



**REPUBLIC OF ALBANIA
ASSEMBLY**

**AD HOC PARLIAMENTARY COMMITTEE
ON JUSTICE SYSTEM REFORM¹**

GROUP OF HIGH LEVEL EXPERTS

**ANALYSIS OF THE JUSTICE SYSTEM
IN ALBANIA**

(Unofficial translation – This document is open for evaluation,
comments and proposals)

June, 2015

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CHAPTER X. CLOSING

CHAPTER I. INTRODUCTION

The Ad Hoc Committee for the Reform of Justice System presents the following document *Analytical Document of the Justice System* (Analytical Document). *The Analytical document* will be the cornerstone in the following process for developing a strategy and action plan for judicial reform.

The purpose of this document is to analyze the current state of the justice system. Taking as its starting point the results of the justice system in these 16 years, since the entry into force of the Constitution of the Republic of Albania, the *Analytical Document* aims to highlight issues affecting our justice system in all aspects of the organization, functioning and administration. Further more, the problems identified will serve as raw material for developing a strategy and action plan in order to address the problems in the most efficient manner possible.

From the methodological standpoint, the results of the justice system (which are subject to the Analytical Document), have been identified through the following processes:

- a) formal analysis - legal and constitutional legislation;
- b) study of the practice of the Constitutional;
- c) study of statistics;
- d) analysis of public perceptions;
- e) analyzing the experiences of users of the justice system;
- f) study of the findings and recommendations of a rich bibliography of studies and evaluations of domestic and foreign players in years.

The following findings are faced with the standards or best practices (identified by the contributions of local and foreign experts), and the public's legitimate expectations (identified by surveys of perceptions and experiences) to understand the depth of the problems and emerging trends.

Taken together, the above sources of data show that our justice system has almost all accepted indicators of a functional system. Problems affecting the

judiciary, are associated with the organization, governance, statutes of the justice officials, administration and in general with the ability of the system to operate according to European standards. Well-functioning of the justice system is a key prerequisite for the progress of our political and economic system and the way of life of the citizens. The justice system is the foundation supporting the rule of law in a democratic society

The justice system in the Analytical Document is estimated against these parameters:

- a) independence and impartiality;
- b) accountability and transparency;
- c) effectiveness and efficiency;
- d) the level of institutional cooperation at all its levels.

Undoubtedly, in Albania efforts to improve the justice system have not been lacking, but basically they have been partial efforts to improve the system through measures of operational nature, such as modernization of infrastructure, introduction of partial information technology to improve communication with the public, etc. In some cases there have also been legislative interventions to correct or improve certain aspects of the organization of the system and its governance. Such were, for example, the enactment of laws for Serious Crimes Court and Administrative Court, changes in the recent years of the laws on the High Court and the High Council of Justice, etc.

But despite awareness of the fundamental importance of the justice system, in no case during the 16 (sixteen) years there has been a broad and deep effort to analyze the results of the justice system as a whole and to deal with its numerous problems radically. Public attention and the attention of the political class on the problems of the justice system has been sporadic and short. Generally these problems (for example: lack of independence, professionalism or integrity) have come into the spotlight only when the bodies of the justice system are involved in the resolution of political conflicts, as for example: electoral disputes, in criminal processes against senior state officials, the

collapse of government normative acts etc., or when certain officials of the justice system are involved in corruption cases. Usually, with the completion of these processes is also vanished the interest of the political class and the public to address the problems identified.

This deficit of attention can be explained by several factors. One of them is political and legal culture inherited from its communist past, in which the justice system was seen more as an instrument for implementing the decisions of the executive rather than an independent authority. This twisted sense seems to have ameliorated the importance of reforms in the justice system based on the concept that, if we have a good government, the justice system can not be otherwise. Another factor was the simplistic perception of the justice system bodies as instances / forums for solving small problems between private individuals, without any potential to influence development policies. Although this perception has changed as the limited role of representative institutions (government and parliament) has been clarified, in the fight against crime it has been identified the increased role of the judiciary in the control of legality in the activity of public administration (which existed only in embryonic form during the totalitarian) and increased control of the constitutionality of legislation by the Constitutional Court, its tracks are remaining in the mentality of the political class and the mentality of the public.

Exclusion of the public in the reforms undertaken so far in the justice system is another factor that minimize their depth and impact. Despite the complexity of the issues involved in the concept of "reform in justice", essentially the purpose of these reforms is to strengthen the guarantees enjoyed by private persons in their relations and in relations with the state. Although this is a valid motive for the inclusion of the public in this process, there have never been made efforts to educate the public about the practical benefits of the reform in justice and to provide a platform for its effective participation in the process of reforms.

As to politics, its approach to a profound reform, which would bring a consolidation of the justice system in the country, has been faltering and complex. Although the ideological level as rightists, leftists as well must be interested in strengthening the justice system and the judiciary in particular, the

practice has lacked the willingness to look beyond the immediate political interests. In the absence of an articulated pressure by the public and a broad political agreement, and the lack of a sufficient democratic tradition of the country, parliamentary majorities and governments of the time were satisfied with the cosmetic interference part in the justice system, mainly supported only by the votes of the majority. Worse, the very nature of these interventions has created the space for politics, which in any case to seek control over the governance of the institutions of justice to avoid risks that could come to politics from an independent justice. The policy has not escaped the temptation to save as much controlling role in matters relating to appointments, status, career and discipline of judicial officials, influencing in this way their behavior. Perhaps the most striking example of this constant trend is the insistence to preserve an exclusive role of the executive in the inspection of the activity of judges and their discipline.

Last but definitely not least, the reforms so far (however partial), are also affected by corporatist interests of justice officials (judges and prosecutors), who through alliances with different political wings, but also through manipulation of the other relevant actors (civil society organizations or international institutions), have managed to find avenues to influence the objectives and instruments of reform. In other words, one of the main reasons that influenced the sterility of the justice reform process has been the fact that the interests of stakeholders of reform (political class and judiciary officials) have not always coincide with the public interest for an independent and professional system with integrity. In these conditions, the only constant pressure and uninterested in justice reform has come from the international partners of Albania and specialized organizations of civil society. European Union at the European Council meeting of 1993 in Copenhagen has articulated the condition for strengthening the rule of law in countries that aspire to join the EU. Thanks to EU conditionality, the reforms in the organization and functioning of the judiciary in Albania, in order to strengthen the independence and its accountability have been continuously.

The Analytical document aims to create conditions for a successful reform to correct the negative impact of the above factors, which over the years have

made it impossible to implement a deep reform of the justice system and have reduced the effect of partial reforms that have been undertaken. The contribution of the Analytical Document in this regard should be seen in several areas:

Firstly, by making a full and objective analysis of all aspects and components of the justice system, the analytical document creates the necessary conditions for the justice reform to be harmonized and its effects to be balanced. It is clear that the various components of the justice system are dependent on each other. Consequently, legislative or organizational interventions in a system aspect create consequences in another aspect. Thus, for example, interventions that may have as a result increasing the role of the courts in the life of society must be accompanied by an increase in professional skills and ethical standards of judges. In fact, performing increasingly complex tasks of the judges and the process of European integration dictates strengthening and expanding their knowledge, in order to not only act, but also to act as European judges. On the other hand, it may require intervention to change or improve traditional forms of training of judges. Therefore, if these interventions will become detached from one another, they will bear the risk that one aspect will profusely be strengthened at the expense of another. This risk is minimized if the issues are addressed at the same time, by the same group of experts, based on the solid and well consulted findings and conclusions.

Secondly, since the analytical document summarizes the objective data, identified with the contribution of all stakeholders in the field (judges, prosecutors, freelance professionals in the field of justice, civil society, specialized international partners, users of the system services and the general public) and identifies the principles, standards and international best practices, it creates the conditions for a reform, the orientation, width and depth of which is determined by the needs and real problems of the system outside the short-term agendas of the politics and corporatist interests of the officials of the system.

Thirdly, the fact that the analytical document is drafted under a parliamentary process, will help to overcome the concept that judicial reforms are purely

technical matters. As noted above, the justice reform is a political hot issue, because the success or failure of all our political and economic system depends on the well-functioning of the justice system. Consequently, the conscious inclusion of political class in this process, as an actor interested in the well-governance of the country, and maintaining their respective responsibilities is crucial. Moreover, the development of the reform under the auspices of a special parliamentary commission avoids the bias that has characterized the current reforms administered by the executive.

Fourthly, becoming public, the analytical document will enable informed participation of all stakeholders in the following process for developing the strategy and action plan.

Finally, the comprehensive analysis that contains the analytical document, conducted through a critical review of all aspects of the justice system, including governance structures, structuring and organization of the courts and the prosecution, judicial and prosecutorial geography, personnel issues, budget, technology systems and information communication, procedural rules by which the system of justice institutions perform their functions, the transparency of the judiciary, the availability and quality of free professions in the area of justice, will make it possible to address all the problems affecting the justice system without any prejudice since they result from facts and the best local and foreign expertise.

CHAPTER II ANALYSIS ON SOME SPECIFIC FINDINGS

1. The public perception about the justice system

There is a widespread public perception that the system suffers from the phenomenon of corruption and outside influence in delivering justice. Corruption, lack of transparent, overlong processes or non-execution of court decisions have contributed to the negative perception of the public on judicial transparency. Today the judicial power is considered as one of the areas with high level of corruption by the evaluation reports of foreign or domestic organisations, public complaints or denunciations made in green numbers located on each institution.³ In a survey of 2009 titled “*Corruption in Albania: Perceptions and Experiences*”, the Institute for Development Research and Alternatives found that Albanians believed that trials would be mostly influenced by financial interests, business connections, personal acquaintances of judges and political considerations⁴. These surveys have shown that the Albanians believe that the judiciary is one of three (3) institutions that have little contribution in the fight against corruption.

In fact, public opinion believes, but some close observers of the sector claim that some prosecutors and judges assumed that pay to be appointed or transferred to jobs in Tirana or other major cities. Unofficial data suggest that public corruption payment cycle begins with the Judicial Police, corrupt officers who accept payment to destroy evidence at the crime scene. Further, according to these data, corrupt prosecutors accept payment for not starting a case or not to bring charges to the court and corrupt judges delay the appointment of the first session or condition the final decision waiting for bribery. Generally, the bribery is not given directly but through the mediation of a third person, which is often a close relative of the family of the judge or

prosecutor, a mutual friend or a lawyer. Generally, there are unofficial data from the public of a well-defined structure of figures paid for various services and predetermined division of illegal benefits between the judge and the prosecutor. Often, illegal profits are sent abroad or were given to relatives or families of judges or prosecutors, or trusted third parties.

In October 2012 the Center for Transparency and Right to Information conducted a survey with 58% of the total number of judges. 25% of them shared the opinion that justice system is corrupt and 58% believed the system was perceived as corrupt. 50% of judges thought that judicial system was not liberated from political influence.

In the eyes of the public another problem is the low level of professionalism of the main actors of the justice system. The development of legal education, as cornerstone in the formation of law professionals, has a considerable influence on public opinion to the proper functioning of the justice system as a whole.

There is a general perception, according to which the education system fails sufficiently to form citizens aware of their rights and legal obligations as well as the importance of recognition and enforcement of law. Inappropriate massification of higher legal education has resulted in lowering the quality of the preparation of lawyers who approach the labor market. Besides problems in admissions and lack of harmonization of programs, it is thought that one of the main problems for the (non) assurance of quality is related to the lack of assessment on the basis of merit. Students expressed themselves on assessments not based on merit and corruption in higher education.⁵

³ Intersectoral Justice Strategy

⁴ Corruption in Albania, Perception and Experience, Institute for Development Research and Alternatives, Pg. 22-24 (2009).

⁵ In the observation of the National Student Council is noted a significant level of corruption in higher education and high level of confidence of students to report cases of corruption at the university. <http://www.gazetadita.al/keshilli-kombetar-i-studenteve-veria-te-ktheje-vemendjen-tek-korrupsioni-ne-arsim/>, access on 01/03/2015

2. Problems noticed by international institutions and organisations

2.1. European Union

The EU has made its estimates through progress reports⁶ prepared annually for Albania's progress on the path of reform that aimed its membership in this organization.

The European Commission Progress Report of 2014 on Albania⁷

The report of 2014⁸ among other things highlights that: key laws should be adopted to reform the Constitutional Court, High Court, the High Council of Justice and the Prosecution. In terms of judicial independence and impartiality, no steps were taken to integrate the High Court within the judicial system. Further efforts are needed to rationalize the High Court proceedings and to significantly reduce the backlog of cases, including the modification of the composition of panels to review criminal cases. High Court should be transformed into a court of cassation. Status of the High Court and the process of appointing its members remains a concern in terms of potential politicization, as long as the relevant constitutional provisions are not amended. Independence and impartiality of the High Court is not yet fully guaranteed. In January, parliament rejected the President's nominees for three members of the High Court and these vacancies are not yet filled. Two recent decrees of the President for the appointment of judges to the High Court were rejected by the Assembly. The functioning of the justice system continues to be affected by politicization, limited accountability, weak interagency cooperation, insufficient resources, delays in the proceedings and backlog issues. Corruption in the judicial system remains a concern. It should be adopted key laws on reforming the Constitutional Court, the High Court, the High Council of Justice and the Prosecution.

⁶ Progress report of 2014 <https://eudelegationalbania.wordpress.com/albania-and-eu/>

⁷ <http://www.mie.gov.al/>

⁸ *Ibid*, as above.

Changes to the law on the High Council of Justice guarantee only a limited and fragmented reform of this body. The judges' evaluation criteria should keep better view of the workload of judges at all levels. Additional measures are needed, that these procedures are clearly based on the merits of the candidates and other objective criteria. The case-sharing system based on the lot under the control of the chairmen of the courts should be gradually eliminated. Furthermore, audio recording, which is used in many courts, should be further extended. Full harmonization and unification of judicial practice remain to be guaranteed. Court decisions are not published systematically; when published, are not always reasoned and do not always respect deadlines. In connection with judicial accountability remains a risk of overlapping inspections. The responsibility to initiate disciplinary proceedings is only with the Minister of Justice, which contradicts EU standards. The disciplinary system for magistrates should be significantly improved through a more transparent and efficient system of inspection. From October 2013, the Minister of Justice has initiated proceedings against 20 judges, despite the fact that so far only 2 judges are dismissed from the HCJ, another one is transferred to another court at a lower level for two years and warnings are issued for eight judges, as well as reprimands to 2 others. The disciplinary system for judges should be significantly improved through a more transparent and efficient inspection system. Also, the role of the Minister of Justice is to be reviewed in this process, and to establish a solid track record of sanctions.

In particular, the process of collating the number of judges assigned to each court remains to be completed. Available resources should be reviewed and added, to cope the increased workload on the prosecution and the courts, and that there are no anomalies in the work by the lack of judges in some courts.

The proper implementation of measures adopted is essential, while the created legal gaps by the repeal of the law for the administration of courts by the Constitutional Court should be filled up. With the current legislation, the chief secretaries have only limited managerial responsibility while the chairmen of

the courts perform a number of administrative tasks. The EC considers that this undermines the efficiency of the court system⁹.

Legal assistants in the administrative courts should be appointed according to the procedure that define changes made to the law in July. Referring to the official website of the Ministry of Justice, until now there does not appear to be announced the date of an open competition for legal assistants to the Administrative Court

Progress Report of the European Commission in 2014 highlights the fact that judges have not yet suitable working and safety conditions. Protection of judges from threats and pressures also remain inadequate¹⁰.

There are very high court tariffs for civil proceedings.

One of the problems identified in the execution of decisions is the non-execution of decisions within a reasonable time, which create the premises for a corrupt judicial system¹¹. The execution of court decisions is weak, especially in cases where state institutions are suing party¹². It is not yet set up an effective system for monitoring the private bailiff service, as well as that of the state bailiff service. Capacities for data collection should be strengthened. The Electronic case management system ALBIS is not yet connected to the system used by the courts¹³.

The lack of accountability of the General Prosecutor's Office remains of concern. Procedures for the appointment and dismissal of key personnel in this office should be transparent and impartial, and the role of the Council of

⁹ European Commission Progress Report on Albania 2014, Brussels, 10.8.2014, p. 13 and p. 48

¹⁰ Progress Report on Albania 2014, chapter 23, "Judiciary and Fundamental Rights" - COM (2014) 700 final, p. 80

¹¹ Ibid as above.

¹² European Commission Progress Report on Albania 2011, id, p. 61

¹³ European Commission Progress Report on Albania 2014, Brussels, 10.8.2014, p. 49

Prosecutors reinforced. The Centralized database of Information Technology installed in the Tirana Prosecution Office should be extended across the country to improve the transparency and efficiency of case assignment system in the prosecution. More work is required to increase the efficiency of investigations and to become more proactive, including financial investigations, investigations into high-level corruption, corruption in the justice system, conflict of interest and fraud in the declaration of assets. Efficient investigations continue to be hampered by legal obstacles, such as tapping and surveillance provisions, the terms of the investigation, the lack of records on bank accounts and telephone subscribers and issues of acceptance of evidence by the court. "It is necessary to undertake further steps to strengthen the disciplinary system for judges, prosecutors and lawyers, as well as to further improve the efficiency of the courts¹⁴. In the performance of their duties prosecutors should take into account the rights and position of the injured party in criminal proceedings, while respecting the dignity, privacy, safety of victims and their families as well as EU legislation¹⁵.

The frequent change of staff in prisons and prison police limits the efficiency of training¹⁶. The Commission also highlighted the inadequate health care during incarceration¹⁷. Minors continue to be detained more than it is anticipated in the provisions of the Criminal Procedure Code for banning and detention for minor infractions. Often are reported cases of abuse of minors in the prevention

¹⁴ Progress Report of the European Commission, October 2014, page 2.

¹⁵ Directive 2012/29 / EU of the European Union sets the condition that criminal justice systems should provide services, information and rights necessary for victims during criminal proceedings. These include the right to be heard in criminal proceedings, the right of translation, the right of the victim of a serious crime to view the decision not to hear this case, the right to legal assistance and reimbursement of expenses, the right to protection and compensation for injuries or losses. The European Union recommends promoting access to the Istanbul Convention, which is to create a one-stop agency for victims, in order to maintain contact with the victim, to provide information about the case of the victim and other government agency or court.

¹⁶ European Commission Progress Report on Albania 2014, p. 53.

¹⁷ European Commission Progress Report on Albania 2014, p. 52.

and only an investigation has been launched against a prison police officer for torture¹⁸. The lack of a specific institution today violates the rights of a group of individuals who suffer from mental health illnesses. Nevertheless, efforts are being taken to establish a medical institution for the treatment of prisoners with mental illness, concerns remain about the lack of adequate health care for people with mental illness.

Further work is required by the authorities to promote alternative means of dispute resolution, such as mediation. In the criminal area there are a range of measures that are applied in other countries to stem the flow of cases in the courts, such as non-criminalization of some non-serious offenses or the application of other efficient means of law enforcement, which do not require investment of the court. Regarding alternative means of conflict resolution, the European Union recalls that there is still a legal basis for the implementation of arbitration in civil disputes in the country¹⁹. Issues such as insufficient budget for the judiciary are a concern for Albania.”

European Parliament in the draft resolution of the Foreign Commission (dt. 04.22.2015) underlines the need to strengthen the rule of law and reform of the judiciary, to ensure the confidence of citizens and business in the justice system; welcomes Albania's commitment to judicial reform, but deplores the persistent deficiencies in the functioning of the judicial system, such as politicization and limited accountability, high level of corruption, insufficient resources and delays in the review of litigation. It reiterates the need for further efforts to ensure the independence, efficiency and accountability of the judiciary, and to improve the system of appointment, promotion and discipline of judges, prosecutors and lawyers, underlines the importance of respecting the rule of law and independence of the judiciary, transparency of judiciary bodies, as the HCJ. It emphasizes the need for implementation of the CC decisions in this respect. It invites the authorities to promote the integrity and independence of democratic institutions and de-politicization of the judiciary. It notes the

¹⁸ European Commission Progress Report on Albania 2014, p. 55.

¹⁹ European Commission Progress Report on Albania 2014, p. 43

inadequate state of the juvenile justice system and calls on the authorities to take measures to improve the situation. It is concerned that corruption, including in the judiciary, remains a serious problem. It encourages Albania to strengthen efforts to fight corruption at all levels and adopt a comprehensive and rigorous anti-corruption strategy and action plan for the period 2014-2020, it reiterates the need to remove barriers that hinder the efficiency of investigations, the creation of a solid system of traceability of investigations, prosecutions and convictions for all levels, including the cases of high level corruption and ensuring adequate resources for training to fight corruption.

At the fifth meeting of the High Level Dialogue (DNL) on key priorities between Albania and the European Commission on 24 March 2015 Commissioner Johannes Hahn said that "consolidating the reform momentum and achieve sustained reforms and stable in the areas involved in five key priorities is essential for progress towards EU integration ". Commissioner Hahn welcomed the progress made by Albania in the reform of the judicial system, including the establishment of an ad hoc parliamentary committee on judicial reform. He highlighted the importance of an inclusive process of reform under the direction of the Venice Commission. He stressed that strengthening the independence, accountability and efficiency of the judicial system is essential for a strong rule of law, and especially the fight against corruption and organized crime.

2.2. Council of Europe

According to the **Council of Europe Commissioner for Human Rights**²⁰, the changes of 2012 in the Albanian Constitution to limit the immunity of judges are welcomed. Commissioner stresses that the independence of the High Council of Justice should be further strengthened through legislative changes that would allow voting by qualified majority of parliament members of the High Council of Justice. The Commissioner also notes with concern that the

²⁰ Special Report of the Council of Europe Commissioner for Human Rights in Albania, CommDH (2014) 1, 16 January 2015. <http://www.coe.int/en/web/portal/home>.

current system of appointment of judges of the High Court and the Prosecutor General carries a serious risk to the exercise of an inappropriate political influence. He urges the authorities to adopt the necessary constitutional changes that the main role in the appointment of judges of the High Court is to be given to the High Council of Justice. Further, the authorities are invited to take appropriate legislative measures, which will enable the vote and approval by a qualified majority in Parliament of the Prosecutor General, appointed by the President. The Commissioner welcomes the requirement that the Albanian authorities have made to the European Commission for Democracy through Law ("Venice Commission") to get their opinion about the legislation on the functioning of the Constitutional Court and the High Court.

High level of corruption in the judiciary seriously hinders the proper functioning of the judiciary and destroys public confidence in the justice and rule of law in Albania

Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe on measures to facilitate access to justice, provides that the parties were not required any payment on behalf of the state as a condition for opening a judicial process if the amount requested is unreasonable in relation to the matter to be considered. Moreover, the European Court of Human Rights on a number of issues, said that the too high court tariffs and the refusal by the domestic courts to order payments have been exceptions in violation of the applicants for access to justice.

Due to the lack of an efficient system for tracking the history of litigation, there are parallel civil lawsuits based on the same subject, which complicates further the issue of the excessive length of the proceedings. This problem is identified by the ECHR in the case "*Gjonbocari and others*", where among other things (*inter alia*) found a violation of Article 6 of the ECHR because of the length of civil proceedings on the issue of property. The Court concluded that the Albanian legal system did not provide internal means effective to repair the excessive length of the proceedings, including compensation. Commissioner for Human Rights of the Council of Europe calls on the authorities to adopt the necessary amendments to the Criminal Procedure Code that would allow for a

possible reopening of criminal proceedings in cases of violations of the right to due process, in accordance with Recommendation No. R (2000) 2 of the Committee of Ministers²¹.

Venice Commission²², among others has highlighted that: "The manner of election of the Prosecutor General has a direct impact on the effectiveness of the prosecutor's office²³. If judges are appointed by the head of state, what matters is the degree of freedom of the head of state to decide on appointments. It should be ensured that the main role in the process should be carried out by an independent body such as the High Council of Justice. Proposals of this Council can fall only in exceptional cases and the President is not allowed to appoint a candidate who is not in the list that is submitted to him by this body"²⁴. In this context, the Venice Commission has submitted several proposals in the memorandum dated 28 April 2014, inter alia Memorandum suggests that the High Court be brought under the umbrella of the HCJ, as is stated that the dismissal of members of the HC by the Assembly can not replace a disciplinary procedure. It is also proposed that its judges not to be elected by the President with the consent of Parliament. According to Opinion no. 751/2013 of the Venice Commission, the Constitutional Court and the High Court should be subject to a special scheme for performance evaluation of judges.

²¹ Nils Muižnieks report Commissioner for Human Rights of the Council of Europe, following his visit to Albania from 23 to 27 September 2013, published in January 2014.

²² See "Report on the recent changes in the law" On the main constitutional provisions in the Republic of Albania", the Venice Commission, CDL-INF (98) 9, paragraph 16). <http://www.venice.coe.int/ëebforms/documents/?country=34&year=all>.

²³ Report on "European standards for the independence of the judicial system", Part II, the Crown Prosecution Service, "the Venice Commission, paragraph 34, [CDL-AD\(2010\)040](http://www.venice.coe.int/ëebforms/documents/?country=34&year=all).

²⁴ Ibid. "Judicial appointments, "the Venice Commission, [CDL-AD\(2007\)028](http://www.venice.coe.int/ëebforms/documents/?country=34&year=all), par 2).

Commission delegation supported the idea that the HCJ should be depoliticised. Its members must be elected by a qualified majority in Parliament and that a higher qualification should be required.

In the Venice Commission's report on judicial independence, it is underlined the need for an independent Justice Council of political influence and the need for transparency. The composition of the Council should reflect a majority of the judiciary, but also the diversity of opinions is available. While it is common for some members of the government or the Presidency may have an ex officio representation on the Board; it is not normal the inclusion of the President to hold the leading role in the High Council of Justice. Opinion no. 753/2013 Venice Commission said about the ranking lists of judges that there is no need and no justification for the creation of a continuous order list of all judges. This can lead to improper competition among the judges, which could compromise the decisions of judges

If the report on the independence of the judiciary as well as the latest summary of the opinions and reports of the Venice Commission about the courts and judges (5 March 2015) it is stressed the need for the independence of the Prosecution from political influence and the need for transparency. It is important that the Prosecutor General is not reelected, at least not by the legislature or the executive. The time period should not correspond with the mandate of Parliament or the government. This removes the possibility of politicization of the Prosecutor General. Venice Commission, appreciates the fact that prosecutors should work on the implementation of rules and standards set by their leaders, and states that hierarchical control should be limited. A prosecution counsel must be able to provide independence from the government and separate the system of prosecution from the policy, and be limited to personal matters of the discipline, the appointment of prosecutors, training, evaluation and budget issues (see the instructions for prosecution system (report on European standards for the independence of the judicial system ", part II, Prosecution Service.

Venice Commission Opinion no. 754/2014²⁵ on the draft of Article 432/1 of the Code of Criminal Procedure excludes appeals to the High Court in particular types of cases. The Committee supported the proposal for the introduction of new amendments to the Code of Civil and Criminal Procedure regarding the possibility of judges to impose fines on lawyers or prosecutors who avoid the duty, to punish those who cause intentional delays and delays in the trial process basically arguing that in principle sanctions against advocates for causing deliberate delays in the judicial process is acceptable as long as they adhere to fair trial standards.

Group of States against Corruption (GRECO) - According to GRECO evaluation²⁶, the justice system in Albania suffers particularly from: i) the low level of public confidence; ii) its weak position in front of the other powers; iii) lack of control over the selection of judges of the High Court; iv) the exclusivity of the Minister of Justice to initiate disciplinary procedures against judges of first instance and the appeal; v) the National Judicial Conference not being active, which has had a negative impact on the selection, career progression, training and disciplinary proceedings against judges.

The European Court of Human Rights (ECHR) - A real concern remains the lack of enforcement of the final decisions given by national courts and the administrative decisions related to compensation and restitution of the property confiscated during the communist.

ECHR identifies the inefficiency of bailiffs as a concern, precisely the bailiff's failure to enforce court decisions. In the *Bushati* decision (6397/04), the Court has identified the bailiff's failure to enforce the High Court's decision, which confirmed the partial recognition of the applicant's request for the property and ordered the prohibition of invasion and violation of land without title.

²⁵ Venice Commission, Opinion no. 754/2014, the draft criminal changes.

²⁶ Evaluation report on Albania No. 4, 24-27 June 2014 GRECO (Group of States Against Corruption) http://www.coe.int/t/dghl/monitoring/greco/news/News%2820140627%29Eval4Albani_a_en.asp.

(Violation of Article 6§1 of the Convention). The European Court recalled that, in cases like this in the review, when the debtor is a private person, the State should act promptly in order to assist the creditor in the realization of his right through the execution of the decision. The European Court has considered as inefficient the bailiff actions, stating that the bailiff should have proceeded with coercive measures to execute the decision in question. Moreover, it concluded that the failure of the bailiffs to take the appropriate and sufficient actions, which aimed at the execution of the decision of the High Court, left the applicants in a situation of uncertainty, who were not able to fully enjoy the rights on their possessions (*violation of Article 1 of Protocol 1 of the Convention*).

The Court has highlighted that Albania has failed to remove all obstacles to the award of compensation, according to the law on restitution and compensation of property, and provide the necessary legal, administrative, and budgetary measures.²⁷ This problem has been identified in several decisions of the Court, one of which relates to Beshiri case, in which the Court found a violation of Article 1, Protocol 1 of the ECHR, due to failure by the authorities to enforce the decisions that recognised to the applicants the right of compensation for their father's property, confiscated during the communist regime. In this decision, the Court stated that in the cases of execution of a decision ordering the state to execute a payment, the person, in whose favor the decision was taken, should not be forced to initiate the procedure for enforcement in order to get the amount set.²⁸

The European Court of Human Rights in the case *Driza*²⁹ has noted that "unjustified obstacles in attempts to receive compensation under the law on

²⁷ Memorandum between the deputy ministers, the Committee of Ministers of the Council of Europe, CM / Inf / DH (2010) 20 25 May 2010.

²⁸ Nils Muižnieks report, the Commissioner for Human Rights of the Council of Europe, following his visit to Albania from 23 to 27 September 2013, published in January 2014

²⁹ *Driza Case (33771/02)*, judgment of 13 November 2007, the final decision 2.05.2008, see also the case "*Ramadhi*", § 90..

property restitution and compensation have arisen due to a deficiency of the Albanian legal order, as a consequence of which, a whole category of individuals have been and are still deprived of their right to peacefully enjoy their property as a result of non-implementation of court decisions (or administrative) that grant compensation under the law on property restitution and compensation. In fact, there are already dozens of identical applications before the European Court. The increasing number of applications is an aggravating factor that has to do with the State's responsibility under the Convention, and is a threat to the future effectiveness of the system created by the Convention, because according to the Court's view, the evidenced legal gaps, could further create conditions for other well-based applications to be accepted "(See § 122 in the decision *Driza*).

The ECHR in the case *Gjonbocari and others*, where, *inter alia* also found a violation of Article 6 of the ECHR, because of the length of civil proceedings on the issue of property. The Court held that a better management of interrelated processes that run in parallel, would undoubtedly have a positive contribution to the clarification of title to the property of the complainant. In addition, the Court concluded that the Albanian legal system did not provide effective domestic remedies to resolve the excessive length of processes, including compensation.³⁰

Problematic on execution of court decisions is the lack of a legal remedy of appeal; In *Ramadhi* case, the European Court found that the authorities had deprived the applicants of their right to have an effective legal remedy of appeal, to enable them to enforce their right of civil compensation, since these authorities have failed to take the necessary steps to provide the means to enforce the decisions of local CRCP (violation of Article 13 taken together with Article 6 § 1). In *Gjyli case (32907/07)*, the European Court noted that the decisions of the Constitutional Court have been declarative, so the Constitutional Court did not provide any appropriate correction tool. In particular, it has not granted compensation for financial and / or non-financial

³⁰ *Gjonbocari and others vs. Albania*.

damage, and did not offer a clear perspective to prevent potential violations or continuation of these violations (violation of Article 13 taken together with Article 6 § 1).

But also a major problem is evidenced in the execution of decisions of the ECHR by Albania, particularly those related to non-enforcement of decisions of the domestic courts or administrative decisions, including the pilot decision on the case of *Manushaqe Puto*, executions which are progressing slowly (according to the opinion of the Commissioner for human Rights). For this reason, it is recommended that all decisions of the Court are conducted in an expeditious, full and effective way.³¹

The European Commission for the Efficiency of Justice (CEPEJ) - In the CEPEJ's report for 2012, where is evidenced the analysis of the number of employees of the court per judge within the selected group of countries, it appears that Albania has the lowest number of employees (2.12 to 1 judge), while the other countries of the group have values close to the European average (3 employees for one judge). The increasing of the number of employees since 2012, which is the subject of study by the CEPEJ, has made it possible that in 2014 the ratio of administrative staff to the staff of judges to be 2.25 employees per 1 judge. While for 2015 the ratio is 2:33 employees to 1 judge. According to the report, there is a difference in the division of the court staff of Albanian and the court staff of other countries, and the smallest number of judicial assistants (law graduates) is in Albania. In courts which have such assistants, the judges have the opportunity to delegate some tasks to their assistants, such as, for example, the reasoning of decisions. Delegation of tasks from judges to court employees and especially to the law graduate assistants or to the secretary is recommended by the Council of Europe and allows better performance of the courts.

³¹ Memorandum between the deputy, the Committee of Ministers of the Council of Europe, CM / Inf / DH (2010) 20 25 May 2010

CEPEJ's experts from the visits in the courts of our country that they have visited estimate that they are generally old and few are new. In both types of buildings there are not enough courtrooms and many sessions should be held in judges' offices. This situation is not satisfactory in relation to the transparency and impartiality of justice

2.3 Organization for Security and Co-operation in Europe (OSCE)

OSCE Presence in Albania has identified following problems:

- a) Justice reform has become more and more a matter of open confrontation between the Ministry of Justice and the High Council of Justice (HCJ) - headed by the President of the Republic - who, for matters as disciplinary measures against judges and powers of the President in relation to the judiciary, has accused the government of trying to weaken the independence of the judiciary.³²
- b) The High Court has operated with a lack of staff since October 2013, due to the disagreement of the President and Parliament for the appointment of judges, each institution has criticized others' decisions as ungrounded.
- c) About replacing judges of the CC, whose mandate ended in 2010, the Assembly nor did it consider candidates decreed by the President, nor did it ask for a common solution to this latest appointment procedure, as expressly required by the Court, thus undermining the credibility of the Court. Even the resignation of one of the nine judges of the CC limited the mechanism of decision making of the Court by still further aggravating the problem, by allowing the situations where the number of votes against and pros in the decision making is equal (Report 2012). The remainder of judges in office for more than a year after the

³² Report of the Ambassador of the OSCE Presence in Albania to the Permanent Council of the OSCE, September 18, 2014, p.2.

mandate, violates the constitutional provision that limits the mandate in nine years. Assembly should now give a solution to this issue.³³.

- d) The ongoing process of appointing new judges as for the CC, and for the HC, where the President proposes candidates to be approved by parliament, has led to tensions, as some of the proposed candidates were rejected because, according government, they do not meet certain criteria, claiming that they were politically active during the Communist regime (report 2010-2011).
- e) Delays in providing reasoned decisions combined with short deadlines for appeals violate the constitutional right of the parties to the appeal. Insufficient time to review the written reasoned decision before the deadline to appeal further compromises the right to a fair trial in the court of appeal³⁴.

Experts, representatives of the OSCE Presence and the Council of Europe have found shortcomings in the clear definition of the procedural position of Probation and expressed the need of drafting and adoption of specific amendments to the procedural law, thus guaranteeing so the role and quality of the acts produced by the institution of Probation in criminal proceedings

In two studies conducted by the OSCE Presence in Albania and the JUST program USAID Kruje and Korca district courts for 2014, it shows that the most frequent cause of delays is the lack of participants in the trial (witnesses, the prosecution, the defendant, probation, the judge). The second reason most often is receiving written evidence.

³³ Report of the Ambassador of the OSCE Presence in Albania to the Permanent Council of the OSCE, September 8, 2011, (accessible in <http://www.osce.org/sq/albania/82274?doenload=true>), p .3. This finding is highlighted in the 2010 report which highlighted that "This situation calls for a legislative solution within the next few years to ensure that it does not repeat".

³⁴ The report "Towards Justice" of the OSCE, p. 75 .

2.4 Other

In the 2013 report, "Nations in Transit", *Freedom House* states that "judicial institutions in Albania have continued to suffer from the pressures and political interference in 2012".

U.S Department of State' Report on Human Rights Practices for 2013 described the judiciary as inefficient and affected by the pressure and political influence, threats and corruption³⁵.

Cherie Booth-Blair has declared that, unqualified judges who owe their positions to corruption or political patronage, undermine the independence of the judiciary. Instead there should be a merit-based system, with an independent process of review and selection of judges, clearly contemplated in the law. The race for a vacant position, as well as terms and conditions, shall be widely and publicly announced. It is necessary that ethics and integrity are at the center of the faith of the candidates and their work³⁶.

3. Reactions of National institutions and Organisations

Open Society Foundation Albania (Soros) - One of the surveys conducted by the Open Society Foundation for Albania (Soros), to measure and evaluate the opinion of the professionals on the need for constitutional reform as a condition for a profound reform of the judiciary, has shown that in most of their majority the judges and prosecutors, (90.7%) of them, expressed to amend the Constitution. According to these surveys, the most important aspects of reform should focus on dealing with:

³⁶ Cited from the speech of Cherie Booth-Blair "Importance of the independence of the Judiciary for a free and fair adjudication", during the konference on judiciary reform, organized by the Union of Judges of Albania, on May 2012.

- a) In relation to the current formula of selection of judges in the CC, HC and the Prosecutor General, more than $\frac{3}{4}$ of respondents think that this formula should be changed, preferring the election forecast by a qualified majority of these subjects. The same result is found in the surveys of academics and civil society.
- b) In terms of the formula of composition of the High Council of Justice 51.1% of judges and prosecutors think that it is appropriate to ensure the independence and accountability of the judiciary. In terms of rebalancing the forces within the HCJ, 65.5% of respondents have stated that the formula should not be changes and that the majority should consist of judges.
- c) For the powers of the Prosecution General Council, 57.7% of respondents among judges and prosecutors are in favour of strengthening and expanding it. While for the role of the prosecution, the prevailing opinion is its strengthening by ensuring the position of the Prosecutor General in the Constitution, but also by increasing the independence of prosecutor's image through legal provisions.
- d) Most of respondents (about 73% of judges and prosecutors and 68/4% of academics and civil society are in favour of strengthening the role of the President as a politically neutral figure and guarantor of the Constitution, while for the manner of his election, the majority are for a direct popular election

Also, by the Soros Foundation monitoring as regards the implementation of the Intersectoral Strategy on the Justice System 2011 - 2013, it has been identified a lack of training for advisory staff members of the judicial administration and priority of implementing measures for the modernization of the functional aspects of the development of the judicial activity, the appropriate infrastructure to working conditions, for safety, public access to the courts.³⁷

Fulfillment of strategic objectives in the judicial infrastructure is compromised by the level of budgetary allocations and technical problems, dealing mainly

³⁷ OSFA, Monitoring of justice intersectoral strategy, p. 121-122.

with finding construction sites, delays in budget forecasts and the implementation of projects (almost half of the measures planned to were taken in excess of the limits set or unimplemented).

