1).” In civil proceedings, the right of access to court includes not only the right to institute proceedings but also the right to obtain a “determination” of the dispute by a court.

Legal aid in criminal cases, ECHR standards and practice

Article 6 (3) (c) of the European Convention requires that “a person charged with a criminal offense” has the right to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. Therefore the relevant factors for legal aid in criminal cases relate to a financial criterion (e.g. insufficient means to afford representation), and the “interests of justice” criterion (e.g. what is “at stake” for the defendant, such as length of imprisonment or severity of the sentence otherwise; legal and factual complexity of the case; ability of the defendant to defend himself or herself personally).

A person has the right to free legal aid if two conditions are met. First, if he does not have sufficient means to pay for legal assistance (the “means test”), and second when the interests of justice so require (the “merits test”). These two conditions are set out in both Article 6(3) (c) of the ECHR and Article 14(3) (d) of the ICCPR. If a person does not have sufficient means to pay for their own lawyer, they will satisfy the first condition set down in Article 6(3) of the ECHR. The ECHR has not provided a definition of “sufficient means”. Instead, the ECHR takes all of the particular circumstances of each case into account when determining if the defendant’s financial circumstances required the granting of legal assistance.

The ECHR has held, as a general rule, that it is for domestic authorities to define the financial threshold for the means test. While the ECHR allows Member States a certain margin of appreciation in choosing how to implement means tests, there must be sufficient guarantees against arbitrariness in the determination of eligibility).

The defendant bears the burden of proving that he cannot afford to pay for legal assistance, but he does not have to prove his indigence “beyond all doubt”.

The UN Principles and Guidelines have highlighted the importance of not applying a restrictively low or unfair means test, by urging States to ensure that “persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted and where it is in the interests of

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164 Golder v the United Kingdom [1975] ECHR 1, paras 35–36.
166 Open Society Justice Initiative, Arrest Rights Brief No.3: The Right to Legal Aid, A Legal Brief prepared by the Open Society Justice Initiative to assist legal practitioners to litigate the right of arrested or detained persons to free legal aid, April 2013.
justice to provide such aid, are not excluded from receiving assistance”. The UN Principles and Guidelines also state that the criteria for applying the means test should be “widely publicized” to ensure transparency and fairness.

The second condition set down in Article 6(3) of the ECHR and Article 14(3)(d) of the ICCPR is that “the interests of justice” must require legal aid to be provided. This means that indigent people are not guaranteed legal aid in every case. The State has some flexibility to decide when the public interest in the proper administration of justice requires that the defendant be provided with a legal aid lawyer. The ECtHR has identified three factors that should be taken into account when determining if the “interests of justice” necessitates free legal aid: the seriousness of the offence and the severity of the potential sentence; the complexity of the case; and the social and personal situation of the defendant. All the factors should be considered together, but any one of the three can warrant the need for the provision of free legal aid.

The Seriousness of the Offence and the Severity of the Potential Sentence
As a minimum guarantee, the right to legal aid applies whenever deprivation of liberty is at stake. Even the possibility of a short period of imprisonment is enough to warrant the provision of legal aid. In Benham v the United Kingdom, the applicant had been charged with non-payment of a debt and faced a maximum penalty of three months in prison. The ECtHR held that this potential sentence was severe enough that the interests of justice demanded that the applicant ought to have benefited from legal aid.

In situations where deprivation of liberty is not a possibility, the ECtHR will look to the particular circumstances of the case and the adverse consequences of the conviction for a defendant. The distinction between cases that require legal aid because of the severity of the potential sentence and those that do not can be very fine. In Barsom and Varli v Sweden, the applicants complained that they were denied legal aid in proceedings in which they faced the imposition of tax surcharges of up to 15,000 euros. The ECtHR found that the denial of legal aid was acceptable, partly because the applicants were in a financial position to pay these sums to the Tax Authority without significant hardship, and because they did not face the risk of imprisonment. In contrast, in Pham Hoang v France, the ECtHR held that the interests of justice required legal aid to be provided to the applicant. Part of the reasoning was because “the proceedings were clearly fraught with consequences for the applicant, who had been … found guilty on appeal of unlawfully importing prohibited goods and sentenced to pay large sums to the customs authorities.”

The Complexity of the Case
Legal aid should be granted in cases that raise complex factual or legal issues. In Pham Hoang v France, another factor which led the ECtHR to conclude that legal aid should have been provided to the applicant was that he intended to persuade the domestic court to depart from its established case law in the field

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169 The UN Principles and Guidelines, Guideline 1, at para 41(a).
170 The UN Principles and Guidelines, Guideline 1, at para 41(b) in Arrest Rights Brief No.3: The Right to Legal Aid, A Legal Brief prepared by the Open Society Justice Initiative to assist legal practitioners to litigate the right of arrested or detained persons to free legal aid, April 2013
171 Arrest Rights Brief No.3: The Right to Legal Aid, A Legal Brief prepared by the Open Society Justice Initiative to assist legal practitioners to litigate the right of arrested or detained persons to free legal aid, April 2013
173 Benham v United Kingdom, ECtHR, Judgment of 10 June 1996, at paras. 59 and 64.
under consideration. In Quaranta v Switzerland, although the facts were straightforward, the range of potential sentences open to the court was particularly complex, including the possibility of activating a suspended sentence or deciding on a new sentence. This complexity also warranted the provision of a legal aid lawyer to protect the accused’s interests. In contrast, the ECtHR has held that denial of legal aid was appropriate in cases that were factually and legally straightforward. For example, in Barsom and Varli v Sweden, the contentious issues primarily concerned an assessment of whether the applicant had submitted an incorrect or incomplete tax return. Given that there were no difficult legal questions to be argued, the ECtHR held that the absence of legal aid did not violate Article 6.

The Social and Personal Situation of the Defendant

Legal aid should generally be provided for vulnerable categories and for people who, because of their personal circumstances, may not have the capacity to defend the case themselves. The ECtHR will take into account the education, social background and personality of the applicant and assess them with regard to the complexity of the case. In Quaranta v Switzerland, the ECtHR held that the legal issues were complicated in themselves, but they were even more so for the applicant given his personal situation: “a young adult of foreign origin from an underprivileged background, he had no real occupational training and a long criminal record. He had taken drugs since 1975, almost daily since 1983, and, at the material time, was living with his family on social security benefit.”

Legal aid should also be provided for people who have language difficulties. In Biba v Greece, the ECtHR found a violation of Articles 6(1) and 6(3)(c) where an undocumented immigrant who lacked the means to retain a lawyer before the Court of Cassation was not appointed a lawyer under legal aid. The ECtHR held that it would have been impossible for the applicant to prepare the appeal in the Greek courts without assistance, because he was a foreigner who did not speak the language. In contrast, in Barsom and Varli v Sweden, the ECtHR noted that both applicants had been living in Sweden for nearly thirty years, and were businessmen who owned and ran a restaurant. The ECtHR found that it was highly unlikely that they would be incapable of presenting their case related to tax surcharges without legal assistance before the national court. The Court took particular consideration of the fact that the Swedish courts were obliged to provide directions and support to the applicants to present their case adequately.

Legal aid in civil cases, ECHR standards and practice

Although the obligation of the states to provide free legal assistance in civil matters is not provided for expressly in Article 6 of the Convention, the European Court has found that the right to access to a court contained in Article 6 (1) encompasses the right to free legal assistance in civil matters of indigent
applicants when such assistance proved indispensable for effective access to the courts and a fair hearing (in particular for ensuring the equality of arms). 182

Article 6 (1) leaves to the state a free choice of the means to be used in guaranteeing litigants the right of access to a court. The institution of a legal aid scheme constitutes one of those means but there are others, such as simplifying the applicable procedures. When legal aid is unavailable, the requirements of Article 6 (1) may be satisfied if effective access to court is ensured in some other way.

In deciding whether the free legal assistance is indispensable for effective access to the courts or fair hearing in a particular case, the Court will consider the particular facts and circumstances of each case, taking into account several factors: (1) the importance of what is at stake for the applicant; (2) the complexity of the case or the procedure, particularly when legal representation is mandatory by law; (3) the capacity of the applicant to effectively exercise his or her right of access to court.

The right to access to a court is not absolute, however, and it may be subject to restrictions, provided that they do not restrict or reduce the access to a court in such a manner that the very essence of this right is impaired, that they pursue a legitimate aim, and that there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. It may therefore be acceptable to impose conditions on the grant of legal aid based, inter alia, on the financial situation of the litigant or his or her prospects of success in the proceedings. Moreover, it is not incumbent on the state to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary. For example, the Court and the former Commission found that refusal of legal aid did not amount to a violation of Article 6 (1) in cases of frivolous or vexatious claims; claims that had no reasonable prospects for success; were manifestly ill-founded; or were petty claims or claims where the costs of funding the litigation were disproportionate to any likely damages to be awarded.

Free legal assistance may be sought to protect only such civil rights that exist under domestic law. When assessing whether the applicant meets the financial criteria, the Court takes the same approach as in criminal cases. 183

In P, C and S v. United Kingdom, the ECHR found a violation of Article 6 (1) where the applicants were denied free legal aid while contesting the severance of their parental rights in child abuse proceedings, because of the complexity of the case, the importance of what was at stake, and the highly emotional nature of the subject matter. The Court applied the tests in the Goldar and Airey line of cases, recalling that free legal assistance may be necessary in civil matters in order to ensure that access to a court is both effective and fair. Here, P was forced to represent herself in child abuse proceedings even though the trial judge noted that the case would have been conducted differently had she been given effective counsel. Assistance afforded to P by the counsel for the other parties and the latitude the judge granted P in presenting her case were considered no substitute for competent representation by a lawyer. 184


183 Open Society Justice Initiative and PILI Public Interest Law Institute, European Court of Human Rights Jurisprudence on the Right to Legal Aid.

In McVicar v. United Kingdom, after assessing the circumstances of this matter, the ECHR found no violation of Article 6 (1) if legal aid in defamation cases is not available. The Court reiterated that “the question whether or not the Article 6 (1) requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case.” Here, the applicant was a well-educated and experienced journalist, the law was not sufficiently complex to require a person in the applicant's position to have legal assistance, he was represented until the commencement of trial by an experienced defamation lawyer, and his emotional involvement was not incompatible with the degree of objectivity required by advocacy in court. In all these circumstances, the Court concluded that the applicant was not barred from presenting his defence effectively to the local court, nor was he denied a fair trial, as the result of his lack of entitlement for free of charge legal aid.  

In Bertuzzi v. France, the ECHR held that the applicant had not had effective access to a tribunal, in breach of Article 6 (1) of the Convention. Here, the applicant was granted legal aid in the context of civil proceedings involving a lawyer as a defendant. However, that decision remained a dead letter, because the three lawyers successively assigned to the applicant's case sought permission to withdraw due to personal links with the lawyer the applicant wished to sue. In spite of his efforts, the applicant failed to get the president of the legal aid office to assign a new lawyer to his case and was therefore unable to issue the proceedings. The Court noted that the legal aid office had granted the applicant legal aid, despite the fact that legal representation was not compulsory. This indicates that it considered it essential for the applicant to be assisted by a qualified practitioner in the proceedings, as the proposed defendant was a lawyer. In the Court's view, the relevant authorities, when notified of the withdrawal of the various lawyers, should have provided a replacement so that the applicant could benefit from effective legal assistance.

The Court considered that the possibility of conducting his own case in proceedings against a legal practitioner had not afforded the applicant the right of access to a court in conditions allowing him the effective enjoyment of equality of arms, a principle inherent in the concept of a fair hearing. In A. B. v. Slovakia, the ECHR found that when domestic law provides that a court may grant free legal assistance to a litigant in civil proceedings, the failure to deliver a formal decision to a request for such assistance constitutes a violation of the Article 6 (1) right of access to court. Here, as a consequence of the national court's failure to issue a decision to the applicant's request, the applicant—a disabled individual—was unable to attend a court hearing on her action to overturn an administrative decision concerning her benefits. The Court found under the circumstances that the applicant was unable to present her case in conditions of equality vis-à-vis the defendant.

In Steel and Morris v. United Kingdom the ECHR found a violation of Article 6 (1). The Court reiterated that it is central to the concept of a fair trial, in civil as well as in criminal proceedings that a litigant should not be denied the opportunity to present his or her case effectively before the court, and that he or she should enjoy equality of arms with the opposing side. The court noted that it may be acceptable to impose conditions on the grant of free legal assistance based, inter alia, on the financial situation of the litigant or his or her prospects of success in the proceedings. Further, the Court noted that it is not incumbent on

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185 McVicar v. United Kingdom, ECtHR, Judgment of May 7, 2002.
the state to use public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary.\textsuperscript{188}

In Thaw v. United Kingdom, the former European Commission of Human Rights found the applicant's complaint manifestly ill-founded. Legal aid may be denied on the basis that a claim either is not sufficiently well grounded or is regarded as frivolous or vexatious, as long as the decision of the administrative authority was not arbitrary. Here, legal aid was refused on the basis that the applicant had shown no grounds for being a party to the proceedings and that his claim had very little prospect of success. The applicant has made no allegation, and the Commission found no basis for finding that the decision was arbitrary.\textsuperscript{189}

**Obstacles on access to courts and tribunals and ECHR practice**

In Steel and Morris v the United Kingdom, the European Court of Human Rights recalled that the ECHR is intended to guarantee practical and effective rights, particularly in the context of the right of access to court, due to the prominent place that the right to a fair trial holds in a democratic society.\textsuperscript{190} The Human Rights Committee has similarly taken the view that access to the courts must not only be guaranteed by the law, but must also not be frustrated through systemic or repeated obstacles, stating that: “A situation in which an individual’s attempts to access the competent courts or tribunals are systematically frustrated... de facto runs counter to the guarantee of article 14 of the ICCPR.”\textsuperscript{191}

A financial obstacle to the right of access to court may constitute the imposition of fees as a precondition to lodge a complaint or as a consequence of appealing against a verdict. The UN Human Rights Committee has held that the imposition of fees on the parties to proceedings that would de facto prevent their access to justice might give rise to issues under Article 14(1) of ICCPR. In particular, a rigid duty under law to award costs to a winning party without consideration of the implications thereof or without providing legal aid may have a deterrent effect on the ability of persons to pursue the vindication of their rights.\textsuperscript{192}

In Äärelä and Näkkäläjärvi v Finland, the UN Human Rights Committee concluded that the imposition by the Court of Appeal of a uniform and substantial costs award, without the discretion to consider its implications for the particular authors or its effect on the access to court of other similarly situated claimants, constituted a violation of the authors’ rights under Article 14(1), in conjunction with Article 2 of

\textsuperscript{188} Steel and Morris v. United Kingdom, ECtHR; Judgment of February 15, 2005.

\textsuperscript{189} Thaw v. United Kingdom, Application No. 27435/95; European Commission decision of June 26, 1996. See also Jones v. United Kingdom, Application No. 42639/04, Admissibility decision of September 13, 2005 (inadmissible).

\textsuperscript{190} Steel and Morris v the United Kingdom [2005] ECHR 103, para 59. See also Airey v Ireland [1979] ECHR 3, Para 24.


the ICCPR (concerning the right to effective remedies).\(^\text{193}\) The Human Rights Committee has noted, however, that the right of access is not absolute and that it is permissible to impose reasonable fees, or deposits, where this is rationally linked to ensuring the proper administration of justice.\(^\text{194}\) Fees must be reasonable, however, and an excessive level of court fees has been treated by the European Court of Human Rights as amounting to a disproportionate restriction on the right to access to a court.\(^\text{195}\) In determining whether or not a person has enjoyed her/his right of access to a court – or whether, on account of the amount of fees payable, the very essence of the right of access to a court has been impaired – the European Court of Human Rights has said that the amount of the fees ought to be considered in light of the particular circumstances of a given case, including the applicant’s ability to pay them and the phase of the proceedings at which the fees are imposed.\(^\text{196}\) In Weissman and Others v Romania, the European Court found to be disproportionate a stamp duty of EUR 323,264 for lodging a claim of lost income from property, thus leading to violation of Article 6.\(^\text{197}\) In Ciorap v Moldova, a case of a prisoner complaining of the alleged damage to his health caused by the actions of the authorities, the Court found that, regardless of his ability to pay, the applicant should have been exempted from paying court fees due to the nature of his claim.\(^\text{198}\)

Practical obstacles to access by parties to the proceedings might also arise for the same sorts of reasons that the public encounters in the context of obstacles to a public hearing. Parties may be prevented from accessing the judicial system, for example, because of a lack of information regarding the place and time of hearing or because the location of the court is such that it is difficult or impossible for parties to get to the hearing venue. Practical obstacles to access might also arise as a result of a lack of facilities to allow physical access by disabled persons, although case law on this subject has been extremely hesitant. Articles 5(3) and 9 of the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities obligate States parties to make a “reasonable accommodation” to allow persons with disabilities to access facilities and services available to others, requiring necessary and appropriate modifications and adjustments that do not impose a disproportionate or undue burden on the State.\(^\text{199}\)

**Court Fees and other costs and ECHR practice**

In Aït-Mouhoub v. France, the ECHR found that imposing a disproportionately high amount of security of costs—in spite of all indications by the applicant regarding his lack of means—to lodge a complaint against police officers for alleged abuses of office amounted to a violation of the applicant’s Article 6 right of access to a court.\(^\text{200}\)

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\(^{195}\) Kreuz v Poland [2001] ECHR 398, paras 59, 60.


\(^{197}\) Weissman and others v Romania [2006] ECHR, paras 40, 42.

\(^{198}\) Ciorap v Moldova [2007] ECHR 502, para 95.


In Garcia Manibardo v. Spain, the ECHR found a violation of Article 6 where the applicant's request for legal aid to lodge a civil law appeal was not considered by a domestic court due to an adverse interpretation of ambiguous procedural rules. Here, the applicant complained that the Tarragona Audiencia Provincial had declared her appeal inadmissible owing to her failure to deposit the sum she had been ordered to pay at first instance at a time when her application for legal aid had yet to be decided.

The Court noted that domestic law and the case law of the Constitutional Court allowed a litigant's economic situation to be taken into consideration, and, in particular, for him or her to be discharged of the obligation to make an advance deposit when he or she had been granted legal aid. In this case, even though the applicant had fulfilled all of the requirements, she had not been granted the said legal aid in the requisite time. The applicant's appeal had, however, been ruled inadmissible for failure to deposit the requisite amount with the court. In this respect, the Court found that requiring the applicant to deposit in advance the damages ordered under the first judgment had prevented her from using an existing and available appeal, so that she had been subjected to disproportionate interference with her right of access to a court.201

In Kreuz v. Poland, the ECHR found a violation of Article 6 (1). The Court stated that filing fees in civil complaints are not incompatible per se, but the amount of the fees assessed in the light of particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed are factors that are material in determining whether or not a person enjoyed his right of access and had a hearing by a tribunal. Here, the applicant complained that he had not enjoyed the right of access to a “tribunal” because he had to desist from submitting his claim to a civil court on account of his inability to pay the excessively high court fees required under the Polish law for lodging that claim. Having looked into the amount of required court fees, the assessment by the local authorities of the applicant's financial situation, and the phase of the proceedings (these were first instance proceedings; the courts had the chance to revoke the exemption from payment of course fees at any stage later in the proceedings), the Court found that the local judicial authorities failed to secure a proper balance between, on the one hand, the interest of the state in collecting court fees for dealing with claims and, on the other hand, the interest of the applicant in vindicating his claim through the courts.202

In V. M. v. Bulgaria, the ECHR found no violation of Article 6, because the amount of the court fee was not so excessive as to hinder the very essence of the right to access to court and the applicant did not prove, either in domestic court or in the proceedings before the Court, that she was unable to pay the fee. The applicant complained that her Article 6 right to access to a court had been infringed by the domestic court’s refusal to exonerate her from the duty to pay the court fees. In fact, there was some evidence to the contrary, as the applicant was a proprietor of her own housing, received a number of social benefits,


202 Kreuz v. Poland, ECHR, Judgment of June 19, 2001. See also Kniaž v. Poland, Judgment of July 26, 2005, where the Court found a violation due to the fact that the domestic authorities did not properly assess the financial situation of the applicant (looking only into the lump sum the applicant received from her husband in the proceedings for the division of marital property, without taking into account that she had no other income and had minor children), and the fee required to proceed with the applicant’s appeal was excessive.
and was supported financially by her relatives. The Court restated that the domestic authorities are in a better position to assess the financial situation of the applicant.\footnote{203 V. M. v. Bulgaria, ECHR, Judgment of June 8, 2006 in Open Society Justice Initiative and PILI Public Interest Law Institute, European Court of Human Rights Jurisprudence on the Right to Legal Aid.}

In Ciorap v. Moldova, the applicant complained about a violation of his rights guaranteed by Article 6 of the Convention as a result of the courts’ refusal to examine his civil-law complaint against the state authorities about force-feeding in prison due to his failure to pay court fees. The Court noted that this amounted to denied access to a tribunal, especially in the light of the seriousness of the complaints made by the applicant, referring as they did to alleged torture. Moreover, the domestic legislation provided for exemption from fees due to the nature of his claim (damages allegedly caused by state action), and this exemption should have been applied by the Supreme Court \textit{ex officio}, irrespective of the fact that the applicant did not expressly rely on this ground for a waiver from court fees.\footnote{204 In Ciorap v. Moldova, ECHR, Judgment 19 June 2007.}

In Stankov v. Bulgaria, the applicant was ordered to pay court fees which amounted to approximately 90\% of the compensation the State was ordered to pay him. The Court established that the amount of the fees assessed in the light of the particular circumstances of a given case is a material factor in determining whether or not a person enjoyed his right of access to justice. The Court further asserted that the imposition of a considerable financial burden due after the conclusion of the proceedings may well act as a restriction on the right to a court. The Court criticized the fees system applied by the Bulgarian courts - calculation of a percentage, resulting in a relatively high and wholly inflexible rate. Finally, the Court held that excessive court fees were disproportionate to the otherwise legitimate aim and hampered the applicant’s right to a court protected by Article 6 § 1 of the Convention.\footnote{205 In Stankov v. Bulgaria, ECHR, Judgment 12 July 2007 in Open Society Justice Initiative and PILI Public Interest Law Institute, European Court of Human Rights Jurisprudence on the Right to Legal Aid.}

In Bakan v. Turkey the applicants were unable to bring an action for damages caused by the killing of Mehmet, their husband and father, by a policeman, because they were refused exemption from court fees by the administrative tribunal. The tribunal stated two reasons for the refusal: a) that their application was ill-founded, because the policeman had been acquitted of unintentional murder in the preceding criminal proceedings; b) that the applicants were represented by a lawyer. Citing the Aerts case, the European Court noted that by refusing the waiver from court fees, the administrative tribunal decided on the well-foundedness of the applicants’ allegations without offering them the opportunity of a court hearing. Further, the Court reasoned that the fact that the applicants hired a lawyer cannot automatically mean that they had the means to pay the court fees. The applicants’ lawyer confirmed that he was acting \textit{pro bono}. The court fee, which amounted to three minimum salaries, presented an excessive burden for the applicants, because they had no income. The Court declared a violation of Article 6 § 1, finding that the requirement to pay the court fees constituted a restriction and a breach of the applicants’ right of access to a court.\footnote{206 Bakan v. Turkey, ECHR, Judgment of 12 June 2007. See Mehmet and Suna Yiğit v. Turkey, ECHR, Judgment of 17 July 2007 in Open Society Justice Initiative and PILI Public Interest Law Institute, European Court of Human Rights Jurisprudence on the Right to Legal Aid.}
Access to justice and EU standards

According to long established case law of the European Court of Justice (ECJ), access to justice is one of the constitutive elements of a European Union based on the rule of law.\textsuperscript{207} This is guaranteed in the treaties through establishing a complete system of legal remedies and procedures designed to permit the ECJ to review the legality of measures adopted by the institutions.\textsuperscript{208} The right to effective judicial protection has been accepted by the ECHR as a general principle of the Union law, as influenced by the case la of the European Court of Human Rights.\textsuperscript{209} The ECJ has traditionally used the constitutional traditions common to the Member States and Articles 6 and 23 of the ECHR as a basis for the right to obtain an effective remedy before a competent court. The Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy and to a fair trial, including legal aid to those who lack sufficient resources. At the same time, access to justice is also an enabling right that allows those who perceive their rights as having been violated to enforce them and seek redress.

The legal aid and mediation Directives

Two specialised European Union legal instruments deal with particular aspects of access to justice: the Legal Aid Directive\textsuperscript{210} and the Mediation Directive.\textsuperscript{211} The Legal Aid Directive promotes judicial cooperation in civil matters having cross-border implications within an area of freedom, security and justice. The main purpose of the directive is to guarantee an adequate level of legal aid in cross-border disputes by laying down certain minimum common standards. The directive applies only in cross-border disputes, to civil and commercial matters. It ensures that all persons involved in a civil or commercial dispute within the scope of the directive must be able to assert their rights in the courts even if their personal financial situation makes it impossible for them to bear the costs of the proceedings. According to the directive, legal aid is appropriate when it allows the recipient effective access to justice. Legal aid covers pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, legal assistance in bringing a case before a court and representation in court and assistance with or exemption from the cost of proceedings.\textsuperscript{212}

According to the Mediation Directive, the objective of securing better access to justice should encompass access to judicial as well as extrajudicial dispute resolution methods. Extrajudicial procedures for the settlement of disputes in civil and commercial matters can simplify and improve access to justice. Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial

\textsuperscript{207} This can be seen in its reasoning for establishing the principles of direct effect (CJEU, Van Gend en Loos, Case26/62, 05 February 1963) and supremacy (CJEU, Costa v. ENEL, Case6/64, 15 July 1964), as well as the concept of state liability (Francovich and Bonifaci v. Italy, Case C-68/80, 19 November 1991) and the requirement that national remedies for breaches of rights derived from Community law comply with the principles of equivalance an defeciency (CJEU, Preston v. Wolverhampton Healthcare NHS Trust, C-78/96, 16 May 2000).

\textsuperscript{208} Case264/83 Les Verts v. Parliament, no. 25 paragraph 23.

\textsuperscript{209} The approach of the ECJ has generally been to follow the reasoning of the ECHR with regard to the meaning of the right to a fair trial as a general principle of the Union law. See for example CJEU, Baustahlgewebe GmbH, C-185/95, 17 December 1998. However, it has not been common for the ECJ to focus in detail upon particular aspects of this right, where it has done so, the context of the application has often differed to that of the present report. For details see FRA - European Union Agency for Fundamental Rights, Access to justice in Europe: an overview of challenges and opportunities, 2011.


\textsuperscript{212} FRA - European Union Agency for Fundamental Rights, Access to justice in Europe: an overview of challenges and opportunities, 2011.
matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. The directive applies to processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. However, it does not apply to rights and obligations on which the parties are not free to decide under the relevant applicable law.\(^{213}\)

### The Racial Equality Directive and access to justice principles

Directive 200/43/EC known as the Racial Equality Directive provides that “Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them.” According to the directive, persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection. The directive also makes a specific reference to associations or legal entities that should be empowered to engage, either on behalf or in support of any victim in proceedings in order to provide a more effective level of protection before the national courts. Finally, the Racial Equality Directive establishes certain rules concerning the burden of proof, according to which the latter must shift to the respondent when evidence of a prima facie case of discrimination is brought.\(^{214}\)

Other relevant Directives establishing a number of key principles as regards access to justice and equality include:


Within the Union legal order, there are a number of legislative instruments that are intended to give effect to the right to access to justice that therefore shape the content of national law. For instance, Article 31 of Directive 2004/38/EC on the right to move and reside freely\(^{219}\) (the Citizens’ Directive or Free Movement Directive) contains certain procedural safeguards in order to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being denied to leave, enter or reside in another Member State. According to this provision, judicial redress procedures should be available to

\(^{213}\) Ibid.


\(^{215}\) Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.


\(^{217}\) Directive 2004/113/EC prohibiting sex discrimination as to access to and supply of goods and services.


Union citizens and their family members who have been refused leave to enter or reside in another Member State. Furthermore, the directive confirms the right of Union citizens and their family members who have been excluded from the territory of a Member State to submit a fresh application after a reasonable period, in line with the relevant case-law of the CJEU.220

Compensation to crime victims and the minimum standards for protection of victims of crimes Directives

The Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims221 sets up a system of cooperation to facilitate access to compensation for victims of crimes in cross-border situations. All Member States must ensure that their national legislation provides for the existence of a compensation scheme ensuring that victims of violent intentional crime committed in their respective territories receive fair and appropriate compensation. This directive sets up a system of cooperation between national authorities to facilitate access to compensation for victims in cross-border situations. Victims of crimes committed outside their Member State of habitual residence may ask an authority in the Member State in which they are residing (assisting authority) to provide information on how to apply for compensation. The authority in the Member State of habitual residence transmits the application directly to the authority in the Member State where the crime was committed (deciding authority), which is responsible for assessing the application and paying out the compensation.222

On 25 October 2012, the EU adopted Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of all victims of crime.223 Directive 2012/29/EU entered into force on 15 November 2012 and the EU Member States have to implement the provisions into their national laws by 16 November 2015. The Directive contains provisions that specifically recognize the needs of victims of hate crimes. Article 22 of the Directive sets out the following obligations for Member States: an individual assessment will be offered to all victims to identify potential “specific protection needs” 224, which should take into account “the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime.” 225; “Particular attention shall be paid to […] victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics”, and that “victims of […] hate crime […] shall be duly considered”; and different types of “special measures” shall be made available during the investigation and court proceedings for qualifying victims.226

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222 Ibid.
The purpose of individual assessment is to determine whether a victim is particularly vulnerable to secondary and repeat victimisation, to intimidation and to retaliation during criminal proceedings. It is important to understand this in order to establish the appropriate extent and scope of questions the victim is asked in this assessment. The assessment implies a two-step process (which could be combined): (1) to determine whether a victim has specific protection needs against the criteria listed in paragraph 2 (the personal characteristics of the victim, the type or nature of the crime, the relationship between the victim and the offender and the circumstances of the crime); and, if so, (2) to determine if special protection measures should be applied, and what these should be (as listed in Article 23 and 24 for children).\textsuperscript{227}

The EU FRA research on victim support in EU

The EU Fundamental Rights Agency is currently implementing a project on victim support seeking to provide Member States with concrete examples of different practices in this area, based on an analysis of what currently exists at Member State level.

According to research carried out until August 2013 and data available on the web-site of the EU Fundamental Rights Agency

<table>
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<td>Model of a generic victim support organisation</td>
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Access to justice and legal aid in Romania

According to Art. 21 of the Romanian Constitution: "Every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests. The exercise of this right shall not be restricted by any law. Through its contents, Art. 21 of the Constitution allows for free access to justice of every natural or legal person, for the purpose of defending any right or freedom and any legitimate interest, in an actual and effective manner, in the sense that the court user should benefit from the clear and actual opportunity to challenge a document that damages his/her rights, and no law can restrict this right."

However, this does not mean that free access to justice represents an absolute right, as the European Court of Human Rights ruled in a number of decision (e.g. Golder vs. United Kingdom of Great Britain, 1975 Ashingdane vs. the United Kingdom, 1985) free access to justice may represent the subj. However, this does not mean that free access to justice represents an absolute right, as any restriction is allowed as long as no damage is incurred to the needs and resources available for the community. The degree of access allowed for the national legislation, however, must be high enough in order grant individual access to the court, following the principle of supremacy of law in a democratic society. The Romanian Constitutional Court ruled similarly, as it reasoned, for example, through Decision no. 894/2006, that "the right to access justice does not represent an absolute right, as any restriction is allowed as long as no damage is incurred to the

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243 Aspazia Cojocaru, judge of the Romanian Constitutional Court, Mariela Saffa, PhD, First Assistant Magistrate, Accesul liber la justiție – principiu constituțional și drept fundamental al persoanei apărât prin jurisprudența Curții Constituționale a României [Free access to justice – a constitutional principle and a fundamental right of the individual defended by the case law of the Romanian Constitutional Court], retrieved at [http://193.226.121.81/events/conferinta/cojocaru.pdf](http://193.226.121.81/events/conferinta/cojocaru.pdf).
244 Published in the Official Journal of Romania, Part I, no. 54 of January 24, 2007
substantial right to access to a court, as the state has a certain margin of assessment in this respect within its powers." Restrictions to access to justice and, therefore, sanctioning its nature of not operating as an absolute right must categorically be stipulated within a law adopted in accordance with the provisions of the Constitution.  

In its case law, the Constitutional Court showed that “the possibility provided to any person to notify at first hand and directly the courts in order to defend his/her right, freedoms or legitimate interests is also circumscribed within the meaning of the constitutional principle established through art. 21 on free access to justice.” As a result, the existence of any administrative obstacle, with no objective or rational justification and which eventually could deny that individual right represents a blatant infringement of the provisions of art. 21 para. (1)-(3) of the Constitution.  

In terms of the financial aspect of provision of judicial services, the Constitutional Court constantly ruled in the sense that these must not and cannot be free of charge in each and every case. As stated in a great many decisions (no. 7/1993, no. 8/1993, no. 18/1997, no. 198/1999, no. 211/1999, no. 65/2000, etc.), art. 21 of the Constitution does not establish any interdiction regarding the court fees. Similarly, through Decision no. 87 of January 20, 2009, Decision no. 808 of May 19, 2009 and Decision no. 358 of September 24, 2013 the Constitutional Court ruled that free access to justice, established by art. 21 of the Constitution, does not translate into free of charge services. In the opinion of the Court, there is no constitutional provision that prohibits court fees from being applied in the justice system, as it is justifiable for the persons addressing to judicial authorities to contribute to covering the expenses made while delivering the act of justice. The general rule is to apply a stamp duty to those claims submitted to the courts, while exceptions to this rule are possible only to the extent to which they have been stipulated by the law-making body. The duty to pay the court fees, as well as the exceptions set down through laws are equally applicable to all citizens who are placed in identical situations, as well as to all conflicts of the same nature, as no discrimination or privileges contrary to art 16 para. (1) and (2) of the Constitution are allowed.  

On the other hand, for example, through Decision no. 1202/2010, the Court accepted the constitutional challenge of art. 81 from Law no. 146/1997 on legal fees, a challenge that was directly raised by the Romanian Ombudsman and these were found as non-compliant with the Constitution, as the “legal text under criticism represents an obstacle of financial nature meant to discourage the court user from bringing

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245 Aspazia Cojocaru, Marieta Safta, Accesul liber la justiţie – principiu constauţional şi drept fundamental al persoanei apărat prin jurisprudenţa Curţii Constituţionale a României [Free access to justice – a constitutional principle and a fundamental right of the individual defended by the caselaw of the Romanian Constitutional Court] or Patricia Ionea, Liberal acces la justiţie- aspecte desprinse din jurisprudenţa Curţii Constituţionale si a Curţii Europene a Drepturilor Omului [Free access to justice – aspects taken from the caselaw of the Constitutional Court and of the European Court of Human Rights], available at [http://193.226.121.81/default.aspx?page=publications/buletin/7/ionea](http://193.226.121.81/default.aspx?page=publications/buletin/7/ionea)  
246 Ibid.  
a claim directly into a court" and also "through the high amount of the legal fee and stamp duty, it prevents the court order from being enforced".