The Union of Judges of Albania. *Union of Judges of Albania have come to the conclusions that:*

- a) The current Constitutional system of election of Constitutional and senior judges with a minimum of 36 votes seems to rule out a kind of consensus between the parties. On the other hand, the amendment of the procedure for the election of the President of the Republic from a consensual formula towards a clear political appointment seems to have brought on the agenda the constitutional revision for the required quorum needed for the selection of Constitutional and senior judges towards a qualified majority.
- b) The legal criteria to be met by candidates for the CC and the HC should be specified, in order that besides the moral integrity also the professional level is to be measurable.
- c) Of fundamental importance is also the transparency and monitoring of public on the way of selection and appointment of judges of the High Court and judges of the Constitutional Court, which would be the only reliable way in terms of their accountability and independence.

The Union of Judges of Albania in its study on the right of access to court has identified the non-complex cases or to a common level of difficulty, which have lasted for more than two years only in the first instance, seeking the development of 23 hearings.³⁸

³⁸ The study stated that "Of these [23] sessions 13 of them were postponed in order to give time to the expert to refer to the act of expertise and then the parties to become familiar with the act and to discuss its conclusions. [...] Shows that four hearings have been postponed due to the failure of litigants and their representatives, five hearings were postponed for presentation of evidence and countercharge, only one hearing was postponed because of the panel."

Ombudsman. Annual Report of the Ombudsman, identifies that in 2012, the number of complaints against the judiciary has reached a total of 685 complaints.³⁹ Of this total it shows that 250 cases have been complaints against judicial decisions.⁴⁰

Also non-execution of court decisions makes ineffective judicial remedy in the result. If administration bodies refuse or fail to act for the execution of a decision, the guarantees of Article 6 of the European Convention on Human Rights, which the parties benefit in the judicial phase of the proceedings, will lose any reason of their existence.⁴¹ Ombudsman Institution during 2014 has handled over 90 cases in which the applicants have presented concerns about the failure in a reasonable period of judicial decisions to be final by the bodies charged by law with their execution.⁴²

Some of the issues that have been identified mostly in regard to the execution of civil decisions by state or private bailiffs is the lack of professional quality of bailiffs and ignorance of the law; unwillingness of bailiffs⁴³ for sanctions against subject at the person under final judicial decision or other persons in the process of execution, committing actions outside the scope of execution and misinterpretation of the enactment of a court decision; lack of support for the body charged by law for compulsory execution of executive titles with power tools by the local or central government unit, State Police⁴⁴ etc.

Execution of final court decisions, which decide for the return to work of persons in their previous job, remains.

³⁹ Ombudsman, "Annual Report on the activities of the Ombudsman", 1 January -31 December 2012, p. 90

⁴⁰ Ibid as above

⁴¹ Special report "On the situation created by the non-execution of final court decisions", 2012, the institution of the Ombudsman, submitted to the Assembly of the Republic of Albania.

⁴² Annual Report of Ombudsman for 2014, filed on the Parliament on February 2015.

⁴³ Ibid as above

⁴⁴ Ibid as above

Lack of financial resources to fulfill their obligations in cash by the debtor bodies of public administration can not justify a failure of that right that the citizen has gained in a legal way.⁴⁵ In addition to financial obligations stemming from the final civil judicial ruling, for which the state body has the duty to pay the extra obligation, it turns out that the obligation laid down in Article 20 of Law no. 8510, dated 15.07.1999, "On the duties of organs of state administration", is not respected doing so that a part of state institutions liabilities become a burden on taxpayers. Also what it is evident is the disregard for the principle of legality by the officials of the treasury branches in the districts, as set out in Articles 581, 583 and 589 of the Code of Civil Procedure in the process of execution of executive titles under which budgetary institutions resulting as a debtor (according to the institution's annual reports to the People's Advocate).

Ombudsman in the role of the national mechanism of prevention of torture (NMPT) in the annual report has revealed: "*Despite the opening of new institutions of detention and strengthening the functioning of Probation, overcrowding remains a major problem in prisons and especially in detention. Ombudsman has often highlighted the importance of reducing the number of inmates in these institutions, while respecting the standards of living space, a request submitted and the CPT's reports for our country*".⁴⁶

Albanian Helsinki Committee. In some cases, it has resulted that prosecutors at the court of first instance have not rigorously implemented the requirements of the Criminal Procedure Code, where they are charged to take measures for the execution of the decision and, where appropriate, to ask specific actions by the prosecutor of another district.⁴⁷ A concern remain the delayed issuance of orders by the prosecution. In more than half of the decisions, the delays go

⁴⁵ Ibid as above

⁴⁶ Annual Report 2012, the activity of the Ombudsman in the role of the national mechanism to prevent torture, p. 32.

⁴⁷ Study Report for prosecution decisions to begin and terminate criminal proceedings & procedures for the execution of court decisions, the Albanian Helsinki Committee, 2014

from two to four days, which has led to delays in the execution of immediate decisions.⁴⁸ Delays in issuing court decisions lead to delays in issuing execution orders by the prosecution, conducting in this way severe violation of human rights. In most cases the decisions are issued in a delay of over 4 days, in some other cases, in a delay of more than 30 days.⁴⁹ For some sentences, referring to Article 21 of the Law Nr.8331, dated 21.04.1998 as amended, "On the execution of criminal penalties", is required immediate execution. Of concern remains the situation in the cases when the court gives lesser punishment because of lack of coordination between the court and the prosecution, and the person has to be released immediately, through immediate execution.⁵⁰ Deadlines followed by the prosecution to issue execution orders in cases where persons are arrested has proved to be longer than when people are detained.⁵¹

According to the study of the AHC,⁵² wrongly, the courts have decided for mandatory medical treatment, where these decisions will be executed and that it

⁴⁸ For the period subject to monitoring, in the Prosecutor's Office of Durres were studied execution orders for 300 imprisonment decisions. While in Tirana Prosecution were studied execution orders for 343 imprisonment decisions. While in Tirana District Court were studied 900 court decisions on imprisonment, while in Durres District Court were studied 443 decisions.

⁴⁹ Study Report for prosecution decisions to commence and terminate criminal proceedings & procedures for the execution of court decisions, the Albanian Helsinki Committee, 2014; The decisions of the Judicial District Court of Durres, bleaching results that decision is made by a deadline of three days for 24 decisions, 4-10 days for 251 decisions, 15 days for the 70 decisions, 30 days for 55 decisions, more than 30 days 17 decisions.

⁵⁰ *Ibid as above*. In the same situation are also those decisions with immediate execution, within 3 days of the declaration six decisions, 95 decisions within 4-10 days, more than 10 day for 55 decisions from the announcement of the decision until the publication of reasoned decisions with immediate execution.

⁵¹ *Ibid as above*.

⁵² The study conducted by AHC, in the judicial district courts of Tirana and Durres, the period subject to monitoring have made 38 decisions on medical treatment in a medical institution and 13 decisions on outpatient medical treatment.

occurred in about 40% of court decisions, thus specifying the penitentiary institution as one, concretely referred to the Prison Hospital Centre and I EVP Zahari Kruje. For the rest, the courts have determined only that the decision must be executed in a medical or psychiatric institution..

Albanian Helsinki Committee assesses that the lack of adequate conditions for safety and security in the working environment and development of court hearings in judges' offices can trigger the creation of a tense situation, which would jeopardize the security and protection of the judge.⁵³

⁵³ Albanian Helsinki Committee, a report on the situation of respect for human rights in Albania for 2012 (published in January 2013).

CHAPTER III. CONSTITUTIONAL ANALYSIS ON REFORM IN JUSTICE AND LEGAL ANALYSIS ON REFORM OF THE CONSTITUTIONAL COURT

I. Introduction

In November 2014 the Albanian constitution becomes 16 years old, referring to its date of entry into effect. Numerous political, economic and social developments have occurred in the meantime, which are naturally accompanied with certain developments in the legal framework. The process of accession to the European Union (EU) is one of the most important national objectives in the function of democratisation and transformation of the Albanian society, in accordance with the values and principles of the United Europe.⁵⁴ Obtaining the candidate status in 2014, marked significant progress in the process of Albania's EU membership and also put the country in front of new challenges to fulfil the criteria imposed by this process. One of the challenges is reformation of the justice system to ensure its functioning in accordance with EU standards.

The justice system in Albania has been the subject of constant transformation since the change of the system of governance of the country in 1991. With the approval of the major constitutional provisions in 1991 pursuant to the principles of rule of law and the separation and balance of powers, the justice system had a complete reorganisation of all its components. The Constitution adopted in 1998 changed and improved further provisions on the organisation and functioning of the justice system. Since the entry into force in 1998, the Constitution was revised three times with Law no. 9675/2007, Law no. 9904/2008 and the Law no. 88/2012. *In the first case*, in 2007, became the extension of tenure of elected bodies of local government from three to four years. *In the second case*, in 2008, the significant changes were reflected in the

procedure for electing the President, the procedure of impeachment of the government and the term of office of the Prosecutor General. *In the third case*, in 2012, an intervention was made to mitigate the immunity regime of some senior public officials. The experience of these years has brought to attention the finding that the revision of the Constitution has not always oriented to the improvement of the justice system. The following identified problems seems to derive much of constitutional norms and from their implementation by constitutional institutions.

Regarding the Constitutional Court, it is necessary to reform it. One of the problems currently faced by the CC, as well as plenty links the judicial system in the country, is efficiency. Efficiency of the Constitutional Court analyzed the following in view of its organic law. Law no. 8577, dated 10.2.2000 "On the organization and functioning of the Constitutional Court" (Organic Law) has provided in detail the rules of organization and functioning of the CC, the status of a constitutional judge, the submission of applications and their examination, principles and rules of constitutional adjudication, special procedures, decisions and their execution. The implementation of the organic law on constitutional practice has identified no less problematic in terms of its efficiency and its being an effective tool.

II. Constitutional analysis on reform in justice

1. Constitutional and legal framework

1.1. The President of the Republic

Articles 87, 125, 136, 147, 149 of the Constitution

1.2. The Constitutional Court

- *Articles 124-134 of the Constitution*
- Law no. 8577/2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania"

⁵⁴ <http://www.integrimi.gov.al/al/programi/integrimi-ne-bashkimin-evropian>.

1.3. The High Court

- *Articles 135, 136, 139, 140, 141 of the Constitution*
- Law no. 8588/2000 "On the organization and functioning of the High Court of the Republic of Albania", amended
- Provisions of the CPC and the CPC to examine litigation in the High Court..

1.4. The High Council of Justice)

- *Article 147 of the Constitution*
- Law no. 8811/2001 "On the organization and functioning of the High Council of Justice", as amended

1.5. National Judicial Conference)

- *Article 147 of the Constitution*
- Law no. 77/2012 "On the organization and functioning of the National Judicial Conference *mbëtare*"

1.6. The Prosecution

- *Articles 148, 149 of the Constitution*
- Law no. 8737/2001 "On the organization and functioning of the prosecution in the Republic of Albania".

2. Constitutional institutions related to justice

2.1. The role of the President in the justice system and his cooperation with constitutional institutions

Due to the role set out by the constitution and law with regard to the system of justice for the President of the Republic, it is necessary for the analysis to start primarily with this authority

2.1.1. Election of the President of the Republic

The President of the Republic appoints members of the CC and members of the HC , with the consent of the Assembly (Article 125/1 and Article 136/1 of the Constitution), is chairman of the High Council of Justice (Article 147 of the Constitution) and enjoys certain powers relating to the appointment of deputy of the HCJ, judges of first and second level, appoint and dismiss the Prosecutor General, with the consent of Parliament, and appoints and dismisses all judicial district prosecutors (Article 149 of the Constitution). According to procedural law, the president appoints the territorial powers, the central headquarters and the number of administrative court judges, but also of the other courts.

The President of the Republic has been set out in the Constitution with the capacity of the head of state, as recognised in the parliamentary republics: i.e., a non-executive president. Article 90/1 of the Albanian constitution explicitly prohibits the governance of the President alongside the executive or lawmaker. For this reason, the discussion among the researchers of the constitutional law has been oriented towards seeing the functions of the President of the Republic in connection with preserving the legal security and implementing the law, controlling the appropriateness of the acts of the highest constitutional state authorities, representing the state and people as a whole and embodying the unity of the people and serving as a guarantee for the constitution.

In this context, the formula of electing the President, which was foreseen by the Constitution drafters of 1998, aimed at reaching a political consensus in the Assembly, to the effect of ensuring an extensive political support, being also translated into a support from the majority of electorate. This formula guaranteed the election of a consensual president, having the consent of a wide political spectrum, and not only the consent of the parliamentary majority. The constitutional amendments of 2008 avoided the condition of reaching a consensus between the parliamentary majority and minority, where in the fourth voting is enough to achieve a simple majority (more than half of all members of Parliament) for electing the head of state.

One such change continuously reflected a lack of broad political support, but also a lack of confidence of the parliamentary minority to the fundamental act of the state and to guarantee that should focus on the figure of the head of state. This change has resulted in: a) election of the President of the Republic with half the votes of all members of the Assembly, bypassing the political consensus at the expense of the independence that should characterize the President in the exercise of his functions in the justice system; b) creating a relationship where there is no cooperation between the constitutional bodies, which has affected not only the non-proper practice of constitutional powers by the President, the Assembly and the HCJ in relation to the justice system, but also to the emergence of dispute of powers among these constitutional bodies and the denial of consent of the Parliament to the decrees of the President for the appointment of members of the CC and the HC; c) being at the top of the HCJ of the President, who is elected by a clear political and nonconsensual formula, which consequently does not avoid suspicions of failing to guarantee the independence and functioning of the High Council of Justice; ç) the lack of an organic law for the institution of the President to provide for the exercise of powers expressly assigned to him by the Constitution, as well as to regulate the cooperation President - Assembly, without excluding the reports of the President with other constitutional bodies.

2.1.2. Appointment of the members of the CC and members of the HC

One of the factors significantly impacting the enhancement of the authority of the High Court and Constitutional Court is the way of electing the judges. The present system of appointing senior judges and constitutional judges includes the President and Parliament in the process, in order to ensure a greater guarantee for the independence of these judges. Selection of candidates is made by the President of the Republic, which as a non-political institution and as par excellence guarantor of the values and the constitutional balance must perform this function independently and impartially. The constitutional amendment of 2008, which allows the selection of the President after the third round by a simple majority, avoiding consensus and allows the president to be elected only with the votes of the ruling majority. Theoretically the probability that a

president elected by a political force to be more prone to be influenced by political pressure in the selection of candidates is higher than when it is the product of political consensus. The current situation, where the President is an active politician elected by the majority of the time, do not avoid these doubts, which range in disadvantage of quality in the selection of candidates and to the detriment of guaranteeing the independence and impartiality that should characterize the process of appointment of constitutional judges and senior judges. Due to the circumstances created by the change of consensual formula of electing the President of the Republic, the guarantee to be provided by the involvement of the President in the appointment of these judges failed to establish credibility of the parliamentary majority. Also it is to emphasize the need of society for an apolitical Constitutional Court and High Court and above all competent ones.

After selection by the President the candidates go to a vote in Parliament. The competence of the Assembly to approve the candidates proposed by the President is essential, because he appreciates the candidates submitted on their merits/integrity. This means that the Parliament cannot accept the candidates of the President, but these cases should always be convincingly justified, because of the institutional respect to the appointing authority, but also to the candidates, who must be informed of their failure in this process. Although the appointment process is based on a mixed system, a simple majority (a minimum of 36 votes) is required to approve candidates by the Assembly, it seems to rule out a kind of consensus between the parties. This kind of minimum majority is a shortcoming of the current constitutional order in terms of guarantees that have to offer in view of the independence and impartiality of candidates approved. Lack of mutual control of political forces on the candidates proposed for the minimum majority required, does not go in favor of approval of the candidates who offer more guarantees on the independence and impartiality. Among others, the low threshold of votes required for the appointment of constitutional judges and senior judges adversely affects public confidence in the process of voting and of the candidacy approved.

However, the introduction of qualified majority for the appointment of members of the CC is seen even in critical viewpoint, because, if there is

consensus between the parliamentary majority and minority, it can block their choice and extend the nomination process. Anticipating a qualified majority vote in the Assembly nominations, it becomes imperative development for compromise negotiations between the parliamentary majority and minority.

If these negotiations do not result successful and no consensus is reached, can damage the efficiency of the process of appointment and its performance within reasonable limits.⁵⁵

Factors that have contributed to malfunctioning of the appointment process for judges to the CC and the HC are identified: a) the primary role played by the President of the Republic for selecting the candidates, see also the focus of the current formula of the election of the President; b) given the political nature of the appointment procedure of the senior judges in the Assembly; c) the minimum majority of not less than 36 votes to give consent by Parliament

2.2 Efficiency and Effectiveness of the Constitutional Court

Is the Constitutional Court an effective tool for the protection of fundamental rights provided in the Constitution? The effectiveness of the Constitutional Court on the constitutional level relates to its jurisdiction. According to article 131 / f of the Constitution, the Constitutional Court decides on the final adjudication of the individual complaints about violations of their constitutional rights to a fair hearing, after having exhausted all legal remedies to protect these rights. From the content of this provision it is clear that the constitutional jurisdiction is limited to individuals only in terms of protection of their constitutional rights under due process. Individuals can not put in motion the CC-for issues that are not related to due process, and this constitutional barrier does not guarantee the effectiveness of the CC. In many cases the existence of the Constitutional Court as an ineffective tool has been found by the ECHR

⁵⁵ Comment provided in the table "For the constitutional reform and the Constitutional Court," developed in the framework of the public consultation on the justice system reform .

practice, particularly in cases of exercising control over the execution of final judicial decisions within a reasonable period of time. These highlighted problems have faced the activities of the Court with the standard of an effective remedy required by article 13 of the ECHR.

Problems encountered with regard to the efficiency of the CC mainly relate to: a) lack of a transparent process for the collection and selection of candidates for judges in the CC; b) the long delay in filling vacancies created due to the resignation of a judge of the CC; c) the lack of clear rules on the basis of which the work process of appointment of judges of the CC and legal criteria to be met by candidates to demonstrate objectivity and impartiality of the decision; ç) existing uncertainties about matters pertaining to the constitutional mandate.

The efficiency of the CC in view of its organization and its operation is treated in more detail below in section III of Chapter IV, "Legal Analysis on the reform of the Constitutional Court".

2.2.1. Constitutional criteria for the selection, proposal and quality of candidates for members of the Constitutional Court

The issue of selecting the CC judges has continuously been raised by the EU, that has insisted to analyse the problems emerging with regard to the independence of the CC, starting from the process of appointment of judges and continuing with the provision of the procedure ensuring a hearing process, as well as an appropriate and depoliticised voting. With regard to the appointment of judges, "*cooperation with the institution of President is needed for establishing legal criteria guaranteeing the qualitative composition of the Constitutional Court*" The Constitution in Article 125 provides as qualification criteria: a) being highly qualified lawyer; and b) work experience of not less than 15 years in the profession. Neither the Constitution nor the Organic Law of the CC do not elaborate what is meant by the term "high qualifications". The important position of the CC in the justice system implies the need for setting high criteria for selection of constitutional judges.

Along with the moral integrity, the professional evaluation focusing on some parameters such as: professional experience in the legal field, destiny of a decision rendered in other adjudication instances, quantity and quality of the work performed, observation of deadlines for announcing the decisions, active participation and assistance offered by the judge for the overall performance of the office/court he is working, availability, frequency of training courses, contribution in resolving organisational problems and specific merits in the field of teaching etc., are very important. All these are basic criteria being instrumental for the election of qualitative judges.

The absence of clear criteria for the selection procedure of judges does not guarantee transparency, where as a result of a fair and impartial selection to be evidenced by the President professionally prominent and with high integrity candidates. Not in all the cases are respected the public hearing by the Assembly and the Assembly Rules commands to apply the secret voting procedure for cases of voting for specific persons.

2.2.2 Termination of the mandate and dismissal

Constitution in its Article 127 expressly provides cases of termination of the mandate of the constitutional judge. The Mandate of the judge of the CC terminates when sentenced by final decision for committing a crime, when without reason he does not come to work for more than 6 months, attains the age of 70, resigns by a final court decision is declared as unable to perform the task. While the dismissal of the judge from duty is provided in Article 128, according to which, the constitutional judge is dismissed from duty by the Assembly with the 2/3 of all its members for breach of the Constitution, committing a crime, mental or physical incapacity, acts and behaviour that seriously discredit the position and image of a judge. The decision of the Assembly is reviewed by the Constitutional Court, which, if it finds that there is one of these grounds, declares the removal from office of a member of the Constitutional Court. The comparison of these constitutional provisions is found uncertain as to the same fact (commitment of a crime) is exercised by two different institutes (end of term and dismissal). Removal of a judge is an initiative undertaken in conditions where there is the responsibility of the judge,

so the judge himself by his actions or omissions caused an illegitimate situation while on duty (eg commission of a criminal offense or acts that seriously discredit and image of a judge). Concretely this means that illegal actions is attributed to the judge who willfully acted in a certain way. While the end of the term is merely declaratory and is mainly related to the situation of events that do not depend on the will of the judge, but because of their verification the judge is unable to perform the task.

Also the declaration of expiry of the mandate when the judge without reason does not come to work for more than 6 months is a deficiency of Article 127. The CC can not be considered efficient when its member is absent without reason for six months. Without doubt this case, if verified in practice adversely affects the functioning and efficiency of the CC as a collegiate institution⁵⁶. Disciplinary responsibility of constitutional judge does not have clear constitutional arrangement. Article 128 provides only the sanction of removal from office when the constitutional judge performs acts and behavior that seriously discredit the position and image of a judge. It does not show what is meant by acts and behavior that seriously discredit the position and image of a judge, making it unclear ascertainment of such acts and behavior. Setting the sanction of dismissal from office by the same body that appoints the constitutional judge (the Parliament), does not guarantee independence and creates the impression that between the Assembly and the CC there is a dependency relationship of administrative type. The lack of forecast of an independent body to assess and decide on disciplinary sanctions other than dismissal, does not guarantee the accountability of the constitutional judges.

2.2.3 Resignation of the judge and term in office beyond mandate

The mandate of constitutional judge ends when he decides to step down (Article 127 of the Constitution). The Constitution does not provide for the term in office of the judge after the resignation. When the resignation is submitted, the judge can not remain in office for an indefinite period because

⁵⁶ For example, applications can be rejected because of the equally division of votes.

such a thing damages the legitimacy of his decision. Given the fact that the resignation was a voluntary act, it would not make sense that the judge continue to remain in office even after expressing his willingness not to be a constitutional judge.

Based on Article 125/5 of the Constitution, *the constitutional judge remains in office after completing 9-year mandate, until the appointment of his successor*. This mechanism of staying in office beyond the term guarantees, on one hand the collegiate, functioning of the CC, but, in turn, carries the risk that this kind of tacit confirmation of continuity in office due to lack of time limits lead in parliamentary and presidential inertia for the replacement of the judge. In practice this provision has created problems, as the relevant authorities have not replaced for a long time constitutional judges whose mandate had expired, making their mandate depended on the will of Parliament⁵⁷. Staying in office beyond the constitutional mandate violates the principles of independence and impartiality that should characterize constitutional judge while on duty. Undoubtedly, maintaining the continuity of constitutional justice (collegial functioning) and non-blocking of the CC's decision are important, but not dominant in relation to the preservation of the constitutional principles of independence and impartiality of the Constitutional Court, which referred to the basic international documents on the judiciary⁵⁸, they are of primary importance for its existence and functioning. The Constitutional Court itself in its jurisprudence has emphasized that "in order to determine whether a body is independent, there should be considered the method of appointment of its members and the duration of their function"⁵⁹.

⁵⁷ For more information see the decision no. 41/2012 CC's .

⁵⁸ The Universal Declaration of Human Rights; International Convention on Civil and Political Rights; The European Convention on Human Rights (ECHR); Basic Principles on the Independence of the Judiciary, adopted by the UN Assembly; Recommendation on the independence, efficiency and role of judges, adopted by the Committee of Ministers of the Council of Europe; Universal Charter of the Judge, etc. (see point 7 of the decision no. 11/2008 of the Constitutional Court).

⁵⁹ See Decision no. 20/2009 of the CC.

The legal and constitutional provision on the continuing mandate from members to replace judges who leave without completing its mandate is deemed problematic. These cases can be considered as a breach of the mandate defined in time for constitutional judges and may have implications in terms of independence that should have new members in the exercise of functions. If new members are not part of CC's with a full mandate, doubts can emerge about their independence and impartiality, as they may be affected in decision-making by political interests or interests with bodies which have about their advancement career.⁶⁰

A constitutional mandate provided for specifically in duration avoids the risk of influenza and political pressures to judges, since the latter is guaranteed the duration and integrity of the mandate⁶¹. By order of succession to the office, the constitution-maker aimed to ensure the proper functioning of the CC, implying the action on-time of the Assembly and the continuation of the proceedings until the provision of consensus /consent, within reasonable limits that assumes a normal appointment process.

2.2.3 *Rotation*

The composition of the CC is renewed every three years, in a third of it, according to the procedure established by law (Article 125/3 of the Constitution) Order of the renewal of the composition of the Court every three years, in a third of it (rotation), and procedures for the implementation of this renewal was originally envisioned by Law no. 7561, dated 29.04.1992 "On amendments and additions to the Law no. 7491, dated 29.04.1991 "On the main constitutional provisions»". With the entry into force of the Constitution of 1998, term of office of constitutional judges changed from 12 years to 9 years, but the forecast for the renewal of the Court every three years with one third of it remained unchanged. According to constitutional transitional provision (Article 179/1), also reflected in the transitional provisions of the organic law

⁶⁰ Ibid 59

⁶¹ See Decision no. 24/2011 of the CC

of the Constitutional Court (Article 82), the mandate of the judges elected in 1992 ended in 2001 and renewal of the Court after 2001 would be by the end of the mandate of each judge. Although this mechanism persists constitutional renewal, it has become inapplicable in practice. Also although MOC regarding obstacle for the performance of rotation is expressed in its decision no. 24/2011 that the relevant constitutional provision is regulated by the legislature mechanism, this decision is not implemented.⁶²

2.4 Independence and effectiveness of the High Court

2.3.1. Constitutional and legal criteria for the selection, proposal and quality of candidates for members of the High Court

The European Union has recommended the transformation of the High Court "in a court of career by establishing transparent criteria for the appointment of judges with experience" to ensure depoliticisation of their appointment. As mentioned above for constitutional judges, even for the High Court judges criteria for their selection are very important, especially if we have in mind that the HC unifies the judicial practice in view of uniformity, consistency and predictability in implementation of law. Article 136 of the Constitution does not provide specific or general criteria that must be met by the candidates to be appointed members of the High Court. It can not be said that no provision of the criteria detailed in the Constitution, does not guarantee a qualitative composition of the High Court, however this can be seen as a shortcoming, given that laws, even organic ones, come to respect and implementation of the Constitution. In conditions where there is not a general constitutional orientation for the criteria that should meet the candidate for judge of the High Court, it seems to give lawmakers complete discretion in determining these criteria, such as in the concrete case. Moreover, this defect / omission in Article 136 of the Constitution does not place this provision in accordance with Article 125/2, which provides general criteria of professional qualification in order to be elected constitutional judge.

⁶² Ibid 61

2.3.2 Termination of the mandate of the judges of the HC

Regarding issues related to the termination of the mandate, the stay in office beyond the mandate, removal from office, resignation and disciplinary responsibility of judges of the HC, the same problems were found as mentioned above for constitutional judges (see point 2.2 and 2.3 *supra*).

2.3.3 Initial and review jurisdiction of the HC

In Article 141 of the Constitution the High Court is provided as a review court, even while exercising initial jurisdiction in certain cases. It is very important to note the position of the High Court as a court of law and not as a court of fact. Basically the recognized review jurisdiction of the High Court has to do with the issue of interpreting and applying the law and not solving the issues of the merits. This is the spirit with which the Constitutional Court has interpreted the definition of specific powers of the High Court and the limits of its jurisdiction. The High Court has no right to make assessments of the facts and evidence, because it does not comply with its function as a court of law. Often there are noticed misunderstandings and misrepresentations in this regard, that in some cases are also caused by the attitudes of the Court in the exercise of its functions. In the jurisprudence of the HC are noted deficiencies that have to do with the overcoming of its power of review and assuming the role of the courts of initial jurisdiction. Also the regulatory framework has found a special position of the HC-in the organizational aspect. Under Article 135 of the Constitution, the High Court is part of the judicial system, even the highest of this power. However, the constitution-maker intended to have a special system of appointment, operation, promotion, termination of office of judges of the HC, thus separating it from the rest of the judiciary. The High Court has initial jurisdiction when "adjudicating criminal charges against the President of the Republic, the Chairman and members of the Council of Ministers, MPs, judges of the High Court and judges of the Constitutional Court.". These are exceptional in the exercise of initial jurisdiction when the High Court acts as a court of fact, administering and judging on the basis of evidence. This type of

jurisdiction is exercised by the High Court only in criminal matters and this has to do with the special status and the constitutional function exercised by the accused persons. This competence is problematic, given that in the process of appointment of judges of the HC are involved the functionaries themselves, for whom in the future may be criminal proceedings before this court.

2.4 Independence, impartiality and transparency of the High Council of Justice

2.4.1 Composition of the High Council of Justice

Autonomy and independence of judges constitute an effective guarantee for protection of the rights of citizens. These guarantees find their expression in Article 147 of the Constitution, from the content of which the governance of the judiciary is within the competence of the HCJ. Under this provision, this constitutional body, independent of the executive and legislature decides, inter alia, for the transfer of judges of first instance and appeal, their disciplinary responsibility and proposes to the President of the Republic for appointment the candidates for judges. The Constitution gave the President of the Republic the chairmanship of the High Council of Justice to the fact that the head of state can exercise better than anyone else the mission of the facilitator in the activity of the High Council of Justice, since his function is vested with prestige and the position that this body occupies sets him on all the parties.⁶³ To realize self-governance of the judiciary, the HCJ consists in its majority of judges, who, by exercising their functions as such, realize the connection of the Council with judicial corpus. The Constitution does not disconnect members of the High Council of Justice from adjudication and, as a result, neither from the interests of the judicial body.⁶⁴

The position of the High Council of Justice members arriving from the Judicial System is not a guarantee for avoiding the conflict of interests. The arrival of

the majority of the HCJ members from the judiciary can create problems with the efficiency of the HCJ, because the above-mentioned members perform their duties full time in the HCJ, while exercising judicial functions full time in their respective courts.⁶⁵

Article 147 of the Constitution does not prescribe any qualification criteria regarding the selection of the HCJ members elected by the Assembly. With no basic criteria where to refer to, the legislator is unclear when making the relevant legal regulations. Moreover, the improvidence of the basic/minimum criteria can create the premise for abuse of discretionary power that the legislator enjoys to regulate by law the specific criteria which must meet a candidate to be elected as a member of the HCJ. Also, *the minimum quorum* of 36 votes which is enough to be elected a member of the HCJ by the Assembly is a shortcoming of the current constitutional order in respect of guarantees that should provide the function of the independence of the HCJ. In conditions when it can be chosen as a candidate member of the HCJ only the votes of the ruling majority, bypassing the role of parliamentary minority in the voting process, create doubts in terms of independence that should characterize this constitutional institution. This issue gets even more important if it is taken into consideration the fact that the Vice-chairman of the HCJ is selected by members elected by the Assembly according to the last amendments to the organic law of the HCJ (no. 8811/2001).

The President's Heading the High Council of Justice as well as the too activating role attributed to the President, along with the right to head this body, but also to replace the constitutional function of a pure executive nature, i.e. the function of the Deputy President of HCJ, in case of the existence of a vacancy, must be seen closely associated with the constitutional functions attributed to the President in relation to the judiciary system.⁶⁶

⁶³ Decision no. 14/2006 of the Constitutional Court.

⁶⁴ *Ibid* 63

⁶⁵ *Ibid* 63

⁶⁶ *Ibid* 63

2.4.2 Position of the Minister of Justice

The concept of self-governance of the judiciary finds its expression not only in the concept of the separation of powers, but also on their interaction. The interaction of the High Council of Justice with the executive power appears especially in the disciplinary proceedings against judges. These cannot be carried out without the active participation of the Minister of Justice, and their appointment cannot be made without the approval of the President of the Republic as the Chairman of the HCJ.

The role of the Minister of Justice is seen as a problem not so much in terms of its presence on the council rather than its activation. The fact that the Minister of Justice has the exclusive power to initiate disciplinary proceedings against a judge contradicts EU standards and do not constitute a guarantee in terms of fairness that the Minister of Justice should be in all cases of punishment of the judges.

2.5 Position of the National Judicial Conference

2.5.1. Body provided for by the Constitution

The primary function of the NJC, provided for in the constitution, consists in selecting among the ranks of the judges of 9 representatives to the HCJ. Since the HCJ is composed as a mixed-structure organism and with a qualified majority from the ranks of the judiciary, the Constitution has granted to the National Judicial Conference a determining role to the effect of strengthening and protecting the independence of the judicial power. The purpose of the constitution was not the constitution of National Judicial Conference as a representative body, but as the body of all judges, organized and self-governed by the judiciary itself⁶⁷. Regardless of the fact that the National Judicial

Conference is an institution provided by the Constitution and has an important function, there is a lack of a proper constitutional arrangement of it as that of the other constitutional bodies.

2.5.2. Statute, mission, authority, organization

Since the adoption of the Constitution of the Republic of Albania in 1998 and until 2005, the organization and functioning of the National Judicial Conference has been arranged through internal norms adopted by it. Although this body has a very important role in the justice system, it does not enjoy constitutional arrangement regarding the status, powers and organization. All these aspects are envisaged only in the legal level.

The Assembly by Law no. 9399, dated 12.05.2005, predicted, through legal arrangements, the organization and functioning of the National Judicial Conference. In this law, were provided powers of the National Judicial Conference and the basic rules of funding, operation and selecting the membership of its governing bodies. With Decision No.25 / 2008 of the Constitutional Court, this law was repealed because it violated Article 81, paragraph 2, letter "a" of the Constitution and the principle of separation and balance of powers in particular with the principle of judicial. With the adoption of the Law nr.77 / 2012 "On the organization and functioning of the National Judicial Conference", were addressed the findings of the Constitutional Court

2.6 The Mission and function of the Prosecution

2.6.1 Election of the Prosecutor General

Article 149/1 of the Constitution provides that the Prosecutor General is appointed by the President of the Republic with the consent of the Assembly. The Constitution, in order to give significant emphases on the independence of the Prosecution, in contrast with the law "For the Main Provisions of the Constitution" has chosen, in essence, the procedure of appointment and

⁶⁷ Decision no. 25/2008 of the Constitutional Court

dismissal of the Prosecutor General by not leaving this process only to a Constitutional body.⁶⁸ As for the appointment of constitutional judges and senior judges, the same problems are highlighted regarding the guarantees to be provided by the President of the Republic in the process of appointment of the Prosecutor General. Namely, the Constitution and the Organic Law omit the procedural rules prior to the stage of the proposal or nomination voting, making the selection process not transparent. Even by 2008 constitutional norms do not define the term or duration of the Prosecutor General nor the criteria that candidates must meet. The constitutional amendments of 2008 defined the 5-year mandate, with the right to reappointment, which was assessed as a positive step, as it brought the institution of the Prosecutor General in line with all other constitutional institutions that have defined mandates.⁶⁹ However, the Constitution does not provide criteria to be met by the candidate for Prosecutor General. These criteria are: (i) occupation "from the ranks of jurists", (ii) work experience "not less than 10 years in the justice system", (iii) "the outstanding professional skills" and (iv) "Clean ethical-moral figure "are defined only by the organic law of the Prosecutor (Article 7, paragraph 1.1). Also, the approval of candidacy by the Assembly by a simple majority (minimum of 36 deputies) does not serve to the obtaining of a broad support from legislators and guaranteeing the independence that should characterize this functionary. The 5-year duration of the constitutional mandate is not sufficient and the possibility of renewing the mandate does not provide the necessary guarantees in the exercise of the function independent of political.

The Prosecutor General is obliged, to the extent permitted by law, to give explanations and inform the parliamentary committees on various issues of its activity (Article 80/3 of the Constitution) and occasionally inform the Assembly for state of crime (Article 149/4 of the Constitution). Although Parliament gives its consent to the appointment of the Prosecutor General

⁶⁸ Decision No 3/2008 of the Constitutional Court

⁶⁹ The explanatory memorandum to the integrated text of the amendments adopted in the Committee on Legal Affairs, Public Administration and Human Rights, Article 9 of the bill, which amends section 149 of the Constitution, decided that the Attorney General has a legal mandate to determine the length of stay.

(Article 149/1 of the Constitution), as well as proposes his dismissal to the President of the Republic (Article 149/2 of the Constitution) in the constitutional sense, the Prosecutor General has no political responsibility before the Assembly. The Prosecutor General is a professional leader of the Prosecution and not a political one, features to ensure the professional independence of this body.⁷⁰ Relations the Assembly-Prosecution have reflected problems particularly as a result of the decisions of the Assembly for the establishment of committees of inquiry to verify the acts or omissions of the Prosecutor General that preceded the decision to discharge him.⁷¹

2.6.2. The hierarchical mode of the functioning of Investigation

Article 148 of the Constitution stipulates that: *“Prosecution exercises criminal prosecution and represents the accusation in court on behalf of the state. The Prosecution exercises other duties assigned by law. Prosecutors are organised and operate within the justice system as a centralised body. In exercising their powers, Prosecutors are subject to the Constitution and.”*

The Constitutional norms define the Prosecution as a body *sui generis*, of a particular type by excluding any possibility to interpret the relevance of this constitutional body to the executive or judicial power. Prosecution is organised and operates under the direction of the Prosecutor General as a centralised structure, where are included the Office of the Prosecutor General, Council of Prosecutors and Prosecutor’s offices at the judicial system.

The Prosecution has some features which are defined in the Constitution and law, that put this body in a position distinct from other powers and especially as: **a)** the only body in the country that carries the prosecution; **b)** as the body that represents the accusation in court on behalf of the state, that decides on the cases that are under adjudication and is free to search for the type and extent of punishment to the persons resulting guilty, **c)** as the body with complete independence in exercising functions, subject only to the Constitution and law,

⁷⁰ Decision no. 26/2006 of Constitutional Court.

⁷¹ Decisions no. 75/2002 and no. 12/2008 of Constitutional Court

which means that the initiation of criminal proceeding, termination of criminal case, suspension of cases or sending them to court are attributes of prosecution; **d)** as a centralised body that functions according to the rule that orders and instructions of a superior prosecutor are binding on lower prosecutors, while the legality of the decisions or actions and regularity and completeness of the investigations conducted by lower prosecutors are only controlled by senior prosecutors, except in the cases when the procedural law acknowledges such a right to the court⁷².

While on one hand the hierarchical organization is appreciated to ensure uniformity in the implementation of legislation, on the other hand it is considered as constituting a source of abuse of authority⁷³. Hierarchical organization defined by the Constitution and the Organic Law and the norms of the CPC have caused continuous friction between prosecutors of different levels which are made subject to the review of cases before the courts of ordinary and constitutional jurisdiction. The problems that have emerged in connection with the Prosecutor have to do with the constitutional position of the Prosecutor's body in the institutional structure of the state, with the constitutional and legal powers and as well with the effectiveness of the organization and functioning.

III. Summary of findings

By constitutional and legal analysis that was done to the constitutional institutions related to justice result the following problems.

On the President

Lack of institutional collaboration President - Assembly has affected not only in the lack of a proper exercise of the constitutional powers by the President of

⁷² See Decision no. 26/2006 of the Constitutional Court.

⁷³ Report of the Special Rapporteur on the Independence of Judges and Lawyers, 2012 f.6-7.

the Republic, the Assembly and the HJC, in connection with the justice system, but also to the competence disputes emerged between these constitutional bodies and the withholding of consent of the Parliament to decrees of the President for the appointment of members of the CC and the HC. In conditions when an organic law for the institution of the President of the Republic is lacking, it is not expressly provided the exercise of certain powers assigned to him by the Constitution, there are no modalities to adjust the President-Assembly relations, nor his reports with other constitutional bodies. The possibility of the election of the President of the Republic with the simple majority of all members of Assembly, as a formula that avoids political consensus, does not guarantee the independence of the exercise of his functions in the justice system, concretely in the appointment of the members of the CC, members of the HC and the GP. This non-consensual mode of election only with the support of the political majority does not avoid the suspicion of failing to guarantee the independence and well-functioning of the HCJ as the President of the Republic is at the top of the HCJ.

On the procedure of appointment of Judges of the Constitutional Court and judges of the High Court

There are delays in the renewal of the Constitutional Court and in filling vacancies in the Constitutional Court and High Court, resulting in deformation of the Constitution, in terms of extending the mandate of these judges. There are no time limits laid down within which to develop the process of appointment. A transparent process with regard to the collection and selection of candidates for the Constitutional Court and the High Court is lacking, which guarantee their qualitative composition. The process of appointment of judges of the HC and the CC is not based on clear rules, so that the legal criteria to be met by candidates to attest to the objectivity and impartiality of decision-makers. Constitutional provisions contain no clear basic criteria to be met by candidates for constitutional judges, while for senior judges these criteria are completely lacking. Parliament does not always give obvious reasons for rejection of candidates. The minimum majority (36 members) required for approval of the candidacy selected by the President to be appointed as a constitutional judge and senior judge, does not offer sufficient guarantees in

terms of respect for the independence, impartiality and quality of the composition of the CC and the HC.

On the High Court

In conditions where there is not a general constitutional orientation regarding the qualifying criteria to be met by a candidate for judge of the High Court, the legislator has complete discretion in determining these criteria. Regarding issues related to the termination of the mandate, the stay in office beyond the mandate, removal from office, resignation and disciplinary responsibility of judges of the HC, the same problems were found as mentioned above for constitutional judges. In the jurisprudence of the HC are noted deficiencies that have to do with the overcoming of its review power and assuming the role of the courts of initial jurisdiction. Original jurisdiction is problematic, given that in the process of appointment of judges of the HC are involved the functionaries themselves, who in the future may be a party to the criminal proceedings before this court.

On the High Council of Justice

Lack of constitutional basic criteria for selection of members elected by the Assembly does not ensure transparency and quality in composition and leaves the legislators unlimited discretion in determining these criteria. Minimum majority (36 seats) required for their voting in the Assembly does not provide sufficient guarantees in terms of respect for the independence of the HCJ. The role of the Minister of Justice is considered problematic because of the exclusivity it enjoys in the initiation of the disciplinary process against judges, which conflicts with EU principles.

On the National Judicial Conference

Regardless of the fact that the National Judicial Conference is an institution provided by the Constitution and has an important function, a proper constitutional regulation is lacking in regard of the status, powers and organization.

On Prosecution

The Constitution does not provide for the basic criteria to be met by a candidate for Prosecutor General. The 5-year duration of the constitutional mandate is not enough and the possibility of renewing the mandate does not provide the necessary guarantees in the exercise of the function independent of the political power. Approval of candidacy by the Assembly with a simple quorum (minimum of 36 deputies) does not serve to obtain a broad support from the legislators and to guarantee the independence that should characterize this high functionary. Hierarchical organization has caused friction between prosecutors of different levels who are made subject to review judicial processes not only at the courts of ordinary jurisdiction but also to the Constitutional Court. Problems which have emerged in connection with the Prosecution have to do with the constitutional position of this body in the institutional structure of the state.

IV. Legal Analysis on the reform of the Constitutional Court

1. Legal framework

Law no. 8577, dated 10.2.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania":

Article 7: This article is a transposition into law of Article 125 of the Constitution.

Article 8: The mandate of a judge of the Constitutional Court starts from the date of swearing and ends on the same date of that month. Constitutional Court Judge continues in office until the appointment of his successor.

Article 9: even this article is similar in content to Article 127 of the Constitution but adding the term (1 month) within which the President with the consent of the Assembly appoints a new judge when the place is vacant and forecasting the demand for the declaration of expiration of the term of a judge is made by the President of the Constitutional Court.

Article 10: (1) is in substance the same as Article 128 of the Constitution (2) the examination of the Assembly for the removal of a judge of the Constitutional Court, for the reasons set out in item 1 of this article begins with a motivated application of not less than half of all members of the Assembly.

Article 16: The Constitutional Court judges enjoy immunity during their activity, they have no legal responsibility for opinions expressed or votes on matters under review. Judge of the Constitutional Court cannot be prosecuted without the consent of the Constitutional Court. He may be detained or arrested only if caught committing a crime or immediately after its commission. The competent body shall immediately notify the Constitutional Court. If the Constitutional Court does not consent within 24 hours to send the arrested judge to court, the competent organ is obliged to release him. The decision of the Constitutional Court, which deals with the majority of votes, should be justified.

Article 30: The application of individuals for the violation of constitutional rights is submitted not later than 2 years from the finding of a violation, or after exhausting all legal remedies to protect these rights 2 years from the date of notification of the decision of the relevant state body.

Article 49 and 50: To review the compliance of the law or other normative acts with the Constitution or international agreements, the Constitutional Court is set in motion at the request of the President, the Prime Minister, no less than one fifth of MPs and Chairman of the High State Audit. The same right have the Ombudsman, local government, organs of religious communities, political parties and other organizations, only when they justify that the issue is related to their interests. These applications can be filed within 3 years from the entry into force of the law or other normative acts.

Article 52: The Constitutional Court reviews the compliance with the Constitution of international agreements before their ratification. For the examination of these issues the Constitutional Court is put into motion only after a request is submitted by the subjects contemplated in section 134 letters "a", "b", "c" and "d" of the Constitution and the subjects provided in the

letters "f", "e", "s" and "f" of the Constitution, on matters related to their interests.

Article 54 and 55: The Constitutional Court examines conflicts of competence between the powers, when the dispute is directly connected with the exercise of their activity. The Constitutional Court considers these conflicts when the respective subjects have considered themselves competent to decide on concrete cases and depending on the case have issued acts to regulate it or when subjects have not considered themselves competent to decide in individual cases. The application before the Constitutional Court is submitted by the subjects in conflict or entities directly affected by the conflict for any kind of act of legal and normative character, action or inaction of local authorities or local government bodies, which have led to disputes of powers between them. This request is made within 6 months after the beginning of the conflict.

Article 57: To review the constitutionality of parties and other political organizations, the Constitutional Court is set in motion at the request of the President, the Prime Minister and no less than one fifth of MPs. The request may be submitted at any time in the Constitutional Court.

Article 61 and 64, The Constitutional Court for the declaration of the dismissal of the President of the Republic is set in motion by the decision of the Assembly which has decided his dismissal from office. For issues related with the election of the President and incompatibilities in the exercise of his functions, the Constitutional Court is set in motion at the request of not less than one fifth of the deputies or political parties

Article 66: For the examination of the electability of the deputies, the Constitutional Court is set in motion at the request of the President of the Republic or the Parliament. The Constitutional Court verifies the election of deputies at the request of a political party or independent candidate for deputy, applying in this case the legal provisions for general elections. The request for incompatibility may be submitted to the Constitutional Court by the Assembly, while the request for examination of the ability of MPs may be filed within

6 months from the identification of the fact of non-electability.

Article 72: The Constitutional Court decisions are taken by a majority vote of all its judges. The decision of the Constitutional Court declared justified, it has general binding power and is final. A judge who is in the minority has the right to justify his opinion that joins the decision and is published with it.

Article 74: When during the voting, the votes are divided equally or in such a way that a conclusion of the matter is not voted on by the required majority, the Constitutional Court must dismiss the appeal. Rejection does not prevent the applicant to submit the request in case the conditions for forming the required majority are created.

Article 76: The decision of the Constitutional Court that has repealed a law or normative act as a rule brings legal effects from the date of its entry into force. The decision has retroactive effect only: a) against a criminal conviction even while it is running, if it relates directly to law enforcement or to the repealed normative act; b) to the issues being considered by the courts, until their decisions have not become final; d) to the consequences of the law or repealed normative acts still not exhausted.

Article 81: Decisions of the Constitutional Court are binding to enforcement. The execution of decisions of the Constitutional Court provided by the Council of Ministers with the respective organs of state administration. The Constitutional Court can appoint themselves another body charged with the enforcement of its decision and, if necessary, the manner of its execution. Persons who do not implement the decisions of the Constitutional Court or hinder their implementation, when the action does not constitute a criminal offense, are punished by the chairman of the Constitutional Court with a fine of up to 100 thousand ALL, whose decision is final and immediately executable.

2. Presentation of the current situation

2.1. Appointment of the members of the Constitutional Court

The process of appointment of the constitutional judge is a joint competence of the President and of the Assembly and goes through two stages; the first stage of the selection of the candidates by the President and the second stage of approval of the candidates by the Assembly. This process is very important in order to guarantee the independence and impartiality of the Constitutional Court. Judges of the CC are appointed from the ranks of the jurists with high qualification and work experience not less than 15 years in profession (*article 7 of the law*). This forecast is the same legal wording of article 125 of the Constitution and, as such, did not specify the concept "high qualifications". In its entirety, the organic law does not define detailed criteria in order to select the independent and professionally qualified candidates. The lack of forecast of the reference criteria goes to the detriment of objectivity, fairness and quality that should guide the selection of candidates. The system of appointment adopted by the Constitution has in its essence the institutional cooperation of the President of the Republic and the Assembly, which essentially expresses the mutual respect of each subject to the powers of the other, and it means the establishment of a ratio between their cooperation in order to ensure a quality and appropriate composition of the Court⁷⁴. Despite the emphasis that the Constitutional Court has put on compliance with this principle, the implementation into practice of the institutional cooperation President-Parliament has proved insufficient. This is due to the absence in the law of clear rules for conducting the appointment process in both its phases. The appointment process is not characterized by transparency because of non-provision in law of the specific qualification criteria and rules set to be implemented by the competent authorities (President-Parliament) for carrying out the process. Recent years a large number of refusals have been seen in the Assembly of candidates submitted by the President, which has made the process of appointment of judges of the CC inefficient. The forecast by the

⁷⁴ See Decision no. 2/2005 and no. 24/2011 of the CC.

organic law, but not by the Constitution, of the period of one month before the expiry of the mandate of the judge of the CC for the commencement of the procedures of his replacement has not proved effective

2.2. End of the mandate of the members of the Constitutional Court

For all matters relating to the termination of the mandate of the constitutional judge, the stay in office until the arrival of the successor, the resignation of a judge, the case of termination of the mandate, dismissal, the organic law does not provide clear rules and deadlines for conducting procedures which result in completion of the constitutional mandate of a judge or his replacement. This legal omission constitutes a serious problem, which undermines the efficiency of the CC, as it not only creates uncertainty for the way of performing these procedures, but can result in not completing them within reasonable limits.

2.3. Procedures for Constitutional proceedings

Problems encountered by the practice of the Constitutional Court in relation to constitutional proceedings are mainly related to the following issues:

- a) Subjects that are legitimized to launch constitutional proceedings;
- b) Deadline of submission of application;
- c) Announcement, entry into force and enforcement of decisions;
- d) Non provision by law of all procedures for constitutional proceedings.

2.3.1. Preliminary review procedures

2.3.1.1. Entities that are entitled to recourse to the Constitutional Court

Issues included in the jurisdiction of the CC, but also the range of subjects that can initiate constitutional proceedings, are not limited only to Articles 131 and 134 of the Constitution. These two provisions are not exhaustive, as there are issues that can be initiated by entities that are not explicitly mentioned in Article 134 of the Constitution. Entities that put the CC in motion, according to Article 134 of the Constitution, fall into two categories; unlimited legitimacy

entities (eg President, Prime Minister, 1/5 of MPs) and limited legitimacy subjects (eg local government, individuals etc). All subjects provided for in Article 134, point 1, letter "f", "e", "e", "f" and "g", of the Constitution have limited legitimacy and impel the Constitutional Court only if they argued "their interest" on a particular issue.

From the organic law it results that:

- **Article 49** of the law provides for, all entities under article 134 of the Constitution, with the exception of the individual, the right to launch constitutional proceedings for invalidation of a legal norm. There is a discrepancy between the understandings that Article 134 of the Constitution has given to the interest that the subjects should prove in a constitutional proceeding from the restriction that the organic law of the CC makes to this category of subjects. *The individual*, as one of the legitimate subjects, under Article 134, paragraph 2, has the right to launch a constitutional proceeding on each of the issues involved in the jurisdiction of the CC. Its only limitation is to prove the interest in the matter under review. Apart of this formulation, the law and constitutional jurisprudence has restricted access of the individual only to the legal procedural process, by not legitimizing him to seek the protection of fundamental rights, in terms of substantive legal process, such as when the right of the individual is directly infringed by an unconstitutional law.

- **Article 57** of the law does not provide for the Chairman of the High State Audit as an initiator subject, while under Article 131, paragraph "d" of the Constitution, the Constitutional Court reviews "the constitutionality of parties and other political organizations and as well as their activities" referring to Article 9 thereof, which compels the disclosure of financial resources of the parties and the expenses incurred. Exclusion of the Chairman of the High State Audit from the initiation of proceedings of this nature is totally without sense, at a time when the Constitution does not prohibit him from doing so.

- **Article 64** of the law allows the initiation of proceedings of electability or incompatibility in exercising of the functions of the President of the Republic

only by one fifth of the deputies or a political party and excludes the launch of constitutional proceedings by other entities.

- **Article 66** of the law restricts the initiating request for the election of parliamentarians only to the President of the Republic and the Parliament, while it does not recognize the right of the parliamentary minority, nor of the other persons who can prove that they have interest in the matter.

- **Article 66**, point 3, of the law is the result of failure of Article 70, paragraph 4 of the Constitution, which recognizes only to the Assembly the right to seek incompatibility in exercising the function of the parliamentarian, excluding one-fifth of the deputies from the initiation of such proceedings. This constitutional formulation has severely limited the role of the parliamentary minority, for it has left any application for incompatibility to the will of the political majority

- Given the important role and function played by the Ombudsman on the protection of the fundamental rights of citizens, his being considered a subject conditioned to address to the Constitutional Court is considered problematic.⁷⁵

- While the incidental control of laws and legal acts is done only at the initiative of the court, this restricts the parties to address to the Constitutional Court when they identify during the trial a violation of their rights by a law which may be unconstitutional. An opportunity for parties to seek incidental control would be an additional guarantee for their access to the Constitutional Court, especially in cases the courts are passive in this regard.⁷⁶

2.3.1.2. Deadline for application

From the content of the law on the Constitutional Court, these shortcomings are observed as regards the deadline of submission of applications to the CC:

Restrictive deadline for filing a request for the repeal of laws: Article 50 of the organic law provides 3-year period from the entry into force of the law or normative acts, within which a constitutional proceeding can be launch to repeal the legal norm. In the Constitution there are two other provisions that allow the repeal of laws even beyond the 3 year period. Article 178 of the Constitution provides: "The laws and other normative acts adopted before the entry into force of this Constitution shall apply *until they are repealed*." This phrase does not exclude the right of the Constitutional Court to repeal the laws adopted before 1998. In addition, Article 180 of the Constitution recognizes the right of the Constitutional Court to review all international agreements ratified before the entry into force of this Constitution the provisions of which are in contradiction with the Constitution, while Article 53/2 of the organic law provides for the right of the Constitutional Court to repeal the act of ratification of the international agreement, i.e the approval law.

Regarding the deadline, attention is to be paid to some other provisions of the organic law: i) the 2-year long deadline for submission of applications by individuals is not effective and underpins the principle of legal certainty; ii) the 3-year deadline for challenging the law, from the moment of their entry into force, is long and not effective, as during the period of 3 years, the law may cause many legal consequences that may be irreversible; iii) Article 52/3 of the organic law has limited the time of preliminary review of the constitutionality of international agreements in 1 month from the date of application; iv) the 6-month deadline for submitting a request for verification of the electability of MPs is not relevant; v) there is no deadline on the application for a declaration of incompatibility of the mandate of parliamentarians; vi) there is no deadline for the cases when the Assembly begins the procedure of dismissal of the President of the Republic.

⁷⁵ Ibid 59.

⁷⁶ Ibid 59.

2.3.2. Special procedures foreseen in the Organic Law

What emerges when analysing the organic law Chapter VII entitled "Special procedures" is the exclusion of all cases when the Constitutional Court exercises its jurisdiction. In the organic law of the CC are not provided procedures relating to: i) The constitutionality of the referendum and verification of its results (Article 131, letter "ë"); ii) The dismissal of judges of the Constitutional Court and judges of the High Court (128, 140); iii) Consent to detain or arrest the constitutional judge or the judge of the High Court caught in flagrante of committing a crime (126, 137); iv) Removal of mayors and heads of communes and dismissal of local government bodies (115).

2.3.2.1. Review of applications for referendum

The organic law provides no procedure related to processing requests for referendum. In terms of the preliminary examination procedure of the constitutionality of the referendum, there is a special adjustment in the Electoral Code in Articles 118-132. It is easily concluded that even in these provisions of the Electoral Code there are significant deficiencies for procedures to be followed during the preliminary examination of the constitutionality of the issue raised for referendum. Thus, the Electoral Code, unlike the Constitution provides other subjects that put the CC in motion, like: i) *Secretary General of the Assembly* who submits the request of one-fifth of the parliamentarians, who require the development of a constitutional referendum (Article 123/3); ii) *CEC* to forward the request to develop a general referendum (Article 129/1); iii) The *Assembly* that decides the development of a general referendum, on its own initiative (Article 131). Also, in the Electoral Code are completely missing provisions that should govern the jurisdiction of the Constitutional Court to verify the (*ex post*) the results of the referendum; well, as it is performed. There is a fundamental distinction between *ex ante* control, that the Constitutional Court makes to the issues put to referendum (Article 152) and *ex post* control of the constitutionality of the referendum and verification of its results (Article 131 letter "ë"). The constitutionality of the referendum and verification of its results is realized only after the Constitutional Court is put into motion by the entities that are legitimized, and

after the referendum is conducted, in contrast to the verification of the constitutionality of the issue raised for referendum, that is carried out in advance in a mandatory way.

Another omission in the Electoral Code, but also in the organic law of the CC, is the case of local referenda. Article 131 letter "ë" of the Constitution when it mentions the competence of the CC to examine "the constitutionality of the referendum" it does not distinguish between general referenda and local referenda. Article 108, point 4 of the Constitution provides that "the principles and procedures for the development of local referenda are provided by law in accordance with article 151, paragraph 2." So, this constitutional provision by conditioning the development of local referendum, after verification that should be made to the case that arises, in the context of Article 152, also highlights the necessity of investing the Constitutional Court to these issues. Meanwhile, both the organic law of the CC and the Electoral Code do not act in this regard.

The organic law of The Constitutional Court does not contain specific references to the law on referendums, as a separate law. Law on referenda needs to be improved.⁷⁷

2.3.2.2. Removal of mayors and heads of communes

This is a procedure that in essence there is no difference by how ordinary courts consider the illegality of administrative acts. However, in the organic law of the CC there is no such provision for the execution of such a specific procedure.

2.3.2.3. Removal of judges of the Constitutional Court and judges of the High Court

The same problem also lies in the organic law with the non-provision of the procedures to be followed when the CC decides to discharge the constitutional judges and the judges of the HC (Articles 128 and 140 of the Constitution).

⁷⁷ Ibid 59

Also in the law is completely lacking the regulation of disciplinary liability of constitutional judges, detailed forecast of disciplinary offenses, their categorization, the identification and evaluation body, and appropriate sanctions for any violations

2.3.2.4. Consent for detention or arrest of the constitutional judges or judges of the High Court caught in the act of committing a crime

Even for the consent to the detention or arrest of a constitutional judge or the judge of the High Court that is caught committing a crime (Articles 126, 137 of the Constitution) the organic law does not stipulate how this procedure is to be performed.

2.3.3. Special procedures provided by law

2.3.3.1. Verification on the election of the MPs

The Constitution of the Republic of Albania in Article 131, letter “e”, alongside with the issues of electability and incompatibility in exercising the functions of parliamentarians, has provided the competence of the Constitutional Court, to decide also on the "verification of the election of the parliamentarians". Article 66 of the Organic Law of the Constitutional Court fails to make any distinction between constitutional concept "electability" and "verification of their election". To verify the election of deputies, Article 66, paragraph 2 of the organic law of the CC has provided individual complaint procedure of candidates for deputies or of a political party, the proceedings which resulted to be applied only in the elections of 2001. While this competency has passed to the Electoral College at the Tirana Court of Appeal. Paragraph 2 of Article 66 of the organic law not only remained unchanged, but it is also unenforceable. The issue is made more problematic through Article 131, letter "e" of the Constitution, which provides for the right of the Constitutional Court to verify the election of deputies.

2.3.3.2. Due legal process

There are no legal provisions concerning the most important competence of the CC which constitutes the largest volume of its work, the reviewing of individual applications for a fair legal process, (*individual constitutional complaint*). The law does not provide for the manner of evaluation and decision making of the CC regarding the requests for the prolongation of court proceedings and non-execution of court decisions. These two proceedings have proven to be ineffective before the CC in the sense of Article 13 of the ECHR, because the CC gives only declaratory/confirmation decisions without any binding effect for the respective body. The CC does not provide any compensation to the applicant, even not a concrete binding deadline for the issue to be judged by the appropriate court or to execute the court decision. These drawbacks have been noted several times in recent years by the ECHR, which has required structural, legislative and organizational measures to be taken in this regard.

2.3.3.3. Dismissal of the President of the Republic

There are no complete and accurate adjustments for the procedure of dismissal of the President of the Republic.

2.3.3.4. Review of the constitutionality of political parties

There are no complete and accurate adjustments for the procedure and consequences of declaring unconstitutional the political party.

2.4. Unforeseen powers in the organic law

The Organic law does not provide powers of the Constitutional Court regarding the review of the legal gap in the cases when due to it have come negative consequences to the state or individual. Also the organic law does not provide for the regulation of situations when during the constitutional review the legislator or executive has reflected and has changed or repealed the act subject to constitutional adjudication. In such cases, the CC has decided to dismiss the

case, arguing that the case has remained without the subject of adjudication. The discontinuance of the adjudication / its suspension in these cases avoids the evaluation of the activity of the body and it does not serve the prevention of situations of unconstitutionality in the future. The organic law does not allow the Constitutional Court to do a preliminary check of international agreements linking the Council of Ministers, because it does not specify such a competence.⁷⁸ It is considered that the law does not sufficiently specify the powers of the President of the Constitutional Court, given his important role and powers within the Constitutional Court. Despite the fact that like other members of the Constitutional Court, the President has the right for only one vote, the possibility of giving greater importance to his vote in order to resolve the situation created during the decision-making process (eg in case the votes are equally divided).⁷⁹ may be reviewed.

2.5. Announcement and implementation of the decisions of the CC

2.5.1. Announcement of decision

Announcement of the decision of the CC is open according to the organic law (article 72). However, the practice of the CC has gone towards the declaration by notice in writing. The moment of announcement of the decision refers to the reasoned decision given by the CC. There are cases, when the CC, due to the sensitivity of the issue, or the effects of the decision, has previously announced the ordering provisions, without reasoning. Then later on, is announced the complete and reasoned decision. The date of announcement of the decision is considered the date of the complete and reasoned decision. In some cases, such practice has presented problems as regards the commencement of the effects of the decision of the CC, which has become known in advance, but in terms of the law, the announcement is made at a later time. The law does not provide the possibility of declaring decisions through a preliminary public notice.⁸⁰ This is

⁷⁸ Ibid 59

⁷⁹ Ibid 59

⁸⁰ Ibid 59

a problem also in terms of transparency and publicity of decision-making of the CC.

2.5.2 Effects of decisions

There is a discrepancy between the Constitution and the organic law for the legal power of the decisions of the Constitutional Court. The Constitution recognizes the publication in the Official Journal and the deadline decided by the Court itself, as two ways of entry into force of the decision. The Organic Law, in its Article 26 provides as a general rule the entry into force of the decision by its publication in the Official Journal, the immediate power of the decision at the time of its announcement, only in the cases decided by the CC, when it comes to protecting the rights of the individual and the retroactive power in cases provided for in Articles 76 and 79. Despite the constitutional wording of Article 132 of the Constitution, the publication in the Official Journal and as well as the setting of another date by the Court itself does not appear to be the only moments for commencing the judicial power of the decision. Thus, the entry into force of the decision of the Court, that must be taken within 24 hours, in the case of consent to the arrest in flagrante, because of the commission of a crime by a judge of the Constitutional Court or a judge of the High Court, doesn't seem to be related to the publication in the Official Journal. Due to the urgent nature of the cases of this type, Article 132 of the Constitution which provides for the publication of the Constitutional Court decision in the Official Journal, as a condition for its entry into force, in this case remains unenforceable. Also, in the case of confirmation of the fact of the inability of the President of the Republic to perform the task, the decision of the CC is presumed to come into effect immediately. This conclusion comes from the way the Article 91, point 2 of the Constitution is drafted, which provides for the starting of the procedure for the election of the new President of the Republic within 10 days from the date of confirmation of the fact of incapability; thus, from the date of the announcement of the decision by the CC and not from the date of publication in the Official Journal. The entry into force of the decision of the CC that decides on the dismissal of the President of the Republic, of the judge of CC and the judge of the HC can be analysed over the same interpretation, which would not have sense for them to continue

practicing their duty until the decision of the CC is published in the Official Journal. Article 76/2 of the organic law determines the retroactive effect of a decision of the CC that has invalidated a law as unconstitutional, in three situations as follows: a) against a criminal conviction even while it is running, if it is directly connected with the implementation of the law or normative act that is repealed; b) to the issues being considered by the courts until the decisions of the courts have not become final; c) against non-exhaustive consequences of the repealed law or normative act. This article has a lot of uncertainty in its implementation in practice, especially in connection with the letter 'a' and 'c'. Also in the cases provided in paragraph "b" the non-clarification of the concept of "final decision" according to the standards of the ECHR is problematic.

The law does not provide clarification regarding the concrete effects of CC's decision on the provision in order to increase the effectiveness of the CC as well as the clarity of the decision to the parties and the bodies which are due to implement it.⁸¹

2.5.3 (Non)-execution of judicial decisions

Given that the implementation of decisions of the Constitutional Court affects the growth of its authority, the Constitutional Court has given importance to the effects of its decision-making, noting that these decisions are binding on all constitutional bodies, public authorities and courts. They constitute constitutional jurisprudence and, therefore, have the force of law effects. Not only the ordering provisions of the CC decision is binding, but also the reasoning part of the decision is binding. However, not in all cases the decisions of the Constitutional Court are respected by state authorities. So in a case reviewed by the Court, although some provisions of the law on property restitution and compensation were abolished for incompatibility with the Constitution, the Assembly, in order to fill in the legal gap created, approved in substance the same provisions, by not taking into account the previous decision

⁸¹ Ibid 59

of this Court, the provisions which again were abolished by the Constitutional Court⁸². In this context, the organic law lacks the establishment of rules and sanctions for the non-execution of the decisions of the CC.

2.6. Other

2.6.1. Position of the advisors of the judges

Since 2005, the judicial bodies of the CC are assisted by legal advisors. Since the law on the CC was adopted in 2000, the law has not provided any concrete arrangement as regards their recruitment, their legal status and labour relations. In the aspect of decision-making of the CC, the role and function of the CC legal advisers is very important and directly affects the quality of its decision. Criteria for the recruitment of legal advisors, his financial treatment or career progress within the justice system are some of the issues that need to be adjusted in the organic law of the CC.

2.6.2. Service fees

Article 83 of the law on the CC provides that the procedures in the CC are tax exempt. For services performed and expenses incurred decides the CC itself. Practically all procedures carried out at this Court are free in the function of guaranteeing the rights to access. But on the other hand, two problems have been noticed: a) administrative costs are increased due to additional applications in the recent years; b) the number of ungrounded and repeated claims (with the same parties, object and causes) is increased, which has led to abuse of complaint remedies. In the law on the CC, the specification of procedures and respectively the establishing of criteria for measuring certain fees for each type of procedure is lacking. In this regard, the completion of the law will bring not only the reduction of administrative costs for the Court, but also the reduction of ungrounded or abusive applications to the Court⁸³.

⁸² See decision No.27 / 2010 and No.43 / 2011 of the CC.

⁸³ Ibid 59

V. Summary of findings

From the analysis presented above, the legal problems are:

Regarding the composition of the Constitutional Court

The process of appointing constitutional judges does not result efficient: there are no clear and detailed criteria for candidates, lacks transparency in their selection and proposal, no clear rules for conducting the appointment process. The criterion "high qualifications" that contains the Constitution is not specified in the law. Judges stay in office for a long time beyond the constitutional mandate because of failure to fill in the vacancies within the reasonable time limits. The Organic law does not provide deadlines for conducting the appointment process. For all matters relating to the termination of the mandate of the constitutional judges (stay in office until the arrival of the successor, the resignation of a judge, the cases of termination of the mandate, dismissal) the organic law does not provide clear rules and deadlines for conducting procedures which result in completion of the mandate of the constitutional judge or his replacement. This legal omission constitutes a serious problem, which undermines the efficiency of the CC, as it not only creates uncertainty for the way of performing these procedures, but it may result in their failure of completion within reasonable time limits.

Regarding the procedures and powers of constitutional proceedings

There is no compatibility among entities provided by the Constitution that are legitimated to address the CC and those provided by the organic law of the CC. The right of individuals to launch a constitutional adjudication to repeal a legal norm is not sanctioned. The deadlines to control laws (3 years) and regular court proceedings (2 years) are long and create a lack of legal certainty. Specific provisions for certain procedures are missing such as dismissal of the President, the review of the referendum, due legal process, the constitutionality of political parties, dismissal of mayors and heads of the communes and dismissal of local government bodies, the consent for the detention or arrest of the constitutional judge or the judge of the High Court caught in the act of

committing a crime, the evaluation and decision of the CC regarding the requests for excessive length of the proceedings and non-execution of court decisions; the constitutionality of legal omission, the continuation of the court proceedings in cases where the issue under review remains without subject. There are no legal provisions to force courts to adjudicate cases within a reasonable timeline or to impose sanctions / deadlines to state authorities that do not execute final court decisions within a reasonable timeline. There is a lack of legal mechanism to avoid obstruction of decision-making of the CC, because of the failure of the organic law to create the required majority. The CC has proved ineffective in the sense of Article 13 of the ECHR

On the promulgation and enforcement of decisions

There is a discrepancy between the Constitution and the organic law for the legal power of the decisions of the Constitutional Court. The Constitution recognizes the publication in the Official Journal and the deadline decided by the Court itself, as two ways of entry into force of the decision, while the Organic Law provides as a general rule the entry into force of the decision by its publication in the Official Journal, the immediate power of the decision at the time of its announcement, only in the cases decided by the CC, when it comes to protecting the rights of the individual and the retroactive power in cases provided for in Articles 76 and 79. Article 76/2 of the organic law determines the retroactive effect of a decision of the CC that has invalidated a law as unconstitutional, there are many uncertainties in its implementation in practice. Decisions of the Constitutional Court not only in terms of ordering provisions, but also the reasoning part are not implemented in every case by the state authorities. The Organic law does not provide effective measures for such cases. In some cases the decisions of the CC are announced without the reasoning part, which causes confusion for the start of their effects.

Other

The Organic law has not provided any concrete arrangement for the recruitment criteria of legal advisers, their legal status, their financial treatment or career development within the justice system. For the recourse to the CC, the organic

law does not provide any service fee, although recent years it has been seen an increase in claims filed to this Court, by adding the workload, administrative costs, as well as abuses by means of appeal in the CC.

VI. Conclusions

This chapter focuses on two main areas: firstly it has analyzed the constitutional framework with respect to the justice system institutions in order to identify whether the Constitution has achieved or not achieved to guarantee their functioning within the system and whether the problems stem from the way the drafting of constitutional norms or their implementation by the respective institutions; secondly it has analyzed the organic law of the Constitutional Court to identify the problems that are encountered in practice from its implementation in all aspects of the organization and functioning of the Constitutional Court.

This chapter is divided into four (4) subheadings. In the first subheading it is analyzed the constitutional arrangement of the institutions of the justice system and there are reflected the problems associated with the design and implementation of specific constitutional provisions. The Second subheading summarizes the findings and issues identified in the first subheading. The Third subheading contains analysis of the organic law of the Constitutional Court and the Fourth subheading presents the findings and identified problems in the organization and functioning of the Constitutional Court.

The first subchapter addresses in the constitutional level, the role of the President in the justice system and its cooperation with constitutional institutions, focusing in particular on the election of the head of state and the guarantees to be provided in the exercise of his powers; the appointment of members of the CC and the HC, effectiveness and efficiency of the Constitutional Court (constitutional criteria for the selection, nomination and qualities of candidate member of the Constitutional Court, the expiration of the mandate and dismissal from office, the resignation of a judge and stay in office beyond the mandate, renewal of the CC); independence and effectiveness of the High Court (constitutional and legal criteria for the selection, nomination and

candidate qualities for member of the HC, completion of the term of a judge of the HC, initial and review jurisdiction of the HC), independence, impartiality and transparency of the High Council of Justice (composition of the HCJ, the position of the Minister of Justice); the constitutional position of the National Judicial Conference and the status, mission, powers and its organization; the mission and functions of the Prosecution Office (election of the Prosecutor General and hierarchical mode of operation of the investigation

The second subheading is summarizing findings and problems as follows:

Lack of institutional collaboration President - Assembly in exercising relevant constitutional powers in connection with the justice system, the lack of an organic law for the institution of the President of the Republic, the possibility of the election of the President of the Republic with a formula that avoids political consensus, does not guarantee the independence of the exercise of his functions in the justice system and it does not avoid the suspicion of failing to guarantee the independence and well-functioning of the HCJ, which he is heading.

There are delays in the renewal of the Constitutional Court and in filling vacancies in the Constitutional Court and High Court. There are no time limits laid down within which to develop the process of appointment. A transparent process with regard to the collection and selection of candidates for the Constitutional Court and the High Court is lacking. The process of appointment of judges of the HC and the CC is not based on clear rules, so that the legal criteria to be met by candidates. The Parliament does not always give obvious reasons for rejection of candidates. The minimum majority (36 members) required for approval of the candidacy selected by the President to be appointed as a constitutional judge and senior judge, does not offer sufficient guarantees in terms of respect for the independence, impartiality and quality of the composition of the CC and the HC.

In conditions where there is not a general constitutional orientation regarding the qualifying criteria to be met by a candidate for judge of the High Court, the legislator has complete discretion in determining these criteria. Regarding

issues related to the termination of the mandate, the stay in office beyond the mandate, removal from office, resignation and disciplinary responsibility of judges of the HC, the same problems were found as mentioned above for constitutional judges. In the jurisprudence of the HC are noted deficiencies that have to do with the overcoming of its review power and assuming the role of the courts of initial jurisdiction. Original jurisdiction is problematic, given that in the process of appointment of judges of the HC are involved the functionaries themselves, who in the future may be a party to the criminal proceedings before this court.

Lack of constitutional basic criteria for selection of members of the HCJ elected by the Assembly does not ensure transparency and quality in composition and leaves the legislators unlimited discretion in determining these criteria. Minimum majority (36 seats) required for their voting in the Assembly does not provide sufficient guarantees in terms of respect for the independence of the HCJ. The role of the Minister of Justice is considered problematic because of the exclusivity it enjoys in the initiation of the disciplinary process against judges, which conflicts with EU principles

Regardless of the fact that the National Judicial Conference is an institution provided by the Constitution and has an important function, there is a lack of a proper constitutional arrangement as regards its statute, powers and organisation.

The Constitution does not provide for the basic criteria to be met by a candidate for Prosecutor general, approval of candidacy by the Assembly with a simple quorum (minimum of 36 deputies) does not serve to obtain a broad support from the legislators and to guarantee the independence that should characterize this high functionary. Hierarchical organization has caused friction between prosecutors of different levels who are made subject to review judicial processes not only at the courts of ordinary jurisdiction but also to the Constitutional Court. Problems which have emerged in connection with the Prosecution have to do with the constitutional position of this body in the institutional structure of the state.

Third heading analyzes the organic law of the CC in connection with: the process of appointing members of the CC; cases of termination of the mandate of the CC members; constitutional adjudication procedures (pre-screening procedures, special procedures foreseen in the organic law, special procedures provided by law, the powers foreseen in the organic law) announcement, the effects and implementation of the CC decisions; position of Judges' advisers; service fees for initiating constitutional adjudication.

At the conclusion of the analysis of the organic law on the fourth heading, findings and problems were identified as follows:

The process of appointing constitutional judges does not result efficient: there are no clear and detailed criteria for candidates, lacks transparency in their selection and proposal, no clear rules for conducting the appointment process. The criterion "high qualifications" that contains the Constitution is not specified in the law. Judges stay in office for a long time beyond the constitutional mandate because of failure to fill in the vacancies within the reasonable time limits. The Organic law does not provide deadlines for conducting the appointment process. For all matters relating to the termination of the mandate of the constitutional judges (staying in office until the arrival of the successor, the resignation of a judge, the cases of termination of the mandate, dismissal) the organic law does not provide clear rules and deadlines for conducting procedures which result in completion of the mandate of the constitutional judge or his replacement.

There is no compatibility among entities provided by the Constitution that are legitimated to address the CC and those provided by the organic law of the CC. The right of individuals to launch a constitutional adjudication to repeal a legal norm is not sanctioned. The deadlines to control laws (3 years) and regular court proceedings (2 years) are long and create a lack of legal certainty. Specific provisions for certain procedures are missing such as dismissal of the President, the review of the referendum, due legal process, the constitutionality of political parties, dismissal of mayors and heads of the communes and dismissal of local government bodies, the consent for the detention or arrest of the constitutional judge or the judge of the High Court caught in the act of

committing a crime, the evaluation and decision of the CC regarding the requests for excessive length of the proceedings and non-execution of court decisions; the constitutionality of legal omission, the continuation of the court proceedings in cases where the issue under review remains without subject. There are no legal provisions to force courts to adjudicate cases within a reasonable timeline or to impose sanctions / deadlines to state authorities that do not execute final court decisions within a reasonable timeline. There is a lack of legal mechanism to avoid obstruction of decision-making of the CC, because of the failure of the organic law to create the required majority. The CC has proved ineffective in the sense of Article 13 of the ECHR

There is a discrepancy between the Constitution and the organic law for the legal power of the decisions of the Constitutional Court; Article 76/2 of the organic law determines the retroactive effect of a decision of the CC that has invalidated a law as unconstitutional, there are many uncertainties in its implementation in practice. Decisions of the Constitutional Court not only in terms of ordering provisions, but also the reasoning part are not implemented in every case by the state authorities. The Organic law does not provide effective measures for such cases. In some cases the decisions of the CC are announced without the reasoning part, which causes confusion for the start of their effects.