Through another decision, no. 778/2009\textsuperscript{258}, the Court found that the provisions of art. I, para. 4 of the Government Ordinance no. 34/2001 for amending and supplementing Law no. 146/1997 on court fees and stamp duty are non-compliant with the Constitution; these provisions repealed art. 15 letter f 1) of Law no. 146/1997, a text that had stipulated an exemption from the payment of court fees and stamp duties for those claims and actions brought to court, including those related to exercising appeals, related to "the definition and provision of remedies for moral damages incurred to the honour, dignity or reputation of a natural person." The Court found that the repeal of the above mentioned legal text is not conditioned by the payment of a stamp duty to the damaged individuals through the action of uttering offending words, libels or defamations, performed through any method, directly or through mass-media."

In general, the Constitutional Court retained the fact that, as the payment of court fees represents a legal pre-condition for initiating civil suits, the obligation to pay in advance such fees (in some cases within a set deadline, established by the court) is justified, and the same applies for the sanction of annulment of the claim or the action brought to court, should these fees be not paid. The Court stipulates: "however, the court user's contribution may be recovered following on an application, submitted based on art. 453 of the Civil Proceedings Code, from the losing side of the suit. Therefore, the general rule is to apply the stamp duty to the actions brought to court, while the exceptions are possible only to the extent established by the law-maker. Also, according to the provisions of art. 90 of the Civil Proceedings Code, the party who is not able to cope with the expenses associated to a trial, due to the lack of financial means, and this represents a guarantee for free access to justice. The assessment in terms of legality and soundness of those applications submitted based on the above mentioned provisions of the law is performed by the court based on the prerogatives instituted by the Constitution and the ordinary laws, based on the evidence supporting such applications.\textsuperscript{259}

Similarly, when assessing the constitutional challenges of the legal provisions on court fees, the Constitutional Court also related itself to the measures in force for exempting, rebating or postponement the payment of stamp duties. In its Decision no. 546 of October 15, 2014\textsuperscript{260}, the Court found that the lawmaker established the possibility for the court to provide exemptions, rebates, rescheduling or postponement for the payment of court fees through the provisions of art. 42 of the Government Emergency Ordinance no. 80/2013. This regulation is aimed at those very situations when the party involved is not able to cope with the expenses associated to a trial, due to the lack of financial means, and this represents a guarantee for free access to justice. The assessment in terms of legality and soundness of those applications submitted based on the above mentioned provisions of the law is performed by the court based on the prerogatives instituted by the Constitution and the ordinary laws, based on the evidence supporting such applications.\textsuperscript{261}

In order to transpose Community directives, particularly the Council Directive 2003/8/EC for improvement of access to justice in cross-border disputes, the Emergency Ordinance no. 51/2008 was adopted, approved with further changes.\textsuperscript{262} GEO no. 51/2008 aims at public legal aid in civil matters.

\textsuperscript{259} Decision no. 425 of July 8, 2014, published in the Official Journal of Romania, Part I, no. 625 of August 26, 2014
\textsuperscript{261} Argument also retained in Decision no. 45 of February 4, 2014 published in the Official Journal of Romania, Part I, no. 274 of April 15, 2014.
\textsuperscript{262} Government Emergency Ordinance no. 51/2008 approved with further changes through Law no. 193/2008, Law no. 251/2011 and Law no. 76/2012.
Public legal aid as defined by the Romanian law

Article 1 of the Ordinance defines the public legal aid as a form of assistance provided by the state whose purpose is to provide the right to a fair trial and to guarantee equal access to justice, in order to achieve a series of rights or legitimate interests by legal means, including the enforcement of court decisions or other enforceable documents. The public legal aid is provided in civil, commercial, administrative, labour and social insurance related cases, as well as in other cases, except for the criminal cases. The provision of public legal aid may be requested by any natural person, when he/she is not able to cope with the expenses related to a trial or with the expenses incurred by obtaining legal advice in order to defend a right or a legitimate interest in front of the court, without endangering his/her own or hi/her family living expenses.

Forms of public legal aid in Romanian law

The public legal aid can be provided under the following shapes:

a) payment of fees for providing legal representation, legal assistance and, if applicable, defence, through an appointed or elected lawyer, in order to achieve or protect a right or legitimate interest in front of a court or in order to prevent a dispute, herewith called legal assistance provided by a lawyer;

Legal assistance provided by a lawyer is stipulated in Law no. 51/1995, which stipulates under art. 68 that the Bar provides legal assistance in all cases where defence is mandatory according to the law or when this is required by the court, the criminal investigation bodies or the local public administration bodies, when these bodies assess that a certain person finds himself/herself in the position of not being able to cover his/her legal expenses.

b) payment of the expert, the translator or the interpreter used throughout the trial, with the approval of the court or the authority exerting jurisdiction, should that payment be incumbent upon the person requesting public legal aid, according to the law;

If the application for legal aid referring to these two categories of experts is approved, two fees are established through the court report with an enforceable power: a provisional one set down on the date of approval of the legal aid and a final one when the dispute is concluded.

c) payment of the fee for the court bailiff;

In this case, a provisional fee is set down in advance depending on the complexity of the case on the date when submitting the application for legal aid, while after having finalized his/her duties as a court bailiff, the court is to set down through a court report the final fee, based on the court bailiff’s request. We have to underline that this duty of the court bailiff may be denied on his/her part only in the case of a conflict of interest or for other well-justified reasons.

d) exemptions, rebates, rescheduling or postponement of payment for legal fees stipulated by the law, included those due during the court order enforcement stage.

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263 Art. 3 of GEO no. 51/2008 approved with further changes and amendments.
264 Art. 4 of GEO no. 51/2008 approved with further changes and amendments.
265 Law no. 51/1995 for organizing and practising the lawyer profession republished in the Official Journal, Part I no. 98 of February 7, 2011, with further changes and amendments.
266 I. Deleanu, Ajutorul public judiciar [Public legal aid], “Dreptul” magazine no.8/2008, page17 and the following pages
267 Ibid. see also Claudia ROŞU and Constantin TENT, lawyer, Ajutorul public judiciar [Public legal aid].
268 Art. 6 letters a-d of GEO no. 51/2008 approved with further changes and amendments.
The public legal aid may be provided separately or cumulatively in any of the forms stipulated by GEO 51/2008, while the value of public legal aid provided, separately or cumulatively, may not exceed during one year the maximum amount equivalent with 10 minimal gross wages established at national level in the year when the application for legal aid was submitted. 270

Terms for granting legal aid, according to Romanian legislation

Persons whose average net monthly income per family member in the past two months prior to the application is less than 300 RON may benefit from legal aid. In this case, the amounts representing the legal aid shall be fully covered by the Romanian state. 271

If the average net monthly income per family member in the past two months prior to the application is less than 600 RON, the Romanian state shall cover 50% of the amounts representing the legal aid. 272

Legal aid may be granted in other situations, proportional with the applicant's needs, when the actual or the indicative costs of the lawsuit might limit effective access to justice, including due to the difference in the living costs in the Member State where the applicant is a resident and the living costs in Romania. 273

Legal aid shall be granted regardless the financial means of the applicant, when the special law provides for the right to legal aid or the right to legal aid free of charge, as a protection measure in special cases involving children, persons with disabilities, a certain status etc. In such cases, legal aid shall be granted even if the criteria provided at Art. 8 are not met, but only for the purposes of defending or having recognised certain rights or interests arising from or related to the special situation justifying the recognition, according to law, of the right to legal aid or to legal aid free of charge. 274

Income includes all and any regular revenues such as salaries, benefits, fees, annuities, rent, profit from commercial or independent activities and other similar revenues, as well as amounts due on regular basis, such as rent and alimony. 275

The right to legal aid shall be extinguished in case the applicant died or improved his/her financial situation to a level allowing him/her to bear the costs of the lawsuit. 276

Competent court to decide on the application for legal aid

The application for legal aid shall be registered with the court of justice competent to decide on the case for which free legal aid is requested; in case of legal aid requested to enforce a decision, the application falls within the competence of the enforcement court. In case the competent court may not be determined according to the above mentioned requirements, the decision shall falls within the competence of the court from the area of the applicant’s residence/domicile. 277

270 Art. 7 of GEO no. 51/2008 amended through Law no. 251/2011.
273 Art. 8 paragraph 3 of GEO no 51/2008 approved with further changes and amendments.
274 Art. 8 introd. by pt. 3 of Law no 193/2008 starting with 27.10.2008.
275 Art. 9 of GEO no 51/2008 approved with further changes and amendments.
276 Art. 10 of GEO no 51/2008 approved with further changes and amendments.
277 Art. 11 paragraphs 1 and 2 of GEO no 51/2008 approved with further changes and amendments.
Legal aid shall be granted anytime during the lawsuit, starting with the date when the interested party submitted the application, and it shall be maintained throughout the lawsuit stage when it was requested. The application for legal aid is exempted of court fees.\textsuperscript{278}

**Extrajudicial aid**

Lawyers may provide extrajudicial aid, namely advise, draft applications, petitions, notifications, initiate other such legal proceedings, and represent clients before certain authorities or public institutions other than judicial or jurisdictional responsibilities, in order to defend legitimate rights or interests. Extrajudicial aid should provide the applicant clear and accessible information, according to the legal provisions in force on the competent institutions and, when possible, according to the terms, deadlines and procedures provided by law for the recognition, granting or fulfilment of the right or interest claimed by the applicant. Extrajudicial aid shall be granted according to the provisions of Law no 51/1995, as republished, with further changes and amendments.\textsuperscript{279}

The lawyer who provided extrajudicial aid may not provide legal aid to the same person, for the purposes of fulfilling or defending the same right or interest, in case the beneficiary of extrajudicial aid should lodge a writ of summons to fulfil or defend that right or interest.\textsuperscript{280}

\textsuperscript{278}Art. 12 paragraph 1 of GEO no 51/2008 approved with further changes and amendments.

\textsuperscript{279}Art. 35 paragraph 1 of GEO no 51/2008 approved with further changes and amendments.

\textsuperscript{280}Art. 36 and Art. 37 of GEO no 51/2008 approved with further changes and amendments.
PERCEPTIONS AND ATTITUDES TOWARDS ACCESS TO JUSTICE FOR VULNERABLE GROUPS AT LOCAL LEVEL

CHAPTER IV
PERCEPTIONS AND ATTITUDES TOWARDS ACCESS TO JUSTICE FOR VULNERABLE CATEGORIES AT LOCAL LEVEL

Summary findings of missions at local level
The Superior Council of Magistracy based on input from the expert team organized 3 fact-finding missions aimed at discussing with various stakeholders issues related to vulnerable categories and Roma and access to justice. Five different locations have been selected on the basis of a variety of factors among other the number of Roma population, the presence of human rights and Roma NGOs, projects addressing vulnerable categories, active partnerships at local level etc.

<table>
<thead>
<tr>
<th>Mission</th>
<th>I</th>
<th>II</th>
<th>III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Bucharest</td>
<td>Buzău, Călărași</td>
<td>Cluj-Napoca, Craiova</td>
</tr>
</tbody>
</table>

Fact-finding missions

Interviewed Stakeholders at national level

<table>
<thead>
<tr>
<th>Lawyer bodies</th>
<th>Public institutions</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Union of the Bar Associations</td>
<td>Ministry of Justice-Directorate for European Affairs, National Probation Directorate, National Institute of Magistracy, Government Agent to ECHR, Ministry of Interior and Administration, Ministry of Regional Development, National Agency for Roma, National Council for Combating Discrimination, Ombudsmen</td>
<td>Romani CRISS-Roma Centre for Social Intervention and Studies, Agency for development “Impreună” (Agentia Impreuna), Roma Centre for Health Policies-Sastipen Association for Development and Social Inclusion-ADIS Centre for Legal Studies and Human Rights Centre for Legal Resources-CRJ Helsinki Committee (APADOR-CH) Public Policies Institute ACCEPT ActiveWatch Amare Romentza</td>
</tr>
</tbody>
</table>
Interviewed Stakeholders at local level

<table>
<thead>
<tr>
<th>Courts</th>
<th>Lawyer bodies</th>
<th>Public institutions</th>
<th>Municipalities</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tribunal Bucharest, First instance Court</td>
<td>Bucharest Bar association</td>
<td>Bucharest Service</td>
<td>Prefecture and Municipality in</td>
<td>Roma Policy Centre in Bucharest, Local</td>
</tr>
<tr>
<td>of district 5</td>
<td>Buzău Bar association</td>
<td>Buzău Probation</td>
<td>Buzău</td>
<td>monitor of the European Roma Rights</td>
</tr>
<tr>
<td>Bucharest, Buzău Tribunal, Călărași Tribunal, First instance Court Cluj, First instance Court Craiova</td>
<td>Craiova Bar association</td>
<td>Craiova Probation</td>
<td>Călărași</td>
<td>Roma Communities, Centre for Ethno-Cultural Diversity, Desiree Foundation, Community association of Roma from Coastei, CRONO Craiova, Pro Democratia Craiova</td>
</tr>
<tr>
<td>Cluj, First instance Court in Craiova</td>
<td>Craiova Bar association</td>
<td>Călărași Probation</td>
<td>Craiova</td>
<td></td>
</tr>
</tbody>
</table>

In total the expert team carried out 49 interviews with different stakeholders concerning the following topics:

**Topic for discussions**

**Vulnerable categories**
Which categories of population are considered vulnerable in their community?
How would they consider access to justice and to welfare services for these categories?

**Barriers**
What are the main barriers for their access to justice in a broad sense?
What measures have been taken to counteract such barriers?

**Equal access**
What measures are needed to assure equal access to civil and criminal justice?
What statistics exists on legal aid applications and rejections?
Which experts (translators, psychologists etc.) are available for support of clients in vulnerable positions?

**Advisory canters**
How do they assess the relevance of the advisory centres?
What services should they provide?
Where should they be situated?

Most interviews/discussions assembled several participants, especially with national institutions and municipalities where up to 15 persons with different positions, such as politicians, case-workers and sometimes counsellors and experts were present. This enabled discussions on a wide range of topics. The team also visited one Roma settlement in Cluj-Napoca, evicted from the city and forcibly moved to the
municipality’s garbage plot. The expert team discussed with the Roma representatives their viewpoints on access to justice and establishment of the advisory centres.

The overall considerations on the legal framework

Romania has adopted new civil and criminal codes and the general view among the Court representatives visited is that these new codes are just and guarantee an equal access to justice for all in accordance with the Romanian Constitution. A similar view has been shared among Court representatives in regard to the legal framework providing free legal aid in Romania.

Discrimination was in general not acknowledged as a problem among the majority of Court informants. Thus, awareness about possible bias concerning interpretations and implementation of the law was generally not regarded as an outstanding issue. A few First Instance Court judges only mentioned possible discrimination based on stigmatization and stereotyping of the poor and of Roma. In this regard, the Court representative’s views are in conflict with those of Bars and the NGO representatives. Some court representatives did, as did several NGOs, express concerns that it is not possible to assess equal access to justice as there is no or very little data concerning who addresses courts, for what reasons and the outcomes of such addresses. Some NGOs pointed out that jurisprudence on court cases concerning discrimination or human rights issues was generally not available and easy accessible and called for more transparency and accessibility on court case law.

Both Bar representatives, local and central administrations as well as NGO’s pointed out concerning aspects about high court fees for clients and the low fees offered to ex officio lawyers representing a serious obstacle for access to justice and equal legal treatment. Bar representatives also voiced the view that the new codes, civil, penal and procedural codes alongside positive developments have had as well a negative impact on procedural matters, length of trial etc. having an adverse impact on the clients. An example in this regard has been presented in Craiova County whereby the Courts rejected applications with a 10% increase on average on the grounds of the procedures stemming from the new Codes. This increase of rejected applications to Courts may be liked with the low level of awareness among the citizens including vulnerable categories towards the new modifications in civil and criminal proceedings.

The apparent lack of awareness concerning discriminatory aspects of the legal system among court representatives, together with a lack of systematized data of the functioning of the legal system, constitute serious impediments to the equal functioning of the Romanian legal system particularly as regards vulnerable categories.

Views on the perceived vulnerable categories in regards to the legal system

The question of who are vulnerable categories is difficult. It was nevertheless asked with a view to overcome the bias of political correctness in the answers, and to underline that different categories of people may be vulnerable in different communities and in different contexts. The answers to this question were diverse. In line with their general view of discrimination not being a problem in the Romanian legal system, Court
representatives generally did not acknowledge Roma as a vulnerable category in the legal system, and some even denied any categories being vulnerable in Romania today. The majority of informants in general, however, listed people with disabilities, with HIV, with psychological disorders, the elderly, the very poor, the Roma, single mothers, children and people living in remote geographical areas, as vulnerable to different degrees.

The rather long list of vulnerable categories presented by informants may represent a challenge to the legal system that should be taken into consideration in the organization and establishment of legal centres.