The Organic law has not provided any concrete arrangement for the recruitment criteria of legal advisers, their legal status, their financial treatment or career development within the justice system. For the recourse to the CC, the organic law does not provide any service fee, although recent years it has been seen an increase in claims filed to this Court, by adding the workload, administrative costs, as well as abuses by means of appeal in the CC.

In their totality the findings of the analysis of the heading "constitutional analysis on judicial reform and legal analysis on the reform of the Constitutional Court" raise questions that need to be addressed at the constitutional and legal level.

CHAPTER IV ANALYSIS OF THE JUDICIAL SYSTEM

I. INTRODUCTION

The Republic of Albania is based on the system of divided and balanced governance powers, where the judicial power has a significant position. In a modern state, the judicial power is a guarantee for the functioning of democracy, rule of law and protection of fundamental rights and freedoms of the individual. Meanwhile, Albania has entered into an important process, that of its integration into the European Union, a process that requires the consolidation of the rule of law and democracy.

The judicial power has undergone significant positive developments and has been subject of major legal, organizational and functional changes. This process began with the repeal of the previous Constitution of the communist regime and the entry into force of the Constitutional main provisions where a particular impact on judicial power have given those of 1992, which were followed later with a package of laws of organic, procedural and regulatory nature in relevant fields.

The Constitution of 1998 was a significant development for the time, and all the legal and organizational process aimed at increasing the effectiveness and accountability of the system to respond to the challenges of the time.

Despite positive developments, the judicial power faces numerous and serious problems in terms of independence, impartiality, accountability, professionalism, efficiency, transparency and its management.

For years in the progress reports of the European Commission for Albania were evaluated serious and immediate problems of the judicial power, which lead to the conclusion that the judicial power with the current constitutional, legal and institutional organization structures is not correctly performing the mission of assurance of the rule of law. Moreover, the dynamics of the integration process of the country in the EU, among others, has created a new challenge for the judicial system. Currently it faces difficulties in recognizing and enforcing

standards of protection of human rights decided by the ECHR and the ECtHR jurisprudence, as well as the adoption of EU directives and treaties.

Based on a detailed analysis of the legal framework in force and reports of different national and international actors, as follows are evidenced in a critical and objective way the problems that are affecting nowadays the judicial system in our country regarding the organization, independence, impartiality, accountability, professionalism, management, efficiency, transparency of the judicial system and the execution of court decisions for the realization of human rights and fundamental freedoms of the individual in Albania

II. CONSTITUTIONAL AND LEGAL FRAMEWORK

The Constitution in its ninth section (articles 135-147) has defined principles and the most important institutions of the organisation and functioning of the judicial power. The judicial power is exercised by the High Court, the Courts of Appeal and the courts of first instance, which are established by law (Article 135/1). Due to the significant number of legal norms that affect different aspects of the organization and functioning of the judicial power, below are listed international laws and the most important documents in this regard.

1. International standards

i. International Conventions

- a) European Convention of Human Rights
- b) International Convention on Civil and Political Rights
- c) International Convention on Economic, Social and Cultural Rights

ii. International guiding acts

- a) The European Charter on the Status of Judges
- b) UN Basic Principles on the Independence of the Judiciary
- c) Principles of Judicial Conduct Bangalore

iii. Council of Europe

- a) *Magna Carta* of Judges, 2010
- b) Consultative Council of European Judges, Opinion 1 (2001)

2. The legal framework for the judiciary

Our judicial system is based on the Constitution and is regulated by an extensive legal framework, where the main laws are mentioned as follows:

1. Law no. 9877, dated 18.02.2008 'On the Organization of the Judiciary in the Republic of Albania', as amended;
2. Law no. 8588, dated 03.15.2000 'On the Organization and Functioning of the High Court', as amended;
3. Law Nr.9110, dated 24.7.2003 'On the Organization and Functioning of the Serious Crimes Court', as amended;
4. Law no. 49, dated 3.5.2012 'Organization and Functioning of the Administrative Courts and Adjudication of Administrative Disputes', as amended;
5. Law no. 8811, dated 17.5.2001 'On the Organization and Functioning of the High Council of Justice';
6. Law Nr.8678, dated 14.05.2001 'On the Organization and Functioning of the Ministry of Justice', as amended;
7. Law Nr.8363, dated 1.7.1998 " On the Establishment of the Office of Judicial Budget";
8. Law no. 77, dated 26.07.2012 'On the Organization and Functioning of the National Judicial Conference';
9. Code of Civil Procedure, approved by the law nr.8116, dated 29.03.1996, as amended;
10. The Code of Criminal Procedure, adopted to the Law No. 7905, dated 21.03.1995, as amended;
11. Law Nr.8136, dated 31.7.1996 " For the School of Magistrates' amended etc

III. Presentation of the Current Situation

Organisation and functioning of the Judicial System

1. Organisation of the Judicial Power

1.1 High Court

1.1.1 Substantial competences

Under the Constitution, the High Court (HC) is the highest judicial authority in the Republic of Albania. It has original and reviewing jurisdiction. It has original and reviewing jurisdiction. It represents the last instance court of the system, meaning that against its decisions can not be made an appeal, except for issues that fall under the constitutional jurisdiction. The HC examines as appellate jurisdiction all the recourses or specific complaints (*including resolution of disagreements over the definition of jurisdiction and competence*) filed against decisions of the courts of the lower level for judicial cases of criminal, administrative and civil nature. Another competence of the HC is the examination of applications for review of a final decision. The High Court has original jurisdiction when adjudicating criminal charges against the President, the Chairman and members of the Council of Ministers, MPs, judges of the High Court and judges of the Constitutional Court⁸⁴. When adjudicating complaints of judges of the court of the first instance and the court of appeal against disciplinary action "discharge of duty", set by the High Council of Justice, it operates as the only appellate level by excluding lower levels of the judiciary.⁸⁵

⁸⁴ Article 141 of the Constitution of the Republic of Albania

⁸⁵ Article 36/2 of the Law No. 9877, date 18.02.2008 "On the organization of the judiciary poker in the Republic of Albania provides that "2. The judge has the right of complaint against the decision of removal from the duty, until 15 days since the notification of the judgment of the High Court which decides on Unified Collegues."

The High Court of Albania is ranked in the group of homologous courts, considered as *legality court*, in the sense that it does not examine the facts of the case, but is confined to verify whether the substantial and procedural law is interpreted and applied correctly by the lower courts⁸⁶. Albania's Supreme Court has such powers involved in the two known systems in Europe: Classic Cassation and Revision ones.⁸⁷

Besides its cassational and revisional role as explained above, the High Court plays an important role in the quality of administering justice through the unification of the judicial practice and development of law by the United Colleges. The High Court exercises this role, in the context of specific issues, if it finds that lower courts make different or conflicting interpretations of certain legal norms. In the unifying judicial decisions, the United Colleges of the HC decide on the same interpretation of the provisions of the law, on which do exist different previous practices in the simple colleges of the HC, or to change the unified interpretation that is decided previously (*Article 141 (2) of the Constitution and Article 481 of the Code of Civil Procedure*). These decisions have the force of binding precedent and aim at the unification of judicial practice and legality in proceedings. The purpose of this role of the HC is to ensure the principle of legal certainty through consistency in judicial practice, which is provided through a uniform interpretation of the law and standardization of administering justice. From 1999 to 2014 the United Colleges of the High Court have given a total of 100 unifying decisions.

⁸⁶Under the current legal framework, the Supreme Court is not due to review evidences having been subject of judicial debate held at first and second level, but only issues: a) if the law has not been respected by lower courts; b) if the law is poorly implemented by lower courts; c) if there are serious violations of procedural norms by lower courts (in cases provided under Article 467 of the Code of Civil Procedure)..

⁸⁷Depending on the constitutional and legal norms, the higher courts have different roles. This role can be: i) cassation (the Supreme Court undoes the decisions of the lower courts and returns cases for review in the lower courts; ii) revision (Supreme Court resolves thoroughly itself the case, by changing the decision of the lower courts; and iii) cassation-revision. In all cases, the Supreme Court examines only cases of law (rather than cases of fact)..

The HC decides to accept or not accept the appeals against decisions of courts of lower instances. The Amendments of 2013 to the Law on the High Court reduced the size of the panel that considers the admissibility of appeals (*recourses*) from 5 to 3, referring to whether the case was adjudicated in the first instance with a panel of three judges or one judge (Article 35 of the Civil Procedure Code). While Law 49/2012 "*On the organization and functioning of administrative courts and adjudication of administrative disputes*" restricted the right of recourse to the High Court, in cases stipulated by Article 56 of this law (*administrative issues worth less than forty time more than the minimum wage nationwide*), as well as changes made to this law in 2014 enabled the reviewing in the deliberation room for administrative issues with a panel of 5 to 3 judges on all matters that in the court of first instance are adjudicated by a judge as well as to the subject matters regarding the disputes on competences, while other cases are adjudicated by panels composed of five judges.

1.1.2 Organisation and functioning

The High Court, as a constitutional body and the highest judicial authority in the Republic of Albania, is organized and operates under the Constitution and the Organic Law no. 8588, dated 03.15.2000 "*On the organization and functioning of the High Court of the Republic of Albania*" amended.

The High Court consists of 19 judges and is organized into three colleges, namely in the civil, administrative and criminal college. The assignment of the judges of the HC in colleges is made by the Chairman of the HC, taking into consideration the professional experience of the members. The head of the college is elected from among its members by a majority vote for a period of one year, with the right of re-election.

The Civil College adjudicates in the deliberation room (for admission of cases) with a panel consisting of three judges. While in the court hearing, the Civil College adjudicates, respectively, with 3 judges in matters which are in the substantial jurisdiction of the single judge at first instance, and with 5 judges for other issues.

The Criminal Panel adjudicates both in the deliberation room (for admission of cases) and in the hearing session with a panel composed of five judges.

The Administrative Panel adjudicates with a panel composed of three judges, the cases that in the first instance court are adjudicated by one judge, as well as the cases that as their subject matters have the disputes of competences. While other cases are adjudicated by panels composed of five.

Matters provided for in the Civil Procedure Code and Criminal Procedure Code, or the law on administrative proceedings for which is required unification or change of the judicial practice, appeals against decisions of the High Council of Justice, and other matters prescribed by law, the Court reviews them in the United Colleges of the High Court. The required quorum for adjudication in the United Colleges of the High Court is the participation of not less than 2/3 of all the judges of the High Court. The decision in these Colleges is taken by a majority vote of the judges taking part in the process. United Colleges are chaired by the Chairman of the High Court, and in his absence, by the Head of the Civil College. For cases that are adjudicated by the Colleges, there are two rapporteurs selected by lot, who, independently, prepare reports and submit them to the College. Unification, or change of the judicial practice is done by the United Colleges when: i) required by each college of the High Court; ii) required by the Chairman of the High Court; iii) deemed necessary by the United Colleges.

In his work, the judge of the High Court is assisted by two legal assistance chosen by him, among jurists who meet the legal requirements to be named a judge at the court of first instance or court of appeals and are appointed by the Chairman of the Court. The auxiliary services to the High Court are directed by the Chancellor, who is appointed by the Chairman of the High Court from the ranks of lawyers with experience not less than 7 years.

Not all complaints / recourses that are deposited by the High Court are reviewed by it. To select complaints that deserve to be reviewed, there is a preliminary filtering mechanism for complaints. This mechanism is "the

deliberation room" which allows the High Court to assess the acceptability or unacceptability of the recourse for judicial review.

The procedure to review recourses starts from the moment that the court file has come to the High Court and is registered in the electronic system of the judicial case management. The system, electronically casts the lot and selects the judge rapporteur of the case.

After studying the dossier, the rapporteur of the case submits in the deliberation room, without the presence of the parties, the report prepared by his assistant, in which is reflected the evidence of the case, the manner of disposition of the case by the lower courts and the causes of recourse. The College assesses in the deliberation room whether the recourse contains legal reasons from those provided in the procedure codes and the law on administrative proceedings, to pass the case for adjudication. In the event when the College considers that recourse does not contain reasons from those anticipated by law, the College decides not to accept it, with a brief explanation⁸⁸ and the court file, together with the decision of the College for the rejection of the recourse is submitted to the secretarial employee to perform procedures required for sending the file to the competent court. Otherwise, when the College in the Deliberation Room estimates that the recourse contains those reasons that are provided by law, decides to refer the case for adjudication, and at this stage, the court file passes through an electronic lot to another judge for adjudication at a hearing session with the presence of the parties, where the review of causes is subject to the judicial debate.

In administrative cases, if an administrative panel finds that recourse contains legal reasons, decides his review is the deliberation room, on the basis of documents, without the presence of the parties, and exceptionally decides over the case for review in the court session with the presence of parties, where do exist legal requirements as provided for in Article 62 of Law no. 49/2012 "On

88. See decisions of the Constitutional Court no. 51, dated 11.12.2014; nr. 17, dated 16.05.2011; nr. 18 dated 21.1.2014

the organization and functioning of administrative courts and adjudication of administrative disputes" (as amended).

1.1.3 The Chairman of the High Court

The Chairman of the High Court under Article 136 (2) of the Constitution shall be appointed by the President, with the consent of Parliament, and his term as Chairman, under Article 5/3 of the organic law of the HC, is calculated in the mandate of the High Court judge. The Chairman of the High Court represents the High Court, and directs and supervises all its activities, caring for the normal functioning of the institution. Pursuant to his powers, he issues regulations and orders of administrative character for the internal organization, structure and organogram of the HC and controls the activity of legal assistants and employees of the Administration for the implementation of functional duties or assigned tasks.

The Chairman of the High Court, when he deems it necessary, may call in a meeting all members of the judicial body, or a part of it, in order to consult and discuss various issues relating to the progress of the activity of the Court, or other important issues related to the administration of justice. He, in special cases, when there are still problems with the administration of the court, may require information from judges on the progress of the review of certain legal cases and jointly with the judges determines the fastest way to resolve them⁸⁹.

The Chairman of the High Court consults with judges, especially on: i) the structure of the High Court; ii) internal rules of operation of the High Court; iii) requirements for the budget of the High Court; iv) division and removal of judges in colleges.

The Chairman is assisted in his administrative work by advisors, who are part of the cabinet of the Chairman of the High Court, who assist him in fulfilling administrative duties.

89. For more info see Article 7 of the Internal RegulationI of the HC.

Also, thanks to his institutional position in the justice system, the Chairman of the High Court is *ex officio* also the Chairman of the National Judicial Conference, a member of the High Council of Justice, Chairman of the Board of the School of Magistrates, Chairman of the Steering Board of the Judicial Budget Administration Office and the Chairman of the Council for Appointments to the High Court as an advisory body to the President of the Republic.

1.1.4 Ways of resolving cases

In accordance with the Civil Procedure Codes and the Criminal Procedure Code and the law on the adjudication of administrative disputes, the parties have the right to oppose, through recourse, the decisions of lower courts, when they claim that the decision rendered by them is illegal.

According to procedural rules, two are hypothetical typologies of legal violations, the existence of which make the court decision vicious (defectuous), and to which the parties have the right to approach the High Court recourse. Specifically these drawbacks are: (i) procedural violations (*errores in procedendo*); and (ii) incorrect interpretation or application of substantive law (*errores in iudicando*).

There are two ways in which the High Court acts on the case. In the case of procedural violations, it quashes (cancels) the decision and returns the case for retrial. In case of wrong interpretation of substantive law it can handle the case by itself, for economic reasons, without the need to return it to a retrial in a lower court.

Types of decisions that the High Court gives regarding the reviewed recourses in hearings are provided for in Article 485 of the Civil Procedure Code, for civil cases, in Article 433 of the Criminal Procedure Code, for criminal cases, and Article 63 of the Law on administrative proceedings for administrative cases.

1.1.5 Interaction with the Constitutional Court

Interpretation of laws is the competence of the courts of ordinary jurisdiction and especially of the High Court. The function of the High Court is to ensure uniform interpretation of the law by lower courts, defining lines of interpretation which judges of the lower courts must adhere to in their activities. The interpretation of the common law by ordinary courts, and at the last instance by the High Court is made by being based on their sense of right and referring to interpretation forms, in order to meet the gap in the legal order, resolution of contradictions, uncertainties or ambiguities in the content of norms, which implies a creative and active role of the Court in development of positive law.

Only if the application of interpretative techniques results not possible to interpret the applicable law in accordance with the, under Article 145/2 of the Constitution, the High Court has the right to raise in an incidental way the issue of constitutional compliance of a legal norm and refer it to the Constitutional Court, by suspending the proceedings of the case and by deciding to send the acts to the Constitutional Court. According to the jurisprudence of the Constitutional Court, the interpretative decisions of the Constitutional Court are final and are binding for execution by the High Court. The Constitutional Court has already a consolidated position according to which the interpretation of substantive and procedural law, its application to concrete cases and the assessment of the facts and circumstances are issues that divide the jurisdiction of the ordinary courts from the constitutional jurisdiction.⁹⁰

1.1.6 Statistical Data

Detailed data for this column are reflected in Appendix 1 of this chapter: "Appearance in the form of graphs / tables of statistical data on cases adjudicated by the High Court".

⁹⁰ Decision of the Constitutional Court nr. 5/2012.

1.2 Courts of Appeal

Second instance courts are courts of appeal of ordinary jurisdiction, administrative courts of appeal and the court of appeal for serious crimes. In the territory of the Republic of Albania operate in total eight (8) courts of appeal. Of these, 6 (six) are courts of appeal of ordinary jurisdiction, 1 (one) is a court of appeal for administrative cases and 1 (one) is a court of appeal for serious crimes.

1.2.1 The Court of Appeal (Ordinary Jurisdiction)

- *The number, geographic distribution and substantial and territorial competency*

In the law no. 7806, dated 17.03.1994 'On the organization of justice and some amendments in the criminal and civil procedure codes', the former Zone Courts that have functioned before 1990 were reorganized by being located in a single court, with the center in the Tirana Court of Appeals. By law no. 8245 dated 09.24.1997, Article 4 of the Law 7806 dated 17.03.1994 was amended and the former Tirana Court of Appeal was disestablished by being reorganized into six such courts, respectively, based in Tirana, Shkodra, Durres, Korca, Vlora and Gjirokastër. This reorganization brought some advantages, such as:

- a) Increase of the authority and independence of the judicial power;
- b) Enhancing the quality of judgment;
- c) Avoidance of unnecessary bureaucratic delays in the adjudication of cases;
- d) Restrictions on the movement of people from districts to the cities and respect of legal deadlines.⁹¹

The Decree of the President of the Republic no. 6217, dt. 07.07.2009 " For determination of territorial and center competences of activity of the courts of

⁹¹ <http://www.gjykataeapelittirane.al/?fq=brenda&gj=gj1&menu=1&kid=7>

appeal"⁹², determined the organization of courts of appeal in 6 zones, and set the center of their activity and the territorial jurisdiction under the judicial districts. In the territory of the Republic of Albania, operate six (6) courts of appeal of ordinary jurisdiction, namely: Tirana Court of Appeal, Shkodra Court of Appeal, Durres Court of Appeal, Korca Court of Appeal, Gjirokastra Court of Appeal and Vlora Court of Appeal. In these courts work 78 (seventy-eight) judges.

The Courts of Appeal review in the second instance all the cases adjudicated by the district courts, which are appealed by the parties. The Civil Procedure Code provides the original jurisdiction for the Courts of Appeal, only for that category of cases relating to the adjudication of claims for recognition of civil decisions of foreign courts (n.395). In this case, the Court of Appeal does not adjudicate on the merits, but it is limited in the verification of legal obstacles that can be contained in the decision of the foreign country.

The Court of Appeal adjudicates in a collegial manner. Detailed rules on court proceedings of this court are provided in the Civil Procedure Code and the Criminal Procedure Code, depending on the nature of the case subject of adjudication.

- *Statistical data*

Detailed data for this column are reflected in Annex 2 of this chapter: "Appearance in the form of graphs / tables of statistical data on cases adjudicated by the courts of appeal, section 2.1"

1.2.2 The Serious Crimes Court of Appeal

- *The number, geographic distribution and substantial competency*

⁹² This decree repealed the decree nr. 1984, dated 07.01.1998 "On the establishment of Courts of Appeals and the determination of the territorial borders of their activity".

Courts for serious crimes (first instance and appeal) are links in the judicial system that review at the first and second instance the high-risk crimes, defined by law.⁹³.

The organization and functioning of these courts is regulated by the law nr.9110, dated 07.24.2003 "*On the organization and functioning of serious crimes courts*". In Article 2 of the law is defined its purpose, associated with the establishment rules for the organization and functioning of the courts of serious crimes, with the aim of increasing the effectiveness of the fight against organized crime and serious crime, and improving the quality of their adjudication.

By decree no. 3993, dated 10.29.2013 of the President of the Republic "For the determination of territorial competences, the center of activity and the number of judges of courts of first instance and the courts of appeal for serious crimes", was envisioned the establishment and functioning of the first instance court and the court of appeal for serious crimes. For the Serious Crimes Court of Appeal, by this decree was determined the territorial jurisdiction in all the territory of the country, with the center of its activity in Tirana and the number of judges was 11 (eleven).

Serious crimes courts and serious crimes courts of appeal adjudicate with a panel consisting of five judges and apply certain rules provided for in the Criminal Procedure Code, except the cases where otherwise provided in their organic law.

- ***Statistical data***

Detailed data for this column are reflected in Annex 2 of this chapter: "Appearance in the form of graphs / tables of statistical data on cases adjudicated by the courts of appeal, section 2.2".

⁹³ A more detailed treatment of the offenses that this court has the jurisdiction is set out in the analysis for Serious Crimes Court of First Instance

1.2.3 Administrative Court of Appeal

- *The number, geographic distribution and substantial competency*

The organization and functioning of administrative courts (in the first and second instances) is provided by Law no. 49/2012 "*On the organization and functioning of administrative courts and adjudication of administrative disputes*", as amended. The aim of this legislative initiative was the reforming of the judicial proceedings to review the administrative disputes in terms of pace and quality by establishing an autonomous specialized court system with administrative judges.

In support of Decree nr. 8349, dated 10.14.2013, of the President of the Republic "On commencement of functioning of the administrative courts", on November 4, 2013 began the functioning of the administrative courts. The functioning of these courts came after the completion of two key conditions relating to the entry into force of the legal amendments in the law no. 8588, dated 03.15.2000 "*On the organization and functioning of the High Court*" for the creation of the Administrative College of this court and the creation of necessary infrastructure for the normal exercise of their activity.

The Decree of the President of the Republic no. 7818, dated 16.11.2012 "For determining the number of judges for each court of first instance and courts of appeal and administrative courts, as well as determination of territorial jurisdiction, and the headquarters of the administrative courts" determined that the administrative courts are organized in 6 first instance courts and 1 court of appeal. In support of this decree, the Administrative Court of Appeal has its headquarters in Tirana and its territorial jurisdiction in the entire territory of the Republic of Albania.

According to the organic law of administrative courts (LAC), the Court of Appeal reviews in the second level appeals against decisions of the administrative courts of first instance and reviews in the first instance disputes subject to normative legal acts and other cases provided by law. LAC has determined the period of 30 days to review the cases in the Court of Appeal.

- **Statistical data**

Detailed data for this column are reflected in Annex 2 of this chapter: "Appearance in the form of graphs / tables of statistical data on cases adjudicated by the courts of appeal, section 2.3".

1.3 Courts of First Instance

In the territory of the Republic of Albania operate 29 courts of first instance, of which 22 district courts of ordinary jurisdiction; 6 administrative court of first instance and one court of first instance for serious crimes.

1.3.1 Judicial District Court (ordinary jurisdiction)

- *The number, geographic distribution and substantial competency*

District courts are the basic links of the judicial system. They are organized and function in judicial districts throughout the territory of the Republic of Albania. First instance courts adjudicate cases that are in the territorial jurisdiction of the district where the courts exercise their functions, which according to the subject matter of adjudication are divided into civil and criminal cases.

Adjudications are carried out by a single judge, but on different cases they can be carried out by a panel, composed of three judges. At the beginning of each year, the chairman of the court of first instance (and that of the court of appeal), define the allocation of judges in criminal and civil chambers of the court for the current 2 (two) years. Generally it is noted that are lacking the well defined criteria on the elections of the judges that are allocated in chambers. Also, the chairman enjoys an excessive discretion in the decision making process with regard to the judges that will serve in the criminal and civil chambers of the court.

According to the decree no. 6201, dated 08.06.2009 "On determination of territorial jurisdiction of the judicial district courts and the center of activity of each of them", as amended, pursuant to Article 93 of the Constitution and

Article 6, paragraph 3, of the law no. 9877, dated 18.02.2008 "On the organization of the judicial power in the Republic of Albania", as amended by proposal of the Minister of Justice, in the Republic of Albania the district court are organized into 22 judicial districts with territorial competency and centers to exercise their activity

The Decree of the President of the Republic nr.1501, dated 29.05.1996, On creation of sections for administrative, commercial and family disputes in the district courts ", determined the creation of sections for review of administrative disputes and sections to review commercial disagreements in 17 district courts and the creation of the sections to review family disputes in all district courts. With the adoption of the law on administrative courts and the beginning of the work of these courts, ceased the functioning of the administrative sections of the judicial district courts. With transitional provision was envisaged that whenever special laws made reference to the administrative sections or to heading "Adjudication of administrative disputes" of the Civil Procedure Code or to the competent court, the references were deemed to have been made to the law on administrative court and in the competent administrative court, according to this law.

Meanwhile, according to Decree of the President No. 6218, dated 07.07.2009 criminal sections are created for juvenile justice at the district courts.

Substantial competences of the judicial district courts are provided for by Article 41 of the Civil Procedure Code and Article 74 of the Criminal Procedure Code, which specify the creation of criminal sections for juvenile justice in 7 Judicial District Court.

- **Statistical data**

Detailed data for this column are reflected in Appendix 3 of this chapter: "Appearance in the form of graphs / tables of statistical data on cases decided by district courts, point 3.1".

1.3.2 Tirana District Court

Before the changes made by Law no. 9877, datë18.02.2008 "On the organization of the judicial power in the Republic of Albania", as amended, this Court had a special status because of the large number of judges, the large number of cases and diversity of cases adjudicated there. For this reason, it was headed by a chairman, who was assisted by two Vice-Chairmen. The court currently has a staff of 76 judges (70 appointed judges), who are divided into two chambers: Criminal Chamber with 18 judges, and Civil Chamber with 58 judges (52 de facto).

The Criminal Chamber considers also the criminal cases of juveniles who commit crimes in some other districts, according to the Decree of the President of the Republic Nr.6201, dated 06.08.2009, which has repealed Decree no. 5350, dated 06.11.2007 "On the establishment of judicial districts, the allocation of territorial jurisdiction and the center of their activity".

De facto, each of the chambers acts as a court in itself, because each of them has separated support staff⁹⁴, but both are simultaneously headed by a chairman and a chancellor. Currently, Tirana Court considers more than half of the total number of cases at a national.

As for what has been mentioned above, difficulties have been identified in managing the situation in these two courts and a quick reduction in handling problems encountered in them. Consequently, this reflects the decline in the quality and velocity in delivering services to the public.

- **Statistical data**

More detailed data for this column are reflected in Appendix 3 of this chapter: "Appearance in the form of graphs / tables of statistical data on cases tried in courts of first instance", paragraph 3.2".

⁹⁴ The chief secretary, secretary, employees of support services and security /IT

1.3.3 The Serious Crimes Court of First Instance

- *The number, geographical distribution and substantial competency*

According to the Decree of the President of the Republic no. 3993, dated 29.10.2003 "On the determination of the territorial jurisdiction of the center of activity and the number of judges of the Court of First Instance and the Court of Appeal for Serious Crimes", the First Instance Court for Serious Crimes has under its territorial jurisdiction the whole territory of the Republic of Albania and its headquarters in Tirana.

From the beginning of its operation, as defined in Article 75/a of the Criminal Procedure Code, based on the law no.8813, dated 13.06.2002 "On some additions and amendments to the Criminal Procedure Code ", the subject of activity of this court would be the crime of creation of an armed gang, a criminal organization, the crimes committed by them, as well as any crime punishable by a minimum of no less than 15 years in prison, as well as crimes under Articles 140 and 284a of the Criminal Code, including even the cases when these crimes are committed by subjects that are under the jurisdiction of military courts and by minors. By law no. 9276, dated 16.09.2004 "On some amendments to Law no. 7905, dt.21.03.1995 Criminal Procedure Code of the Republic of Albania, as amended ", there were changes made in the jurisdiction of the Serious Crimes Courts.⁹⁵

The Criminal Procedure Code has recently undergone changes by Law no. 21/2014, which extends the substantial competences of this court, anticipating in the scope of its activities the adjudication of offenses under Articles 245,

⁹⁵ According to these changes Serious Crimes Courts will adjudicate crimes under Articles 73, 74, 75, 79, letters c f d, 109, 109b, 110a, 111, 114b, 128B, 219, 220, 221, 230, 230a , 230b, 231, 232, 233, 234, 234a, 234b, 278a, 282a, 283a, 284a, 287a, 333, 333a and 334 of the Criminal Code, including the cases when they are committed by subjects that are under the jurisdiction of the military courts and by minors.

260, 319, 319 / d of the Criminal Code. These changes were made in order to give a new impact in the fight against corruption, so that high state officials, judges, prosecutors, etc. face justice in cases of committing criminal offences based on corruption.

The circle of persons (high state functionaries) that remain under the provisions of Articles 245 and 260 that are proposed to be under the jurisdiction of the Serious Crimes Court consists of deputy ministers, prefects, deputy prefects, leaders of independent public institutions and members of regulatory agencies; officials elected and appointed by the Assembly, such as the Commissioner for Data Protection, the Commissioner for Protection against Discrimination, Chairman of the Central Election Commission, the Chairman of the Financial Supervision Authority, the Inspector General of the High Inspectorate of Declaration and Audit of Assets; Ambassadors, Head of the Public Procurement Commission, Chairman of the Public Procurement Agency, Attorney General of the State, directors of Institutions / Agencies of dependency, Director General of Prisons, Director of the Center of Official Publications, Governor of the Bank of Albania, Deputy and members of its Supervisory Board, the directors of public institutions under the central institutions at the regional level.

Also under the jurisdiction of the Serious Crimes Court is the review of applications submitted for seizure and confiscation of property under the law no. 10192 dated 03.12.2009 "On the prevention and fight against organized crime and trafficking through preventive measures against property". Even this law underwent parallel changes with the Law no 24.2014, which expanded the scope of its activity with the group of criminal offences added to the jurisdiction of the Serious Crimes Court, by creating the opportunity, inter alia, to place under seizure and confiscation the assets and proceeds derived from corruption offenses.

The serious crimes court has a judicial body of 16 judges and adjudicate with a panel consisting of five judges.

- ***Statistical data***

Detailed data for this column are reflected in Appendix 3 of this chapter: "Appearance in the form of graphs / tables of statistical data on cases that were tried in courts of first instance ', point 3.3'.

1.3.4 The Administrative Court of First Instance

- *The number, geographic distribution and substantial competency*

As mentioned in the section of the Administrative Court of Appeal, based on Law no. 49/2012 "*On the organization and functioning of administrative courts and adjudication of administrative disputes*", as amended, are set up and operate administrative courts of first instance. Currently in Albania operate six (6) administrative courts of first instance in Durrës, Gjirokastra, Shkodra, Tirana and Vlora.

The Administrative Court has jurisdiction to review disputes related to administrative actions, labor relations governed by the Labour Code, in which the employer is a public body; as well as normative legal acts of central bodies or organs of local government units. The purpose of the Administrative Court is to guarantee effective protection of individual rights and legitimate interests of the people through a fair trial and through administrative courts it is aimed at creating the conditions for an effective judicial review within the deadlines.

According to the decree no. 7818/2012 President of the Republic, the total number of judges in both instances of administrative courts is 43 judges, of whom 36 judges are assigned to the Administrative Courts of First Instance.

- **Statistical data**⁹⁶

Referring to statistics, it is seen a very high volume of cases registered in the administrative courts. Specifically, during 2014 there are 55 479 cases recorded, of which 36 558 cases in the first instance. During the same period, 19 600 administrative decisions were given in the courts of first instance. These data show that the average number of registered cases per 1 judge at first instance was 1261 cases (calculated for the 29 judges who currently exercise their activity in the administrative courts) or 1016 cases (calculated with 36 judges, according to the number specified by decree the President). Also, the number of decisions made by one judge at first instance is 676 decisions. In relation to the standards prescribed in determining the number of 246 cases per judges, it is concluded that there is a very significant increase in the caseload ratio 1: 5 for the first instance administrative judge. From the statistics, it is noted that in the first instance, the court with the highest number of registered cases is the Administrative Court of First Instance in Tirana with 18417 cases, followed by: the Administrative Court of First Instance of Durres with the 4173 cases; Administrative Court of First Instance of Shkodra with 3720 cases; Administrative Court of First Instance of Gjirokastra with 3494 cases; Administrative Court of First Instance of Korca and Administrative Court of First Instance of Vlora with 3720 cases.

2. Good Governance of the Judiciary

Good governance of the judiciary is essential to its operation, in order that it provides the results for which it was built, in terms of ensuring an independent judiciary, which provides quality and efficient services within a reasonable time and at a reasonable cost .

⁹⁶ The data presented in this section are taken from the evaluation study on the workload of the Administrative Court of Appeal, the High Council of Justice, approved by decision no. 23, dated 04.03.2015 of the HCJ.

The main institutions involved in the good governance of the judiciary are the High Council of Justice, the National Judicial Conference and Minister of Justice.

2.1 The High Council of Justice: composition, function and powers

The High Council of Justice (HCJ) was created in 1992, following changes in the law no. 7491, dated 29.04.1991 "On the main constitutional provisions", which brought provisions for the creation of an authority responsible for the justice system with power over the appointment, transfer and disciplinary proceedings against judges and prosecutors. From 1992 to 1998, the High Council of Justice functioned only based on constitutional provisions and internal regulations. Currently, Article 147 of the Constitution and Law. 8417, dated 21.10.1998, as amended, contain relevant provisions for the HCJ.

- *Regarding the selection of members of the High Council of Justice*

Law Nr. 8235, dated 28.08.1997 "On the procedure for electing members of the High Council of Justice" provides the procedure for electing members of the High Council of Justice and the creation of the structure of the High Council of Justice Inspectorate.

Law Nr. 8811, dated 17.05.2001 "On the organization and functioning of the High Council of Justice", as amended, contains provisions regarding the composition, organization and operation of this constitutional body. Changes in the law in 2005, brought changes on issues such as: composition of the HCJ with full time members to the Council, except members, ex officio (because of duty), changing of criteria for selection of candidates for members elected by the Assembly, who should not come from the judiciary. The Constitutional Court with Decision no. 14, dated 22.05.2006, repealed provisions which predicted full-time membership in the HCJ. However, through this decision, the CC did not change the provision that excluded judges to be elected as members of the High Council of Justice by the Assembly.

The composition of the HCJ is regulated by the Constitution. Article 147 point 1 of the Constitution provides that the High Council of Justice consists of the President of the Republic, Chairman of the High Court, Minister of Justice, three members elected by the Assembly and nine judges of all levels elected by the National Judicial Conference. Elected members hold this position for five years, without the right to immediate re-election. The President of the Republic, based on Article 147 point 2 of the Constitution is the Chairman of the High Council of Justice. Article 147 point 3 provides that "The High Council of Justice, by proposal of the President, elects a vice-chairman from its ranks. The vice chairman of the HCJ organizes the activity of the HCJ and chairs its meetings in the absence of the President of the Republic ". As for the duties of the HCJ, point 4 of this Article simply refers to decisions "for the transfer of judges as well as their disciplinary liability.

According to Article 2 of the Law on the HCJ, the HCJ makes proposals for the appointment, decides on the dismissal, transfer, evaluation and disciplinary liability of judges and chairmen of the courts of first instance and the courts of appeal, and performs other duties determined by law

Article 12, point 1 of the Law on the High Council of Justice specifies that the vice-chairman is elected from among the members elected by the Assembly. The Vice-Chairman is the only full-time employee of the members. He / she takes care of normal activities, organizes and directs the activities of the Inspectorate and the administration of the High Council of Justice. He / she follows the actions of the Inspectorate to verify the complaints, organize meetings, replaces chairman in the absence and fulfills other functions.

According to Article 17 of the Law on the HCJ, an inspectorate is attached to the High Council of Justice, which is organized and operates according to the rules that must be approved by the HCJ. Its activity is directed by the Vice-Chairman, while the Chief Inspector is responsible for the daily work activities.

The necessary services for the functioning of the High Council of Justice are carried out by the administration, which is governed by internal rules adopted by the HCJ.

There is not a coherent system of discipline, such as the creation of a disciplinary *tribunal* (court) for the members of the HCJ in their capacity as members, although the mechanisms of accountability are necessary elements for such a position. There are no clear rules for the accountability of the HCJ as a collegial body.

Therefore, recent changes in the law on the HCJ by Law no. 101/2014 aimed at forecasting more instruments of accountability of the members and the body. Article 4 of the Law no. 101/2014 added Article 7/1 in the organic law of the HCJ according to which a member of the High Council of Justice is dismissed by the HCJ or the Assembly in event of violation of the law. The Constitutional Court has decided on 16.12.2014 to repeal Article 4 of the law no.1/2014 "On some amendments to Law no. 8811, dated 17.5.2001 "On the organization and functioning of the High Council of Justice"."As a need to increase accountability for chief inspector and inspectors, not less than once every 2 years is made the professional and ethical evaluation according to criteria and procedures established by the High Council of Justice (Article 14 as amended by Law no. 101/2014). Also clear rules are sets for filing periodic public reports, which transparently show the principles on which the HCJ performs its functions and activities.

Despite of the amendments in the Law of HCJ, it is noted that HCJ has a limited role in the important fields of the good governance of the judiciary poker.

- *Collegiality and decision-making*

The High Council of Justice operates with members who are mainly serving judges and the President of the Republic and the Minister of Justice. Consequently, a total commitment to the HCJ activities is difficult in practice.

The HCJ members are simply members "to vote" they do not have the entire file available nor the draft decision and are not charged with the preparation of the decision.

The HJC, by law, must meet at least once a month, but despite this its collection frequency is somewhat lower and internal practices allow the deputy chairman to sign on behalf of the HCJ acts whose content is discussed without a concrete draft in plenary session.

The process of drafting the decisions of the High Council of Justice does not cover all its members. Moreover, it seems to be a practice that decisions are taken out of plenary sessions or in circulars, in which there are not involved all members. Commissions lacking as internal structures for the review and decision making about certain cases.

- *Vice Chairman and vacancies*

Currently in the HCJ the position of the deputy chairman is vacant. In 2014 the Assembly sacked two members chosen by the HCJ, among them the deputy chairman. Although the Assembly has elected two new members, the deputy chairman has not yet been elected. Also with decision no.16/2015, the CC rejected the request of the President of the Republic for the repeal of article 7 of Law no. 1, dated 07.31.2014 that has changed the organic law of the HCJ.⁹⁷

- *The HCJ Committees*

The law on the HCJ has shortcomings in the organization of work, namely the lack of commissions / committees related to the main functions of the HCJ, ie. a disciplinary committee, an appointments committee, a committee of evaluation and others, although in practice, the HCJ provides its functionality by creating working groups. These working groups have no decision-making powers anyway. A body with thirteen members seem to be great to develop a procedure for preparing decisions and to discuss the draft decisions

⁹⁷ According to Article 7, "The High Council of Justice on the proposal of the President elects from among the members elected by the Assembly a deputy".