Views on the obstacles to equal access to justice

There is a constancy among Courts representatives regarding their view on the access to justice for vulnerable groups; the obstacles that stem externally from the legal system and are in the groups themselves, not in the legal system or its working. Local and central authorities share to a certain extent this view, the most pressing issues they list being: lack of education and information, lack of economic means, lack of identity and housing documents among the Roma in particular. As one representative of local government explained “In most of the cases, Roma do not know how to access the courts, how to file a case, how to write a complaint”.

Most of the stakeholders at local level varying from Court representatives to social workers and Roma as well outlined the issue of lack of identity documents for Roma. In this regard, several local administrations have launched projects to speed up the processes and procedure, but complained that these are often too complicated and that this represents the most serious obstacle to access civil rights for most Roma groups.

Lack of mutual trust between particularly the Roma and the legal system has been also constantly raised among stakeholders. Lack of specialists such as interpreters (sign, language and minority languages) psychologists etc. was also seen as a problem by several bar representatives. NGO representatives expressed the view that measures designed to address vulnerable categories often are more meritocratic than need-based and lack evaluation, coherence and interconnectivity in implementation. The lack of coordination among institutions in projects targeting vulnerable categories was voiced by many.

The Bar representatives were conscious about legal fees and taxes as too high for the general Romanian and especially for the poor, and the rather restrictive criteria for acquiring free legal aid. Bars also emphasized that the fees for ex-officio legal services are symbolic, and do not represent the actual work undertaken for proper representation. This, they, asserted, is a serious impediment to equal legal assistance.

The rather overwhelming assertion among Courts and Central/local authorities and some Bar representatives that the problem of equal access to justice is more or less an individual or group problem, is disturbing. It points to a lack of awareness on central aspects of human rights: That it is the responsibility of the state and its authorities to provide human rights to its citizens, and that individual and group differences in equal access must be compensated for by public measures.
Awareness of discrimination

Several Bars representatives and NGO’s were strongly aware of the stereotypes and stigma that were attached especially to the Roma, and of the open and more subtle discrimination exerted by lawyers, administrations and Courts in their dealing with Roma and other vulnerable individuals. One probation officer expressed that stereotyping is part of their every-day experience among themselves and their clients, and something they have to work against it every day. As one lawyer expressed: “A Roma person cannot get a fair trial in Romania”. Similar views were also voiced by most NGO’s dealing with Roma and minorities in general. NGO’s told stories of several problems for minorities in accessing civil rights such as equal education for Roma children, access to medical services and legal services due to discrimination and prejudice.

The lesson from most parts of the world is that stigmatized populations are discriminated against by authorities, and in general. To what extent this is an impediment to access justice in Romania, is difficult to assess scientifically as long as there are no data concerning different groups’ paths in the legal system. The experiences from the clients themselves, from lawyers and NGO’s are however important to consider, and will be basic to the development of training of lawyers connected to establishment of advisory legal centres addressing vulnerable groups.

Training in Human rights and anti-discrimination

Despite various initiatives signalled out by NGOs, some Court representatives and the National Institute for Magistrates there is rather scant information at local level regarding the availability of training in human rights and particularly on anti-discrimination and vulnerable group’s issues for the judiciary in general. It seems that rather few of representatives of Courts and Bars had participated in such training, in spite of initiatives in this respect by the National Institute for Magistrates.

Aspects related to availability of training provided on a consistent and long term basis on issues such as anti-discrimination, human rights challenges faced by vulnerable groups should be investigated further, as to what extent this training is available, how many participants from the judiciary and the legal system have attended, what the obstacles to attendance might be, how it has been evaluated and what the result is. Such information will be crucial for the development of the training for Courts and Bars in the Norway Grant project.

Considerations on the establishment of advisory centres

Almost all representatives for Courts, Bars, local/central authorities and NGOs interviewed agreed that the establishment of legal advisory centres is a positive initiative and beneficial for vulnerable groups including Roma communities.

It was a general idea that the centres should be located in the local community where clients could reach them and that outreach services could be part of the centres’ work. There were many viewpoints as to which institution the centres should be attached to and located in. A general agreement was that they should be located outside the premises of the Courts. There is also a general view that the centres should cooperate
with local authorities and NGOs in the community. Bar representatives underlined that experienced lawyers should provide for the services, that the centres should be located close to the Bars and cooperate with them. Several NGO representatives underlined that the employees at the centres must be familiar with vulnerable groups and their conditions, and operate in close contact with their target groups. They should also be trained in socio-cultural and communication skills.

Centres should be providing services for the public in general and not for Roma only as this would cause problems at the level of local communities. A general view among informants is that the centres should provide both legal advice, legal counselling and representation before court when necessary.

A general concern was with the sustainability of the centres; who should organize and run the centres after the project period? Who will pay wages when the pilot-period is over? One Municipality suggested that they could take over the responsibility for a centre if it was placed in their community and if it proved successful.

The issues of sustainability of running advisory centres on a long run for the benefit of vulnerable groups stays as an outstanding aspect of the project that would require serious consideration and clarification before the setting up of advisory centres.

In-depth views expressed on fact-finding missions at local level

<table>
<thead>
<tr>
<th>Interviewed Stakeholders</th>
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<tbody>
<tr>
<td>Stakeholder</td>
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<tr>
<td>Courts</td>
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<tr>
<td>Vulnerable categories</td>
</tr>
</tbody>
</table>
### Awareness of discrimination and training

There is a rather low level of awareness about discrimination (e.g. both generally and in particular related to vulnerable groups) among Court representatives interviewed during missions. The available training for the judiciary have a limited outreach despite positive initiatives of the National Institute for Magistrates or NGOs. Few magistrates and even fewer lawyers have participated in human rights trainings and the number of trainings offered by the NIM is insufficient considering existing needs.

### Obstacles

In general the Romanian public has limited awareness on legal rights and opportunities, and in the case of the vulnerable groups the level of awareness is even more acute. The obstacles of access to justice in the case of Roma relates mostly to their low level of education, their low level of knowledge about the judiciary, the legal proceedings, as well as the lack of trust in the state institutions and the judiciary, and equally their low level of income and affordability of Court fees and taxes, or in some case the lack of necessary documentation (e.g. Id or other related documents).

### Advisory centres

The setup of advisory centres is beneficial for both the public and vulnerable groups including Roma communities. Advisory centres should be set up outside Court premises, in cooperation with local authorities or non-governmental organisations. Advisory centres should provide information, counselling services as well as legal representation, covering the expenses for a case trial including adequate resources for both court fees and lawyer fees.

### Interviewed Stakeholders

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Issue at stake</th>
<th>Views</th>
</tr>
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<tbody>
<tr>
<td>Bar associations</td>
<td>Overall legal framework</td>
<td>Court fees and taxes are rather prohibitive for the general public in Romania and particularly for the vulnerable categories who cannot afford costs including for legal representation. The new codes (civil, penal and procedural codes) had a negative impact on procedures, length of trial, delayed hearings, appeals etc. The level of awareness of the general public in regard to new codes is rather limited and has impact on their access to justice. The fees offered by the state for ex officio lawyers are symbolic and do not reflect the proportion of legal work provided by the lawyer. This situation discourages the lawyer to provide a quality service for the client. In some situations the ex officio lawyer is not provided by the Courts the opportunity to offer a consistent and quality legal representation (e.g. the proper time for consulting with the client,</td>
</tr>
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</table>
There are policy issues related to financial obstacles some such as budgetary allocations by the Ministry of Justice whereby there is no distinct line related to free legal aid. Only approximately 20% of the total legal aid cases relate to civil law matters on the basis of requests and granted by the Courts or by the Bar according to the criteria's provided by the law. The main problem in accessing free legal aid relates to the threshold set by the law on public legal aid.

Vulnerable categories

There is a diversity of opinions about who vulnerable categories are in general or in regard to justice. An overall emphasis was put on poverty.

Awareness of discrimination and training

It has been expressed the view that in Romania vulnerable categories have limited access to justice in some cases due to discrimination, bias and prejudice within the judiciary. Few lawyers have participated in human rights trainings and the available ones on human rights, non-discrimination, minority issues have limited outreach.

Obstacles

Roma communities to a certain extend are faced with the lack of identity documents that impacts their access to justice. Equally lack of education, lack of trust in the state institutions and their victimhood mentality represent barriers in access to justice. Generally there is a reciprocity in terms of lack of trust of Roma communities, the majority population and the state authorities that needs to be overcome in order to improve access to justice for Roma.

Advisory centres

Setting advisory centres addressing certain groups of citizens is a positive initiative. Legal services shall be provided by lawyers. Advisory centres should operate in close cooperation with the Bar associations and should be located in the proximity of the Bars.

**Interviewed Stakeholders**

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Issue at stake</th>
<th>Views</th>
</tr>
</thead>
<tbody>
<tr>
<td>National, regional and local institutions</td>
<td>Overall legal framework</td>
<td>Several local authorities expressed the view that Courts should establish a closer relation with fiscal authorities and should better disseminate information on the criteria’s for providing legal aid at local level particularly where vulnerable groups live in order to ease the access to legal aid.</td>
</tr>
</tbody>
</table>
### Vulnerable categories

Regional, local authorities and decentralised services have awareness on vulnerable categories and vulnerability in general given by the fact that they outreach these categories and work directly with them at community and individual level.

### Obstacles

The most pressing issues affecting Roma in access to social protection or access to justice is the lack of identity documents in connection with the lack of property and other related documentation. Despite several projects implemented by various local authorities the issue is still affecting Roma communities and a variety of intervention measures are still needed to tackle the simplification of the procedures to obtain ID cards as well as property documentation.

Members of Roma minority have no or limited awareness about the administrative procedures to obtain social services, identity documents or other related documentation (e.g. property legalisation). They do not have the financial resources to cover costs for technical expertise or related fees. In most of the cases Roma do not have the necessary knowledge how to access Courts, how to file a case, how to write a complaint and this is mainly due to lack of education, lack of knowledge and legal awareness, including their rights and opportunities.

Roma communities and other vulnerable categories have no knowledge about the free legal aid and the procedures to access this state benefit including tax exemption, tax reduction, legal counselling, and legal representation.

### Advisory centres

Advisory centres are welcomed and they will be beneficial for vulnerable groups including Roma communities.

Advisory centres should be established outside the Court premises but in the proximity of the Court where citizens can easily access and approach the staff in these centres.

One aspect that requires serious consideration is the sustainability of the advisory centres at regional or local level.

Advisory centres could be established near by the Prefecture office or the municipality office where citizens are addressing or requesting support for their social problems.

### Interviewed Stakeholders

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Issue at stake</th>
<th>Views</th>
</tr>
</thead>
<tbody>
<tr>
<td>NGOs</td>
<td>Overall legal framework</td>
<td>Within the judiciary there is no collection of data regarding vulnerable categories and related rights and this impacts the measuring and evaluation of both access to, quality of justice and trust of vulnerable groups in justice. State policies and subsequent measures designed to address vulnerable categories are rather meritocratic than need-based and lack evaluation, coherence and interconnectivity in implementation.</td>
</tr>
<tr>
<td>Awareness of discriminatio n and training</td>
<td>Despite some positive initiatives such of the one promoted by National Institute of Magistracy or the NCCD to provide training on human rights and non-discrimination, this activity needs to be extended to reach as many magistrates as possible and at various Courts levels. Court jurisprudence (e.g. including that on different rulings in same type of cases) or that relevant to vulnerable categories, on non-discrimination, on human rights is not available or easy accessible for the public or particularly to victims or those defending vulnerable categories.</td>
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<td>---</td>
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<tr>
<td>Obstacles</td>
<td>Generally there is a lack of trust in authorities and the judiciary among the Roma communities. The overall mentality particularly in small communities is that the police, the judiciary, the Court and the prosecutor are in tied connection and this circle is basically impossible to be broken. This has a significant impact on vulnerable categories preventing them from complaining against rights violations and to seek redress from justice. For example, equally Roma and LGBT representatives say that even if victims would complain nothing will happened. Lack of social justice leads to alternative means for empowering groups seeking different type of activism (e.g. street action, petitions, working with media, advocacy with authorities etc.) to sensitize stakeholders and the public about rights violations.</td>
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<tr>
<td>Advisory centres</td>
<td>The establishment the advisory centres should be widely disseminated to various networks of city halls, health mediators, school mediators and other grass-root level networks. The advisory centres personnel should be familiar with vulnerable groups, community or local representatives, able to ensure a bridge with the lawyers and community members. Advisory centres should put in place an effective communication strategy, involving relevant stakeholders. People in the communities should be made aware about the service provided by the advisory centres. Advisory centres should be located as close as possible by the communities or vulnerable groups in a neutral public setting (e.g. community centre, school etc.) Services delivered by the centres should be provided at the centres but equally outside centres outreaching communities (e.g. mobile units, scouting vulnerable groups, public place meetings including information/orientation/counselling sessions). Advisory centres should offer information and advices for vulnerable groups but equally legal counselling and legal representation before Courts.</td>
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ACCESS TO JUSTICE OF VULNERABLE GROUPS IN ROMANIA - OVERALL PERCEPTIONS
CHAPTER V
Survey addressing stakeholders relevant for access to justice

The expert team proposed by the Council of Europe, the Norwegian Courts Administration and the National Council of Magistracy developed separate questionnaires, with common core-questions targeting various groups such as: Court, lawyer’s bodies, national human rights institutions, probation services and non-governmental organizations.

### Surveyed groups

<table>
<thead>
<tr>
<th>Courts</th>
<th>Lawyer bodies</th>
<th>National institutions</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tribunals, first instance courts (Judecătorie)</td>
<td>National Union of the Bar Associations in Romania, Bar associations</td>
<td>Relevant Ministries, National Council for Combating Discrimination, Ombudsmen, National Agency for Roma, Probation services etc.</td>
<td>Human rights organizations, Roma non-governmental organizations.</td>
</tr>
</tbody>
</table>

### Surveyed groups and answers

<table>
<thead>
<tr>
<th>Courts</th>
<th>Lawyer bodies</th>
<th>National institutions</th>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>41 Tribunals</td>
<td>41 Bar associations</td>
<td>41 Probation services 8 national institutions</td>
<td>36 NGOs</td>
</tr>
<tr>
<td>51 Tribunals and first instance courts responded all together</td>
<td>9 Bar associations responded</td>
<td>29 Probation services responded 4 national institutions responded</td>
<td>12 NGOs responded</td>
</tr>
</tbody>
</table>

All questionnaires were based on the same basic topics related to the efficiency of the justice system in providing human rights for all, affordability/accessibility of the justice system, fairness of the justice system, issues of concern related to vulnerable groups including Roma and perspectives on advisory centres.

### Representativeness of the survey

In part due to a number of factors including limited answers from some stakeholders, or the limited knowledge about the actual respondent and to what extent the answers represent the actual perception or the experience of the respondent, the current study cannot hold a standing for introducing representative data. Nevertheless, the study presents a consistent picture of the viewpoints and experiences of the stakeholders including all Tribunals concerning the access to justice for vulnerable categories (including Roma) in Romania.
## Common issues included in the surveys

<table>
<thead>
<tr>
<th>Common issue</th>
<th>Detailed aspects</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EFFICIENCY OF THE JUSTICE SYSTEM</strong></td>
<td>Perspective over the human rights protection</td>
</tr>
<tr>
<td></td>
<td>Perspective over vulnerable categories</td>
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<td></td>
<td>Quality of legal services</td>
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<td></td>
<td>Trust of vulnerable groups including Roma</td>
</tr>
<tr>
<td><strong>AFFORDABILITY/ACCESSIBILITY OF THE JUSTICE SYSTEM</strong></td>
<td>Affordability by vulnerable categories of legal related costs</td>
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<tr>
<td></td>
<td>Availability of information</td>
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<tr>
<td></td>
<td>Factors impacting the ability to access justice</td>
</tr>
<tr>
<td></td>
<td>Most significant obstacles for vulnerable groups and Roma</td>
</tr>
<tr>
<td><strong>FAIRNESS</strong></td>
<td>Equal treatment of vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Same respect for vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Complaints addressed duly and fairly</td>
</tr>
<tr>
<td><strong>ISSUES OF CONCERN</strong></td>
<td>Most pressing issues facing vulnerable groups/Roma</td>
</tr>
<tr>
<td></td>
<td>Level of awareness of discrimination against vulnerable groups/Roma</td>
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<tr>
<td></td>
<td>Needs for information, consultation, advice for vulnerable groups/Roma</td>
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<tr>
<td></td>
<td>Frequency of addressing legal institutions by vulnerable groups/Roma</td>
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<tr>
<td></td>
<td>Aspects related to legal aid</td>
</tr>
<tr>
<td></td>
<td>Aspects related to discrimination</td>
</tr>
<tr>
<td><strong>ADVISORY CENTRES</strong></td>
<td>Factors to increase access to justice</td>
</tr>
<tr>
<td></td>
<td>Aspects to be considered when establishing advisory centres</td>
</tr>
<tr>
<td></td>
<td>Type of function of advisory centres</td>
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<td></td>
<td>Ways to function most effectively of advisory centres</td>
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</table>
Efficiency of the justice system

When asked about the justice system in Romania, the overwhelming majority of the Tribunals and first instance Courts (98%) as well as national institutions (97%) consider that justice is performing well in ensuring human rights. The situation is slightly different in view of Bar associations (71%) while the civil society representatives (75%) consider the contrary; that the justice system does not perform well in human rights protection.

A similar trend is noted in regard to services provided by judges where the quality services are considered to be provided at “high level” by 42% of Tribunal respondents and 28% by public institutions in comparison with a much lower quality perception from Bar associations (15%) and of NGOs (14%) considering that the quality of service is “good”. Judges are perceived to provide a better quality service than prosecutors. Only 31% of Tribunal respondents consider prosecutors provide “very good” services, 27% of national institution respondents while Bar association’s respondents (17%) and NGOs (14%) consider their services to be “good”.

Vulnerable categories in regard to access to justice

When asked to nominate vulnerable categories in regard to access to justice, Court representatives referred mostly persons with disabilities (60%) and elderly (53%). On the other hand the majority of Court respondents (62%) consider that people infected with HIV, Roma (60% of respondents), children (59% of respondents) and single mothers (55%) are not among vulnerable categories.

Bar associations have a different view on vulnerable categories and access to justice: 50% consider Roma members as vulnerable as well as people infected with HIV, 60% consider vulnerable people with disabilities, 67% children, 80% and 83% consider elderly and single mothers as the most vulnerable categories in regard to access to justice.

Which groups of citizens would you consider vulnerable regarding the access to justice?
National public institutions have a further different perception on vulnerable categories whereby 74% of respondents consider that Roma are not vulnerable alongside people infected with HIV (73% of respondents), children (73% of respondents). The majority respondents consider vulnerable people with disabilities (65%), elderly (58%) and single mothers (53%).

Which groups of citizens would you consider vulnerable regarding the access to justice?
**Trust of Roma members in the judiciary**

When asked about the level of trust of Roma minority members in courts, prosecutors and police, all stakeholders indicate a high degree of distrust in the judiciary with the highest level of distrust in police and prosecutors and a lesser degree in judges.

4. Based on your experience how would you evaluate the trust of members of Roma minority in:

![Bar chart for Justice (Courts)](chart1)

![Bar chart for Prosecutors](chart2)

![Bar chart for Police](chart3)
Affordability of the justice system for vulnerable groups

In terms of affordability of legal costs including assistance, legal representation, court fees and other administrative related fees, the views of the stakeholders vary a lot. Majority Court respondents consider that Court fees (67%) are always affordable, as well as legal representation (56% of respondents), assistance with legal costs (55%) and administrative fees (49%). In comparison, only 10% of public institution respondents consider that assistance with legal cost and court fees are always affordable for vulnerable groups as well as legal representation costs (13%).

5. Do you consider the Romanian justice system to be affordable for members of Roma minority? (e.g. costs of legal assistance, access to free legal aid, Court fees, administrative fees)

Furthermore, an overwhelming majority of civil society organization respondents (75%) consider that assistance with legal costs is not affordable, (see table above on assistance) 62% consider that administrative costs are affordable on a “seldom” basis (see table below), and 50% consider that the legal costs for representation are similarly affordable only a seldom basis. (see table above).
Availability of information relevant for vulnerable groups

The majority of Court representatives (58%) consider that information is available and “easy” or “very easy to be obtained” by vulnerable categories including Roma in their interaction with both the Courts and the prosecutor offices. In contrast, Bar association representatives (66%) consider that information from Courts is rather “obtainable” by vulnerable categories and in regard to the prosecutor offices 33% of Bar respondents consider that information is “difficult” to be obtained while only 33% consider that information is “obtainable”.

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**Court fees**

- Tribunals: 7% Never, 5% Seldom, 21% Sometimes, 67% Usualy
- Bar association: 17% Never, 50% Seldom, 33% Sometimes
- Public Institutions: 3% Never, 13% Seldom, 47% Sometimes, 27% Usualy, 10% Always
- NGO: 25% Never, 37% Seldom, 25% Sometimes, 13% Usualy

**Administrative fees**

- Tribunals: 4% Never, 8% Seldom, 13% Sometimes, 26% Usualy, 49% Always
- Bar association: 33% Never, 33% Seldom, 34% Sometimes
- Public Institutions: 6% Never, 16% Seldom, 48% Sometimes, 23% Usualy, 7% Always
- NGO: 25% Never, 62% Seldom, 13% Sometimes
Civil society organization respondents consider that information both from the Courts and prosecutor offices is rather “obtainable” with 38% respondents considering that information is “very difficult to be obtained” by vulnerable categories particularly Roma.
Factors impacting the ability to access justice
While the overwhelming majority of all respondents consider that distrust, the level of education, the socio-economic status plays an strong role in impacting the ability to access justice, the majority of Court and national institution respondents consider that ethnicity (73% and 69%) and gender (80% and 90%) does not play a role in impacting the access to justice for vulnerable groups.

7. Based on your experience which of the following factors do you see as having an impact on the ability to access justice by member of Roma minority?
Most significant obstacles for Roma in accessing justice

The majority of Bar, public institution and NGO respondents consider that Court fees, lack of information and awareness of rights, illiteracy and lack of personal identification documents are among the most significant obstacles for Roma in accessing justice. However, the majority of Court respondents consider that the lack of IDs do not constitute an obstacle (56%), similarly as the Court fees (65%) and the lack of information (72%) in the case of Roma minority members.

8. Based on your experience what are the most significant obstacles for members of Roma minority accessing Courts, human rights institutions or public authorities?

[Bar chart showing percentages for various obstacles for different groups.]
A majority of all respondents consider that prejudice towards vulnerable groups and Roma constitutes an obstacle in accessing justice. The views vary a lot in regard to other factors such as the complexity of the trial where the majority of the NGOs (88%) and Bars (67%) consider this aspect an underlining factor in comparison with 76% of both Court representatives and institutions disagreeing with this consideration. Similarly, lack of enforcement of decisions is viewed as an obstacle by civil society (63%) and Bars (75%) while 67% of Court representatives and 64% of institutions disagree with this assumption as well. The views are much more closer in terms of physical accessibility of the Courts constituting an obstacle.

The length of the trial is not perceived as an obstacle in view of the 86% of Court respondents in comparison with 88% of NGOs considering the opposite. On the other hand, the majority of civil society respondents (88%), public institutions (76%), Bar associations (60%) consider the costs for experts too expensive for

\[\text{91}\]
Roma clients. Access to information in a minority language is not perceived as an obstacle by Court respondents (only 27%) and public institutions (only 21%) while 50% of Bar respondents consider it is an obstacle.

**Fairness of the justice system**

When asked about the equal treatment and the respect given to Roma before Courts or public institutions, the majority of Court respondents (68%) and Bar respondents (58%) consider that Roma are equally treated. In terms of respectfulness, Bar respondents have a slightly different opinion only 42% considering that Roma are treated respectfully and 29% considering that usually they are treated as such. NGOs on the other hand have a different opinion, 50% considering that “sometime” Roma are treated equally and 62% considering that only “sometime” are treated with respect.
9. Based on your experience do members of Roma minority receive equal treatment in comparison with majority population by Courts, human rights institutions or public authorities?

In terms of reasons for rejecting complaints from Roma minority members an overwhelming majority of Court respondents consider that corruption (89%), lack of professionalism (83%), political influence (77%) prejudice/bias (77%) and lack of awareness of challenges faced by Roma (68%) never plays a role in dealing with respective complaints. Bar respondents share more or less the same perspective in what regards corruption (75%) and political influence (67%) but a slightly different perspective towards lack of professionalism where 33% consider it plays role, 40% consider that prejudice and bias plays a role in rejecting requests and 50% consider as well that lack of awareness about challenges faced by Roma may impact on the rejection process.

11. Based on your experience requests, complaints from members of Roma minority are rejected by Courts, public administration offices, human rights institutions due to…

Prejudice/Bias/discrimination
Most pressing issues including discrimination faced by Roma minority

Only a small percentage of Court respondents consider that Roma are facing discrimination in various spheres of life. 4% of Court respondents consider that Roma are usually discriminated against by state institutions, in accessing health services or social rights. 5% consider that Roma are facing usually discrimination in access to education.

13. Based on your experience what do you see as the most pressing issues facing members of Roma minority?
A slightly higher percentage of Court respondents (11%) consider that Roma usually face discrimination in police procedures. While in the area of housing the perception is that Roma do not face discrimination (38% consider they never face discrimination and 32% only seldom) in the area of access to employment seems to be a higher degree of acknowledgment as 9% consider Roma face always discrimination and 42% consider they usually face discrimination.
In relation with issues faced by Roma minority members a proportion close to majority of Court respondents identify lack of identity documentation (46%), land disputes (34%), property ownership (32%), and lack of registration (14%). Bar associations have a stronger view on these aspects 17% of respondents considering that Roma always face issues related to identity documents, 20% related to lack of registration and 25% related to property ownership and land disputes.
Assistance needed for vulnerable categories including Roma

Most of Court respondents consider that vulnerable categories including Roma should receive information, advice and consultation related to discrimination (75%), related to criminal law (69%), on how to address local authorities (65%), on how to draft requests to local authorities (65%), related to social protection and assistance (59%), and related to civil law (58%) and administrative law (44%). More or less the same perspective is shared by the Bar respondents.

15. Based on your experience what type of information, consultation, and advice do members of vulnerable groups need to access justice?
Factors increasing access to justice for vulnerable categories

Almost all stakeholders surveyed considered that access to justice for vulnerable categories would be increased through enhanced public awareness about laws and procedures, through the establishment of advisory centres for vulnerable categories including the Roma, through enhanced financial support on legal aid, through networking between courts, state institutions and vulnerable groups including NGOs, through simplification of procedures on legal aid, and through on-going training on vulnerable groups for the judiciary.
20. Based on your experience which factors do you think would increase the access of justice for members of Roma minority?

Enhanced public awareness about law, procedures etc.

- Tribunals: 94% (4%), 2% (2%)
- Bar association: 100% (0%)
- Public Institutions: 100% (0%)
- NGO: 100% (0%)

Establishment of advisory centres for vulnerable groups including Roma

- Tribunals: 83% (7%), 11% (11%)
- Bar association: 80% (20%)
- Public Institutions: 100% (0%)
- NGO: 88% (13%)

Enhanced financial support on legal aid for vulnerable groups including Roma

- Tribunals: 34% (46%), 20% (20%)
- Bar association: 75% (25%)
- Public Institutions: 53% (44%), 3% (3%)
- NGO: 88% (13%)

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Factors to be considered when establishing advisory centres

Most of surveyed stakeholders consider primarily a number of factors relevant for establishing advisory centres such as: geographical (the number of vulnerable groups), issue base (challenges faced by vulnerable groups), proactive community (community based organization, vulnerable group organization, willingness to host centre), pro-active civil society (work with the community, willingness to host centre), pro-
active local authority (willingness to host centre, history of good relations, integration initiatives and policies at local level).

21. Based on your experience which factors should be taken into account when establishing advisory centres for vulnerable groups (including Roma) for improving access to justice?

### Number of vulnerable group (geographical factor)

<table>
<thead>
<tr>
<th></th>
<th>Tribunals</th>
<th>Bar association</th>
<th>Public Institutions</th>
<th>NGO</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>8%</td>
<td>21%</td>
<td>25%</td>
<td>13%</td>
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### Issues of concern for vulnerable group (most pressing factor)

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<th></th>
<th>Tribunals</th>
<th>Bar association</th>
<th>Public Institutions</th>
<th>NGO</th>
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<tbody>
<tr>
<td></td>
<td>8%</td>
<td>21%</td>
<td>40%</td>
<td>50%</td>
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### Community availability to host centre

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<tr>
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<th>Tribunals</th>
<th>Bar association</th>
<th>Public Institutions</th>
<th>NGO</th>
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<tbody>
<tr>
<td></td>
<td>19%</td>
<td>23%</td>
<td>29%</td>
<td>50%</td>
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### Existence of community based organisations in the area

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<thead>
<tr>
<th></th>
<th>Tribunals</th>
<th>Bar association</th>
<th>Public Institutions</th>
<th>NGO</th>
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<tbody>
<tr>
<td></td>
<td>18%</td>
<td>100%</td>
<td>30%</td>
<td>13%</td>
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</table>
ACCESS TO JUSTICE OF VULNERABLE GROUPS - OVERALL PERCEPTIONS

**Existence of vulnerable group organization (civil society) in the area**

- **Tribunals**
  - Not Important: 13%
  - Important: 58%
  - Very Important: 29%

- **Bar association**
  - Not Important: 100%
  - Important: 0%
  - Very Important: 0%

- **Public Institutions**
  - Not Important: 10%
  - Important: 68%
  - Very Important: 23%

- **NGO**
  - Not Important: 50%
  - Important: 38%
  - Very Important: 13%

**Local authority availability to host centre**

- **Tribunals**
  - Not Important: 42%
  - Important: 42%
  - Very Important: 16%

- **Bar association**
  - Not Important: 17%
  - Important: 66%
  - Very Important: 17%

- **Public Institutions**
  - Not Important: 12%
  - Important: 61%
  - Very Important: 27%

- **NGO**
  - Not Important: 38%
  - Important: 25%
  - Very Important: 38%

**Local authority history to cooperate with Roma community**

- **Tribunals**
  - Not Important: 19%
  - Important: 49%
  - Very Important: 32%

- **Bar association**
  - Not Important: 50%
  - Important: 50%
  - Very Important: 0%

- **Public Institutions**
  - Not Important: 10%
  - Important: 74%
  - Very Important: 16%

- **NGO**
  - Not Important: 29%
  - Important: 71%
  - Very Important: 0%
Functions to be performed by the advisory centres

When asked about the most important functions of the advisory centres NGO respondents outlined mostly rights awareness, counselling on discrimination matters and addressing public institutions followed by counselling on private disputes, legal advice and counselling on social protection. Court and public institutions respondents outlined mainly counselling on private disputes, on social protection, rights awareness, followed by counselling on addressing institutions and discrimination. Bar respondents outlined mainly counselling on social protection, rights awareness and legal representation in civil and administrative procedures.

<table>
<thead>
<tr>
<th>Function</th>
<th>NGOs</th>
<th>Public institutions</th>
<th>Bar associations</th>
<th>Tribunals</th>
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</thead>
<tbody>
<tr>
<td>Counseling on addressing institutions</td>
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<tr>
<td>Counseling on social protection</td>
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<td>Counseling on discrimination</td>
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<td>Rights awareness</td>
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<td>Legal advise</td>
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<tr>
<td>Counselling private disputes</td>
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<tr>
<td>Representation administrative procedures</td>
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<tr>
<td>Representation Court procedures</td>
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</table>
Functioning in a most effective way

The majority of the stakeholders surveyed consider that advisory centres should be run either by a non-governmental organization or by a local authority. 46% of Court respondents consider that such centres should be operated by an NGO in comparison with 35% considering the local authorities. 60% of Bar
respondents considered as well that it should be run by an NGO in comparison with 40% opting for a local authority. On the other hand, public institutions incline rather for local authorities. 34% of public institution respondents considered a local authority in comparison with 24% opting for a NGO.
A COMPARATIVE SUMMARY OF LEGAL AID CENTRES ADDRESSING VULNERABLE GROUPS
CHAPTER VI
A COMPARATIVE SUMMARY OF LEGAL AID CENTRES ADDRESSING VULNERABLE GROUPS

This section is meant to provide an insight into parallel existing legal aid provision systems and potentially serve to transfer know-how to Romania based on already established structures and pilot services. The chapter without claims to being exhaustive shall briefly summarize the twofold system in the Netherlands where the concept of legal aid centre has been in use since 2003 with the creation of the so-called Legal Service Counters or Het Juridisch Locket\(^\text{281}\) as well as the Legal Aid Centres (LACs) under the National Legal Aid Bureau in Bulgaria developed as part of a similar predefined project funded by the EEA Grants in the period 2013-2014.

Introduction to the System of Legal Aid Provision in the Netherlands

According to the European Convention on Human Rights and the Constitution of the Netherlands, access to court, requesting and benefiting from legal aid and representation is an inalienable right of every citizen that shall be supported by the state in occasions when means do not suffice, thus, embedding the state with duty to grant legal aid to citizens with fewer opportunities, of limited means and/or in vulnerable social situation.

The Dutch Legal Aid Act (in force since 1994; the last amendment of this law took effect on July 1st, 2011) stipulates that any individual unable financially to cover his/her costs in seeking their basic rights’ defence shall be entitled to call upon its legal provisions. An estimation based on the studies of the Legal Aid Board of the Netherlands points out that approximately 36% of the Dutch population\(^\text{282}\) (with a total of 16.7 million people) would, according to the current estimates, qualify for legal aid if circumstances so require.

The Dutch legal aid system is principally a two-level model, i.e. it incorporates two ‘lines’ that provide legal aid. The Legal Services Counters, being the first line, provide front services, i.e. primary legal information and advice; these are the places where people would go in order to have their legal matters explained and if needed clarified. If and when necessary, clients are referred to the second line which comes in as a private lawyer or a mediator delivering the service necessary whose fee is covered by the Legal Aid Board for clients of limited financial means.

\(^{281}\) See [https://www.juridischloket.nl](https://www.juridischloket.nl)/

Legal Services Counters

As outlined above, the Legal Services Counters in the Netherlands serve as front offices that provide primary legal aid. They put forward all-purpose information concerning rules and regulations as well as legal procedures; give advice in simple legal matters, and refer clients to private lawyers or mediators if their problems turn out to be more complicated or time-consuming. All services are free of charge and are provided on the spot or as part of a consultation hour (max. 60 minutes). Clients can approach the Counters with issues touching upon civil, administrative, and criminal as well as immigration law. When stepping at the Counters for the first time, citizens are met by staff members who try to clarify the nature of the problems seeking information on:

- whether the problem is actually a legal problem and, if so,
- whether the problem is within the scope of the legal services provided by the Counters (not all legal problems – e.g. those between businesses – are dealt with by the Counters);
- what kind of help is most suitable for the client.