- *The status and powers of the Inspectorate*

Inspectorate of HCJ is composed from the Chief Inspector and Inspectors. The rules on the organization and functioning and the number of inspectors is set by the HCJ. Inspektorati i Këshillit të Lartë të Drejtësisë përbëhet nga kryeinspektori dhe inspektorët. The Chief Inspector and Inspectors are appointed and removed by the HCJ upon the proposal of the vice chairman. The activity of the Inspectorate is led from the Vice Chairman of the HCJ.

Currently the HCJ Inspectorate operates in two sections; the Section on Inspection and Verification of Claims and the Section on Professional and Ethical Assessment. So, the Inspectorate does not only deal with complaints, verification of complaints and disciplinary issues, but it is also responsible for drafting reports on professional evaluation of judges. The existence of this two functions does not serve to the efficiency of the Inspectorate and at the same time is not in compliance with the international standards.

Clear and comprehensive provisions on the status of inspectors are lacking in the current legal framework. Under Article 15 (1) of the Law on the HCJ, the inspectors are appointed to this office for a period of five years, with the right to re-appointment. Candidatures of the inspectors are selected after the public announcement, among the judges who fulfil the criteria for being appointed judges in courts of appeal, and in their absence among the lawyers who have served as judges not less than 5 years.

The period of exercising the function of the inspector is recognized as a period of seniority in work as a judge for the purposes of the requirements of professional career. Judges who serve as inspectors of the Inspectorate of the HCJ are re-appointed as a judge at their request "without competition". The Law on Judicial Power, provides that the judges who serves in other institutions at the end of this period they return to their former place of work. These provisions of the law are not clear as regards the fact if to act as an inspector should be considered or no as a promotion.

On the other hand, clear mechanisms of accountability are not provided by law. Article 14 (6) of the Law on the HCJ, which was involved recently with the amendments of 2014, requires that the chief inspector and inspectors undergo at least once every two years a professional and ethical evaluation, according to the criteria and procedures established by the HCJ. Currently, the HCJ is drafting a sublegal act to establish an evaluation scheme for inspectors. However, the assessment is not a proper mechanism of accountability. The law lacks clear predictions on the disciplinary responsibility of inspectors.

There is not an appropriate established mechanism of traceability which shows a consolidated overview of the number of complaints, handling of these complaints and results.

- *Transparency and confidentiality*

Recent amendments to the Law on the HCJ were a step forward in terms of transparency. Article 27 (2) of the Law on the HCJ already requires that the date and place of the meeting, members who participated, agenda, issues discussed, participants' discussions, proposals made, decisions taken, the form, the result and the way voting by each member be recorded in the minutes. The Minutes of the meeting and the decisions taken should be transcribed within five days after the end of the meeting and published immediately on the official website of the HCJ. The transcribed minutes and the decisions are signed by the Vice Chairman.

Legal provisions do not provide for restrictions on the publication of the minutes. This can become problematic with respect to the right to privacy and data protection, especially when it comes to discussions on the evaluation of professional performance of judges, appointments and disciplinary matters.

Other clear obligations are lacking to justify decisions, providing information and reporting on the function of the body to provide accurate perception of the public on the administration of justice

- *Impartiality*

Article 25 of the Law on the High Council of Justice determines that the members of the High Council of Justice, "*who are subject to legal restrictions do not participate in the discussion and voting on the respective issue of the agenda. In cases of conflict of interest, the members should abstain from every action.*" Despite the usefulness of this forecast, it appears that it is necessary to add some specific procedural provisions that regulate the way how to proceed in such cases, for example, by specifying the procedures for the identification and registration of private interests of members of the HCJ, the powers of the HCJ to handle such matters, the procedures for appealing the decisions of the HCJ in such cases etc.

- *Legal Remedies*

An important aspect of the principle of the rule of law is a coherent and effective regime of legal remedies against all kinds of decisions of the HCJ with effect on third parties. Even with regard to this aspect, the legal framework appears to leave room for improvement. The HCJ is a collegial body and it is questionable whether it is appropriate to have only a single judge in the administrative court as an appeal body against the decisions of a collegial body.

- *Professional and efficient administration*

According to Article 17 of the Law on the HCJ "Necessary services for the functioning of the High Council of Justice are carried out by its administration", where "organization, structure and number of employees of the High Council of Justice are determined by the High Council of Justice ". Also, 'Internal Rules of the administration of the High Council of Justice are approved by the High Council of Justice, by proposal of the Vice Chairman".

2.2. National Judicial Conference, function and powers

The National Judicial Conference (NJC) is an institution contemplated as such for the first time by the Constitution of 1998. The main decision-making power

of the NJC is the election of the nine members of the High Council of Justice, from the entirety of judges to all levels.⁹⁸

Since the adoption of the Constitution of the Republic of Albania in 1998 and until 2005, the organization and functioning of the National Judicial Conference has been arranged through internal norms adopted by its Statute.

The first Law on the National Judicial Conference is approved by the Assembly of the Republic of Albania, on 12.05.2005. Under this law, the National Judicial Conference of Albania was conceived as the representative body of judges at all levels of the Republic of Albania, part of which were members of the High Court, because of duty, chairmen of the courts of first instance, chairmen of the courts of appeal and a certain number of judges, chosen by the Regional Judicial Conferences.

The Constitutional Court by the Decision no. 25, dated 05.12.2008, abolished as incompatible with the Constitution of the Republic of Albania, the law nr.9399, dated 12.05.2005 "On the organization and functioning of the National Judicial Conference". The court held that the *ipso jure* determination and position of the management part of the judiciary in the National Judicial Conference, under the law⁹⁹, creates a double standard and puts judges not in the same position, in terms of exercising the constitutional right and duty for the selection of their representatives in the High Council of Justice.

Currently, the organization and functioning of the National Judicial Conference is regulated by Law no. 77/2012. In accordance with the law, the National Judicial Conference is not simply its annual meeting, or only the fulfillment of

⁹⁸ Article 147, point 1 of the Constitution.

⁹⁹ Articles 3 and 4 of the law, subject of review, provide that the members of the High Court, the chairmen of the courts of first instance and the courts of appellate are members, because of the duty, of the National Judicial Conference and they do not undergo the process of voting and selection by all the judges, while the Chairman of the High Court is the Chairman of the National Judicial Conference and chairs its Executive.

the important constitutional obligation for choosing the 9 members of the High Council of Justice from among the judiciary. It is an institution with constant activity to the purpose of enhancement and consolidation of standards of justice.

The NJC protects and promotes judicial independence, discusses the main directions of activity of the courts, presents statements and recommendations to the appropriate state authorities for a fair and efficient administration of the courts, make recommendations for improving the legal and institutional framework of the judicial power, etc. The Law on the Judicial Conference considers judges as active participants in the process of legal, institutional, organizational, structural and administrative reform of the judiciary and administration in its service. This law imposes on the executive and the legislature to inform the judiciary and get its thoughts on programs that affect the activity of the courts, in particular for new draft-laws that regulate the activity of the judiciary.

A permanent structure of the Conference is the Ethics, Verification of Mandates and Continuous Professional Development Committee. It monitors compliance by the judges of the Code of Judicial Ethics and may make recommendations for initial and continuous professional development programs of judges in the School of Magistrates. The judges who are members of the School Board are also members of this Committee.

2.3. *The Minister of Justice, function and powers*

Law nr. 8678, dated 14.05.2001 "On the organization and functioning of the Ministry of Justice" (as amended) provides that the Minister of Justice has the competence to and runs under his responsibility all areas of activity of the Ministry of Justice. In the field of justice, the responsibilities of the Minister of Justice in the quality of the highest office-holder of the institution he / she runs, lie in these directions: i) Follows and is responsible for overall implementation of the state policy in the field of justice; ii) Designs drafts of legal and sublegal acts in the field of justice; iii) Ensures the organization and operation of services related to the judicial system and justice, in general; iv) Assists and

supervises the activities of judicial administration; v) Perform inspections and takes disciplinary measures against judges of the courts of first instance and the courts of appeal in compliance with the law; vi) controls the Prosecution and reports to the President of the Republic and the Assembly. Supports and participates, according to the law, in the accomplishment of the functions of the High Council of Justice viii) Assists and supports activities for the professional development and specialization of judges, prosecutors, lawyers, notaries and public administration lawyers ix) Assists and supports scientific activities in the field of justice and propagation of legal education.

Based on Article 147, point 1 of the Constitution, the Minister of Justice is one of three *ex-officio* members (because of duty) of the High Council of Justice

The Law on organization of the judicial power, in its Article 34, provides that "*The right to launch disciplinary proceedings against a judge of the High Council of Justice lies with the Minister of Justice*". According to the Law on the organization and functioning of the High Council of Justice, the Minister of Justice carries out inspections of the courts of first instance and the courts of appeal for the organization and the work of the court, judicial administration and as well as realizes and decides on disciplinary proceedings against the judges of these courts. The Minister of Justice carries out inspections according to special thematic or territorial programs, drafted *ex officio* or mainly on implementation of the tasks assigned by the High Council of Justice, following the process of verification of complaints of citizens and legal entities, and according to the data, on which he is informed primarily or through the Inspectorate of the High Council of Justice.

It is noted that there are conceptual and legal inaccuracies on the role of Minister of Justice in the area of good governance of the judiciary, particularly with regard to case management system, public and media relations, quality management system and safety system of the court. These powers, by selecting different models are not well-defined to a sole body (the Ministry of Justice or High Council of Justice), which has led to further fragmentation in the area of good governance powers of the judiciary.

The relationship between the High Council of Justice and the Ministry of Justice has repeatedly drawn the attention of all actors operating in the justice system and especially in the judicial branch. Especially the inspections of the Ministry of Justice are one of the most problematic manifestations of this relationship. The relationship between these two institutions has been object of constitutional control with regard to the aspect of good governance. The Constitutional Court by decision No. 11, dated 27.05.2004, has rejected the request of the United Colleges of the High Court arguing: "*Comparing the disputed provisions with the concepts of the Constitution, the Constitutional Court concludes that these provisions are not about the control over decision-making (on the way how to resolve cases, administration and evaluation of evidence), but they are about inspections in relation to the administration of justice, and judicial services.*"

Another contested aspect of the relationship between the HCJ and the MoJ is the exclusive right of the Minister to initiate, at the end of the inspection or examination of complaints, disciplinary proceedings against the judge. In its decision no. 11, dated 27.05.2004, the CC has concluded that this solution of law does not constitute a violation to the independence of the judiciary, by stating that: "*The Minister of Justice is a member of the High Council of Justice, who simply sets out the case but has no right to vote. ... The fact that the Minister of Justice has the right to initiate disciplinary proceedings, but has no right to vote in the High Council of Justice, and the right of decision-making lies with the latter which separates the function of the "prosecution" and creates greater opportunities for the High Council of Justice to maintain impartiality in decision making, such an important principle to a fair legal process*

Although it has rejected the request of the United Colleges of the High Court, the Constitutional Court itself in its decision stated that: "*The existence of two inspectorates which seem to overlap each other, the determination and clear definition of the terms inspection, control and verification, the avoidance of overlap of competences between the two inspectorates and two institutions (the Ministry of Justice and the HJC), relating to the administration of justice and services and the setting of clear boundaries on the control of courts and judges*

are some of the issues that under the overall framework of improvement of legislation need to be studied and reviewed by relevant authorities.”

The role of the Inspectorate of the Ministry of Justice is problematic and not in accordance with international recommendations, with the constitutional principles and the efficiency of the role of the Ministry of Justice

Another important power of the MoJ in relation to the judiciary is leadership and control over the activities of the judicial administration. Law no. 109/2013, dated 1.04.2013 "On judicial administration in the Republic of Albania" is repealed by the decision no. 10, dated 6.03.2014 of the Constitutional Court, where among others, the powers of the Minister of Justice in relation to the judiciary were assessed as problematic because of the premises for improper influence on the judiciary.

1. Status of the Judge

1.1 Incompatibilities

Under the Albanian law, being a judge is incompatible with any public, private, or political activity, or any other activity except for teaching at a university for up to six hours a week¹⁰⁰. Judges may not be members of political parties to engage in political activities, participate directly or indirectly in the administration or management of companies or act as experts or arbitrators. In addition, the Law on Conflict of Interest¹⁰¹ prohibits judges of the Supreme Court and judges to act as members of the High Council of Justice possess ownership share in profit organizations. This prohibition applies to their spouses, adult children, parents-in-law and mother in law.

¹⁰⁰ The engagement of judges in teaching is regulated in detail in the HCJ Decision No. 287/2 dated 19 July 2011 on Academic Activity of Judges”.

¹⁰¹ The 2005 Law on Prevention of Conflict of Interest in exercising public functions, as amended.

Law no. 44/2014 dated 24.04.2014 has brought several changes with regard of strengthening of the provisions on conflict of interest of judges, prosecutors and persons related to them. Firstly, in the circle of officials to whom apply prohibitions of entering into contracts with a public institution as a party, are included the judges and prosecutors of each level¹⁰². Secondly, it is extended the circle of people connected to the official, to whom are applied the same restrictions as to the official¹⁰³.

As abovementioned, it results that current provisions regarding specific incompatibilities of the function of judge and restrictions on them to carry out certain public and private activities are very general. The law does not provide explicitly, clear and sufficient cases related to restricted activities incompatible with the function of judge.

The law does not provide the necessary adjustments and sufficient regarding the actions, procedures and powers to be exercised by the state structures in case of verification of the incompatibilities with the function judge.

Legislation also lacks the mechanisms of coordination of activities and with regard of clarifying the powers of the High Council of Justice on the incompatibilities of the judge and, at the other hand with regard to other structures such HIDAA, charged by law to verify the incompatibilities, prohibitions and conflicts of interest of public officials etc.

a. Appointment

i. The High Court

Under Article 136 of the Constitution the judges of the High Court are appointed to office for a period of 9 years, by decree of the President of the

¹⁰² Article 21.1 of the Law on Prevention of Conflict of Interest in exercising public functions”.

¹⁰³ Article 24.1 of the Law on Prevention of Conflict of Interest in exercising public”.

Republic, with the consent of the Assembly, with no right to reappointment. They are elected from among the judges with professional experience of not less than 13 years, or from the ranks of prominent lawyers with professional experience of not less than 15 years.

Legal provisions for the appointment and the criteria to be met by members of the High Court have been the subject of constitutional adjudication by the Constitutional Court. In decision no. 2/2005, the Constitutional Court examines the relationship President-Parliament in the process of appointing members of the High Court, arguing: "*... the participation of Parliament in this process is aimed at balancing the competence of the President in the appointment of judges, and this comes in line with the principle of separation and balancing of powers provided for in Article 7 of the Constitution. [...] The Constitutional Court concludes that under Articles 125/1 and 136/1, the Constitution provides granting of a real consent by Parliament. This means that the involvement of Parliament in this process has to do not only with consideration of legal regularity, but the merit of the choice made by the President of Republic..*"

After changes to the law on the HC in 151/2013, Article 4/1 provides that the President of the Republic, together with the heads of parliamentary groups in the Assembly cooperates holding consultations to determine the specific criteria, based on the list of applicants to determine the concrete compliance with the constitutional requirement for high qualification to ensure qualitative and appropriate composition of the High Court. In February 2015 entered into force an amendment in the law on the HC. It provides for the creation of a consultative body, which should examine CVs of the candidates, propose their rankings on the basis of meeting the criteria and prepare a report together with the obligation to publish this report. Until then, neither the applications nor the reasons for their ranking were made transparent. This report of the Council for appointments which is accessible to the public should be a reference point for the President and the Assembly. Thus, based on this new legal basis, both parties will have to justify their decision, if they come in different estimates of CVs of the candidates

Although this amendment does not represent a conflict resolution mechanism in cases where consensus is not reached between the President and the Assembly - which would require a constitutional amendment - it is prone to objectify the procedure and increase transparency.

With the completion of the mandate, under the conditions provided for in Article 136 paragraph 3 of the Constitution, a judge of the High Court, at its request, is appointed as a judge at the Court of Appeal. However, in practice have been identified cases where former judges of the High Court after the termination of their mandate have not appointed to the Court of Appeal, although they have made a request according to the Organic Law of HC.

ii. The Court of Appeal

The judge of the Court of Appeal is appointed by the President with the proposal of the High Council of Justice on the basis of competition with CVs, between candidates with a minimum of 7 years of work seniority in the court of first instance. The appointment of the judges of the court of appeal is provided for by Articles 28-30 of Law no. 9448 dt. 12.05.2005 by the same procedure as for the judges of first instance.

Winning candidates are proposed for appointment by the HCJ to the President of the Republic, being subject to the control of their integrity by the Inspectorate of the HCJ and the Inspectorate of the Ministry of Justice and subject of control by the High Inspectorate for the Declaration and Audit of Assets and the Conflict of Interest about their income and property declaration.

Law no. 49/2012 "On the organization and functioning of administrative courts and administrative disputes", as amended, provides for specific rules on the criteria and procedure of appointment of judges of the Administrative Court of Appeal, who should have not less than 9 years experience as judges. The procedure of selection of candidates for judges in the Administrative Court of Appeal is organized in two stages. In the first stage, a list of candidates who meet the criteria is provided to the School of Magistrates to undergo a written selection test organized by the latter. In the second stage, candidates who

successfully pass the selection test, are selected by the High Council of Justice, taking into account the results of the selection test.

While the mandate of a judge of the Appeal and the Administrative Appeals Tribunal is not limited in time, Law Nr. 9110/2013 "On the organization and functioning of courts for serious crimes" states that the mandate of the judges of the Serious Crimes Tribunal (in the first instance and appeal) is 9 years, with the right to reappointment.

iii. First Instance Court

The appointment of judges is an important process of having an independent judiciary, worthy and with integrity. The Constitution provides in paragraph 4 of Article 136 that: "*Judges shall be appointed by the President of the Republic upon the proposal of the High Council of Justice*"

Appointment of judges finds a detailed regulation in chapter IV of Law no. 9448 dt. 12.05.2005 "On the organization and functioning of the High Council of Justice. According to Article 2 (a) of the Law on the HCJ, the proposals for appointment of the judges of the courts of first instance are made by the HCJ. In accordance with Article 28 of the Law on the HCJ, the appointment of the judges of first instance is carried out by a procedure initiated by the Minister of Justice, who recourses to the High Council of Justice to publicly announce the vacancies for judges, not later than one month before the meeting. The announcement should respect all the criteria for being public and accessible

The winning candidates are proposed for appointment to the President of the Republic by the HCJ. These candidates will be subject of control of their integrity, the control which is carried out by the Inspectorate of the HCJ and the Inspectorate of the Ministry of Justice. To this integrity control procedure is

also added the control of the declaration of assets by the High Inspectorate for the Declaration and Audit of Assets.¹⁰⁴

It should be noted that, although the Law on the HCJ provides in Article 26, paragraph 2, letter "b" that the voting for an appointment is accepted even when the votes are divided equally, this provision has not been respected until today by the HCJ, who have proposed to the President for appointment only candidates who have received a majority of the votes of the members present at the meeting.¹⁰⁵

As regards the control made to the candidate for his integrity, it is discussed whether it is necessary to be regulated by law what will constitute the object of verification and what resources will be used for verification. The same goes for the right of the candidate to be informed and to challenge the information collected by the HCJ for the verification of the data on his integrity.

Article 11 of the Law on Judicial Power sets the criteria for appointment as a judge. In particular, all applicants must, among other things, have completed the School of Magistrates, although 10% of the total number of judges may be appointed from among persons who have previously worked as judges, but did not attend the School Magistrates.

Article 12 (2) of the Law on Judicial Power provides additional criteria to "be appointed" as a judge of the serious crimes court, which among other things require work experience of not less than 5 years in the first instance court. The criteria for appointment as a judge of the Administrative Court are provided for in Article 5 (2) and (3) of the Law on Administrative Court, where in particular the candidates must have at least 5 years of experience as a judge.

¹⁰⁴ Fourth Evaluation Round, GRECO Evaluation Report Albania, published 27 June 2014, pg. 22.

¹⁰⁵ Law No. 9448 dated 12.05.2005 "On the organization and functioning of the High Council of Justice", article 26, paragraph 1.

It should be noted that the law does not clearly distinguish between the appointment, transfer and promotion. Generally, appointment is the act of appointment of a judge, who at the time of appointment does not act as a judge, while the transfer and promotion are moves of the incumbent judge within the system. This differentiation is considered crucial because Article 137 (3) of the Constitution requires the involvement of the President of the Republic only for appointments made on the proposal of the High Council of Justice, and not for transfers and promotions. In addition, for incumbent judges the regime of assessment is applicable and a system based on merit would base the decision on career development not only, but primarily on the results of the evaluation.

The appointment of the judges of the administrative court and judges of the ordinary courts of first instance is the competence of the HCJ, but in this case working closely with the School of Magistrates, which will host the qualifying test. The difference of appointing administrative judges consists in the fact that the administrative court of first instance is considered as a career court for which it can be competed with a qualifying test. The HCJ drafts the final list for each degree of adjudication and forwards it to the School of Magistrates to continue with the testing process.¹⁰⁶

In practice have been noted problematic with regard to the appointment of administrative judges, where the recruitment process has not resulted efficient and stimulating. Indicator of this finding is the fact that nine vacancies for administrative judges have not yet been filled in.

As above, we note that the criteria and procedures for the appointment of judges are not fully provided for by law in accordance with the requirements of objectivity, meritocracy, fair process and transparency.

¹⁰⁶ Enclosure for organization of the qualifying test for the appointment of judges of first instance administrative and appeal courts [\(http://www.kld.al/korniza-ligjore/ligj-nr-49-2012-p%C3%ABr-organizimin-dhe-funksionimin-e-gjykatave-administrative-dhe-gjykimin-e-mosmarr%C3%ABveshjeve-administrative-Shtojca-\(nenet-1-7\)\)](http://www.kld.al/korniza-ligjore/ligj-nr-49-2012-p%C3%ABr-organizimin-dhe-funksionimin-e-gjykatave-administrative-dhe-gjykimin-e-mosmarr%C3%ABveshjeve-administrative-Shtojca-(nenet-1-7)) (accessed 20.2.2015)

Also deficiencies are being noticed in legislation and institutional mechanisms regarding the criteria and testing procedures and the necessary verification to be applied for admission to the judicial career and appointment as a judge of those who are not subject to exceptionally initial training at the School of Magistrates both in terms of professional knowledge, and in terms of personality and integrity qualities to serve the public, and especially to exercise the constitutional function of the judge.

The law does not provide clear, sufficient, objective and transparent criteria and procedures for an effective job vacancies competition for judges to candidates from the School of Magistrates and other candidates. An effective verification and complaint mechanism against the decisions of the High Council of Justice for the appointment of judges is missing.

b. Assessment of professional and ethical performance

i. Judges of the High Court

The current legal framework does not provide for any adjustment for assessing the performance of members of the High Court. Although as members of the High Court are appointed the most prominent judges and jurists of the country, a system of performance evaluation in the actual Albanian conditions merit to be considered critically.

Other judges

The responsibility for the evaluation of the judges of first instance and appeal courts belongs to the High Council of Justice.¹⁰⁷ The HCJ regulates details of the evaluation (criteria in particular). The HCJ itself observes the process and reviews complaints of judges on the evaluation results. The Judges in the courts of first instance and courts of appeal must be evaluated at least once every three years.

The evaluation process consists of three stages: firstly the judge is assessed by the chairman of the court where the judge serves. This is usually followed by a self-assessment of the judge. In the second phase, the Inspectorate of the HCJ prepares a report with findings on the performance of the judge and proposes the score / rating scores for the judge. Then, the HCJ decides on the assessment.¹⁰⁸ The result / possible outcomes of the evaluation process include "very good", "good", "acceptable".¹⁰⁹

The purpose of the evaluation system is to:

- a) identify the professional qualifications of judges considering career options;
- b) identify judges with poor and good results;
- c) identify problems in courts where judges serve; and
- d) identify training needs.

¹⁰⁷ Article 1/dh, Law on the HCJ.

¹⁰⁸ This process and its phases are envisaged in the HCJ decision No. 261/2 dated 14.04.2010 "On the system of evaluation of judges", Article 2/3.

¹⁰⁹ A judge who is considered "insufficient" may be removed from office. On the other hand, a judge who is assessed 'acceptable' is re-evaluated within the last year of assessment.

Evaluation criteria of the judges are:

- a) professional and organizational skills.¹¹⁰;
- b) technical skills.¹¹¹;
- c) human / ethical/skills.¹¹².

As above, it is noted that the law does not expressly, clearly and sufficiently provide criteria, procedures and competencies for professional evaluation of judges. With some exceptions, these matters are generally dealt with by by-laws issued by the High Council of Justice, which does not meet the standard of provision of law of issues relating to the status of a judge.

The law does not provide any specific mechanisms in order to give the possibility to the judge estimated as "satisfactory" or even "incompetent" to rehabilitate through a mandatory certain period attendance of special training programs finalized with a verification test of his/her capacity to pursue professional judicial career.

The law does not explicitly provide, through adequate and clear rules, even that the decisions of the High Council of Justice on the professional evaluation of a judge should be subject to administrative verification, as well as the right of an tested judge to appeal in Court the decisions of the above-mentioned Council.

¹¹⁰ Professional and organizational skills based on the number of judgments turned down or remaining in power by the higher courts (quality), the number of cases dealt by the judge during the evaluation period (amount) , the number of cases the judge has passed , deadlines set by HCJ (speed) .

¹¹¹ Technical skills are based on a judge's ability to draft clear judgements, to manage court proceedings and to effectively lead and oriented judicial review, to express him/herself clearly and ethically and to organize the court file such as to be easy to use..

¹¹² Human and Ethical skills are based on ethic sens during the trial and out the court, his or her skills of communication during the sessions , the solemnity of judges and discipline at work, participation of judges and their involvement in the activities of professional training and legal studies..

c. Irremovability and transfer

i. *Legal Constitutional basis and International Standards*

Irremovability of judges or their sustainability in office is a very important factor which ensures to the judges a sense of confidence and security that is necessary for the quality of their services. Irremovability is a basic concept envisaged by the Bangalore Principles on the status and conduct of judges alongside other principles such as independence, impartiality, integrity, dignity, equal treatment, belonging to the profession of judges, etc.

Irremovability should be considered as a basic rule in judicial career. Of course it cannot be absolute. The judge can be moved from his / her place of work as a result of processes such as the secondments, delegations, promotions or demotions in the framework of disciplinary measures

Movements of judges as a result of disciplinary measures are especially vulnerable.

In connection with this, as it results also from the above standards, it is important that the law clearly stipulate disciplinary violations which can be applied for the transfer or demotion of judges. In the Albanian legislation, the disciplinary violations are defined in Article 32 of the Law on the Organization and Functioning of the Judicial Power and are categorized in "very serious", "serious" and "minor". –The HCJ practices in the implementation of disciplinary measures has shown that the boundaries between several different elements are not always clear. Likewise it seems that the range of disciplinary sanctions is relatively small and, as such, does not always allow the determining of proportionate sanctions.

Transfer of judges is one of the powers that Article 147 (4) of the Constitution has clearly assigned to the HCJ. In line with this, according to Article 1 of the Law on the HCJ, the HCJ is "the responsible state authority" among others "for the transfer, career and observation of the activity of judges of the courts of first instance and courts appeal ". Article 147 (5) of the Constitution and Article 21 of the Law on the Judicial Power more than clearly specify that a transfer

cannot be done without the consent of judges, except when this is dictated by the need to reorganize the judicial system

ii. *Temporary Transfer*

Article 21, Paragraph 2 of the Law on Judicial Power states that "*when a court does not have the ability to review one or more cases within reasonable time limits, the HCJ may, on a reasoned request of the chairman of the respective court, delegate judges from other courts. The delegation of judges is made only for specific cases. The HCJ decides on the criteria and mode of the delegation of judges, taking into account the geographical proximity, individual work load of judges and sections which they belong to.*" It is assumed that "delegation" is a temporary transfer of a judge.

As Article 147, paragraph 5 of the Constitution provides for only one exception to the requirement that judges must give consent to the transfer, ie the reorganization of the system, the case mentioned in Article 21, paragraph 2 of the Law on Judicial Power, will need the consent of the judge. This should be clarified in the law. It is questionable whether this is a sufficiently efficient instrument for the HCJ to ensure the functioning of the courts in the event of non-permanent increase of workload or temporary absence of judges.

The law does not provide powers and clear, sufficient, objective and transparent procedures in the cases when the transfer of judges should be made even without their consent in circumstances related to the reorganization of the courts in accordance with the law and in order to guarantee the exercise of the judicial service in territory and judicial terms.

The law does not provide an effective verification and complaint legal mechanism by competing candidates against decisions of the High Council of Justice to fill job vacancies through the transfer of judges, which must be motivated and justified.

The law does not provide sufficient regulation regarding the competencies, cases and criteria on which is evaluated and decided on delegating judges to a

court other than the one where they exercise regularly their service, for reviewing certain cases for a certain period of time. The law does not provide for maximum periods of delegating and the case of delegating for the interim assignment of a judge to a head position. All delegating decisions are taken by the High Council of Justice and there is no decentralization of this competence.

The law does not provide the necessary guarantees for the return to the previous position of a judge temporarily engaged in other public functions.

iii. Permanent Transfer

More problematic is the case of transfer of judges, on the basis of their consent and demand from the courts of small districts to the courts of greater districts, especially in the first instance court of Tirana, as well as the issue of their assessment or promotion.

In the case of transfer in large courts and especially in cases of promotion of judges, the role of the High Council of Justice and that of the President of the Republic is essential and very important. Particularly problematic is the lack of necessary legal provisions and non implementation of existing ones by the HCJ regarding effective competition, with files, among interested judges based on professional achievement and assessment, integrity and devotion to duty, length of career, and in specific or environmental circumstances related to competitive judges.

In general, positions in central areas, such as Tirana or Durres seem more attractive than positions on the outskirts. The legal framework does not provide clear rules which criteria should be applied to regular transfers at the request of judges.

Also in connection with determining the number of judges, their assignment to courts, and assessment of the needs for transfer and power, are distributed to different actors: the current total number of judges in Albania is 383. This number is determined by a Decree of the President of 2012 (no. 7818, dated 16.11.2012). In connection with the powers of the HCJ to supervise transfers it

does not result that the HCJ has instruments to monitor the workload, efficiency and the needs of the courts to determine the optimum number of judges needed. Powers in this regard between the Ministry of Justice and the High Council of Justice are not specified and the cooperation is lacking between these institutions to carry out a thorough analysis on the issues of permanent transfer.

d. Promotion

i. Forms and criteria of promotion

Under the legislation in force, promotion of judges is presented in three (3) ways: i) appointment to a higher court (eg court of appeal or the High Court) ii) the appointment as chairman of a court; and iii) transfer to a court of career (eg the court of serious crimes or administrative courts¹¹³). In practice, even the appointment in a large court is considered promotion, such as in the courts of Tirana or Durres, though for them do not apply additional criteria.

Law on organization of the judiciary and the organic laws of the administrative courts and the Court for Serious Crimes provide criteria that must be met for each of these forms of promotion.

The law does not provide sufficient rules on the development of the special examination for the selection of the winning judge in cases of promotion, as well as on the nature, criteria and basic rules of the development of the test according to the type of promotio: for filling the vacancy in a higher court or for a leading position in court.

Particularly problematic are the delays in filling vacancies and the disregard of the criteria and existing rules by the High Council of Justice regarding the promotion of judges.

¹¹³ The law provides additional special criteria for appointment / transfer of judges in these courts.

The law does not expressly, clearly and sufficiently provide criteria, procedures and competencies for the development of promotion competition by the High Council of Justice. With some exceptions, these matters are generally dealt with by by-laws issued by the High Council of Justice, which does not meet the standard of provision of law of issues relating to the status of a judge.

It turns out so far that the HCJ decisions for promotion of judges are neither subject to internal administrative verification nor their judicial appeal to the court by the judges concerned.

The law does not explicitly provide, through sufficient and clear rules, even that the HCJ decisions regarding promotion of judges should be motivated and justified, in connection with this, even the existence of the verification mechanisms of this act, as well as the right of the competing judges to appeal the decision of the Council even in court.

3.5.2 Evaluation as a means of promotion, implementation of the evaluation system and outcomes

As results from the wording of Article 14 of the Law on the Organization of the Judicial Power (see above) the means for promotion of judges is their score in the evaluation process. This interpretation is also supported by Article 16 of the Law on Judicial Power which, alongside of the the definition of criteria for appointment as chairman of a court, states that candidates for court chairman, among others, should be assessed with the result "very good" by the HCJ two last times.¹¹⁴

¹¹⁴ It should be noted that this provision has caused problems in practice because so far the HCJ has developed only one evaluation round for judges. In these conditions it is impossible to appoint the chairmen of courts where the law requires for them to be evaluated 2 times with the result "very good". Even the condition that the assessment has to be definitely "very good" (ie maximum) seems excessive. In other countries (eg Italy) only one positive assessment is enough, and it is not required to be the maximum (very good").

The HCJ is the state authority responsible for the assessment and career of the judges of courts of first instance and courts of appeal. The HCJ "determines the criteria for the evaluation of judges, controls and guarantees the process of evaluation and reviews complaints of judges regarding their assessment." The Inspectorate of the HCJ gathers and processes the data necessary for professional evaluation of the judges, in accordance with criteria established by law, and prepares data about the professional competence of the judge. The evaluated judge has the right to be informed on the documentation and the right to submit his opinion in writing together with relevant arguments.

According to the law on the organization of the Judicial Power, the HCJ performs at least once every three years, the evaluation of professional skills of the judges, in accordance with the decision adopted by it on the evaluation criteria. Article 13 (2) of the Law on the Judicial Power provides for a four-tier rating: 'very good', 'good', 'acceptable' and 'incompetent'. In a case of a rating of "acceptable", the HCJ re-evaluates the respective judge within a year. The evaluation of "incompetent" constitutes a cause for starting the procedure for removal of the judge.

The law does not stipulate any specific mechanism by which to give the possibility to judge who has been evaluated as "acceptable" or "incompetent" to be rehabilitatee through mandatory attendance for a certain period of special training programs, finalized with a verification test of its capacity to pursue professional judicial career

The HCJ adopted two decisions determining assessment schemes: no. 193/2, dated May 11, 2006 and no. 261/2 dated April 14, 2010 in connection with the professional evaluation of judges.

In January 2014, the HCJ for the first time in Albania completed the first round of professional assessment of judges for 2005-2006, by means of which 279

judges were evaluated. Based on second evaluation scheme approved by the HCJ, which provides clearer standards of time limits, in 2014 began the second wave of the evaluation for the period 2007-2009. There are uncertainties regarding the issuance by the HCJ of the general conclusions of this evaluation process and relevant statistics, which serve to the identification of weaknesses and the measures focused on specific areas

These data show that the system of evaluating judges can not be considered effective and efficient due to the considerable time interval between the period when the results of the evaluation are announced and the reference (ie the period when the activity of the evaluated judge is developed). The current system does not allow monitoring of performance and progress that the judge has made over time, for early detection of problems such as the high number of cases and the length of proceedings.

Results of the first round of evaluation served as a basis for establishing a final ranking list of judges as required by Article 14 (1) of the Law on Judicial Power. Last update of this list took place on 1 March 2014. The HCJ has not yet decided whether the second evaluation results should be reflected in real time or only at the end of the whole process. Moreover, the HCJ has not decided whether to include in the list even the inspectors of the HCJ.

Based on abovementioned, it is noted that the law does not provide explicitly, clear and enough the issues related to the criteria, procedures and competencies for professional evaluation of judges. With some exceptions, these issues have been addressed with sublegal acts issued by the HCJ, which does not satisfy the standard of forecasts in the law of issues relating to the status of a judge. The rating system does not pay proper attention ethical performance of judges.

Particularly problematic is the evaluation from the structure that is in charge with the inspection of judges, serious delays in the implementation process of professional evaluation of the judge.

The law does not explicitly provide, clear and sufficient rules and even the decisions of the High Council of Justice on the professional evaluation of a

judge should be subject to administrative review, as well as the right of a judge to assess the appeal of the Council' decision to the court.

The law does not provide for any adjustment for assessing the performance of members of the Supreme Court.

Article 14 (6) of the Law on the HCJ also provides a professional and ethical evaluation for Chief Inspectors and Inspectors, not less than once every two years, according to the criteria and procedures established by the HCJ. No such assessment has been done so far. In the meeting of 17 October 2014, HCJ has set up a working group on design of the criteria and procedures of evaluation of inspectors that will be approved after by the HCJ.

Since the applicable laws currently provide only some provisions for evaluation, the Ministry of Justice has designed a draft-law that regulates the process of evaluation.¹¹⁵

3.5.2 The Chairman of the Court

The appointment of the chairman of the court of first instance or the court of appeal is the jurisdiction of the High Council of Justice and in compliance with Article 16 of "On the Organization of the Judicial Power in the Republic of Albania". The main conditions, to be met are those related to seniority and on the performance. Apart from these conditions the candidate should not be a member of the HCJ, not to have disciplinary measures in force and have organizational and management skills.

According to Article 17, the chairmen have four-year mandate with the right of reappointment. Based on the law "On the Organization of the Judicial Power in

¹¹⁵ Minister of Justice established a Working Group at the end of December 2014, which included representatives of the National Judicial Conference, the Union of Judges and the Association of Judges, and a representative of the HCJ. The draft reflects some international standards concerning the assessment and does not interfere with the institutional framework.

the Republic of Albania", the chairmen of the courts carry out many administrative tasks, among others, the representation of the courts to third parties, the separation of judges in chambers and sections, the control of work discipline and ethics of judges, and keep contacts with the School of Magistrates, the HCJ and the Ministry of Justice on issues related to improving the capacity of judges¹¹⁶.

The Law no. 109/2013 "On Judicial Administration" which contained partly contradictory provisions about the powers of the chairman of the court and the chancellor was repealed by the Constitutional Court (decision no. 10/2014), which stated that "the lack of legal provisions on the definition of direct responsibility of chairmen of the courts, which would enable the management and control of support services in the court is a matter of constitutional assessment.". Moreover, the CC noted that a clear and consolidated function of the chief secretary is a guarantee of sustainability and should be followed by "clear legal requirements regarding the procedure of appointment and employment relations for this function. The powers of the chairmen should be linked with the observing function of the HCJ". Still a new law on judicial administration is not adopted to fix the powers of the chairman of the court.

3.6 Disciplinary liability

3.6.1 Inspection

3.6.1.1 The High Court

Unlike other judicial bodies the HC is not controlled by the HCJ and there is no legal framework for assessment, inspection or disciplinary responsibility of judges. This constitutes a deficiency, since the constitutional provision for their removal by the Assembly can not replace a disciplinary procedure.

¹¹⁶ Support for the justice efficiency –SEJ” "Report on the individual assessment of judges in Albania, by prof. dr. Anne Sanders, M. Jur http://www.coe.int/T/dghl/cooperation/cepej/cooperation/Albania/ALB%20-%20eval_judges.pdf

3.6.1.2 The object and purpose of inspection

Inspection of judges / courts may be general or thematic depending on the scope of the inspection specified in the order. General Inspection refers to all types of cases heard by the judge, while a thematic inspection relates to a type or nature of cases clearly defined within the scope of inspection. Inspection can be done for two purposes: a) to be informed about the effectiveness of the activity of the judge / s or the court, and ii) to identify and document the alleged disciplinary violation aiming at disciplinary proceedings against the judge.

3.6.1.3 Inspection Procedure

In general provisions of the law on inspection procedures and the rights and obligations of the parties in this process are insufficient. The Legal gap is somewhat filled by a decision of the HCJ which contains a slightly different regulation from that of the law and a Manual. In practice, the inspection is based on a complaint or ex officio based on other sources of information (eg media) and initiated by the Inspectorate of the High Council of Justice or the Department of Inspection and the Organization of the Judiciary of the MoJ, i.e the Inspection Service in the MoJ. In any case, the inspection of the judge is carried out only after the inspection order is approved, which determines the scope and purpose of the inspection depending on the case. There is an agreement between the two inspectorates that issues relating to the activities of judges are inspected by the inspectorate of the HCJ and issues relating to the operation of the courts are inspected by the inspectorate of MoJ.

Thanks to the Memorandum of Cooperation between the Minister of Justice and the Vice-Chairman of the High Council of Justice to avoid overlapping of competencies in the judicial inspection (Memorandum of Cooperation), the inspection service at the MoJ follows the same procedure as the HCJ.

In practice the inspectorates of the MoJ and the HCJ are facing difficulties in gathering evidence because some institutions refuse to provide data as the law provides for them only to the prosecution services. In those cases, when the inspection has to do with allegations of corruption of a judge / the cooperation

of the MoJ and HCJ inspectors with the High Inspectorate for the Declaration and Audit of Assets takes a special importance. However, the cooperation between them takes place in the absence of clear rules of cooperation and, in these conditions, it is often effected by misunderstandings and contradictions.

If after the verification of the complaint or information obtained in other ways against the activity of judges the HCJ Inspectorate finds "violation", it may proceed as follows:

- a) In the case of minor violations, the evidence is recorded for the professional evaluation of the judge, or the HCJ is informed about the violation and it is asked to issue an authorization to proceed with a general inspection of the judge on these grounds.
- b) In cases when violations are considered to justify the initiation of disciplinary proceedings, the file is submitted to the Minister of Justice officially.

3.6.1.4 Inspection Institutions

Under Article 9.6 of the Law on the Ministry of Justice and Article 31/1 of the Law On the High Council of Justice, the power to inspect the courts of first instance and the courts of appeal is attributed to the Minister of Justice. Especially the law on the HCJ clearly establishes that the Minister of Justice carries out inspections of the courts to verify the level of organization of judicial services.

The General Directorate of Legal Matters (GDLM) is the specialized office within the MoJ for inspections. At the end of inspections, the GDLM prepares recommendations to the Minister of Justice regarding the necessary measures to resolve problems and identified violations, and makes recommendations regarding legal and organizational measures for the functioning of the judicial power.

The law does not clearly provide the powers of the HCJ to make inspections of the courts. However in practice, the Inspectorate of the HCJ (IHCJ) and the

GDLM carry out the thematic and general inspections of the courts together. Both parties stick to a consensus reached among them under which, the issues relating to the activities of judges are inspected by the IHCJ and issues relating to the operation of the courts are inspected by the GDLM.

The inspection function is characterized by major problems as follows:

- i) There is no clear legal authorization for HCJ to perform inspections.
- ii) The competence of the Minister of Justice to perform thematic inspections (Article 32 of the Law on the HCJ) is problematic because it has to do with the essence of the activity of the judge).

The existence of two inspectors which are estimated to overlap each other; meaning and clear definition of the terms "inspection", "control", "verification"; avoiding overlap of responsibilities between the two inspectorates and the two institutions; and establishing clear limits on the control of courts and judges are some of the issues that were identified in the CC's jurisprudence, as well as the progress reports of the European Commission about our country.

3.6.2 Disciplinary proceedings

3.6.2.1 Disciplinary Institution

The law "On the organization of the judiciary" categorizes discipline violations of the judge as:

- a) very serious;
- b) serious;
- c) light.

It is noted that the provisions of the law "On judicial power" contain an unusual and unclear classification and order of disciplinary violations, which turns out that do not respond and do not help the goal of escalating, exhaustive and clear provision of disciplinary violations by their type and importance. HCJ practices in the implementation of disciplinary measures has shown that the boundaries

between different disciplinary violations provided by the law are not always clear.

In some cases disciplinary violations provided in article 32 of the law, are not related to the acts and behaviour that seriously discredit the public and constitutional position and image of the judge and the judiciary, as provided by the Constitution.

The law introduces several disciplinary violations only motivated by the way of reasoning, the assessment of circumstances and the interpretation of the law made by the judge in the judgment, the non-compliance with judicial practices etc .. These issues, as far as they can be considered, may be related to "professional insufficiency", as provided by the Constitution, in terms of professional evaluation of a judge, but not "disciplinary violations".

The law does not distinguish and classify duly the disciplinary violations that occur during the exercise of the judicial function, out of the judicial function, and those which follow / accompany the act of committing an offence by a judge. The 5-year term of limitation starting from the date of the violation is too long.

The law "On the organization of the judicial power" provides as well disciplinary measures given to judges who commit disciplinary violations, as follows:

- a) reprimand;
- b) reprimand and warnig;
- c) temporary demotion for 1 to 2 years in a court of a lower level;
- ç) submission for 1 to 2 years in a court of the same level outside the judicial district where the judge has his appointment;
- d) removal.

It is noted that the range of disciplinary sanctions is relatively small and as such does not allow always determining proportionate sanctions. The law does not regulate adequately the nature and cases when measures should be applied for

suspension of a judge from the exercise of the judicial function or the his / her mandatory transfer (as a complementary or temporary measure). The relationship between professional insufficiency and disciplinary responsibility is problematic as well in terms of constitutional point of view.

3.6.2.2 Disciplinary Process

According to Article 147 (4) of the Constitution and Article 2 (d) of the Law on the HCJ, the latter decides to take disciplinary measures against judges. Only the Minister of Justice has the right to initiate disciplinary proceedings. According to Article 31 (3) of the Law on the HCJ, at the end of the inspection and on the basis of its results, on the proposal of the GDLM, the Minister proposes to the HCJ disciplinary prosecution of the judges.

In cases when the findings come at the conclusion of the review of complaints or at the end of the inspections carried out by the IHCJ, the inspectors of the HCJ must submit a report to the Minister of Justice informing the latter that a disciplinary offense may have occurred¹¹⁷, and they carry out the verification procedure within 15 days and submit a relevant report¹¹⁸. On the other hand, the Minister of Justice should initiate disciplinary proceedings within a year from the date the violation is noticed¹¹⁹. The HCJ should decide within a month.¹²⁰

As it is noted above, the disciplinary investigation is partly under the umbrella of the executive and partly under that of HCJ Inspectorate, which carries out its function under the supervision of Vice President of the HCJ. Procedural rules are weak and not fully comply with international standards.

Deadlines, as limitation terms or terms within which actions should be carried out and decisions should be taken are not always coherent or are missing. The

¹¹⁷ Article 16 (1) (c) of the law on the HCJ.

¹¹⁸ Article 31 (5) of the law on the HCJ.

¹¹⁹ Article 34 (2) of the law on Judicial Power.

¹²⁰ Article 33 (2/1) of the law on the HCJ.

term of limitation for initiating disciplinary investigation is determined by five years from the commission of the offense.

Another problem that has affected the disciplinary process against judges is the fact that the HCJ did not appeal against the decision of the MoJ for archiving disciplinary proceedings from MoJ. On the other hand, constitutes a problem the fact that MoJ is not possible to appeal against decisions of the High Council of Justice for failing to implement disciplinary measures against judges.

3.7 Termination of the mandate of a judge

The law does not provide expressly, clearly and sufficiently issues related to cases of judicial career termination, as fundamental issues related to the principle of the immobility of the judge from his / her position.

The law does not provide actions and procedures to be taken in given cases of termination of the mandate of a judge, as in the case of the termination of the mandate of judges for acting inability. Even the Constitution, in Article 147 thereof, mistakenly considers this case as the reason for the judge dismissal.

Article 140 of the Constitution, which provides for cases of judges of the Supreme Court dismissal, guarantees in maximum their immobility. Members of the Supreme Court may be removed by the Parliament by two-thirds of all its members votes for violation of the Constitution, committing of a crime, mental or physical incapacity, or acts and behaviour that seriously discredit the position and image of a judge. The decision of the Parliament to remove the judge is reviewed by the Constitutional Court, which, upon verification of the existence of one of the above-mentioned reasons, declares his / her dismissal. The formula of Article 140 of the Constitution, which provides for cases of dismissal of judges of the Supreme Court, has not been tested in practice.

Provisions which define the terms and procedure of dismissal of a judge in case of physical or mental disability are missing in the organic law of the HCJ.

3.8 Appointment to other institutions

Judges have the right to have a special status which they keep even after they leave the profession of a judge to serve in other institutions.

Judges, at the request of institutions and their consent, as well as at the decision of the High Council of Justice, can serve for up to 3 years in the structures of the Ministry of Justice, the administration of the High Council of Justice, legal assistant or advisor to the judge of the Constitutional Court, High Court and Court of Appeal, prosecutor, professor and director of the School of Magistrates. At the end of this period, the judges returned to his previous job.

Financial treatment of judges during this period is made by the relevant institutions, by giving to them the higher salary between the two salaries. The period of service is recognized as a period of seniority in the profession as a judge, for the purposes of pay and professional career. The period of service is recognized as a period of seniority in the profession for those judges who have served in institutions such as MoJ, administration of the HCJ, legal assistant or adviser to the chairman of the CC or the HC, prosecutor, professor and director of the School of Magistrates before the entry into force of the law of 2008.¹²¹

Lack of a special law, specific, for the career and status of the judge has made the guarantees for the judge's career and status be minimal and the judges to be unsafe for the continuation of their career.

3.9 Salaries, financial and social treatment of the judge

Salaries for judges of three levels are defined based on Law no. 9877, dated 18.02.2008 "On the organization of the judiciary in the Republic of Albania", amended by law no. 114/2013, Law no. 8588, dated 15.03.2000 "On the organization of the Supreme Court of the Republic of Albania", Law no. 9584,

¹²¹ Article 28 of Law no. 9877 dated 18.02.2008 "On the organization of the Judicial Power in the Republic of Albania"

dated 17.07.2006 "On salaries, bonuses and structures of independent constitutional institutions and other independent institutions founded by law".

The rights and benefits of judges are provided under Article 27 of the law "On the organization of the judiciary". According to this article, the judge, his / her family and his / her property enjoy special protection. The above-mentioned provision is too general and currently provides almost no concrete benefits to judges, since there is no subsidy or compensation for judges or their family members if the judges work away from their family residence.

The system of salaries, remuneration and social and health care of judges, as one of the means to guarantee the independence and impartiality of their task, does not meet the necessity of adequate and duly financial treatment.

Salaries and current financial treatment of the judges do not take sufficiently into account the dignity of the office and profession, the nature of responsibilities of the judicial function, the degree of difficulty in exercising it, the high number of incompatibilities and specific prohibitions to do other profitable activities, the need to protect them from pressures and influences on their judicial activity and their behaviour as a whole, as well as social integration needs of their family in the community.

The current pay system and financial treatment do not guarantee the principle of their inviolability, while net level more than once, without being declared and motivated by the government, they have had effective earnings decrease, due to frequent changes of government fiscal policy .

Despite constant improvements, the social care system does not guarantee that the pay of a judge at the time of his retirement be as close as possible to the salary he had at the the time of his mandate termination, as well as the guarantee that at his retirement should be kept the reference pension level of any time same level judge in service, in case it is in favour of the retired judge.

Likewise, legislation does not provide special disability pensions for judges in case of mental and physical disability to pursue exercising his function, as well

as special family pensions to the judge's spouse and children in case he / she dies during his / her judicial career or even at his / her retirement time.

The legislation does not provide precisely the right of judges to be fully compensated for the loss or destruction of his / her and his / her family property, due to exercising his / her duty.

The legislation does not specifically provides special facilities and financial benefits for the judge and his / her family in terms of health care.

The legislation does not provide other forms effective reward and compensation for judges assigned to exercise their function out of their residence.

a. Safety and protection of judges

The legislation does not explicitly stipulate the obligation and the power of the HCJ to take a stand and take possible measures in cases where judges should be protected from any kinds of acts which violate or are intended to prejudice their independence and impartiality.

The legislation does not provide for the right of judges to address to the HCJ, when considering that their independence and impartiality are violated or may be violated by acts and internal or external interferences in the exercise of their functions.

The law, with its current provisions, offers no , effective conditions, ways and means to guarantee the safety of the courts and the security of judges, in order that they enjoy the State protection of their lives, their property and their family against intimidations, threats and acts of violence which might result due to exercising their duty, either in the premises of the court or out of it.

According to the Constitution of the Republic of Albania, judges of all levels enjoy immunity whether either in terms of irresponsibility for the consequences that might result from exercising their duty, or in terms of immunity from some

aspects / phases of criminal proceedings. The second aspect of immunity of judges (immunity) was significantly limited as a result of the constitutional amendments of 2012, which removed protection from criminal preliminary investigation (*or initiation of criminal proceedings*).¹²² Due to this important amendment, the Prosecution can now file a criminal case against a judge at any level and carry out preliminary investigations freely. Other forms of immunity (temporary protection from arrest, detention, personal inspection of the apartment) remained in force.

While temporary protection from arrest seems reasonable, if taken into account the characteristics of the judge's function, protection from personal control and the apartment control constitutes an unjustified obstacle to the process of gathering evidence. There are uncertainties regarding the immunity of the judge when the latter commits offenses in the exercise of his / her function and when the offense is committed out his / her function.

To reflect the constitutional changes on immunity in specific parts of the Code of Criminal Procedure, Parliament passed several amendments to the Code.¹²³ in order: first, to remove any reference to the authorization for the initiation of criminal proceedings (conducting preliminary investigations) in the text of the Articles of the CCP and, second, to detail the procedure for obtaining authorization for the implementation of other procedures (arrest, detention, arrest in flagrante delicto and controls). However interventions on the CCP to Articles 288 and 289 were wrongly done. The difference of these articles is problematic because:

¹²² Other minor changes include the extension of the application of the provision in flagrancy (*flagrante delicto*, the opportunity to arrest/detention of an official with immunity if he/she will be caught during or immediately after the commitment of a crime), referring to all the crimes, with exception of serious crimes and the obligation of the Parliament to decide upon the request of prosecutor for authorization to proceed with open voting.

¹²³ Law no. 21/2014 "On some amendments in the Criminal Procedural Code".

First, Articles 288 and 289 of the CCP regulate the procedure to be followed to demand authorization for initiating criminal proceedings (*or for conducting a preliminary criminal investigation*).¹²⁴ But, as indicated above, after the constitutional amendments of 2012, the authorization for the initiation of criminal proceedings (preliminary investigation) is not necessary.

Second, gathering under a single article the procedures for demanding authorizations which are very different from one another (i) the authorization to execute the arrest warrant, ii) the authorization to perform personal control and iii) confirmation of detention in flagrante delicto) can cause confusion in the practical implementation of these measures.

Procedures taken for the arrest or detention of a judge, or for doing a personal control over him / her or his / her apartment are not efficient. Even when a judge authorizes a control or arrest of the judge, the authorization of the HCJ is required. Many countries do not have a judge's immunity for arrest or control.¹²⁵ The March amendments in the Criminal Procedure Code fail to provide a clear procedure for the implementation of criminal procedural measures against officials with immunity.

3.11 Working conditions

The law does not contain specific provisions, followed by the specific delegations to the executive regarding the obligations, responsibilities, standards, measures and resources that should be provided and implemented to guarantee effective and appropriate conditions of work for courts and judges

¹²⁴ Articles 288 (Authorization on proceeding) and 289 (Prohibition of the proceeding) are in the Part II, Chapter VI (Preliminary Investigation), Chapter III (Request for Proceeding) of CPP.

¹²⁵ In Italy the Magisters, as public officials, are criminally responsible for criminal offences (such as misabuse with duty, corruption, etc) without the necessity to take authorization from the High Council of Magisters.

The current law stipulates the right of a judge to an annual paid leave of 30 calendar days, thus reducing without any reasonable motive the duration of the annual leave stipulated by the previous law. This results as well to be generally shorter than what judges benefit in other countries, i.e. at least 30 working days.

The law "On judicial power" does not explicitly provide the special conditions of the right of a judge to ask for paid leaves for reasons of attending vocational profiling programmes in the country and abroad, for preparing or passing science degrees, as well as unpaid leaves for given reasons.

4. Administration of Justice

The administration of justice is seen under its two most important aspects: transparency and efficiency.

4.1 Transparency

Publicity of judicial activities, public access to justice and the opening of this activity to society through communication with the public, are substantial elements for a functional justice.

Transparency of the judiciary is characteristic of democratic regimes and serves the respect for the constitutional principle to guarantee due process of law, embodied in whole legal instruments. This is the basic premise at enhancing the efficiency, transparency and public access to judiciary.

The application of the main principle that court proceedings are open to the public is conditioned by the infrastructure of the courts. Although towards improveemnt, the infrastructure continues to be weak, especially in the Tirana District Court and the Court of Appeals of Tirana¹²⁶. Currently, civil court hearings often take place in judges' offices and not in the courtrooms, because of the lack of reception facilities.

¹²⁶ Intersectorial Strategy of Justice, p. 4587.

Obtaining information on court hearings, place and time of their development and informing the parties, are other indicators that affect public access to justice. To guarantee the right of public hearings, the courts must ensure that information about the sessions can easily and quickly be found, and the participation of public in them is to be facilitated.

Installation of digital audio-recording technology in courtrooms in Albania represents a significant step forward in terms of transparency and a fair trial in the country. This guarantees an accurate (literally) record of minutes of the court session. Audio recording becomes part of the court file. RDA technology helps efficiently the process of a fair trial, but even though the administrative courts of first instance and appeal do not have this system, with difference to 28 other cours in the country.¹²⁷

Despite of the pozitive aspects that the Technology of digjital registration has brought, as well as the sistem of eletronic management of the cases, without the necessary infrastrukture in the courts, it will not be achieved pozitive results.

The latest development is the entry into force on September 18, 2014 of the Law "On the right to information". It aims to guarantee the awareness of the public about the information that is considered public, within the exercise of individual rights and freedoms in practice, as well as the formation of views on the situation of the state and society. Through new standards, this law is intended to promote integrity, transparency and accountability of public

¹²⁷ The first installation of RDA technology in Albania took place in Lezha District Court in March 2012. So far, the RDA system was extended to 123 courtrooms of 28 courts in the country, which include all courts involved in range of appeal in Korce, Durres, Tirana, Vlora and Gjirokastra, the Court of First Instance of Appeals for Serious Crimes and district courts in Puka and Shkodra and Shkodra Court of Appeals. To use the system are 252 trained judges and 391 administrative personnel in these courts. Training on the system and its monitoring have been developed and 20 inspectors of the judiciary in the High Council of Justice and the Ministry of Justice.

authorities to the public.¹²⁸ The law guarantees on the one hand the right of every individual to be familiar with public information¹²⁹ and on the other hand the obligation of the public authorities to inform the claimant about the required information.¹³⁰ Besides the categories of information being made public without request¹³¹, the new law provides a 10-day deadline within which citizens' requests are answered. However, this is a law that extends its effects on judicial administration and its provisions cannot be applied to court proceedings, which are regulated by the procedural provisions of the Civil or Criminal Procedure Codes.

One of the initiatives to increase public confidence in the system is digitalization, under which the courts operate. In 2012 was launched the online appeal and digital management of complaints to the Ministry of Justice and the HJC.¹³² Thus, during the second half of 2012 and first six months of 2013, 25% of complaints are performed in the digital way.¹³³ Response time for appeal in the digital way is five days, from 10 to 360 days on the manual way.¹³⁴

4.1.1 Hearings Courts

Transparency of court proceedings means the legitimate right of participation of the litigants in the trial sessions. Civil proceedings, as a rule, are open to the public. Besides litigants, this right applies also to the general public, including media representatives. Both, the Criminal Procedure Code and the Civil Procedure Code foresee exceptional cases where the court has the decision to

develop closed-door hearing sessions, excluding the media and public from attending the hearing sessions in these cases.

The Order of the Minister of Justice no. 6777/5, dated 30.09.2010 On approval of the Regulation "On the court's relationship with the public", allows courts to exclude representatives of the public and the media in the courtroom if it is not large enough for all to stay inside.¹³⁵ And when the number of family members exceeds the number of free seats, the chairman makes a proportional selection, always maintaining a representative quota for journalists.

The transparency of the courts to the public is assessed, alongside others, from the minutes that are part of the judicial dossier. The importance of holding them correctly is sanctioned in the Civil Procedure Code. Lack or invalidity of the minutes becomes subject to quash the first instance decision and sent the case for retrial.¹³⁶ In contrast to the Civil Procedure Code where it is not expressly determined who is responsible to keep the minutes, the Criminal Procedure Code attributes the obligation to the presiding judge.¹³⁷ This position of the judge is reflected in a decision of the High Council of¹³⁸.

Minutes can contain sensitive data on litigants. They are considered as information of limited access, and their sharing with the public may be refused.¹³⁹ The decision to give access to these minutes is taken by the presiding judge or the chairman of the court, where appropriate, by evaluating

¹²⁸Law no. 119/2014 dated 18 Sep. 2014, "On the right to Information" Article 1/1 and 1/2.

¹²⁹The same law, Article 3/1.

¹³⁰The same law, Article 3/2.

¹³¹The same law, Article 4 and 7.

¹³² *Online complaint and complaint management in the Ministry of Justice and High Council of Justice is implemented by the Center for Transparency & Free Information, supported by the British Embassy in Tirana.*

¹³³ Published by the Union of Judges, p. 2..

¹³⁴ Po aty.

¹³⁵Order of Minister of Justice Nr. 6777/5, dated September 30, 2010 for approval of the Regulation "On the Relationship of the Court to the Public", Title IV, section 2.2.

¹³⁶Civil Procedure Code, Article 467, letter 'c'.

¹³⁷ Criminal Procedure Code, Article 345, paragraph 2.

¹³⁸HJC decision no. 261/2 dated 14 April 2010 to approve "Judges' Assessment System", Chapter II, Section 1, Article 12.

¹³⁹Order of the Minister of Justice Nr.6777 / 5, dated September 30, 2010 for approval of the Regulation "On the Relationship of the Court with the Public", Section III, 4.1, letter "f".

the progress of the court proceedings and the confidential contents of the file, part of which are also the minutes.¹⁴⁰

The legal framework does not explicitly foresee rules for storage of files, in terms of access, the duration of its storage, access to the stolen documents, safety measures against illicit payments, safe treatment after the expiry of the storage deadline, etc.

The only way of documenting the court hearing that the Civil Procedure Code provided for were the notes kept by the court secretary mainly to computer printouts. With the changes made in 2013,¹⁴¹ ways of documenting the court session changed. Currently, the chairman of the session must ensure that a record is kept via audio or audiovisual recording of the hearing, as well as of any other judicial procedural arrangement that takes place outside the hearing. Obviously, these legal changes were accompanied by the necessary additions in the sub-legal framework.¹⁴²

Digital audio recording of court hearings guarantees keeping accurate records, by contributing to a fair trial.¹⁴³ Creating full audio records provides judges and especially those of appeal a great ease in the review of court cases, avoiding reference to manual summaries on the hearings.¹⁴⁴

¹⁴⁰Ibid.Chapter III, Section 4.1

¹⁴¹Law no. 122/2013 "On some amendments to Law no. 8116, dated 03.29.1996 " Civil Procedure Code of the Republic of Albania", as amended.

¹⁴²Instruction no. 353, dated 03.09.2013 "On establishing detailed rules for the maintenance, preservation and archiving of record of the hearing with audio" Order no. 358, dated 05.09.2013 "On the tariffs of transcription of the minutes of the hearing, held by means of audio or visual recording"

Order no. 359, dated 05.09.2013 "For the preservation and archiving of record of the hearing or other procedural arrangement that take place outside of the session".

¹⁴³Booklet ALTRI-

¹⁴⁴ *Ibid.*

There is a discrepancy between the legal provisions of the Civil Procedure Code and Criminal Procedure Code relating to the documentation of the session as on one side, the Civil Procedure Code recognizes as minutes the audio recording and on the other side, the Criminal Procedure Code requires that the secretary must keep a written summary of the minutes accompanied with audio recording.

4.1.2 Availability of court decisions

The constitutional principle that court decisions should be announced publicly,¹⁴⁵ set the premise for increasing public access to judicial activity. A wide access to court decisions enables the public to closely monitor its work, by strengthening mechanism of accountability and responsiveness of the judiciary as well to exercise the right of appeal.

The regulation of the Ministry of Justice has determined that the court decisions at any level are part of the category of information that can be taken without any restriction, and therefore are easily accessible by the public. However, the online accessing of decisions is not always possible, if we take into account the infrastructure of the justice system and the level of use of information technology by the public.

Publication of court decisions creates the problem of exposure of personal data and in some cases sensitive data.¹⁴⁶ Instruction "On the processing and publication of personal data in the judicial system"¹⁴⁷ determines that the data of the parties, third parties, witnesses and experts called for the matter to the court session, must be presented with initials or encrypted.¹⁴⁸ In fact, having an adequate guarantee for the protection of personal data and business data in the

¹⁴⁵Constitution of the Republic of Albania, Article 146, section 2.

¹⁴⁶Intersectorial Strategy of Justice, p.4587

¹⁴⁷Instruction No. 15, dated 23.12.2011 "On the processing and publication of personal data in the judicial system".

¹⁴⁸Guidelines on Improving the Management Information System of Civil / Criminal Cases (CCMIS / ICMIS), Tirana 2014, p. 20.

published decisions (interim) of the courts, still constitutes a problem throughout the country. The parameters of publication of such decisions are not regulated by law, as well as leaving room for concerns about data protection.

In this regard, the Commissioner for the Protection of Personal Data based on the Recommendation no. 8, dated 06.05.2013 has requested the courts to take appropriate measures to make anonymous and protect the personal data of parties involved in legal proceedings, before they are published. Furthermore, the Commissioner has issued Instruction No. 15, dated 23/12/2011 which determines clear rules regarding the way the personal data should be managed in the judicial system. There is lack of integrated laws, which allow public access to the court operation in respect of the administration of personal data

Announcement of unreasoned decisions has turned into a cause for the violation of the right to a fair trial and in particular the right to appeal. The review of court proceedings in the courts of first instance in particular is regulated by the CPC and the Civil Procedure Code. After hearing the claims of the parties, the court must announce its reasoned decision. A copy of this decision is deposited with the court secretariat in the last session of the trial.¹⁴⁹ or for complicated cases within 10 days.¹⁵⁰ A logical interpretation of these articles shows that, in the process of giving a final court decision, it is assumed that the judge must declare it reasoned and signed, and immediately submit it to the secretariat. If the case is complicated, the judge has two options: first, to announce only the ordering provisions of the decision and to submit a reasoned decision within ten days, or to postpone the announcement of the decision but, within five days, to declare it reasoned. The CPC, in contrast to the Civil Procedure Code, does not provide for the announcement of criminal decisions at two times. That is so, because the decision is announced at the hearing by the chairman or a member of the panel by reading.¹⁵¹ The announcement also serves as notice to the

¹⁴⁹Civil Procedure Code, Article 316.

¹⁵⁰Po aty, neni 308, paragrafi 2.

¹⁵¹ Criminal Procedure Code, Article 384.

parties that are or should be considered present at the hearing. The decision is filed with the secretariat immediately after the announcement.

It turns out that the decisions are declared unjustified, only the disposition of the decision is announced, procedural deadlines for the announcement fail to be respected. The main challenges are the transformation of the decision procedure, the debate on the decision and the writing of a court decision in order to make it possible that the judges and the panel, when they go into the hall, come up with a reasoned decision and this is part of the duration of the trial.¹⁵²

Official Publications Centre is responsible for the publication of the Official Gazette, Official Announcement Bulletin, and publication of decisions of the European Court of Human Rights, dealing with Albania, the Constitutional Court's decisions and the United College of the High Court, which unify jurisprudence

4.1.3 Access of public and media at hearings

Regulation of the Ministry of Justice "On the court's relationship with the public"¹⁵³ establishes the obligation of the chairmen of the courts by domestic orders, to create the public relations office (PRO). Relations with the public through media communication, measures to guide the public in the court premises and updating of the website or the drafting of press releases are some of the tasks that this regulation imposes on the Chairman of the Court. However there are no public relations offices in each court and there is no clear legal definition in terms of management, maintenance and updating of an information portal on the Internet. The method of disseminating information is not regulated concerning access to justice, the responsible body that provides

¹⁵² Referuar diskutimeve të pjesëmarrësve në tryezën konsultative me aktorët e sistemit të drejtësisë të draft dokumentit analitik, datë 5 maj 2015.

¹⁵³ Regulation on "Court's relation to the Public" approved by Order of Minister of Justice, Nr.6775 / 5, dated 30.9.2010.

information about the activity of the court, in order to better inform the public and media on various issues of public interest

The obligation to assign spokesman in all the courts is not provided yet. The introduction of the notion of a judge of the press has been discussed several times in the past, but the High Court judges and the judges of the other instances have not embraced the idea. The main reason for this refusal has to do with the conservative approach of Albanian judges who argue that "the court speaks only through its decisions" and the restriction of Article 23 (1) (c) of the law "On the organization of the Judicial Power". Lack of professional media coverage in the Albanian courts is to the detriment of the courts themselves, because citizens are not properly informed on the reasoning of the court.

National Judicial Conference has recently selected three permanent committees, one for relations with other institutions and media coverage. The latter, under Article 12, paragraph 2, letter (c) of Law no. 77/2012 "On the Organization and Functioning of the National Judicial Conference", is in charge of maintaining relations with The Assembly, the Directorate of Codification in the Ministry of Justice, and ensures that the work done by the Albanian courts be properly broadcast in the media. In practice, the activity of this committee has been almost non-existent.

4.2 Efficiency

4.2.1 Judges, the number and distribution by the courts and by territorial division of the country

Under Article 8 of the Law on the Organization of the Judicial Power " the number of judges for each court of first instance and court of appeal is set by decree of the President of the Republic on the proposal of the Minister of Justice. The Minister of Justice makes proposals after having previously received the opinion of the High Council of Justice".

In connection with the percentage of distribution of the judges in three instances and its comparison with European standards it is concluded that " In

Albania, the first instance judges constitute 79% of the total number of judges (a very high figure compared with the European average which is almost 74%) and High Court judges make up 4.2% of the total number of judges (a figure very low compared to the EU average is approximately 7%".

Over the years 1993 - 2014, the total number of judges of the Courts of First Instance and the Courts of Appeal in Albania has changed. In 2009, this indicator fell by 21 judges, compared with the decrees of the President for the years 1993, 1995 and 2000. From 2009 until 2012, the number has increased slightly. More detailed information regarding this indicator is given in Appendix 4 of this Analysis.

The number of judges to three judicial level is 402 (19 High Court judges and 383 judges of the courts of both levels (courts of appeal and judicial districts courts).¹⁵⁴

Currently, the number of judges for each court to two levels of the judiciary is established by the Decree of the President of the Republic no. 7818, dated 16.11.2012 "On determining the number of judges for each court of first instance, appellate and administrative courts" The number of High Court judges is defined in the Law nr.8588, dated 15.03.2000 "On organization and functioning of the High Court of the Republic of Albania ", amended.

The burden level of judges is a criteria, which affects directly the efficiency of the justice system, but this should not necessarily be seen by the number of cases, but also by their nature and complexity. This might be an indicator even for the reorganization of the judicial system and the courts in the country..¹⁵⁵.

Also the length of civil, criminal and administrative judicial processes judged by judges of three judicial levels directly affects the availability of an efficient

¹⁵⁴ Statistical data transmitted electronically by the Office of Judicial Budget.

¹⁵⁵ Referuar diskutimeve të pjesëmarrësve në tryezën konsultative me aktorët e sistemit të drejtësisë të draft dokumentit analitik, datë 5 maj 2015.

justice system. Having control mechanisms for various practices by judges for similar cases will affect not only the administration and efficiency of the justice system, but the final result received by the citizens, as well.¹⁵⁶

In order to reduce the occupation level of judges, to minimize the length of proceedings and to reduce the number of outstanding issues, the opportunity of reducing the judicial powers in civil or criminal cases should be considered.¹⁵⁷

The occupation level of judges, especially of the administrative courts judges, is too high, and the creation of administrative courts, despite having been considered as helping the speed of trials, especially in business assistance, remains problematic and has not provided the hoped solutions.¹⁵⁸

4.2.2 Employees of the judicial administration, status, number and distribution according to the courts.¹⁵⁹

One of the factors for the functioning of the judiciary is judicial administration staff (not judges) who should be well-trained and in sufficient numbers. The role and functioning of the judicial administration can not be separated from the function of administering justice and it constitutes an important element of the organizational independence of the judiciary.¹⁶⁰

Currently the status of non-judicial staff in the courts is not clear, since the relevant law no. 109/2013 on Judicial Administration is repealed by the Constitutional Court by decision no. 10/2014. The Constitutional Court argued that the Assembly should have adopted this law by qualified majority since the court administration enjoys the same constitutional procedural protections in the context of the procedure for approval of laws by a qualified majority. Also,

¹⁵⁶ Po aty.

¹⁵⁷ Po aty.

¹⁵⁸ Po aty.

¹⁵⁹ Statistics reflected in this sub-issue received electronically by the Office of Judicial Budget.

¹⁶⁰ See decisions of the CC nr.19, dated 3.5.2007.

the Constitutional Court in this decision highlighted several other issues related to the content of the law that violate organizational and financial independence of the courts as an expression of independence of the judiciary, such as:

- a) Lack of legal provisions in determining the direct responsibilities of the chairmen of the courts, which would make possible the direction and control of supportive services in the courts.
- b) Competences and bylaws that the Minister of Justice should issue according to the law under examination, calls into question the standard of balance and cooperation between administrative and judicial power.
- c) Sanctioning in the law of a clear and consolidated legal position for the chancellor function, serves as a guarantee for the stability and balance of cooperation between management functions in the court, therefore, also for the preservation of separate and balanced reports between powers.
- d) As the powers of the Minister of Justice, according to the law under examination, extend to matters of appointment and dismissal of court support staff, influential premises of this authority can also be created.
- e) Direct Powers of the Minister of Justice in connection with the proposal and administration of the judicial budget, for its particular items, affect the financial independence as one of the elements that explain the sense of independence of the judiciary.

At the end of December 2014, the Ministry of Justice established a Working Group to prepare a draft-law on judicial administration and determine the status of civil court servants. The Working Group is still working on a draft assisted by EURALIUS and the representation of a court chairman and a chancellor.

Article 43, paragraph 6, of the Law No.9877, dated 18.02.2008 "On the organization and functioning of the judicial power" and was conceived as an integral part of it, the status, and organization and functioning of judicial administration. This law, in Articles 38, 39 and 40 adjusts the powers of the chancellor of the court, judicial administration and budget of the judiciary.

The functions performed by the judicial administration, particularly towards the services to the public are included in the connotation of public function, as

defined in Article 107 of the Constitution. The Constitutional Court stated in its jurisprudence¹⁶¹ that, the role and functioning of the judicial administration cannot be separated from the function of administering justice and it constitutes an important element of the organizational independence of the judicial power. The unusual nature which represents judicial administration in relation to the "civil servant", is also noted in Article 2 of the Law nr.152 / 2013 " for civil servants' which provides that the employees of the judicial administration are excluded from the scope of application of this law. And yet, the situation of a clear definition of the status of judicial administration, criteria and procedures for appointment, promotion and dismissal of employees is still problematic in the courts

The judicial power for 2014 had 907 employees of the judicial administration. The same year, the number approved by the law on budget for the judicial power was 1309 employees - 402 judges and 907 administrative staff. Structure and the number of employees for the two levels of the judiciary for 2014 was approved by Order the Minister of Justice No. 153, dated 03.04.2014. For 2015 the number of approved by the law on budget for the judicial power is 1339 employees - 402 judges and 937 administrative staff. Although the number of employees is increased, the figures show that we have not reached European standards, where the needs for some positions still remain unmet.

The number of employees for the High Court is in accordance with the law nr.8588, dated 15.03.2000 "On the organization and functioning of the High Court in the RoA", as amended.

More detailed information regarding the number of court administration staff for all three levels of courts in the country is provided in Annex no. 4 of this Chapter.

¹⁶¹See Constitutional Court decision No. 19, dated 03.05.2007 and the Decision No. 10, dated 03.06.2014.

Although the number of employees is increased, figures show that we have not reached European standards, remaining unmet needs for some positions. In the CEPEJ's report for 2012, which is an evidenced analysis of the number of employees of the court per one judge within the selected group of countries, it appears that Albania has the lowest number of employees (2.12 per 1 judge), while The group's other countries have values close to the European average (3 employees for one judge). The increase of the number of employees since 2012, which is the subject of study by the CEPEJ, has made it possible that in 2014 the ratio of administrative staff for the staff of judges has increased to 2.25 employees per 1 judge, while for 2015 the ratio is 2:33 employees per 1 judge.

Special significance has dedicated CEPEJ to the judicial assistance. According to the report, there is a difference in the division of Albanian court staff and other countries, and this is the small number of judicial assistants (law graduates) in Albania. In the courts, which have such assistants, judges can delegate some tasks to the assistants, as reasonings for decisions, for example. Delegation of tasks from judges to court employees, especially to graduate assistants in law or to judicial secretaries, is recommended by the Council of Europe and allows better performance of the courts.

The positions of chancellor, legal assistants, judicial secretary and staff of the Secretariat of the Court, represent a special significance in terms of the tasks entrusted to the persons exercising these positions in terms of management, organization, administration, and direct assistance they provide to the judges. More concretely:

1. Chancellor performs important functions in the organization and control of the daily activity of judicial secretaries and other sectors or offices that are part of the court structure¹⁶².He takes measures to create the necessary

¹⁶² With the decision no. 20, dated 09.07.2009, the Constitutional Court repealed Article 38 paragraph "a" of the law "On the organization of the judiciary", that gave the chancellor the power to appoint and remove judicial secretarial and administrative-technical personnel of court services, avoid the role of the chief judge. In this decision

administrative normal conditions for support and realization of the trial. Chancellor also takes care of the issues of ethics and external appearance of judicial administration staff during participation and outside of court proceedings and also in respecting the rules relating to the solemnity of the adjudication. He is the central figure of the court in terms of receiving or hearing of complaints for violation of the public's right to information or services unperformed by the court administration.

Chancellor enjoys some procedural powers regarding the organization of assignment of judicial cases through open lottery in the presence of judges, by making the documentation of this process, for the implementation of procedural relations with the Court of Appeal and the High Court.

2. Legal Assistant is a position that is provided for in the law on the organization and functioning of the High Court and in the law on the administrative courts. In EU member states for these positions is required the qualification as for the judges.

Currently, the High Court has 38 legal assistants and the Court of Appeals of Tirana has two legal assistants. Pursuant to the Law of administrative courts, for 2014 are planned 22 legal assistants for 43 judges of the administrative courts, respectively 1 **Legal assistant for two judges**. Other courts have no legal assistants. Law on organization of the judicial power and the law on the organization and functioning of the Serious Crimes Courts did not anticipate the position of legal assistant.