Following that introductory meeting, clients are also provided with information on the chances of success, the time that is needed and the potential costs and fees they need to take into consideration when planning to take action against one individual and/or institution to protect their rights.

Currently, there are 30 LSC offices across the Netherlands that share a website and a call centre. They have been evenly set up geographically taking into consideration the possibility for every Dutch citizen to easily reach a Legal Services Counter for not more than one hour journey by public transport.

All 30 LSC offices have an identical vision and appearance making them an easily identifiable brand. The facilities of the Counters have been designed to follow latest customer-oriented trends of creating an inviting atmosphere leaving clients with a more like shop feeling than of an office one. Inside each LSC there is open space with a waiting area and desks. The call centre and rooms for private consultation are located at the back of the shop. There are also shelves with information brochures on legal matters.

In general, each Legal Services Counter employs at least six legal advisers. Since the services of the current Counters do not include extensive legal aid and representation in court, paralegals can be employed too. The Dutch bachelor education system recently started a law course to train students for this purpose.

The legal advisers at the Counters work in shifts, covering turns in both the call centre (answering inquiries both by telephone, e-mail and chat), at the counter, and in the consultation rooms. All Counters across the country have been interconnected, thus, spreading the workload in a balanced way throughout the whole country.

The special emphasis on primary legal aid at the LSC serves two main aims. Firstly, the help provided is readily available and free of charge, thus, positioning the LSC as easily accessible and fairly informal for the general public. Secondly, they have an important screening function, in that they tackle disputes and legal

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283 More information about the type of services offered as well as an insight into the scope of topics covered by the Legal Aid Counters can be found at their website: https://www.juridischloket.nl/

problems at an early stage and thereby help to avoid escalation\(^\text{285}\) as well as minimise costs, both for the individual in question and for society at large. This latter aim has been reinforced since the diagnosis and triage measure took effect (1 July 2011), which encourages potential clients to contact the LSC first.

### Introduction to the System of Legal Aid Provision in Bulgaria

The National Legal Aid Bureau (further referred to as NLAB), established in 2006, together with the Bar associations in the country provides legal aid to citizens representing vulnerable social groups. The NLAB is an independent legal entity; it works as a collective body and has its own budget. The President and the Vice President of the NLAB are appointed by an order of the Prime Minister on the basis of a Council of Ministers decision, and three other members are elected by the Supreme Bar Council.

The NLAB supervises the provision, scope and range of legal aid, makes sure that the persons who are entitled to it can exercise their rights as well as it monitors the overall procedure of rendering and carrying out of legal aid in the Republic of Bulgaria. The Legal Aid Act (ALA), in force since January 2006, settles the provision of lawyer’s defence in the case of binding defence, as well as to persons in vulnerable position who cannot afford to pay for their rights’ protection. According to it, legal aid is delivered by lawyers inscribed into the NLAB, registered members of regional Bar Associations who have declared willingness to work as attorneys as well. In 2013 there were 4529 attorneys registered at the NLAB, which is about 1/3 of the total number of the lawyers in the country. Annually — in May and September, the list of the inscribed into the Register lawyers is updated after a meeting of the Board of the NLAB.

In order to illustrate the operation of the system for provision of legal aid in Bulgaria, the types of legal aid regulated in the ALA must be delimited, and they include the following:

- primary legal aid or pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings or to bringing a case before a court;
- preparation of documents for bringing a case before a court;
- representation in court by legal counsel;
- representation upon detention under Article 63 (1) of the Ministry of Interior Act and under Article 16a of the Customs Act.

With the latest amendments in the Legal Aid Act, in force as of 19 March 2013, the scope of persons who have right to legal aid has been expanded to include the following social groups:

- persons and families who satisfy the eligibility requirements for receipt of monthly social assistance benefit according to the procedure established by Article 9 and Article 10 of the Regulations for Application of the Social Assistance Act;
- persons and families who satisfy the eligibility requirements for assistance with a targeted heating allowance for the preceding or current heating season;
- persons placed in specialized institutions for provision of social services or using a resident-type social service or using a Mother and Baby Unit social service according to Article 36 of the Regulations for Application of the Social Assistance Act;
- children placed with foster families or with immediate or extended family members according to the procedure established by the Child Protection Act;

\(^{285}\) https://e-justice.europa.eu/content_mediation_in_member_states-64-nl-maximizeMS-en.do?member=1
• a child at risk within the meaning given by the Child Protection Act;
• persons referred to in Article 144 of the Family Code and to persons who have not attained the age of 21 years, in accordance with Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ, L 7/1 of 10 January 2009);
• victims of domestic or sexual violence or of trafficking of human beings, who are unable to pay and wish to avail themselves to the assistance of a lawyer;
• seekers of international protection according to the procedure established by the Asylum and Refugees Act, in respect of which the granting of legal aid is not due on another legal basis;
• foreigners in respect of whom a coercive administrative measure has been applied and foreigners accommodated at a special facility for temporary accommodation of foreigners according to the procedure established by the Foreigners in the Republic of Bulgaria Act, who are unable to pay and wish to avail themselves of the assistance of a lawyer;

Each individual willing to benefit from free legal aid sends an application to the NLAB accompanied by documents proving his/her status. The President of NLAB endorses the application for receiving legal aid and redirects it to the respective Bar association for determining the attorney. With the view of guaranteeing a better access to justice and if the applicant to whom legal aid is provided insists on the defence of a particular lawyer, the Bar association is bound to conform to this circumstance and at their earlier convenience designate the specified attorney. Most often the applicant submits a request for legal aid in the course of the procedural actions - the preliminary and the court proceedings, as well delegation in the case of detention pursuant to Article 63, paragraph 1 of the Law for the Ministry of the Interior. These cover the cases in which as stipulated by the law the defence of an attorney is required or delegation, as well as when an applicant in a criminal, civil or administrative case has no means to pay the fee of a lawyer, but wishes to have one and it is in the interest of jurisdiction this is demanded.

In criminal cases the estimation that the applicant has no means to pay the fee of a lawyer is performed by the body leading the procedural actions (the judge, the public prosecutor, the examining magistrate, and the preliminary investigator) based on the established by this body property status of the person in the specific case. In civil and administrative cases legal aid is provided in the cases when based on the submitted evidence by the respective competent bodies the court decides that the applicant has no means to pay the fee of a lawyer. In the formation of the estimation the following are taken into consideration:
• the income of the person or the family;
• the property status;
• the family status;
• the health status;
• the employment;
• the age and others, related to the specific case and the established circumstances.

In any case the body leading the procedural actions and has the duty to inform the person of his right of defence, as well as of the opportunities for the provision of legal aid in case this person meets the criteria and provisions for receiving such aid. In both cases the act of granting legal aid is referred to the respective bar associations in order that they designate an attorney to provide the legal aid. And here, if convenient, the bar association designates the attorney, specified by the person provided with legal aid. The lawyer who has assumed the defence is bound to participate at all stages of the proceedings and in this way guarantee efficient legal aid to the applicant.
The practice in applying the Legal Aid Act during the years shows a tendency of increasing the amount of the granted legal aid. Thus, in comparison with the year 2006 the amount of the granted legal aid has grown up with 1/3 for 2006 legal aid was granted in 15765 cases, and in 2012 – in 42526 cases. This requires strengthening the control of rendering legal aid in view of expedient spending of the state funds as well as creation of a mechanism for re-financing of the expenses. All these circumstances have led to the necessity of changes in the Legal Aid Act. The changes concern widening the circle of persons who have right to obtain free legal aid, standardization of the criteria for rendering legal aid, reimbursement of the travelling expenses/allowance of the lawyers who had appeared in cases in other city/town, solving the problem of gathering the expenses for legal aid by the National Revenue Agency and setting the Legal Aid Act in conformity with the legislation of the member states of EU.

Pre-defined project №4 “Improving the access to legal aid for vulnerable social groups through implementing a pilot project for primary legal aid hotline and regional consultation centres”

In February 2013 the NLAB started the implementation of pre-defined project № 4 funded by the EEA Grants and the Norwegian Financial Mechanism in Bulgaria. The main aim of pre-defined project № 4 was to develop and improve the overall system for provision of primary legal aid, oriented towards the most marginalized and vulnerable social groups by means of piloting mechanisms for primary legal aid provision and preparation of legal amendments to improve the opportunity for access to justice to individuals with unfavourable background. The project was focused on the creation of a set of pilot services, namely the Primary Legal Aid Hotline – a service for citizens offering free of charge legal information via phone consultations and the Legal Aid Centres (LACs) for provision of primary legal aid directly into two of the most densely Roma populated districts in Bulgaria, the towns of Vidin and Sliven.

For the purpose of the current section of the feasibility study and the scope of the Supreme Court of Magistracy’s own project within EEA Grants, we shall review in more details the working model of LACs as prepared by the team of the Open Society-Sofia, partner of the NLAB in the implementation of pre-defined project no. 4 in Bulgaria.

Function of the LAC

The LACs have as their main objective to facilitate the citizens’ access to justice through providing legal advice, legal consultation or preparation of documents for disadvantaged citizens. LACs do not provide legal aid in reference to pending litigations. Such may be provided through the general procedures according to the LAA. The services of the LACs are free of charge for the citizens.

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286 The model was prepared by Ivanka Ivanova and Velislava Delcheva, OSI-Sofia. On 24 June 2013, an internal discussion meeting was held with specialists working with Roma communities and special projects – Dimitar Dimitrov, Boyan Zafirov, and Georgi Angelov of OSI-Sofia. On 25 June 2013, a discussion was held with lawyers with experience in providing legal aid to persons from vulnerable social groups – Daniela Mihailova, Dilyana Gileva, Iliana Savova, and Natasha Dobreva. The notes and comments of the participants in both discussions have been taken into consideration while drafting the model LAC.
Who can use legal aid at LACs?

Legal aid is provided to Bulgarian citizens, as well as foreign country citizens who reside on the territory of the Republic of Bulgaria. LACs only provide assistance in resolving problems of natural persons. Juridical persons may not use the service. The legal aid is provided to disadvantaged citizens, who cannot afford to pay for a lawyer. The LACs provide services to the following categories of persons:

- Persons eligible for targeted assistance in the form of heating aids;
- Persons who have received heating aids during the period of the last three years;
- Persons who have received monthly aids during the period of the last three years;
- Pensioners;
- All persons accommodated in social or healthcare facilities and protected homes or at the moment are using the services of centres for integration and social rehabilitation, as well as their legal representatives regarding matters concerning the rights of their wards;
- Children and parents (legal guardians) in cases of infringements of the rights of children;
- Prisoners;
- Others, at the discretion of the Manager of the LAC.

The presence of the aforementioned circumstances is attested by a declaration, filled in by the person upon his appearance before the LAC. No additional documents are required. In the cases of false declaration, the person is criminally liable. Periodically, the manager of the LAC on his own motion verifies the authenticity of randomly selected declarations - through inquiries in the National Social Security Institute or the Social Assistance Agency. Up to 10% of the received applications for legal aid are to be verified in such a way.

What fields of law is the service applicable to?

The service is applicable to problems related to the application of the Bulgarian national law. Advice shall not be provided regarding the application of laws in foreign countries. If it is necessary to provide assistance to Bulgarian citizens, for any length of time residing abroad, and the matter is related to the application of foreign law, the LAC may refer the citizen to the primary legal aid system in the respective foreign country.

The limitation referred to in art. 24 of the LAA applies – the manager of the LAC may refuse the provision of legal aid to the client when:

- the provision of legal aid is not justified on the grounds of the benefit it would bring to the person applying for legal aid;
- when the claim is manifestly unfounded, unjustifiable or inadmissible;
- in cases of commercial matters and tax cases under the Taxation and Social Security Procedure Code.

The refusal shall not be subject to an appeal procedure.

What exactly does the LAC do?

The LAC organizes the provision of legal aid, which consists of:

- providing legal advice;
- providing legal consultation;
- preparation of documents;
- providing legal information regarding the application of the LAA;

287 The conditions of access to the services of the pilot projects for LACs are more broadly defined than the actual conditions in the LAA and allow for a certain degree of managerial discretion on the part of the LAC’s Manager.
• assistance in the completion of forms and documents for public authorities;
• representation before administrative authorities.

Structure, participants and functioning of the LAC
The NLAB manages the activity of the LACs through establishing specific Regulations for the work of the LACs. The activity of the LACs is performed by a manager of the LAC, an administrative secretary and lawyers working at the LAC. The necessary minimum number of lawyers to be drawn into each of the two places in the project is about 24. They must be categorized in lists according to field of expertise – civil, criminal and administrative law. Apart from that, the lists must also be subcategorized according to the expected legal problems. Nine basic groups of legal problems are expected and for each one of them, at least two lawyers must be available to be chosen, some of the fields requiring even three. The expected most common problem will be refusals for providing social aids. In addition, at least 5 stand-by lawyers are necessary to deal with cases that are here not recognized as common – common for advice on criminal, administrative and other civil cases.

Volunteers can be drawn in to the LACs, student interns and assistant lawyers, who will receive the citizens and help in any other way in the organization of the work of the LAC. Volunteers and student interns are not allowed to fill in legal documents or forms and to provide legal advice to clients. Assistant lawyers are allowed to fill in documents.

The NLAB selects the manager and the administrative secretary of the LAC and approves a list of lawyers who will provide legal aid at the LACs.

Description of the necessary resources
Documents:
• Regulations for the work of the LAC;
• Information brochures presenting the LAC;
• List of lawyers working at the LAC – arranged by the lawyers’ field of expertise;
• Register of the legal advice provided, specifying which lawyer received the case, the date on which he/she met the client and what he/she has accomplished on the case;
• Dossiers for the separate cases;
• List of specialized agencies and NGOs for reference – to be arranged according to types of legal problems;
• Monthly reports for the activity of the LAC, which contain the number of received requests for legal aid, the number of clients serviced, a representation of the services provided by the LAC according to type and geography, analysis and summary of problems and difficulties;
• A web-based system for registration of the dossiers of the cases of legal aid provided; it must support the possibility for generating summaries, which are periodically stored electronically and/or printed on paper;
• Archive – consists of the registers of the lawyers and the legal advice provided, as well as the dossiers of the separate cases; it is stored for 5 years after the conclusion of the project by the NLAB.

The LAC keeps paper dossiers of the legal aid provided – the dossier contains the declaration by the client that he/she meets the requirements for eligibility for legal aid, the completed form by the lawyer for the work
performed on the case, including the dates of the meetings with the client and copies of relative documents. The originals of the documents are by no means taken from the client.

**Equipment and facilities**

Premises – The LAC must have at its disposal separate premises, suitable for receiving citizens and providing legal consultations. At least four working desks are necessary and a minimum of 2 telephone lines, permanent internet connection and at least one subscription for a legal information retrieval system. The premises must be equipped with desks, chairs, waiting chairs/benches, computers, a scanner, a copying machine and a printer. In addition, there must be lockable filing cabinets for storing documents.

The premises in which the citizens will be received must meet the established requirements for fire safety and hygiene at work – The Regional Health Inspectorate has requirements for daylight access, temperature in the premises, ventilation, etc. The premises must be accessible to elderly people and people in wheelchairs, because such people are expected to be clients of the centre.

Both centres must be equipped with toilets with washbasins, accessible to employees and clients as well. The budget must include expenses for sanitary items, and cleaning of the reception premises on a daily basis must be organized. Security (alarm signalling and security equipment or other) is recommended to be organized at both places.

**Working process**

It is recommended that citizens visit the office of the LAC only after they have made an appointment in advance for a meeting with a lawyer. The information brochures must state clearly that the process suggests a telephone call first, then making an appointment for a meeting with a lawyer and then appearing at this meeting. The administrative secretary accepts the calls during the working hours and creates a short dossier of the request for legal aid, analogical to the system of service of the National telephone line for legal aid. In the course of a conversation with the citizen, the administrative secretary clarifies who is eligible for receiving legal advice from the LAC and writes down a short description of the problem. If there is a necessity to refer the client to another government authority/NGO or to provide legal information, the administrative secretary does it immediately or after consulting legislation.

On a daily basis, the administrative secretary and the manager of the LAC examine the list of the received calls/appointments made and assess whether a meeting with a lawyer is necessary, which lawyer from the list should be referred to according to the field of expertise specified by the lawyer. A schedule shall be made for the reception days of the lawyers – it must be organized according to the lawyers’ fields of expertise and days of the week – for example lawyers on criminal cases provide legal advice on Thursday and Friday afternoon; lawyers on civil cases provide legal advice on Monday and Tuesday and lawyers on administrative cases – only on Wednesday. In the framework of the already organized fields of expertise by days, the schedules of the individual lawyers shall be made.

The administrative secretary arranges the meetings of the lawyers and clients. The administrative secretary informs the lawyers and the clients about the time of the meeting; the administrative secretary clarifies to the
client the necessity to bring to the meeting all documents that he/she possesses that are related to the specific legal problem in question. Upon his/her arrival at the meeting, the client fills in a declaration and submits it to the administrative secretary, by which he declares that he meets all requirements and is eligible for provision of legal aid. The lawyer must have access to the dossier of the case that has been forwarded to him and must study it in advance. After the meeting with the client, the lawyer registers in the dossier information about the specific service he/she has provided, the time it took and what advice exactly was given to the client.

Ancillary advisory boards at the LAC

The ancillary advisory boards consist of representatives of the local authorities, representatives of specialized NGOs for social activities or protection of the human rights on a local level, the local social assistance services, a local ombudsman, representatives of the local bar associations. After the launching of the project, the manager of the LAC sends official letters to the institutions concerned, with an invitation to appoint their representatives in the advisory board. These board members supervise the compliance with the Regulations for the work of the LAC, discuss and approve the periodical reports on the activity of the LAC and, if there are systematic problems, make suggestions about their resolution to the NLAB and the local authorities. They express an opinion on the decisions of the Manager of the LAC for provision of legal aid in the cases which are not explicitly described in the regulations – for persons who are not on the list of those eligible for legal aid. The board shall have the power to receive signals from citizens and institutions about irregularities in the work of the LAC and cooperates in the resolution of disputes, resulting from the activity of the LAC. The members of the Advisory board do not receive remunerations for their work.

Manager of the LAC– responsibilities, selection criteria, selection procedure

Responsibilities. The Manager of the LAC:

- organizes the activity of the LAC;
- organizes the establishment and after that – the meetings of the ancillary advisory board at the LAC;
- supervises the work of the administrative secretary and that of the lawyers;
- verifies the quality of the legal advice/information provided by the administrative secretary and the lawyers;
- approves the provision of legal aid to persons, not explicitly specified as eligible in the regulations for the work of the LAC, but for any reason are in a vulnerable position, need legal advice and cannot afford the expenses for its provision. In such cases the decision of the manager must be motivated;
- monitors for the regular and correct maintenance of the documents of the LAC on the part of the administrative secretary and the lawyers;
- together with the administrative secretary, organizes the schedule of the reception desk and monitors for the even distribution of the load of work among the lawyers at the reception;
- provides legal advice to citizens in urgent cases;
- prepares periodical reports for the work of the LAC, which are presented and defended by him before the local Advisory Board and the NLAB;
- represents the LAC in public events and statements, as well as before other public authorities and organizations on a local level;
- organizes the maintenance and storage of the documentation and the archive of the LAC;
- suggests to the Advisory board who should be chosen as volunteers, assistant lawyers or interns at the LAC;
of his own motion, verifies the authenticity of the clients' declarations through contacting the Social Security Institute or the Social Assistance Agency – on a random basis;
periodically summarizes the most commonly met legal problems of citizens and if any consistencies are found, prepares signals and suggestions to the competent government authorities regarding their resolution.

Selection criteria. The Manager of the LAC must have:
- a degree in law
- minimum of 15 years of experience as a lawyer
- experience with working with vulnerable social groups
- management experience/qualities – skills to organize the work of the administrative secretary and the lawyers, delegation of tasks, selection and assessment of staff
- excellent communication skills
- computer skills

The Manager of the LAC shall be appointed by the NLAB after a competition based on documents and an interview.

Administrative secretary - responsibilities, selection criteria, selection procedure
Responsibilities. The administrative secretary:
- maintains the register of lawyers;
- maintains the register of the legal advice provided;
- organizes the schedule of the lawyers' reception days and fills it in with meetings with clients;
- receives telephone calls from clients and appoints meetings with lawyers for them if necessary;
- gives legal information or advice if the case does not require a meeting with a lawyer;
- fills in the part of the dossiers of the cases with information about the client and a short description of the case;
- monitors for the correct maintenance and storage of the documentation, related to the work of the LAC;
- organizes the work of the volunteers and interns.

Requirements:
- a degree in law;
- excellent knowledge on the application of the Legal aid act;
- high level of organizational skills
- professional experience as a lawyer – at least 5 years and the experience must be recent;
- communication skills, a friendly and patient personality and high concentration skills;
- experience with working with vulnerable social groups
- computer and typewriting skills.

The administrative secretary of the LAC shall be appointed by the NLAB after a competition based on documents and an interview.

Lawyers. Responsibilities, selection criteria and selection procedure
Responsibilities. The lawyer must:
- be available for the period of the working hours of the LAC and according to his reception time in the schedule;
- receive and listen to the client and provide him/her with legal advice, consultation or prepare documents for him/her in accordance with the highest professional standards;
• upon meeting the client, get acquainted with the necessary documentation and information and explain to the citizen in a comprehensible language the nature of the problem, the current status, the possibilities for defence or resolution of the problem, the consequences of that, future stages and possible development, as well as the possible expenses he/she might have to incur;
• maintain individual dossiers of the cases on which he/she provides legal advice at the LAC;
• complete and keep the necessary documentation for the LAC by registering in it the provided information, advice and the duration of the conversation or meeting with the citizen;
• give recommendations on improving the scheme of the LAC;
• the lawyer cannot refer to his/her private practice citizens who have visited the LAC;
• the lawyer is not allowed to accept payment or other forms of compensation from the client of the LAC himself/herself.

In cases when the client declares his/her will to proceed to taking legal action, the lawyer must carefully explain to the client the possible consequences, including the possible expenses on the case, as well as to inform him/her about the degree of probability of losing the case and having to cover the expenses of the other party as well. If, despite this, the client is determined to take legal action, he/she must sign a standard form declaration, stating that he/she has been warned about the possibility of losing the case and the risk of covering the expenses. The purpose of this measure is to prevent the possibility that the LAC is liable for causing damages to its clients in accordance with the Obligations and Contracts Act.

In the cases when the lawyer advises the client to take legal action, the lawyer prepares the application in written form and is obliged to attach to it a request for granting legal aid in accordance with the procedures of the LAA, which the client lodges before the court. This should guarantee the possibility of the client to be represented at the trial stage as well, but in accordance with the standard procedure before the NLAB. The lawyer explains to the client his/her right to be represented before the court by a lawyer of his/her own choice. The remuneration of the lawyers can be estimated as a fixed sum per one legal consultation provided or per hour service. Given that „legal consultation“ is defined as assistance for the resolution of a concrete legal problem of one client. The activity of the lawyer may consist of the provision of legal advice, oral or written consultation or preparation of documents. If more than one activity is necessary to be performed by the lawyer on the case, it is not paid for separately. If a second meeting with the client is necessary in reference to the same case, the lawyer is not paid additionally as well, i.e. lawyers at the LAC are expected, in addition to the fixed remuneration for providing legal consultations, to perform additional unpaid labour in reference to the cases that have been entrusted to them.

In order to be registered as a lawyer at the LAC, the lawyer must meet the following criteria:
• he/she must agree to work according to the requirements and in compliance with the Regulations of the LAC;
• he/she must have a minimum of 5 years of experience as a lawyer;
• he/she must have no imposed disciplinary sanctions against him/her;
• he/she must specify a field of expertise and provide a motivation of why he/she thinks that he/she is capable of providing legal advice in this specific field of law;
• he/she must have been entered in the National legal aid register for the period of at least 1 year;
• he/she must have a high level of professional knowledge;
• he/she must have excellent communication skills and be able to explain laws and regulations in an understandable language;
• he/she must be able to work with a computer and freely use the basic software products for document processing.
The selection procedure for the lawyers may be conducted in two stages: selection based on documents and conducting interviews. Again, the necessary documents for applying for participation in the scheme are: completed and submitted application form, an application for expression of interest and a CV. The selection based on documents shall be conducted by a commission, structured by the NLAB. It consists of a representative of the NLAB/the project team, the manager of the LAC and at least one member of the local Advisory Board. The NLAB prepares, of its own motion, a summary of the number and nature of the cases dealt with by the applicant according to the LAA so far, based on which a conclusion may be drawn about the quality of the work of the lawyer on these cases. Interviews are conducted with the selected lawyers.

Information gathered in reference to the activity of the LAC

<table>
<thead>
<tr>
<th>Dossier of the case</th>
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<tbody>
<tr>
<td>Client information:</td>
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<tr>
<td>Three names of the client:</td>
</tr>
<tr>
<td>Civil Identification Number:</td>
</tr>
<tr>
<td>Sex</td>
</tr>
<tr>
<td>Social status: (e.g. working, studying, unemployed, pensioner, person with disabilities etc.)</td>
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<tr>
<td>Education</td>
</tr>
<tr>
<td>Grounds for the provision of legal aid</td>
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<tr>
<td>Is he/she literate?</td>
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<tr>
<td>Does he/she understand Bulgarian language?</td>
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<tr>
<th>Information concerning the problem</th>
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<tbody>
<tr>
<td>Short description of the problem</td>
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<tr>
<td>Nature of the problem (determined by the administrative secretary) – according to the catalogue of the expected legal problems</td>
</tr>
<tr>
<td>Specific request or question, asked by the citizen</td>
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</tbody>
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<table>
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<tr>
<th>Information concerning the legal aid provided</th>
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<tbody>
<tr>
<td>Short description of the legal aid provided</td>
</tr>
<tr>
<td>Code representation – information given, reference, legal advice, completion of documents, etc.</td>
</tr>
<tr>
<td>Which lawyer was the citizen referred to?</td>
</tr>
<tr>
<td>When exactly did the lawyer meet the citizen?</td>
</tr>
<tr>
<td>What specific activities were performed by the lawyer on the case?</td>
</tr>
<tr>
<td>The time that was necessary</td>
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<tr>
<td>Does it transform into a court trial or not?</td>
</tr>
<tr>
<td>Other important information, at the discretion of the lawyer</td>
</tr>
<tr>
<td>Copies of the relevant documents (originals are not taken from the citizens!)</td>
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Staff training for work at the LAC

Before starting work at the LAC, the teams must undergo training and acquire knowledge about the procedures and requirements of the work within the scheme, as well as skills for working with clients (communicative skills, dealing with difficult clients, time management and dealing with stress). The lawyers also undergo training. The team of educators should include a psychologist.

Assessment criteria for the work of the LAC

Quantitative Indicators:
- Number of citizens serviced
- Number of provided consultations/advice and documents prepared
- Number of references to other government authorities or NGOs
- Degree of satisfaction of the clients
- Degree of satisfaction of the partner institutions - mainly the municipal administration and the social assistance services.

The LAC periodically gathers and analyses feedback from clients and institutions and organizations to which clients are referred to. To this end, a special survey form is to be developed which is given to clients, partners and institutions to be completed. The survey form reflects whether the client is satisfied with the services of the LAC. The results are summarized currently by the LAC itself and at the end of the project - by the NLAB.

The LAC prepares periodical reports for its activity (once every three months), which are discussed first internally with the team of the LAC and the lawyers, and after that are approved by the Advisory Board by location and by the NLAB. The reports contain quantitative data about the consultations provided, the main legal problems of the citizens, as well as analysis of the administrative problems of the LAC itself and suggestions for their resolution.

Mechanism for monitoring and control

The external control over the work of the LAC will be provided by the NLAB. The NLAB has the right to verify the documentation and discuss with the lawyers the legal advice provided by them. In the various fields of law, the NLAB may appoint experienced lawyers from outside the localities in the project and once or twice during the course of the project they may verify the work of the lawyers at the LACs. Additional external control will be provided by the Advisory Boards at the LACs, which discuss and approve the periodical reports of the LACs.

An external assessment is achieved through evaluation of the clients' level of satisfaction. To this end, an anonymous survey should be prepared, copies of which should be given to the citizens at their disposal. After a meeting with the lawyers, the citizens may complete the survey forms and the results are to be summarized. The internal control is provided by the manager of the LAC, who monitors for the quality of the advice provided through performing direct verifications and supervision of the registers in the dossier system. He/she summarizes and analyses the most commonly met problems, as well as gives internal assessment of the service provided at the LAC.
In addition, every month the team and the lawyers hold a briefing, at which the separate cases and the given advice, as well as possible current issues, problems and necessities for changes in the operating procedures, etc. are discussed. At the discretion of the manager, some issues may be referred to the Management committee of the project. Additionally, the web page of the NLAB and the LAC may provide a special email address or a section for signals and suggestions by citizens in reference to the LAC with a clear mechanism for answering the citizen regarding his/her signal or suggestion.
CONCLUSIONS AND RECOMMENDATIONS ON ACCESS TO JUSTICE AND VULNERABLE CATEGORIES IN ROMANIA
CHAPTER VII
Output views from the surveyed stakeholders on access to justice and vulnerable groups

Efficiency of the justice system
An overwhelming majority of the Tribunals and first instance Courts as well as national institutions consider that the justice system in Romania is performing well in ensuring human rights. The situation is slightly different in view of Bar associations while the civil society representatives consider the contrary, that the justice system does not perform in human rights protection. Judges are perceived by Court respondents to provide a better quality service than prosecutors.

Vulnerable categories in regard to access to justice
There is a wide diversity of opinions among surveyed stakeholders about who are vulnerable categories in regard to access to justice. Majority Court representatives consider mostly persons with disabilities and elderly. On the other hand, the majority of Court respondents consider that people infected with HIV, Roma, children and single mothers are not belonging to vulnerable categories. Bar associations have a different view about vulnerable groups: the majority consider Roma members as vulnerable as well as people infected with HIV, people with disabilities and children. A large majority consider elderly and single mothers as most vulnerable categories. National level public institutions have a further different perception on vulnerable categories wherein Roma, people with HIV and children are not vulnerable. The majority respondents consider vulnerable categories people with disabilities, elderly and single mothers.

Trust of Roma members in the judiciary
All stakeholders indicate a high degree of distrust among vulnerable groups particularly Roma in the judiciary with the highest level of distrust in police and prosecutors and a lesser degree in judges.

Affordability of the justice system for vulnerable categories
In terms of affordability of legal costs including assistance, legal representation, court fees and other administrative related fees the views of the stakeholders vary a lot. Majority Court representatives consider that Court fees are always affordable, as well as legal representation, assistance with legal costs and administrative fees. In comparison, only a small percentage of public institution respondents consider that assistance with legal cost and court fees are always affordable as well as legal representation costs. An overwhelming majority of civil society organization respondents consider that assistance with legal costs is not affordable, while administrative costs and legal costs for representation are affordable only on a seldom basis.

Availability of information relevant for vulnerable groups
The majority of Court representatives consider that information is available and easy or very easy to be obtained by vulnerable categories including Roma in their interaction with both the Courts and the prosecutor offices. In contrast, majority Bar association respondents consider that information from Courts is rather “obtainable” by vulnerable categories and in regard to the prosecutor offices Bar respondents consider that information is rather difficult to be obtained while only some consider that information is “obtainable”. Civil society organizations
CONCLUSIONS AND RECOMMENDATIONS

consider that information both from the Courts and prosecutor offices is rather obtainable with a close majority respondents considering that information is very difficult to be obtained by vulnerable categories particularly Roma.

Factors impacting the ability to access justice

While the overwhelming majority of all respondents consider that distrust, the level of education, the socio-economic status plays a strong role in impacting the ability to access justice, the majority of Court and national institution respondents consider that ethnicity and gender does not play a role in impacting the access to justice for vulnerable groups.

Most significant obstacles for Roma in accessing justice

The majority of Bar, public institutions and NGOs respondents consider that Court fees related costs, lack of information and awareness of rights, illiteracy and lack of personal identification documents are among the most significant obstacles for Roma in accessing justice. Nevertheless, the majority of Court respondents consider that lack of ID does not constitute an obstacle, Court fees and lack of information does not constitute an obstacle either in access to justice for Roma.

A majority of all stakeholders respondents consider that prejudice towards vulnerable groups and Roma constitutes an obstacle in accessing justice. The views vary a lot in regards to other factors such as the complexity of the trial where the majority of the NGOs and Bars consider this aspect an impeding factor in comparison with both Court representatives and institutions disagreeing with this aspect. Similarly, lack of enforcement of decisions is viewed as an obstacle by majority of civil society and Bars while Court representatives and institutions disagree with this assumption as well. The views are much more closer in terms of physical accessibility of the Courts constituting an obstacle.

The length of trial is not perceived as an obstacle in view of the Court respondents in comparison with NGOs considering the opposite. On the other hand, the majority of civil society respondents, public institutions and Bar associations consider the costs for experts too expensive for Roma clients. Access to information in a minority language is not perceived as an obstacle by Court respondents and public institutions while majority of Bar respondents consider it an obstacle.

Fairness of the justice system

The majority of Court and Bar respondents consider that Roma are equally treated before courts of law and public institutions. In terms of respect, Bar respondents have a slightly different opinion, only 42% considering that Roma are treated respectfully and 29% considering that usually are treated as such. NGOs on the other side have a different opinion, the majority considering that Roma are only “sometime” treated equally and considering that only “sometime” are treated with respect.

In terms of reasons for rejecting complaints from Roma minority members, an overwhelming majority of Court respondents consider that corruption, lack of professionalism, political influence, prejudice or bias and lack of awareness of challenges faced by Roma never plays a role in dealing with respective complaints. Bar
respondents share more or less the same perspective in what regards corruption and political influence but a slightly different perspective towards lack of professionalism where close to majority consider it plays a role, as well as prejudice and bias while the majority consider as well that lack of awareness about challenges faced by Roma might influence the rejection.

**Most pressing issues including discrimination faced by Roma minority**

Only a small percentage of Court respondents consider that Roma are facing discrimination in various spheres of life. 4% of Court respondents consider that Roma are usually discriminated against by state institutions, in accessing health services or social rights. 5% consider that Roma are facing usually discrimination in access to education. A slightly higher percentage of Court respondents (11%) consider that Roma usually face discrimination in police procedures. While in the area of housing the perception is that Roma do not face discrimination (38% consider they never face discrimination and 32% only seldom) in the area of access to employment it seems that there is a higher degree of acknowledgment as 9% consider Roma face always discrimination and 42% consider they usually face discrimination.