According to the law on the organization and functioning of the High Court, legal assistants are selected by the judges of the High Court between jurists who meet the legal criteria to be assigned a judge of the court of first instance or the courts of appeal and are appointed by the Chairman of the High Court. Legal assistants of the High Court examine appeals, court files, prepare reports on cases under process by giving their opinion, answering complaints, prepare

the Constitutional Court dismissed the request related to alleged unconstitutionality of the competence of the Chancellor to oversee the process of organizing and documenting the separation of judicial affairs through the lot, and the signing of tracking litigation practice of appointed judge.

necessary materials, and perform any other tasks that were charged by the High Court judge.

According to the Law on Administrative Court, the legal assistant is appointed, released or dismissed by order of the chairman of the court with the proposal of the court chancellor, after a competition and selection process conducted by a special ad hoc committee that is constituted for this purpose. The candidates who have completed their studies at the School of Magistrates, have worked as judges and are not removed from the system due to a disciplinary measure and have worked as advisors to the judges of the High Court and the Constitutional Court, with experience in these positions not less than 5 years, are proposed and appointed as legal assistants without undergoing competition procedures. Legal assistants in the administrative courts assist and give advice in relation to the preparation of the case for adjudication and judicial review, prepare procedural draft-acts necessary for the trial and on the judge's request, do legal research and prepare written opinions on legal issues of procedural and substantial nature related to pending cases.

However, despite legal regulations, the number of legal assistants in courts remains low, which affects the efficiency of these courts

3. The Secretariat of the court accepts documents and procedural acts. It distributes lawsuits after the lottery, receives files after the completion of the trial and submits the court files to the archive.

In the criminal area, the secretariat of the court keeps the Criminal Registry where are immediately registered applications for trial that come from the Prosecutor and as well as from the aggrieved party, the Military Criminal Registry, Alphabetical Index of criminal cases where the identity of the parties is recorded, the Register of Criminal Decisions, etc.

In the civil area, the secretariat of the court keeps the Fundamental Civil Registry where all the civil lawsuit applications are filed, Alphabetical Index of civil cases supplemented by letters of the alphabet and the name and surname of each plaintiff and the defendant, the Register of Civil Decisions where are

registered all civil decisions with their serial number, the date of the decision, the judge's name, the names of the parties, the scope and number of sessions.

4. Judicial secretary exercises procedural duties stipulated under the provisions of the Civil and Criminal Procedures and procedural provisions provided for by a special law. The Judicial secretary, for the realization of the procedural function, exercises administrative activities. According to the Criminal Procedure Code, the secretary keeps the seized items or keeps the minutes of the session. Under the Civil Procedure Code, the role and duties of the judicial secretary are to document the activities of the court, the parties and participants in the process. Secretary attends all court activities for which the minutes must be kept. He sends copies and authentic extracts of the prepared documents, records cases, forms judicial files, compile communications and notices prescribed by law or by the court and other duties related to the judicial process.

4.2.3 The Chairman of the Court: Jurisdiction

In each court, management and organization of the activity of Judicial Administration is made by the Chairman of the Court and the Chancellor.

Powers of the Chairman of the Court are provided for in Article 18 of the Law on organization of the judicial power. The Chairman of the Court, apart from being a judge, has also some important powers for the progress of work in the courts. The Chairman of the Court represents the court in relations with third parties. He / she at the beginning of the judicial year determines the allocation of judges in the Civil and Criminal Chambers and in sections. The Chairman of the Court divides the judges in panels, supervises the process of organization and documentation of the allocation of court cases through the lottery.

At the beginning of each month, the Chairman of the Court assigns judges, according to a plan, based on their surname in an alphabetical order, to court sessions evaluating in flagrante arrest or detention cases and determining security measures. In cooperation with the Chancellor of the Court follows the

submission of completed case files to the judicial secretary in respect of procedural deadlines provided by law.

The Chairman of the Court plans and conducts periodic or thematic work analysis with judges and court administration structures. He provides a special environment within the Court for lawyers, prosecutors, experts, representatives of the parties and persons who have this right, to study the case files, announces the list of licensed experts to respective fields, sets the reception hours for the public and approves the schedule of services conducted by the structures of judicial administration, appoints and dismisses employees of the judicial administration of the court, makes the problems posed by the sector or office for Public and Media Relations publicly known and follows the work discipline of judges and other court employees and for the observed violations of judges, he notifies the Minister of Justice and for other employees of the judicial administration decides on disciplinary measures in compliance with the law.

4.2.4 The average duration of cases by groups

The right to trial within a reasonable time is one of the guarantees of due legal process. Article 42 (2) of the Constitution of the Republic of Albania states that everyone has the right to a fair and public hearing within a reasonable time. This right is protected by Article 6 of the European Convention on Human Rights (ECHR) and Article 14 of the International Convention on Civil and Political Rights (ICCPR). Violation of this right constitutes the most frequent cause of complaints to ECHR

The Constitutional Court referred to the ECHR standards, has set the following criteria, which are considered to assess a reasonable time period¹⁶³: (i) the complexity of the legal issue. (ii) the conduct of the applicant, (iii) conduct of state authorities. (iv) the risk that this excessive length of time limits brings to the applicant

¹⁶³ Vendimi nr. 3/2015

Calculation of reasonable time of court proceedings

According to the jurisprudence of the CC, in criminal cases the calculation of their duration begins from the moment when the person is accused¹⁶⁴ or detained and ends with the decision and when any appeal or review have been completed. In civil cases, the calculation starts from the moment when the issue is referred to the competent judicial authority.¹⁶⁵ If it is needed initially to address a request to an administrative authority, the duration of the proceedings is counted from the moment of submission of the request. The court process is considered complete upon receipt of a final decision. In some cases, the CC may include within this period even the procedures of enforcing the decisions and other forms of their.¹⁶⁶

Domestic legal framework

Although Albanian legislation does not provide for a certain period of time for court proceedings, the terms governing the initiation, development and closing are defined in the codes of civil and criminal procedures, and the law "On the organization and functioning of administrative courts and adjudication of administrative disputes".

In relation to criminal matters, the Criminal Procedure Code of the Republic of Albania provides that courts must complete judicial review in a single session and if this is not possible, then the court decides to continue to work the following day and only for particular reasons, proceedings may be extended to fifteen days.¹⁶⁷ This is in accordance with the principle of "continuous trial", which aims at a complete and coherent presentation of the facts before the

¹⁶⁴ A person is accused when he or she has received an official notification from the competent authority, that he has committed a criminal offense.

¹⁶⁵ Scopelliti against Italy, ECtHR, 23 November 1993, paragraph 18, and Deweer v Belgium, ECtHR, 27 February 1980, paragraph.

¹⁶⁶ Legal Overview of international standards for due process, ODIHR / OSCE.

¹⁶⁷ CPC Article 342.

judge (panel) of the case, thereby facilitating the evaluation by the panel of material presented before them.¹⁶⁸

In relation to civil matters, article 28 of the Civil Procedure Code states that the court must adjudicate within a "reasonable time".¹⁶⁹ Consequently, both the judges and the court staff have a responsibility to ensure that all those who play a role in the proceedings do their utmost to avoid any unnecessary delay. The court is the one who decides the time of development of sessions and the deadlines for conducting procedural actions or other actions as required from it.¹⁷⁰ Before expiry of the deadlines, these may be postponed. The extension can not exceed the duration of the original terms except in "particularly serious" situations".¹⁷¹ Litigants who do not obey court orders or illegally do not come to the sessions can be fined up to an amount of 30 000 ALL.¹⁷² However, lawyers are excluded from the scope of these rules.¹⁷³ Meanwhile, if the deadline is not respected, the parties lose the ability to determine the facts and other evidence.¹⁷⁴

In connection with civil proceedings, the High Council of Justice has directed the courts on procedural deadlines for certain types of cases such as court proceedings on commercial disputes - a maximum of 6 months; Family disputes proceedings - maximum 4 months; and court proceedings of civil

¹⁶⁸ Criminal Procedure, p. 471 and unifying decision of the High Court, no. 6, 11 November 2003

¹⁶⁹ Article 28 of the Civil Procedure Code provides that courts should state all the requirements set out in the indictment, achieving a fair, independent and impartial within a reasonable time.

¹⁷⁰ Article 171/a, parag 2 of the CPC.

¹⁷¹ Article 147 of the CPC.

¹⁷² Article 165 to 168 of the CPC.

¹⁷³ Article 165 to 168 of the CPC.

¹⁷⁴ Article 180, parag 5 of the CPC.

disputes with general character - a maximum of 6 months.¹⁷⁵ These timelines are used when evaluating the work of the judges.

As regards **administrative cases**, the law "On the organization and functioning of administrative courts and adjudication of administrative disputes" one of the main principles which it relies on is prompt and reasonable proceedings.¹⁷⁶ Because of the nature of the interests protected by the administrative justice, procedural deadlines are very short, so in full compliance with the principle stated above. So starting from the initiation of the case, Article 25 provides for a term of 7 days from the submission of the lawsuit for preparatory actions of the judge; then a 10-day deadline left to the party to complete the claim; and further, a period of 20 days are given by the court for the commission of expertise, and so on.

4.2.5 Efficiency through procedural law

Outstanding cases to a significant extent appear to be caused by gaps or shortcomings in procedural law:

- **All procedures:**

Problems regarding **notification of documents** still exist and need a solution. In Albania reliable notification of documents is a problem in a significant number of cases, if the defendant is not registered or cannot be reached or does not have a postal address. This is not just a problem of registration of citizens. In the procedure codes there is a lack of specific provisions to enable a wide range of valuable notification.

¹⁷⁵ Decision of the High Council of Justice no. 199/3, dated 15 September 2006 "On the evaluation criteria of judicial activity", point 5, the letters "b-e".

¹⁷⁶ Article 5 of the law "On the organization and functioning of administrative courts and administrative disputes".

Management of cases needs to be improved and legal provisions need to facilitate this.

It appears that courts tend to postpone hearings for a variety of reasons, especially because of the absence of a party. The legislation in force does not provide a legal regulation of this problem.

Judicial practice that in the course of appeal regularly are presented **new facts and evidence** should be reconsidered, because the level of appeal should be a degree of control of the first instance.

- ***In civil proceedings:***

The simplified payment procedure, which allows a creditor to recover his uncontested civil and commercial claims from the courts according to a uniform procedure that operates on the basis of standard forms, is not provided. Such a procedure is foreseen for the EU Member States in Regulation (EC) No. 1896/2006 of the European Parliament and Council of 12 December 2006 creating a European order for payment procedure.

The small claims procedure, which applies in civil and commercial cases where the value of the claim does not exceed a certain amount, is not provided (ie a local monthly average salary). This is an EU standard, defined in Regulation (EC) No. 861/2007 of the European Parliament and Council dated July 11, 2007. The procedure is a special procedure, in writing, unless a hearing is considered necessary by the court.

In Articles 175-179 of Civil Procedure Code, the discretion to postpone the cases seems very high. Conditions for **"default judgment"** are not clearly provided.

- ***In criminal proceedings:***

The law does not specify **the order of penalty**, a written indictment of a prosecutor that contains a specific fine or imprisonment up to one year on probation. The indictment is presented to the court. If the judge disagrees with the sanction proposed, the indictment is dealt with the criminal standard procedure. If the judge agrees with the sanction, the penalty order is handed over to the defendant. If there is no response, the penalty order becomes final and enforceable. Reduced court fees can be predicted in order to give incentive to accept.

- ***In administrative proceedings:***

Insufficient number of judges (especially in the Administrative Court of Appeal), has resulted in a large backlog of administrative courts and the delay in the adjudication of cases due to the large number of administrative cases.

5 . Implementation of Judgement

The right to a fair legal process is guaranteed in Article 42 of the Constitution of the Republic of Albania, which sanctioned the protection of the right to develop a regular legal process and Article 6/1 of the ECHR. Albanian Constitutional Court and the ECHR through its jurisprudence, have considered and consider the right to ask for the execution of a final court decision (executive titles) in a reasonable time, an integral part of Article 42 of the Constitution.

5.1 Implementation of civil, administrative and commercial court decisions

- ***The legal framework and institutions responsible for the enforcement of decisions***

Bailiff Service is organized as the state judicial bailiff service and the private judicial bailiff service.¹⁷⁷ Following in Chapter VIII is widely treated the organization and functioning of the bailiff service. Private Bailiffs or private bailiff agencies exercise their procedural enforcement functions throughout the territory of the Republic of Albania. At the local level of organization, the bailiff offices, in every judicial district, take the necessary procedural measures for the effective execution of executive titles. Private Bailiffs or private bailiff agencies exercise their procedural functions throughout the territory of the Republic of Albania.

Public administration bodies in the process of compulsory execution of executive titles have an obligation to cooperate with the Bailiff Service. A series of decisions of the Council of Ministers and orders of MoJ are adopted aiming at regulating procedures for cooperation of a number of institutions with the bailiff service, the procedures for the enforcement of court decisions for obligations that affect the state budget, for the determination of tariffs for services offered and procedures carried out by the private bailiff service, etc. Nevertheless, the low efficiency of the bailiff service in the execution of court decisions remains a problem.

- ***Obstacles of legislative nature in implementation in practice of legislation on execution of judgements***

The execution of court decisions is weak, especially in cases where state institutions are suing party.¹⁷⁸ For several years, the European Commission has noted in its progress reports that for our country is of a particular concern the norm of execution of judgments, as well the allocated budget. Non-execution of final court decisions in a reasonable time, by the Public Administration bodies in the quality of the debtor, is contrary to the provisions of Article 142/3 of the Constitution of the Republic of Albania, Article 451 / a of the Civil Procedure

¹⁷⁷ Analytical document - Analysis of the justice system, the Ministry of Justice.

¹⁷⁸ European Commission Progress Report on Albania in 2011, id, p. 61.

Code, as well as the principles on which the activity of the Public Administration bodies, sanctioned in the Code of Administrative Procedures.

During the review process it is concluded that the failure to execute executive titles in a reasonable time came as a result of obstructions of legislative and practical nature, as well as failure by the authorities charged by law to respect legal and sublegal acts.

Directive of the Council of Ministers no. 2 dated 18.08.2011, "On the execution of monetary obligations of budgetary institutions in the treasury account" was rejected in the Constitutional Court by the Institution of the Ombudsman for the fact that it constituted an obstacle to the execution of executive titles. For this reason, on the 20.04.2014, the Constitutional Court decided to repeal as incompatible with the Constitution of the Republic of Albania of the letter "d" of point 7 of Instruction No. 2, dated 08.18.2011. Fully repeal of the Directive in question was carried out by the Council of Ministers on the occasion of the issuance of Directive No. 1, dated 04.06.2014, "On the execution of the monetary obligations of general government units in treasury account".¹⁷⁹

Applications to the Constitutional Court regarding the failure to adjudicate within a reasonable time and non-execution of final court decisions have increased in number.¹⁸⁰ Despite this, in the decisions of the Constitutional Court where noted deficiencies, in case of identification of the violation of constitutional rights, to determine compensation for the individual.

Despite legal restrictions, State Bailiff Service in its operations is not good due to non-execution in time or failing to use all legal means available. In terms of its operations, State Bailiff Service is not good as well, due to the non-execution in time of these court decisions or failing to use all legal means available, therefore it was considered necessary that superior institutions carry out inspections and periodic audits, in order to increase the responsibility of

¹⁷⁹ Data from the report of the Ombudsman for 2014.

¹⁸⁰ Analytical document - Analysis of the justice system, the Ministry of Justice.

those specific institutions, which carry out the execution of court decisions. Furthermore, it is identified that was not set up an effective system for monitoring private as well as State bailiff service.

"ALBIS" electronic management system of bailiff cases is not yet connected to the system used by the courts, which is evidenced as well by the European Commission in its progress reports.

The first problem in terms of the execution of civil court decisions is the way the court decision is announced, which is followed by the way of complaint that leads to the start of implementation of a civil court decision.¹⁸¹ Some of the issues that have been identified mostly with regard to the execution of civil court decisions by State or private bailiffs are the lack of professional skills of judicial bailiffs and the lack of knowledge of the law;¹⁸² unwillingness of court bailiffs to make sanctions against the person under final judicial decision or other persons in the process of execution, doing actions out of the object of execution and bad interpretation of the clauses of the court decision; non assistance of the institution charged by law for compulsory execution of executive titles and enforcement tools by the local or central government institutions, as well as State Police etc.¹⁸³

One of the main reasons for judicial non-execution, is also considered the lack of financial resources and sufficient resources, that nevertheless should not be an excuse that might lead to non-execution.

A huge concern remains the non-execution of final decisions given by the courts as well as administrative decisions primarily related to the restitution and compensation of properties confiscated during the communist regime.

¹⁸¹ Referring to the discussions of the participants in the consultative round table with stakeholders of the justice system of the analytical draft document, dated May 5, 2015.

¹⁸² Special report "On the situation created by the non-execution of final court decisions", 2012, the institution of the Ombudsman, submitted to the Parliament of the Republic of Albania

¹⁸³ Report by the Ombudsman for 2014, submitted to the Parliament in February 2015.

On specific issues related to the execution of court decisions, the European Court has also considered as problematic the inefficiency of bailiffs and namely the bailiff failure to implement the decisions of the Albanian courts.¹⁸⁴

But also a big issue is the execution of decisions of the ECHR by Albania, particularly those related to non-enforcement of domestic court decisions or administrative decisions, including the pilot decision on the case of Manushaqe Puto against Albania. Based even in the Report of the HR Commissioner of the CoE, the execution of this category of decisions has been progressed slowly. For this reason it was recommended to find effective remedies in order that the judgements of ECHR to be implemented quickly and in effective manner.

In pursuance of this decision, the Council of Ministers issued Decision no. 236, dated 23.04.2014 "On the implementation of the pilot decision of the European Court for Human Rights" "Manushaqe Puto and the others against Albania ", on the law reform to be undertaken for the restitution and compensation of property; creating a new efficient mechanism for compensating expropriated subjects during the communist regime, for forms of compensation, timeframe and the methodology of mapping the value of land in Albania and transforming the role of AKKP associated with this process.

Also within the execution of the ECHR decisions, the Council of Europe prepared a memorandum in order to assist the Committee of Ministers in supervising the execution, by Albania, of a number of decisions of the European Court, which highlights a number of different structural problems that require urgent solutions. A special focus has been devoted to cases dealing with property restitution and compensation. The decisions have to do with the failure of public authorities to respect the final domestic decision.¹⁸⁵

¹⁸⁴ ECHR Bushat decision against Albania.

¹⁸⁵ Memorandum between deputy ministers, the Committee of Ministers of the Council of Europe, CM / Inf / DH (2010) 20 25 May 2010¹⁸⁵.

5.2 Execution of Criminal Judgements

- *Legal framework and responsible institutions*

The legal framework provides for the execution of court decisions, it consists of the Constitution of the Republic of Albania, Criminal Procedure Code, Law no. 8737 dated 12.02.2001 "On the organization and functioning of the Prosecution", Law 8331 dated 21.04.1998 "On the execution of penal decisions", the Law "On the rights and treatment of prisoners and detainees" as amended and a number of laws and related acts and regulations which regulate the manner of execution of penal decisions.

Execution of penal decisions not in compliance with the law may be associated with harmful consequences. Institutions responsible for the execution of penal decisions are: Prosecution, police, detention institutions and institutions of penitentiary.

Referring to the Criminal Procedure Code, among the actions of the prosecutor for the execution of a prison sentence is the issuance of the order of execution, which must contain the data of prisoners, ordering provisions of the decision and dispositions necessary for execution. If the convicted person is in detention, the order is sent to the state body that manages prisons and notified to the person concerned, and when the convicted person is not in detention, it is ordered his detention. In the same way it is acted in cases of enforcing the compulsory closure in medical and educational institutions.

The Prosecutor under Article 465 of the CPC recalculates the detention time, the period of detention served for the same offense or for another offense, the period of imprisonment served for another criminal offense, when appropriate sentence is revoked, or when for the offense is given amnesty or pardon. After making the above calculations, the prosecutor issues the order to be communicated to the prisoner and his lawyer. Prosecutor, by law, for the execution of penal decisions is bound to take all necessary measures to execute

the decision according to commandments of the court even when they provide medical and education measures under Article 46 of the Criminal Code and the Criminal Procedure Code. He must also check the regularity of the execution, intervene at the competent authorities, and if necessary also in proceedings to restore law. The court, immediately as the imprisonment decisions became final, sends them to the prosecutor who carries out the above mentioned actions.

Non issuing court decisions within the legal term brings about delays in issuing execution orders by the prosecution, thus leading often to serious human rights violations. In most cases, court decisions are issued in more than 4 days, in some cases, in more than 30 days.¹⁸⁶ This process is affected as well by the overbearing administrative red tape between courts and prosecutors in the delivery of court decisions to be followed later by other procedural actions

A serious problem currently turns out to be the execution of decisions of enforced medical and educational measures given by a court decision. Article 46 of the Criminal Code stipulates that medical measures may be issued by the court against irresponsible persons who have committed offenses. The above-mentioned measures are mandatory treatments in health institutions and ambulatory treatments. In the absence of such specialized institutions, the rights of a group of individuals who suffer from mental health illnesses are being violated.

Likewise, the implementation of ECHR decisions on Caka group is very important. In this framework, the Commissioner for Human Rights of the Council of Europe urged the authorities to adopt the necessary amendments to the Criminal Procedure Code that would allow a possible reopening of criminal

¹⁸⁶ Study Report on prosecution decisions on non initiating and terminating criminal proceedings & procedures for the execution of court decisions, the Albanian Helsinki Committee, 2014. As to the decisions of the Durres District Court, it turns out that decisions have been issued within three days for 24 decisions, 4-10 days for 251 decisions, up to 15 days for 70 decisions, up to 30 days for 55 decisions, more than 30 days for 17 decisions.

proceedings in cases of violations of the right to a due process, in accordance with the Recommendation No. R (2000) 2 of the Committee of Ministers..¹⁸⁷

Semi-freedom and house detention court decisions or other alternative penalties are delivered as well for execution to the Prosecutor..¹⁸⁸

While educational measures are executed in specialized education institutions of minors, sent voluntarily by the parent or custodial person, at the execution order of the prosecutor. Currently in Albania there are no such institutions, therefore such measures cannot be executed

IV. Summary of Findings

Regarding the organization of the judiciary it is noted that:

Actually in the High Court might be appeal almost any decision of the lower courts (with some limitations in administrative courts) that has brought an unreasonable overload to this court.

The initial and reviewing jurisdiction of the High court is necessary to be reviewed and re-conceived because it overloads the functioning of the court and might infringe the efficiency of the system.

Despite the acceleration of court proceedings in 2014.¹⁸⁹, the High Court still has a significant backlog. Despite some significant improvements, the average time needed to resolve civil cases in the High Court is longer than the maximum period of 2 (two) years set by the European Court of Human

¹⁸⁷ Report by Commissioner Nils Muižnieks of the Council of Europe for Human Rights - following a visit to Albania from 23 to 27 September 2013, published in January 2014.

¹⁸⁸ Widely dealt with in the chapter on Criminal Justice of this document.

¹⁸⁹ The Rate / percentage of resolving cases by the Supreme Court in 2014 was 100% for criminal cases and 92% for civil cases.

Rights.¹⁹⁰ The caseload of judges of the High Court (number of cases per judge) is high compared to the European standard of 246 cases per year per judge.¹⁹¹

In Albania there are three categories of the Courts of First Instances and Appeal, respectively the Courts of Ordinary Jurisdiction, the Court of Serious Crimes and the Administrative courts.

In general the number of court cases registered by the courts of the Republic (at all levels) has been increasing. An exception to this trend make first instance courts (ordinary jurisdiction) in which the number of registered cases has been declining as a result of the creation of administrative courts that have taken over a part of the cases.

Courts of Appeal have the right to examine in fact and in law the appealed judgments, which has affected to the unreasonable delay of proceedings. In this way can not be clearly disciplined the phase of presentation from the litigation parties (at first instances) which is one of the biggest problems today in practice as regards the length of trials.

Despite a slight improvement in 2014, the caseload of the judges of the courts of appeal of ordinary jurisdiction is significantly higher than the standard of 246 cases per year per judge.

Administrative Court of First Instance has an increasing caseload and practically has exceeded any legal term for their resolution. Subjects of the Law have not full access to these courts (travel difficulties, etc). Administrative Court has very wide competences that undermine the effectiveness of its activity.

¹⁹⁰In 2014, the average time to resolution of civil cases in the High Court was 2.1 years. As for criminal matters 0.9 years.

¹⁹¹The average load for judges of the Supreme Court is 454 issues per year.

The court of first instance for serious crimes, due to the fact of being separated from other courts faces the lack of judges to resolve issues due to the exclusion of its judges. Practically, this has led to the fact that judges of ordinary jurisdiction' courts perform the functions of the judge of the Court of serious crimes. This situation has drawn without meaning the existence of this special court in practice.

In 7 of the 21 courts of first instance (ordinary jurisdiction), the work load of judges is under the standard of 246 cases per year. On the other hand, in some courts such as Kruje, Saranda, and Lezha judges seem to be overloaded.

The speed of the judgement of cases by appeal courts of ordinary and administration jurisdiction is still a problem. The speed of trial in criminal cases in the first instance courts of ordinary jurisdiction is relatively good. On the other hand, the speed remains a problem in civil matters, where almost 16% of cases last over 6 months and 7% of cases over 1 year.

Regarding the Good Governance of the judiciary it is noted that:

In general there is a fragmentation of responsibilities in the Good Governance of the judiciary. One of the most prominent causes of this fragmentation or unnecessary division of responsibilities is the fact that the HCJ has a limited role in relation to key areas of good governance. HJC has not sufficient capacity to develop policies and strategies in the field of judicial administration.

The process of selecting the members of the High Council of Justice is based solely on the criterion of minimum professional experience. Also, is being noted that there is not a coherent system of discipline and accountability mechanisms in relation to their capacity as members of the Council, and there are no clear rules for the accountability of the HCJ as a collegial body.

Part-time commitment of members of the High Council of Justice, with the exception of vice Chair, does not allow the active involvement of the institution in the exercise of his powers, causing in this way the facing with the pressure of

the overload relating to the tasks that are urgent, as well as weakening its collegial nature.

The high number of judges in the quality of the HCJ members, chosen by the judges, exposes his decision on a subjectivism of its members in decision-making, particularly on matters relating to disciplinary proceedings or the promotion of their judges' colleagues, from which they have been elected as members of this Council.

Amendments in the law "On the High Council of Justice" did not comprehensively reform this important body of Good governance of the judicial power. The law does not define the powers of the High Council of Justice for matters relating to: determining the number of judges in various courts, the organizational structure of each court, including matters pertaining to the support staff and the Office of Judicial Budget.

It has not been avoided the problematic with inappropriate political influence on the activity of the HCJ, overlaps between the powers of this Council and Minister of Justice with regard to the inspection of courts, review of the complaints against judges and disciplinary proceedings against judges. The Venice Commission considers that the overlapping of inspections between these two institutions should be addressed by concentrating these competences in a single authority, ideally in the HCJ.

There is no forecast of the obligation to design and implement strategic plans, to ensure the achievement of relevant targets within the time limits, set as a practice of accountability of independent institutions.

HCJ and the MoJ have not achieved to organize inspection structures with sufficient human resources and professional capacity. Status under the law for inspectors has not been sufficient to attract the interest of judges with experience and integrity, while the HCJ and the MoJ have not proven that guarantee their immobility, the necessary evaluation and promotion in terms of their judicial career.

The exclusiveness of the Ministry of Justice for exercising the mechanism of disciplinary proceeding initiative has not resulted as an effective and there are perceptions of a lack of objectivity and professionalism in its exercise, especially in the circumstances when the initiative for the inspection itself and its results are under the direct responsibility of the Minister.

The disciplinary hearing in HCJ is held in a general meeting of this collegial body, while, like any other trial, should respect the principle of the court specified by law and due process. HCJ should not act like a meeting, but as a disciplinary court and it should rigorously implement procedural norms regarding the composition of the group of judges, the reporter, procedural actions, contradictoriness, the burden of proof, the right of defence as in any other type of judgment.

In the organic law of the HCJ, the objective and transparent criteria for assessing the professional and ethical judges are missing. On the other hand, the evaluation of the judges does not refer mostly to the criteria related to the efficiency, the quality, the velocity of court proceedings, but to the number of decisions changed by the highest court, a factor which is out of the control of judges. Fixed quantitative criterion is not considered fair and reasonable, which penalizes the court judges, who have less caseload.

The High Council of Justice has not completed the evaluation of judges, a substantial request for an appointment transfer and promotion process, based on merit and transparent. The lack of evaluation of judges has not simply been unable to realize, but it is also a sign of lack of goodwill.

In addition to problems related to the HCJ Inspectorate it shows that currently the Inspectorate carries out inspections as well as the evaluation of judges. Having these two functions does not serve the efficiency of the inspectorate.

The powers of the High Council of Justice with regard to "the exercise of authority to verify the property of judges" are overlapping with the powers of the HIDA, which is the most specialized body in this field that has this as the subject of its work.

As regards the activity of the HCJ it is important to also be applied the principle of transparency in decision making. But a concern remains the fact that there is no limitation to transparency. This can be problematic in relation to the right to privacy and data protection, especially when it comes to discussions on the assessment of professional performance of judges, appointment and disciplinary matters.

National Judicial Conference is mentioned in article 147, first paragraph of the Constitution, only for the election of members to the HCJ. The role that the Conference has in the Judiciary is considered formal. The role of the National Judicial Conference in connection with the Code of Judicial Ethics is deficient, which sets the rules for professional and extra professional conduct of judges. There is no available information, guidance and counselling, in order to prevent violations of ethics.

It is noted that there are conceptual and legal inaccuracies on the role of Minister of Justice in the area of good governance of the judiciary, particularly with regard to case management system, public and media relations, quality management system and safety system of the court.

The institution name refers not only to the judiciary, although the HCJ has jurisdiction only in relation to the judiciary, not in relation to other sectors of the justice system. In the context of the role and powers of the Council of Prosecution it is not specified, also, if these two sectors of the justice system, should have their councils, completely separate, or be included in a Council of Justice.

Status of the judge

The provisions on the status of judges are distributed in various legal acts, in by-laws and acts of regulatory nature. The lack of a comprehensive law to stipulate in detail the provisions on the status of judges, as well as responsible institutions and procedures adopted in the decision-making on this status is also noted. Specifically, the main issues identified in terms of the status of judges are as follows:

***i.* Incompatibilities and prohibitions with the function of judges**

Current provisions regarding specific incompatibilities of the function of judges and restrictions on them to carry out certain public and private actions are quite generally stipulated..

The law does not explicitly, clearly and sufficiently stipulate cases related to prohibited activities incompatible with the judges' function..

The law does not provide necessary and sufficient adjustments regarding the actions, procedures and powers to be exercised by the state institutions in case of incompatibilities identified with the function of the judge.

Also, the legislation has shortcomings in terms of coordination of activities mechanisms and clarifying the powers of the High Council of Justice with regard to incompatibilities of the judge and, on the other hand, those of other structures charged by law to verify incompatibilities prohibitions and conflicts of interest of public officials etc.

***ii.* Appointment of judges**

Appointment of judges is generally estimated with critical notes in relation to the need to ensure the standard of their selection, in accordance with their professional skills and without external influences inappropriate with the judicial career.

Criteria and procedures for appointment of judges are not provided entirely by the law in accordance with the requirements of objectivity, meritocracy, due legal process and transparency.

Besides the need to enhance the quality of theoretical preparation, there is a lack of normative regulations and institutional mechanisms on the criteria and procedures of testing and verification of candidates for admission to initial training until its conclusion in terms of the necessary qualities of life experience, intelligence and due human maturity, as well as appropriate

personality qualities of integrity to serve the public and, in particular, to exercise the constitutional function of the judge.

A qualifying theoretical and practical examination at the end of the second year, and a final theoretical and practical examination at the end of the third year for the initial training are missing for monitoring and evaluating of candidates for magistrates.

Likewise, there are shortcomings in legislation and institutional mechanisms regarding the criteria and testing procedures and the necessary verification to be applied for admission to the judicial career and appointment as a judge of those who, exceptionally, are not subject to initial training at the School of Magistrates, both in terms of professional knowledge and personality and integrity required qualities to serve the public, and especially to exercise the constitutional function of the judge.

The law does not provide clear, sufficient, objective and transparent criteria and procedures in terms of effective competition of candidates for judges from the School of Magistrates and other candidates for vacancies. It lacks an effective verification and complaint mechanism against the decisions of the High Council of Justice on the appointment of judges.

Criteria and procedures for selecting and appointing members of the Supreme Court are constantly accompanied by the politicization of the process, delays in filling vacancies and appointments, unaccepted constantly by politicians, interest groups and public opinion, both in terms of professionalism and confidence in the impartiality and integrity of these judges.

The composition of the Supreme Court steadily continues to have a significant majority of judges who do not arrive from judicial career or a long and distinguished professional career.

The limited 9-year term mandate of the High Court judges, namely the lack of stable and immobile judicial career has contributed to the deterioration of the evaluation and the public confidence in the institutions and the independence,

professionalism, integrity and impartiality of the above-mentioned judges and the Supreme Court as a whole. In practice, various cases are identified in which, after termination of their mandate, former Supreme Court judges have not been appointed in the Court of Appeal, although they have made a request in accordance with the Organic Law of the Supreme Court.

Problems are identified in terms of appointing administrative judges. Practice has revealed that the process of applying for administrative judges has not resulted in an efficient and stimulating system.

The process of selection of candidates by the High Council of Justice to be appointed to the appeal courts is estimated to have been made out of objective criteria. First, the lack of a professional evaluation of judges by the Supreme Council of Justice has made it impossible for these candidates to meet a legal requirement, namely, the evaluation "very good" for professional skills the last two times. Secondly, the law provides that a candidate for a judge should have been distinguished for professional skills and high ethical qualities. It is not clear what are the verifications to be done to check the integrity and the high ethical qualities of the candidates and what are the sources of information to be used in this process.

Also, judges are commanded in the Administrative Appeals Court to resolve the impasse that has to do with the occupation level of these courts. Commanded judges in this court are appeal judges, who meet only one of the criteria under the law, namely the criterion of seniority, while they have not undergone the testing process.¹⁹²

¹⁹² Referring to the roundtable discussions on consultation and Analytical Justice System document presentation ", dated. 05/05/2015.

iii. Professional and Ethical Evaluation of Judges

The law does not provide expressly, clearly and sufficiently issues related to the criteria, procedures and competencies for professional evaluation of judges. On the other hand, with some exceptions, generally these issues are dealt with by by-laws acts enacted by the HCJ, which do not meet the standard of law stipulated issues relating to the status of a judge..

Particularly problematic are the disrespect of obligations, the quality of the existing criteria and rules of the HCJ regarding the judge's professional evaluation, as well as the carrying out of the evaluation by the same body charged with the inspection of judges and the serious delays in the implementation process of the professional evaluation of the judge.. This problem has reduced significantly the effect and the benefits of using this mechanism of judicial career development.

The law does not stipulate any specific mechanism for giving the opportunity to the judge evaluated as "acceptable" or even "unable" to rehabilitate, through mandatory attendance for a certain period of special training programmes finalized by a verification test of his / her capacity to pursue the professional judicial career.

The law does not explicitly provide, through sufficient and clear rules even that the decisions of the High Council of Justice on the professional evaluation of a judge should be subject to administrative verification, as well as the right of the tested judge to appeal to the court against the decision of the Council.

The evaluating system does not pay due attention to the ethical performance of judges.

The law does not provide any adjustments for evaluating the performance of members of the Supreme Court.

iv. The judge transfer

The law does not provide clear, sufficient, objective and transparent procedures for the creation, announcement and filling vacancies in the court, which the HCJ should be bound to carry out in the process of filling the vacancies in the court through the transfer of judges interested to other courts of the same level.

Particularly problematic and harmful to the judges careers are the lack of necessary legal regulations and disrespect of existing ones by the HCJ regarding effective competition and folders, among the judges concerned, based on the achievements and professional evaluation, integrity and commitment, career length, as well as specific or environmental circumstances related to competing judges.

The law does not provide an effective verification and complaint legal mechanism by competitors against decisions of the High Council of Justice to fill vacancies through the transfer of judges, which must be motivated and justified.

Permanent transfer of judges seems more problematic as it is often confused with promotion. The legal framework is not clear about the competencies between the MJ and the HCJ to transfer standard procedures for determining the proper number of judges for each court.

The law does not provide sufficient regulations on the competency, cases and criteria on which is evaluated and decided on delegating of judges to examine given issues for a given time in another court, other from the one in which they exercise regularly their function. The law does not stipulate the maximum periods of time of delegation and the case of delegation for the temporary assignment of a judge to a leading function.. All delegating decisions are taken by the HCJ and there is no decentralization of this competence. In the meanwhile, the problems of delegating can be prevented and reduced by a fair redistribution of courts and judges in the territory.

Likewise, the law does not explicitly stipulate that the delegation cannot be decided without the consent of the judge. The HCJ has not paid due attention so far to this aspect of the principle of immobility of a judge from their position, which must be respected.

The law does not provide clear, sufficient, objective and transparent powers and procedures in the case when transfer of judges should be made even without their consent in circumstances related to the reorganization of the courts, in accordance with the law and in order to guarantee judicial service in territory and court cases. Even with the existing legal framework, the HCJ did not implement this power and its obligation, thus violating judicial service guarantees for the public and the adjudication of cases in reasonable terms.

v. Promotion of judges

The law does not explicitly stipulate, with sufficient and clear regulations, that promotion is related only to cases of the "transfer" of the judge from his / her current duties in a lower court to a higher court or to a special court of the same level, as well as to the cases when they are appointed in leading court functions.

The law does not provide sufficient regulations on the development of a special examination for the selection of the winning judge in cases of promotion, as well as on the nature, criteria and basic rules of the the development of examination according to the type of promotion: on the filling a vacancy in a higher court or in a leading position in courts.

Particularly problematic and harmful on the evaluation and expectations of court career judges are also delays in filling vacancies, as well as disrespect of the existing criteria and regulations by the HCJ regarding the promotion of judges.

The law does not provide clear, sufficient, objective and transparent procedures for the development of promotion competition by the HCJ. These issues, with some exceptions, are generally dealt with through by-laws issued by the HCJ,

which does not meet the standard of provisions of law issues relating to the status of a judge.

To date, the HCJ decisions regarding the promotion of judges are neither subject to internal administrative verification nor to their judicial appeal to the court by the judges concerned, although dissatisfaction about these issues constantly has been expressed in the community of judges..

The law does not explicitly provide, by clear and sufficient regulations, even that the decisions of the High Council of Justice regarding the promotion of the judges should be motivated and justified, and, in this regard, the existence of verification mechanisms of this act, as well as competing judges right to appeal in court against the decision of the Council.

vi. Disciplinary responsibility of judges

Disciplinary responsibility of judges is identified and documented through inspection of judges activity and verification of complaints against judges. Legal regulation of the inspection process does not make a clear distinction between the judge's inspection activities and inspection activities of the courts.

Considerable overlap and ambiguity are being noted between the powers of the High Council of Justice and the Minister of Justice in connection with inspections of courts, reviewing complaints against judges and disciplinary proceedings against judges.