In relation with issues faced by Roma minority members a proportion close to majority of Court respondents identify a number of problems such as lack of identity documentation, land disputes, property ownership and lack of registration. Bar associations have a stronger view on these aspects considering that Roma always face issues related to identity documents, related to lack of registration and land disputes.

**Assistance needed for vulnerable categories including Roma**

Most of Court respondents consider that vulnerable categories including Roma should receive information, advice and consultation related to discrimination, to criminal law, on how to address local authorities, on how to draft requests to local authorities, counselling related to social protection and assistance, related to civil law and administrative law. More or less the same perspective is shared by the Bar respondents.

**Factors increasing access to justice for vulnerable categories**

Almost all stakeholders surveyed considered that access to justice for vulnerable categories would increase through enhanced public awareness about laws and procedures, through the establishment of advisory centres for vulnerable groups including the Roma, through enhanced financial support on legal aid, through networking between courts, state institutions and vulnerable groups including NGOs, through simplifications of procedures on legal aid, and through ongoing training about vulnerable groups for the judiciary.

**Factors to be considered when establishing advisory centres**

Most of surveyed stakeholders consider primarily a number of factors relevant for establishing advisory centres such as: geographical (the number of vulnerable groups), issue base (challenges faced by vulnerable groups), proactive community (community based organization, vulnerable group organization, willingness to host centre), pro-active civil society (work with the community, willingness to host centre), pro-active local authority (willingness to host centre, history of good relations, integration initiatives and policies at local level).
Functions to be performed by the advisory centres

NGO respondents outlined mostly rights awareness, counselling on discrimination matters and addressing public institution matters followed by counselling on private disputes, legal advice and counselling on social protection. Court and public institutions respondents outlined mainly counselling on private disputes, on social protection, rights awareness, followed by counselling on addressing institutions and discrimination. Bar respondents outlined mainly counselling on social protection, rights awareness and legal representation in civil and administrative procedures.

Functioning in a most effective way

The majority of the stakeholders surveyed consider that advisory centres should be run either by a non-governmental organization or by a local authority. 46% of Court respondents consider that it should be set up by an NGO in comparison with 35% considering local authorities. 60% of Bar respondents considered that it should be run by an NGO in comparison with 40% opting for a local authority. On the other hand, public institutions indicate local authorities. 34% of public institution respondents considered local authorities in comparison with 24% opting for NGOs.

Output views from the Fact-finding missions at local level

Provisions of the legal framework and access to justice

Court representatives interviewed consider that the new codes (civil, criminal and procedural) are just and guarantee an equal access to justice for all in accordance with the Romanian Constitution. A similar view has been shared among Court representatives in regard to the legal framework providing free legal aid in Romania.

Discrimination was in general not acknowledged as a problem among the majority of Court informants. Thus, awareness about possible bias concerning interpretations and implementation of the law was generally not regarded as an outstanding issue. A few First Instance Court judges only mentioned possible discrimination based on stigmatization and stereotyping of the poor and of Roma. In this regard, the Court representative's views are in conflict with those of Bars and the NGO representatives. Some court representatives did, as did several NGOs, express concerns that it is not possible to assess equal access to justice as there is no or very little data concerning who addresses courts, for what reasons and the outcomes of such addresses. Some NGOs pointed out that jurisprudence on court cases concerning discrimination or human rights-issues was generally not available and easy accessible and called for more transparency and accessibility on court case law.

Both Bar representatives, local and central administrations as well as NGO's pointed out concerning aspects about high court fees for clients and the low fees offered to ex officio lawyers representing a serious obstacle for access to justice and equal legal treatment. Bar representatives also voiced the view that the new codes, civil, penal and procedural codes alongside positive developments have had as well a negative impact on procedural matters, length of trial etc. having an adverse impact on the clients.
Perceived vulnerable categories in regards to the legal system

The question of who are vulnerable categories is difficult. It was nevertheless asked with a view to overcome the bias of political correctness in the answers, and to underline that different categories of people may be vulnerable in different communities and in different contexts. The answers to this question were diverse. In line with their general view of discrimination not being a problem in the Romanian legal system, Court representatives generally did not acknowledge Roma as a vulnerable category in the legal system, and some even denied any categories being vulnerable in Romania today. The majority of informants in general, however, listed people with disabilities, with HIV, with psychological disorders, the elderly, the very poor, the Roma, single mothers, children and people living in remote geographical areas, as vulnerable to different degrees.

Views on the obstacles to equal access to justice

There is a constancy among Court representatives regarding their view on the access to justice for vulnerable categories; the obstacles that stem externally from the legal system and are in the categories themselves, not in the legal system or its working. Local and central authorities share to a certain extent this view, the most pressing issues they list being: lack of education and information, lack of economic means, lack of identity and housing documents among the Roma in particular.

Most of the stakeholders at local level varying from Court representatives to social workers and Roma as well outlined the issue of lack of identity documents for Roma. In this regard, several local administrations have launched projects to speed up the processes and procedure, but complained that these are often too complicated and that this represents the most serious obstacle to access civil rights for most Roma groups.

Lack of mutual trust between particularly the Roma and the legal system has been also constantly raised among stakeholders. Lack of specialists such as interpreters (sign, language and minority languages) psychologists etc. was also seen as a problem by several Bar representatives. NGO representatives expressed the view that measures designed to address vulnerable groups often are more meritocratic than need-based and lack evaluation, coherence and interconnectivity in implementation. The lack of coordination among institutions in projects targeting vulnerable groups was voiced by many.

The Bar representatives were conscious about legal fees and taxes as too high for the general Romanian and especially for the poor, and the rather restrictive criteria for acquiring free legal aid. Bars also emphasized that the fees for ex-officio legal services are symbolic, and do not represent the actual work undertaken for proper representation. This, they asserted, is a serious impediment to equal legal assistance.

Awareness of discrimination

Discrimination was in general not acknowledged as a problem among the majority of Court informants. In contrast, Bars representatives and NGO's were strongly aware of the stereotypes and stigma that were attached especially to the Roma, and of the open and more subtle discrimination exerted by lawyers, administrations and Courts in their dealing with Roma and other vulnerable individuals. Moreover, NGO's outlined various Court cases, cases before the equality body and several problems for minorities in accessing
CONCLUSIONS AND RECOMMENDATIONS

civil rights such as equal education for Roma children, access to medical services and legal services due to discrimination and prejudice.

Training in Human rights and anti-discrimination

Despite various initiatives signalled out by NGOs, some Court representatives and the National Institute for Magistrates there is rather scant information at local level regarding the availability of training in human rights and particularly on anti-discrimination and vulnerable group's issues for the judiciary in general. It seems that rather few of representatives of Courts and Bars had participated in such training, in spite of initiatives in this respect by the National Institute for Magistrates.

Considerations on the establishment of advisory centres

Almost all representatives for Courts, Bars, local/central authorities and NGOs interviewed agreed that the establishment of legal advisory centres is a positive initiative and beneficial for vulnerable groups including Roma communities.

It was a general idea that the centres should be located in the local community where clients could reach them and that outreach services could be part of the centres’ work. A general agreement was that they should be located outside the premises of the Courts and should cooperate with local authorities and NGOs. It has been emphasized that the employees at the centres must be familiar with vulnerable groups and their conditions, and operate in close contact with their target groups. They should also be trained in socio-cultural and communication skills.

A general view among informants is that the centres should provide both legal advice, legal counselling and representation before court when necessary.
Conclusions on access to justice and vulnerable groups in Romania

Progressive legal framework lacks impact assessment towards vulnerable groups. As several Court representatives and NGOs pointed out it is not possible to assess equal access to justice as there is no or very little data concerning who addresses courts, for what reasons and the outcomes of such addresses.

Legal aid provisions do not counter balance the views that Court fees are not affordable for vulnerable groups. As public institution representatives, Bar representatives and civil society pointed out assistance with legal costs, court fees and other related fees are not generally affordable by members of vulnerable groups.

Information related to the judiciary exists but it is not adaptable and easy accessible to vulnerable groups. Despite the fact the members of the justice system consider that information is very easy to be obtained by vulnerable groups including Roma this assertion is rather rejected by the views expressed at grassroots level from lawyers, civil society organizations and local authorities.

Gender and ethnicity does not play a role in impacting access to justice for vulnerable groups but however prejudice does. Despite the fact that the majority of Court and national institution respondents consider that ethnicity and gender does not play a role in impacting the access to justice for vulnerable groups, a majority of stakeholders consider that prejudice towards vulnerable groups and Roma constitutes an obstacle in accessing justice.

Lack of trust among Roma in the judiciary is at high level and impacts their access to justice. All stakeholders indicate a concerning high degree of distrust among vulnerable groups particularly the Roma in the judiciary with the highest level of distrust in police and prosecutors and a lesser degree in judges.

The judiciary does not acknowledges discrimination faced by vulnerable groups particularly the Roma. Only a very small percentage of Court respondents consider that Roma are facing discrimination in various spheres of life. Most of the challenges faced by Roma are considered to stem from lack of identity documentation, land disputes and lack of registration.

The apparent lack of awareness concerning discriminatory aspects of the legal system among court representatives, together with a lack of systematized data of the functioning of the legal system, constitute serious impediments to the equal functioning of the Romanian legal system particularly as regards vulnerable groups.

The judiciary does not seem to grasp the landscape of vulnerable groups in Romania. There is a wide diversity of opinions among Court stakeholders about who are vulnerable groups. However, the majority of Court respondents (62%) consider that people infected with HIV, Roma (60% of respondents), children (59% of respondents) and single mothers (55%) are not belonging to vulnerable categories.

Access to justice is not an individual level issue when addressing vulnerable groups. The rather overwhelming assertion among Courts and Central/local authorities and some Bar representatives that the
problem of equal access to justice is more or less an individual problem, is disturbing. It points to a lack of awareness on central aspects of human rights: That it is the responsibility of the state and its authorities to provide human rights to its citizens, and that individual and group differences in equal access must be acknowledged and compensated proportionally with their respective disadvantage by public measures in line with the anti-discrimination legal framework and the case law of the European Court of Human Rights.

**Recommendations on access to justice and vulnerable groups in Romania**

There is a need to acknowledge, measure and address effectively discrimination against vulnerable groups including the Roma in access to justice. The lesson from most parts of the world is that stigmatized populations are discriminated against by authorities, and in general. To what extent this is an impediment to access justice in Romania, is difficult to assess scientifically as long as there are no data concerning different groups’ paths in the legal system. The experiences from the clients themselves, from lawyers and NGO’s are however important to consider, and will be basic to the development of training of lawyers connected to establishment of advisory legal centres addressing vulnerable groups.

There is a need to provide long-term sustainable human rights training framework for the judiciary. Aspects related to availability of training provided on a consistent and long term basis on issues such as anti-discrimination, human rights, challenges faced by vulnerable groups should be investigated further, as to what extent this training is available, how many participants from the judiciary and the legal system have attended, what the obstacles to attendance might be, how it has been evaluated and what the result is. Such information will be crucial for the development of the formal and informal training initiatives for Courts and Bars as part of professional development.

There is a need to effectively enhance access to justice for vulnerable groups. Almost all stakeholders surveyed considered that access to justice for vulnerable groups would increase through enhanced public awareness about laws and procedures, through enhanced financial support on legal aid, through networking between courts, state institutions and vulnerable groups including NGOs, through simplifications of procedures on legal aid, and through on-going training about vulnerable groups for the judiciary. Most of Court respondents consider that vulnerable groups including Roma should receive information, advice and consultation related to discrimination, on how to address local authorities, on how to draft requests to local authorities, counselling related to social protection and assistance.

There is a need to enhance access to justice for vulnerable group’s through establishing advisory centres. Almost all Court stakeholders as well as Bar and civil society representatives considered that access to justice for vulnerable groups would increase through the establishment of advisory centres for vulnerable groups including the Roma.
Factors to be considered when establishing advisory centres

A number of factors relevant for establishing advisory centres should be accounted for such as: geographical (the number of vulnerable groups), issue base (challenges faced by vulnerable groups), proactive community (community based organization, vulnerable group organization, willingness to host centre), pro-active civil society (work with the community, willingness to host centre), pro-active local authority (willingness to host centre, history of good relations, integration initiatives and policies at local level), socio-economical (level of social and economic status, level of income etc.)

Functions to be performed by the advisory centres. Advisory centres should provide a wide range of activities such as: rights awareness, counselling on discrimination matters and addressing public institution matters, counselling on private disputes, legal advice and counselling on social protection, legal representation in civil and administrative procedures.

Functioning in a most effective way. Advisory centres should be run either by a non-governmental organization or by a local authority. For example the majority of Court and Bar association respondents consider that it should be operated by a non-governmental organization.

Strategies for the advisory centres. The establishment the advisory centres should be widely disseminated to various networks of city halls, health mediators, school mediators and other grass-root level networks. The advisory centres personnel should be familiar with vulnerable groups, community or local representatives, able to ensure a bridge with the lawyers and community members. Advisory centres should put in place an effective communication strategy, involving relevant stakeholders. People in the communities should be made aware about the service provided by the advisory centres. Advisory centres should be located as close as possible by the communities or vulnerable groups in a neutral public setting (e.g. community centre, school etc.) Services delivered by the centres should be provided at the centres but equally outside centres outreaching communities (e.g. mobile units, scouting vulnerable groups, public place meetings including information/orientation/counselling sessions). Advisory centres should offer information and advices for vulnerable groups but equally legal counselling and legal representation before Court

Sustainability of the advisory centres. The issues of sustainability of running advisory centres on a long run for the benefit of vulnerable groups stays as an outstanding aspect of the project that would require serious consideration and clarification before the setting up of advisory centres.
ANNEX: the socio-economic situation of the Roma community in EU and Romania

According to research by the EU Fundamental Rights Agency, the United Nations Development Program (UNDP) and the World Bank, in Romania, Bulgaria and Slovakia the majority of the Roma surveyed live in households that do not have at least one of these basic amenities, in contrast to the non-Roma households surveyed. In all EU Member States significant differences exist in the proportion of Roma and non-Roma living in households that are at-risk of poverty. In Romania over 80% of Roma interviewed live at risk of poverty in comparison with 40% of the non-Roma.

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Between 70% and 90% of the Roma surveyed reported living in conditions of severe material deprivation. The proportion of non-Roma in such conditions is significantly lower with substantive differences between the EU Member States. In Romania 90% of the Roma interviewed live in such conditions in comparison with over 50% of non-Roma.  

Important differences in school attendance are recorded between Roma and non-Roma children. At least 10% of Roma children aged 7 to 15 in Greece, Romania, Bulgaria, France and Italy are identified in the FRA survey as not attending school, meaning that they are either still in preschool, not yet in education, skipped the year, stopped school completely or are already working.

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290 Ibid.  
291 Ibid.
Results for young adults aged 20 to 24, who are entering the labour market, show significant differences between Roma and non-Roma in all EU Member States. In five out of 11 EU Member States, Portugal, Greece, Spain, France and Romania, fewer than one out of 10 Roma is reported to have completed upper-secondary education²⁹².

There are high unemployment rates for the Roma across all EU Member States where they were surveyed. In Romania the number of Roma saying that they are unemployed is almost double than the number of non-Roma²⁹³.

²⁹² Ibid
²⁹³ EU FRA, UNDP, World Bank, The situation of Roma in 11 EU Member States, Survey results at a glance, 2012
There are noticeable differences when comparing Roma and non-Roma responses in Greece, Romania and Bulgaria in particular, where only around 45% of the Roma said they have medical insurance in contrast to around 85% for the non-Roma.\textsuperscript{294}

\textsuperscript{294} Ibid.
The experience of discrimination of Roma communities in EU and Romania

In all EU Member States, a significant proportion of Roma said that they have experienced discriminatory treatment because of their ethnic origin in the 12 months preceding the survey. The proportions range from more than 25% in Romania to around 60% in the Czech Republic, Greece, Italy and Poland.²⁹⁵

5. Discrimination & Participation / Feeling discriminated against because of being Roma/because of ethnicity

When asked if they knew of any law that forbids discrimination against ethnic minority people results reveal important differences between EU Member States. In general, a larger proportion of non-Roma is aware of such laws in comparison with a lower proportion of Roma. A similar situation relates to identifying an organization that may support victims of discrimination whereby Roma are less knowledgeable as well.296

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5. Discrimination & Participation / Awareness of any organisation offering support in the case of discrimination


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Reporting discrimination and lack of confidence in authorities

Another relevant aspect concerning discrimination and the members of the Roma community relates to reporting and complaining to State authorities for redressing the situation. According to the European Union Minorities and Discrimination Survey published by the EU fundamental Rights Agency between 66% and 92% of Roma respondents in seven Member States (Bulgaria (92%), Greece (90%), Hungary (82%), Romania (81%), Slovakia (80%), Poland (71%) and Czech Republic (66%)) did not report their experiences of discrimination to any organisation or office where complaints can be made, or at the place where the discrimination happened.

According to the same report, Roma who were victims of assault, threat or serious harassment experienced on average 4 incidents over a 12 month period. Between 69% and 89% of respondents did not report in person crime. (89% in Greece, 88% in Bulgaria, 85% in Hungary, 76% in Czech Republic, 75% in Romania, 72% in Poland and 69% in Slovakia)

The FRA report findings indicate that a great deal of work needs to be done to instil the Roma’s confidence and trust in the police so that they feel able to report their experiences of victimisation.

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298 Ibid.

299 Ibid.

300 Ibid.

301 Ibid.