The current law "On judicial power" features unusual and confusing classification and sorting of disciplinary violations, which result that do not respond and do not help the goal of escalating, exhaustive and clear provisions of disciplinary violations by their type and importance .

HCJ practice in the implementation of disciplinary measures has shown that the boundaries between different disciplinary violations provided by the law are not always clear. Likewise, it appears that the range of disciplinary sanctions is

relatively small and, as such, does not allow always determining proportionate sanctions.

In some cases, disciplinary violations stipulated in article 32 of the law, are not related to the acts and behaviour that seriously discredit the public and constitutional position and image of the judge and the judiciary, as the Constitution provides

The law stipulates a number of disciplinary violations simply motivated by way of justification, the assessment of circumstances and the interpretation that the judge makes to the law in announcing the decision,, the non-compliance with judicial practices etc. These cases, as far as they are due to be considered, can be related to "professional inadequacy" provided by the Constitution, as an aspect of professional evaluation of a judge, but not being "disciplinary violations".

The law does not duly distinguish and sort between the disciplinary violations that occur during the exercise of the judicial function, out of the judicial function, and those that follow / accompany committing of an offense by a judge. 5-year term of limitation from the date of the violation is too long.

The law does not regulate adequately the nature and cases when to apply measures of suspension of a judge from the exercise of the judicial function or the forced transfer (as a complementary or as a temporary measure).

The disciplinary investigation is partly under the auspices of the executive and partly within the powers of the Inspectorate of the HCJ, which exercises its function under the supervision of the Vice President of the HCJ. Procedural regulations are weak and are not in full compliance with international standards.

One of the considered problematic issues is the exclusion of members of the SC under the jurisdiction of the HCJ as regards the disciplinary process issues. Supreme Court judges are subject to disciplinary proceedings only for extreme violations, for which the only extreme disciplinary measure applied is their dismissal.

vii. Termination of the mandate of judges

The law does not provide expressly, clearly and sufficiently issues related to cases of judicial career termination, as fundamental issues related to the principle of the immobility of the judge from office.

The law does not stipulate actions and procedures to be adopted in given cases of mandate termination of the judge, as in the case of the mandate termination of judges for their inability to act. The Constitution in its Article 147, mistakenly deals with this case as the motive for the judge dismissal.

The formula of Article 140 of the Constitution, which stipulates cases of dismissal of the Supreme Court judges, has not been tested in practice.

viii. Salaries, financial and social treatment of judges

The system of salaries, rewards and social and health care of judges, as one of the means to guarantee their independence and impartiality, does not meet the necessity of duly and merited financial treatment.

Salaries and current financial treatment of judges do not take sufficiently into account the dignity of the office and of the profession, the nature of the responsibilities of the judicial function, the degree of difficulty in exercising it, the high number of incompatibilities and specific prohibitions to carry out other earning activities, the need to protect them from the pressures and influences on their judicial activity and in their behaviour as a whole, as well as social integration needs of them and their family in the community.

The current pay system and financial treatment do not guarantee the principle of their inviolability, while their net level earnings more than once, without being declared and motivated by the government, have also decreased due to frequent changes of government fiscal policy.

Despite constant improvements, the social care system does not guarantee that the salary of judges at the time of their retirement should be as close as possible to what they earned by their mandate termination, as well as the guarantee that

during retirement pension should be kept the reference of the pension with the salary of the judge of the same level in function at any time, if it is favourable for the retired judge.

Likewise legislation does not provide special disability pensions for judges in case of mental and physical disability to continue their functions, as well as special family pension to the judge's spouse and children if he / she dies during the judicial career or during retirement.

The legislation does not provide specifically the right of judges to be compensated fully for the loss or destruction of their own and their family's, property due to the exercise of their function..

The legislation does not specifically provide special facilities and financial benefits for the judges and their family in terms of health care.

The legislation does not provide other forms of effective reward and compensation for judges assigned to exercise functions out of their residence place.

ix. Safety and security of judges

The legislation does not explicitly stipulate the obligation and the powers of the HCJ to take a stand and adopt possible measures in cases when judges must be protected from any kind of act which violates or is intended to prejudice their independence and impartiality.

The legislation does not stipulate the right of judges to address to the HCJ, when considering that the independence and impartiality are violated or may be violated by acts and internal or external interferences in the exercise of his functions.

With its current provisions, the law does not offer effective conditions, ways and means to guarantee the safety of the courts and judges, in order that the State protects their lives, their property and their family against the pressures,

threats and acts of violence that might occur due to their duty, in the premises of the court and out of it.

Despite the change of the Constitution in 2012, by which the immunity of judges from prosecution was removed, it is noted that judges cannot be arrested or subject to personal control or the apartment without the authorization of the responsible body.¹⁹³ While temporary protection from arrest seems reasonable if you take into account the specifics of the judicial function, protection of personal and the apartment control constitutes an unjustified obstacle to the process of gathering evidence. There are confusions regarding the immunity of the judges when the latter commits offenses in the exercise of his / her function and when he / she commit offenses out his / her function.

Interventions made in the Code of Criminal Procedure in March 2014 to reflect the above-mentioned constitutional changes do not fairly determine the range of actions to be taken by the prosecution to secure the arrest or control (personal or of the apartment) of the judge.

x. Working conditions

The law does not contain specific provisions, followed by the specific delegations to the executive regarding the obligations, responsibilities, standards, measures and resources that should be provided and implemented to guarantee effective and appropriate conditions of work for courts and judges

The current legislation stipulates the right of a judge to the annual paid leave of 30 calendar days, which is reduced without any reasonable motive compared to the duration of annual leave stipulated by the previous law. This turns out to be also generally shorter than what judges benefit in other countries, at least 30 working days.

¹⁹³ The Constitutional Court in the case of SC members and the HCL in the case of other judges

The law on judicial power does not expressly provide special conditions to the exercise of the right of a judge to ask for paid leave for reasons of attending vocational profiling programmes in the country and abroad, for the preparing and passing of degrees, as well as payable leaves for certain reasons.

Administration of Justice

Administration of justice is composed by two very important aspects, transparency and efficiency in the judiciary.

Not all hearings are open to the public in the judicial district courts. Hearings are being held in judges' offices, which constitutes a physical barrier to the participation of the public or media representatives to a hearing.

Lack of court halls is evaluated by judges as a factor that prevents public access to the courts. Order no. 6777/5 of the Minister of Justice, dated. 30.09.2010 "On the approval of the Regulation" On the court's relationship with the public " is contrary to section 26 of the Civil Procedure Code, which provides without any reservation that hearings are open to the public.

One of the elements of transparency of judicial proceedings is the audio recording, which is relevant not only for the credibility of citizens in the courts, but also for the prevention of corruption. Using audio recording has proven to be very important in all courts in the country, as for instance, in Korca District Court, audio recording is used by 97-100% of all judges.¹⁹⁴ Nevertheless, in some courts, where there is a limited number of court halls, hearings are being held in judges' offices, and no audio recording is being made. For instance, court hearings are being held in judges' offices without audio recording in the Judicial District Court of Elbasan, with only 2 courtrooms available for 13 judges.

¹⁹⁴ European Union's Progress-report on Albania për Shqipërinë for 2013.

But in a number of courts, especially in the administrative courts, the audio recording system has not yet been installed.

There is a discrepancy between the legal provisions of the Civil Procedure Code and Criminal Procedure Code relating to the documentation of hearings, as on one side, the Civil Procedure Code recognizes as a record the audio recording and on the other side, the Criminal Procedure Code requires that the secretary should keep a written record accompanied by audio recording.

Announcement of unjustified decisions causes the violation of the right to a fair trial and in particular the right to appeal. One of the factors that influenced in this direction is the short time between the moment when the decision is made available in the reasoned form and the appeal's deadline.

As for the relations with the public and the media, there is no clear legal definition in terms of management, maintenance and updating of a website which would provide specific information about the nature of the proceedings, legal assistance, average proceedings duration in various fields, court fees, alternative means of dispute settlement provided to the parties.

A few courts provide updated information. The time period within which judicial decisions can be downloaded is not clearly determinable, as not all courts post their decisions on the Internet in a unified way. Practice has shown that in some cases the records are inaccurate and incomplete information is given. These shortcomings have affected judicial transparency, reducing the possibility of the public and stakeholders to understand how the process developed.

The disregard of the rules for informing the parties by the court administration has been identified as one of the main causes of the deteriorated efficiency and prolonged delays in trials.¹⁹⁵ This is related to incorrect addresses, whereof

¹⁹⁵ Inter-sectorial Strategy of Justice, page 4587.

data show that 60% of the respondents' address is not found¹⁹⁶ and to the lack of access to the addresses database in the central and local level. In 2013 amendments electronic notification of litigants is included as one of the means of notification.¹⁹⁷

The lack, in general, of a comprehensive legal framework for the administration of justice in Albania, in accordance with European standards, together with the shortcomings in the organization and court staff shortages, has negatively impacted the efficiency and transparency of the courts.

Delays in providing reasoned decisions combined with short deadlines for appeal may thus affect the constitutional right of the parties to the appeal. Insufficient time to review the written reasoned decision before the deadline to appeal further compromises the right to a fair trial in the court of appeal.¹⁹⁸ But some courts have not installed audio system registry, specifically for administrative courts.

One of the initiatives to increase public confidence in the judiciary is digitalization. In 2012, it launched the online complaint and digital management of complaints at the Ministry of Justice and the HCJ.¹⁹⁹ Thus, during the second half of 2012 and first six months of 2013, 25% of complaints have been done in the digital way.²⁰⁰ Response time for appeal in the digital way is five days compared to 10 to 360 days as it was in manual way.²⁰¹

¹⁹⁶ Independent Reporting Mechanism: Progress-report 2012 – 2013 on Albania, Open Government, page 60.

¹⁹⁷ Published by the Union of Judges, page 50.

¹⁹⁸ Report on Justice of OSCE, page 75.

¹⁹⁹ Online complaints and management of complaints at the Minister of Justice and The High Council of Justice was implemented by the Centre for Transparency & Free Information, supported by the British Embassy in Tirana.

²⁰⁰ Published by the Union of Judges, page 2.

²⁰¹ Ibid.

Corruption, lack of transparency, overlong processes or non-execution of court decisions have contributed to the negative perception of the public on judicial transparency.

Politicization, limited responsibility, weak interagency cooperation, insufficient resources and delays in the trial are some of the causes of corruption in the judiciary.

Regarding the efficiency of the judiciary it is noticed that:

In the field of efficiency of the judiciary were made a number of efforts, which consist in taking some measures of organizational nature and adoption of key legislation in this area. However, the adoption of legislation is not a decisive result and not sufficient to improve the efficiency of the system.

In Albania, the first instance judges constitute 79% of the total number of judges (very high figure compared with the European average, which is almost 74%) and the High Court judges make up 4.2% of the total number of judges, a very low figure compared with the European average which is approximately 7%".

The failure to complete the process of appointing the number of judges assigned to each court, and the lack of judges in some courts has led to increased workload in the courts.

Currently, the status of non-judicial staff in the courts is not clear, since the relevant law on Judicial Administration was abolished by the Constitutional Court early in 2014. Consequently, as a problematic situation in the courts is the clear definition of the status of judicial administration, the criteria and procedures for appointment, promotion and dismissal of employees.

With the current legislation, the chancellors have only limited managerial responsibilities, while the court chairmen perform a number of administrative tasks, which undermines the efficiency of the court system. *Also, it is observed a lack of training for the advisory staff of court administration.*

Although in the recent years it is seen a slight increase in the ratio between administrative staff and the number of judges, again, Albania is one of the countries with the lowest number of court staff per judge, by failing to reach the average of European standard of 3 employees per judge.

Legal Assistant is a position that is provided for in the law on the organization and functioning of the High Court and in the law on Administrative Courts, while the law on the organization of the judiciary power and the law on the organization and functioning of the Serious Crimes Courts do not anticipate this position. In Albania, the ratio of legal assistants per judge is very small and does not respond to European standards.

The Code of Civil Procedure and the Criminal Procedure Code provide some guarantees for the adjudication of cases within a reasonable time, but there are no provisions to regulate in detail the duration of these terms.

Prolonging of processes is a major problem in Albania. By September of 2014, 70% of complaints against judges with the High Council of Justice concerned the length of court proceedings. Likewise, the number of complaints received by the Ombudsman for the same concern turns out to be quite high. In addition to that, nearly 50 cases against Albania are deposited to the European Court for Human Rights related to the length of civil and criminal proceedings.

Lack of due regard to rules by the court administration to inform the parties has been identified as one of the main causes of damage to the efficiency and lengthy delays in the court proceedings. This is related to incorrect addresses and the lack of access to databases of addresses in central and local level.

The lack of an effective system for tracking the history of court proceedings has caused parallel civil lawsuits based on the same subject, which complicates even further the problem of excessive length of proceedings. It is also noted a lack of internal resources in our country's legal system for issues related to the prolongation of proceedings.

In a very considerable number of courts, the number of courtrooms is very small and sessions are held in judges' offices.

The use of ICMIS systems, audio recording and the software program for the management of calendars of the courtrooms have brought significant improvement of the proceedings. Currently, ICMIS system is implemented in most courts. However, it is still not in use in some other courts such as the administrative courts and also in two important courts, that of Tirana and in the Serious Crimes Court. Even in the courts where it is put into use, it continues to run alongside with the manual registration of cases. Generating statistics from ICMIS is not complete, as long as the use of this system is not mandatory by law, and cases are recorded manually in court registers. ICMIS database technology is not updated and it needs to be rebuilt in accordance with the database technology of the Police and Prosecution. Currently, courts use specific databases, making the system expensive and difficult to maintain to interact.

Regardless of recent developments in terms of reducing court fees and improvements made to the law on legal aid, it is estimated that " the court fees deter many citizens and application procedures are too slow.

Execution of civil, administrative and commercial court Judgements

The rate of execution of court decisions, as well as budget allocations are a concern for Albania.

The execution of court decisions is weak, especially in cases where state institutions are the respondent party. During the review of the cases, the failure to execute the executive titles in a reasonable period of time comes as a result of the barriers of legislative and practical nature and as well as as a result of disrespect of laws and regulations by the authorities in charge of law.

The number of applications to the Constitutional Court regarding the failure to adjudicate within a reasonable time and the failure to execute final court decisions is increased.

The situation is problematic also in the process of execution of executive titles according to which it is decided the release and return of an object, thus bringing delays in the execution process and as well as failing to offer to the winner of the case, the opportunity to enjoy the right of ownership over the property subject to execution.

Problems are also identified in execution of the decisions of the ECHR by Albania, particularly those related to non-execution of decisions of the domestic courts or the administrative decisions, including the decision for the case of *Manushaqe Puto*”.

Unreasonable delays are registered in the execution of final court decisions which create the premises for a corrupt judicial system, which is constantly addressed by the European Court of Human Rights in decisions given against Albania, which are increasing as well as regarding the number of application.

In the decisions given by the Strasbourg Court for Albania, it is noted that the failure to execute the court decisions primarily on cases related to ownership is connected with execution procedures, shortcomings in the legal order, the lack of effective domestic remedies to repair the excessive length of proceedings, and the application of the right of citizens to compensation.

Non-transcription of court decisions in criminal cases within the legal deadline has led to delays in issuing execution orders by the prosecution, so often committing severe violation of human rights.

An effective system for monitoring the enforcement of private and state bailiff service is not established. The capacity for data collection should be strengthened. The electronic case management system of bailiff services ALBIS is not yet connected to the system used by the courts.

Private Bailiffs must undergo a series of trainings to enhance their capabilities. The association of private bailiffs in Albania has no capacity to train the future private bailiffs.

Also, a concern for the execution of court decisions constitute the administrative bureaucracy between the courts and prosecutions including the submission of court decisions on which appears the order of execution for a criminal sentence. In most of the cases, it turns out that the secretary of the court sends the transcribed court decisions to the prosecutor after more than 4 days.

Enforcement of medical measures has always been reflected in progress reports on Albania, by considering the placement of people with medical treatment in penitentiary institutions as a serious violation of human rights, and the lack of such medical institutions is not justifiable. Currently, there is no institution to enforce court decisions for educational and medical treatment to minors.

V. Conclusions

1. Organization of Judiciary - The judicial power with the current constitutional, legal and institutional’ organization appears numerous problems and is not properly performed its mission to consolidate the rule of law.

Administrative Court of First Instance has an increasing caseload and practically has exceeded any legal term for their resolution, meanwhile it is being noted that it has a wide competences that undermine the effectiveness of its activity.

2. Good governance of Judiciary - It is noted a fragmentation of responsibilities in the field Good Governance between the High Council of Justice and Ministry of Justice. HCJ has a limited role in relation to key areas of good governance.

The current composition of HCJ, where the judges have 10 from 15 seats provided by the Constitutions sets the conditions for the flourishing of the corporatism, does not exclude the influence of the executive and legislative and also undermines the credibility and legitimacy of the judiciary.

With the exception of the Vice - Chair, all the their members of HCJ have part – time commitment. As a result, the majority of the members have not a full and coherent engagement to the daily activity of the Council and are not active in a series of important working processes, because their participation is periodic, based only on the participation of the meetings of the Council.

It is noted that there are conceptual and legal inaccuracies on the role of Minister of Justice in the area of good governance of the judiciary, particularly with regard to case management system, public and media relations, quality management system and safety system of the court.

The inappropriate political influence on the activity of the HCJ, overlaps between the powers of this Council and Minister of Justice with regard to the inspection of courts, review of the complaints against judges and disciplinary proceedings against judge, are some of the main issues that should be addressed in the reforming process of this institution.

The exclusiveness of the Ministry of Justice for exercising the mechanism of disciplinary proceeding initiative has not resulted as an effective and there are perceptions of a lack of objectivity and professionalism in its exercise, especially in the circumstances when the initiative for the inspection itself and its results are under the direct responsibility of the Minister.

In addition to problems related to the HCJ Inspectorate it shows that currently the Inspectorate carries out inspections as well as the evaluation of judges. Having these two functions does not serve the efficiency of the inspectorate.

HCJ' competences with regard to "the exercise of authority to verify the assets of judges" have overlapping with HIDAA' competences which is the most specialized in this field, as it has this competence in object of its activity.

In general the National Judicial Conference has exercised its immediate constitutional function on selecting the members of the judiciary representative in the HCJ but meanwhile it is noted that it could not use its potential to strengthen ethics in the ranks of the judiciary and the protection of his interests.

There are no clear rules for the accountability of the High Council of Justice as a collegial body and is not foreseen for its activity to be presented in periodic public reports, which, in a transparent manner, show the principles on which the Council performs its functions and the results of its activity .

3. Statusi i Gjyqtarëve - The legal framework of the judicial system guarantees significantly the independence and impartiality of judges even though in practice were noted serious problems of political and financial influence during the exercise of the official duty of judges.

It lacks a comprehensive law to stipulate in detail the provisions on the status of judges, as well as responsible institutions and procedures to be followed with regard to the decisions on the status.

Current provisions regarding specific incompatibilities of the function of judge and restrictions on them to carry out certain public and private are very general

The law does not make clear distinction between the appointment, transfer and promotion of judges.

In conditions when the judicial system needs new judges, it lacks a long-term strategy regarding the need for judges in the next years. Also there are not reevaluated the criteria and procedures for the selection of candidates for judges in the School of Magistrates.

The appointment of judges is generally assessed with critical notes in relation to the need to ensure the standard of their selection according to the professional merit and without external undue influences in judicial career.

Criteria and procedures for appointment as a judge are not provided entirely by the law in accordance with the requirements of objectivity, meritocracy, due process and transparency.

Criteria and procedures for selection and appointing members of the High Court are constantly accompanied by the politicization of the process, delays in

filling vacancies and appointments, which are contested continuously by politics, interest groups and public opinion with regard the professionalism, as well as confidence in the impartiality and integrity of these judges.

Limited 9-year mandate of the functions of Judges in High Court has tended to further worsening of the assessment and confidence of institutions and public in the independence, professionalism, integrity and impartiality of these judges and the High Court as a whole.

The process of competition for administrative judges has not resulted in an efficient and stimulating system. Judges who are commanded in Administrative Court of Appeal met only one of the criteria provided under the law, namely the criteria of seniority, while did not undergone the testing (competition).²⁰².

From a professional point of view, judges have shortcomings and are far from the standards and the professional level that should characterize a judge Community (EU).

The law does not provide specifically, in clear and sufficient manner, the issues related to the criteria, procedures and competencies for professional evaluation of judges. These issues are generally dealt by sub legal acts issued by the HCJ.

Particularly problematic are the disrespect of obligations, the quality of the existing criteria and rules of the HCJ regarding the judge's professional evaluation, as well as the carrying out of the evaluation by the same body charged with the inspection of judges and the serious delays in the implementation process of the professional evaluation of the judges which has lost in a considerable way the effects and usefulness of this mechanism of the development of judicial carrier. Actually since 2007 until now has ended only one evaluation of the judges of first instances and appeal, related to their

activity for the period 2005 – 2006, meanwhile is being worked for the evaluation of the judges for the period 2007 – 2009.

The law does not provide any regulation on evaluation of the performance of the judges of High Court.

Legal provisions regarding the transfer and delegation to specific issues are unclear as regards potential infringement of the principle of removability and the flexibility that is needed to ensure effective distribution of justice. On the other hand, permanent transfer of judges seems more problematic as it is often confused with the promotion

It is noted that lacks a comprehensive system of career development of judges, including the highest level. There is no clear definition in the law about which of the movement of judges will be considered promotion. The law does not provide clear procedures and sufficient, objective and transparent for the development of competition for promotion of judges by the HCJ.

In view of the career of judges, there is no system of ranks that might reveal the professional values of each judge.

Delays in filling vacancies, as well as disrespect of the existing criteria and rules by the HCJ regarding promotion of judges violated in many cases judicial career.

Disciplinary responsibility of judges is evidenced and documented through inspection of judges and verification of complaints against them. Legal provisions of the inspection process do not make a clear distinction between the judge's inspection activities and inspection activities of the courts.

Accountability of judges and application of disciplinary measures have been in a low number and in many cases the disciplinary measures were not in proportion to the violation for which the judge was proceeded. Some of the decision of the High Council of Justice that provide disciplinary measures have

²⁰² Referred from the roundtable on consultation of the Analytic Document on the Justice System, 05 May 2015.

been turned down by the courts (Court of Appeal or High Court) on the basis of the appeals issued by the judges who were subject of these measures.

The current law "On judicial power" features a sequence sorting unusual and confusing disciplinary violations, which results that do not respond and do not help the goal of escalating forecast, exhaustive and clear of disciplinary violations by type and their importance. The range of disciplinary sanctions is relatively small and, as such, does not always allow the determination of proportionate sanctions.

The law "On judicial power" contain an unusual and unclear classification and order of disciplinary violations, which turns out that do not respond and do not help the goal of escalating, exhaustive and clear provision of disciplinary violations by their type and importance. The range of disciplinary sanctions is relatively small and as such does not allow always determining proportionate sanctions.

The disciplinary investigation is partly under the umbrella of the executive and partly under that of HCJ Inspectorate, which carries out its function under the supervision of Vice President of the HCJ. Procedural rules are weak and not fully comply with international standards.

The legislation does not provide disciplinary responsibility for the judges of the High Court and members of HCJ.

Cases that are related the termination of judicial carrier, as fundamental issues relating to the principle of the removability of the judge from the function are not provided clearly and detailed in the law. The formula of Article 140 of the Constitution that provides cases of dismissal of judges of the High Court has not been tested in practice. Indicator of low accountability of judges is the low number of criminal proceedings against them. Although the legal framework has restricted the immunity of judges, again it appears that this limitation has been insufficient. Despite the change of the Constitution in 2012, by which judges were removed immunity from prosecution (preliminary investigation), special protection was reserved for judges is still high.

The system of salaries, rewards and social and health' care of judges, as one of the means to guarantee the independence and impartiality of their duty does not respond to the necessity of financial dignified treatment, as well as the nature of the responsibilities of the judicial function, degree of difficulties, its high number of incompatibilities and specific prohibitions to carry out other activities that generate income and the need to protect judges from pressures and their impact on judicial activity and in their whole behavior.

The law, with its current provisions, does not offer the conditions, effective ways and means to guarantee the safety of the courts and the security of judges, in order to ensure state' protection of their lives, property and family against the pressures, threats and acts of violence that might come due to duty at the premises of the court and outside these premises.

4. Efficiency of Judiciary - Adjudication of cases from the courts of all three levels do not fully guarantee the trial of within a reasonable time.

Problems in the efficiency of the courts of first instance is related to a number of factors such as: the high number of cases per judge, non fulfilling the vacancies positions of judges, the delegation of judges on specific issues in courts other than those which they exercise the task, the lack of sufficient support of administrative staff, inadequate physical and technological infrastructure, postponement of court hearings as a result of difficulties in notifying the parties and other participants in the process, the lack of provisions on various forms of trial procedure for different categories of the issues, depending on their importance, etc.

Problems in the efficiency of Appeal Courts is related to a number of factors such as: the high number of cases per judge, lack of sufficient support of administrative staff, inadequate physical and technology infrastructure, wide range of examination of appeals based in law and in fact, as well as shortages of suitable filters in this regard, causing in some cases unreasonable delay of the judicial processes, the lack of provisions on various forms of trial procedure for different categories of the issues, depending on their importance, etc.

Problems in the efficiency of the High Court is related to factors such as: wide competence on subject legal circumstances of the appeal (Rekurs), number of judges that appears to be insufficient to face the flux of cases, the lack of provisions on various forms of trial procedure for different categories of appeals (Rekurs) depending on the seriousness of the issue, etc.

In all three instances is not fully guaranteed the participation of the public in various judicial processes. In a significant part of the courts of first instance, trials are held in the offices of the judges. This situation is largely due to the fact that in most courts are lacking the public courtrooms or because of the limited area of these courtrooms.

A considerable number of the courts of first instance and appeal are lacking electronic case management system and official web sites, which makes impossible the access of public in decision-making or in the court proceedings.

Currently the status of judicial administration staff in the courts is not regulated by law, as the law no. 101/2013 "On judicial administration" is repealed by the Constitutional Court. Therefore it is problematic the situation of a clear definition of the status of judicial administration, criteria and procedures for appointment, promotion and dismissal of judicial employees in the conditions when it is not yet approved the new law.

Albania is one of the countries with the lowest ratio between the number of judicial administration staff and number of judges, failing so the European average standard, 3 employees for 1 judge.

5. Execution of the Judgements is committed through the system of Bailiff Office which is organized in state and private bailiff services.

The execution of court decisions is weak, especially in cases where state institutions are the respondent party.

The electronic case management system of bailiff services is not efficient and is not yet connected to the system used by the courts.

Actually there are deficiencies for the continuous training of the private and public Bailiffs. The association of private bailiffs in Albania has no capacity to train the future private bailiffs. Frequently in practice it is noted that for similar cases, Bailiffs implement non unified and different procedures.

Failure to implement within a reasonable time executive titles is a result of obstacles of legislative and practical nature, as well as disrespecting by the authorities in charge by the law of the laws and sub legal acts that regulate the way of fulfillment of obligations arising from judicial decisions towards the state administration bodies and public institutions.

Control through audits and inspections from superior institutions to the responsible institutions for execution were lacking, affecting in this way the professionalism of the actions of bailiffs to execute court decisions.

The number of applications to the Constitutional Court regarding the failure to adjudicate within a reasonable time and the failure to execute final court decisions is increased, despite that in this decisions is not defined the value of compensation.

Problems are also identified in execution of the decisions of the ECHR by Albania, particularly those related to non-execution of decisions of the domestic courts or the administrative decisions. The failure to execute the court decisions primarily on cases related to ownership is connected with execution procedures, shortcomings in the legal order, the lack of effective domestic remedies to repair the excessive length of proceedings, and the application of the right of citizens to compensation.

Civil and criminal procedural legislation, has not changed with regard to the provisions related to the phase of execution of final court decisions, in order to regulate the shortcomings found in practice during the execution phase.

In criminal cases were observed delays in issuing execution orders by the prosecution, mostly affected by factors related to non publication of the

reasonable judgment within the time and administrative bureaucracies between the courts and prosecutors.

Problems were noted in the implementation of alternative decisions. Thus, there are no educational institutions in order to execute the judgments on educational measures against juveniles involved in criminal activity. This gives rise to the minors to broadly apply the punishment of imprisonment, which turns out to be extremely harmful for this category.

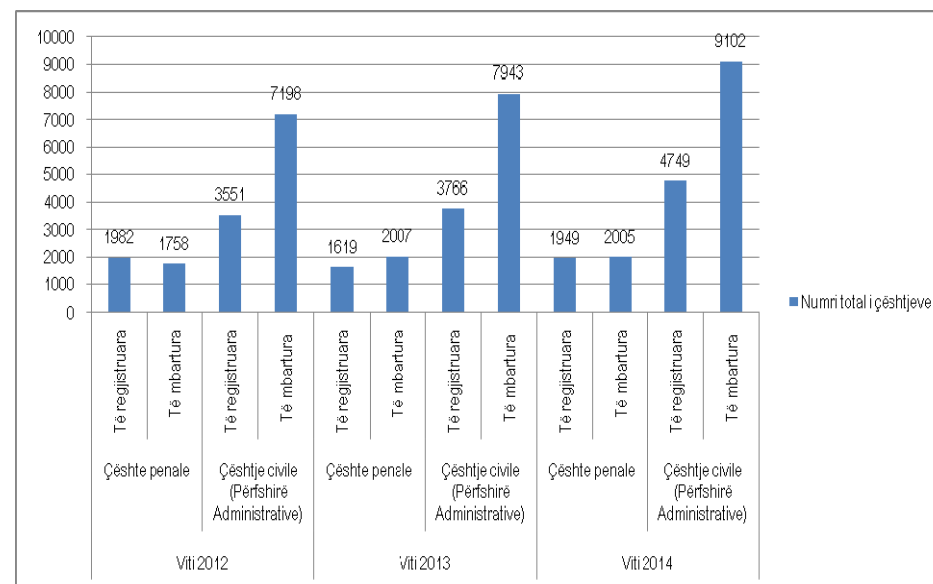
There are lacking specialized health institutions with special security measures for the execution of judgments of medical measures. Currently the persons against whom these measures are provided are placed in penitentiary institutions in violation of international conventions to which Albania has ratified.

APPENDIXES

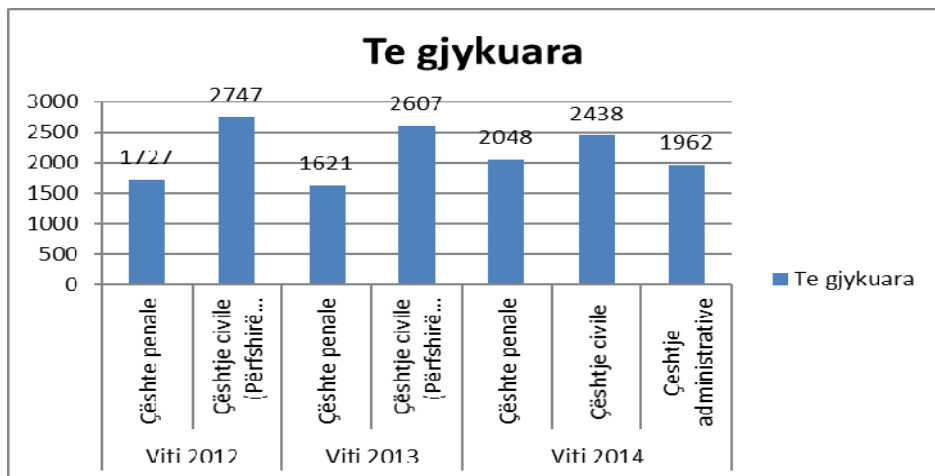
Chapter IV: JUDICIAL SYSTEM ANALYSIS

Appendix 1 Introduction in the form of graphs / tables of statistical data on issues judged by the High Court

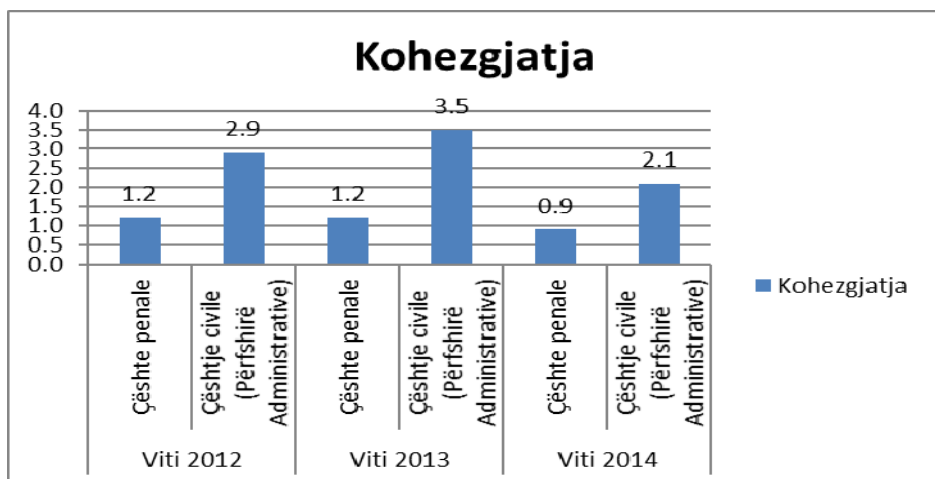
Graphical representation. No 1 - The total number of registered cases for the period 2012-2014



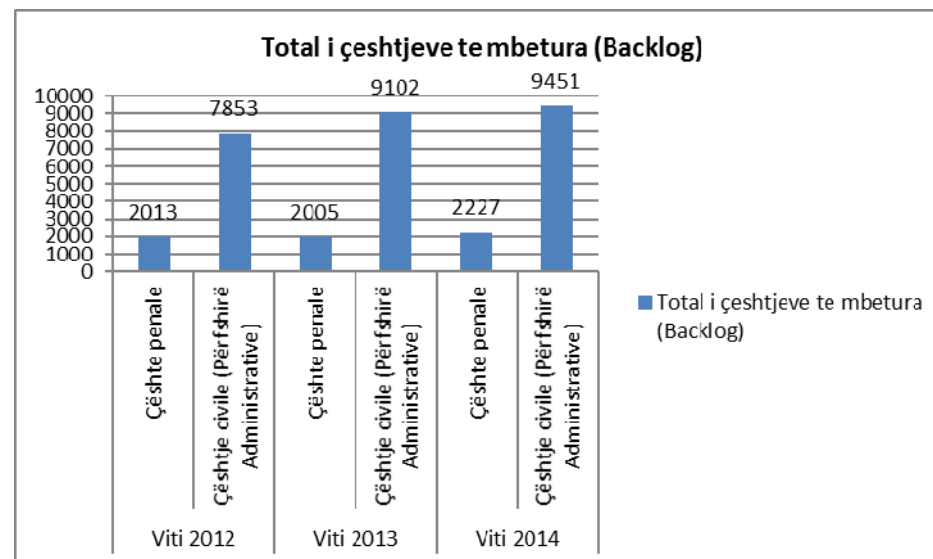
Graphical representation. No 2 - The total number of cases adjudicated / resolved for the period 2012-2014



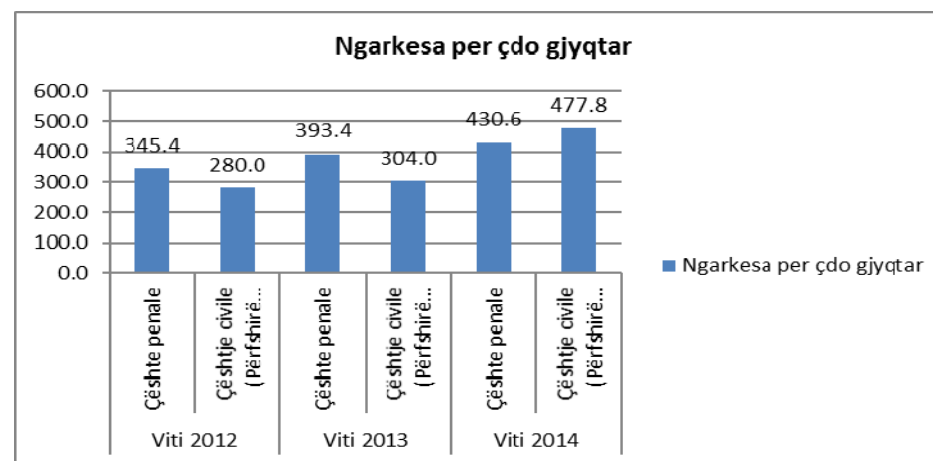
Graphical presentation. No 3 - The average duration for the adjudication of cases for the period 2012-2014



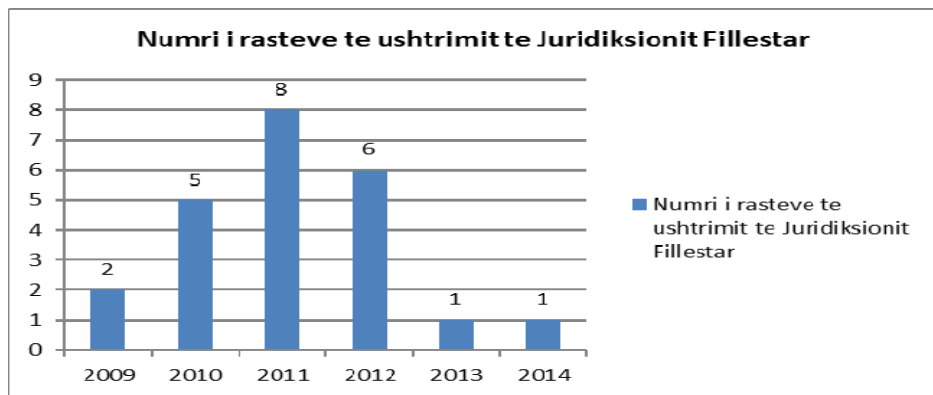
Graphical presentation. No 4 - Total number of backlogs



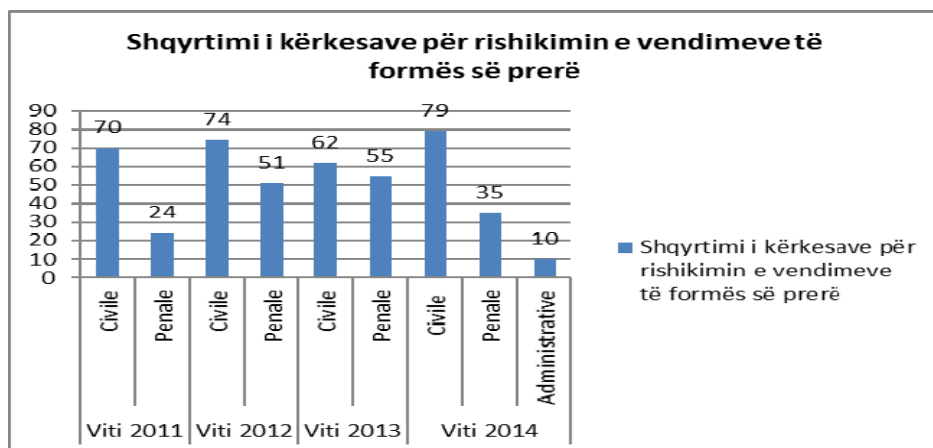
Graphical presentation. No 5 - Caseload for each judge



Graphical representation. No 6 - Number of cases adjudicated by the High Court as original jurisdiction

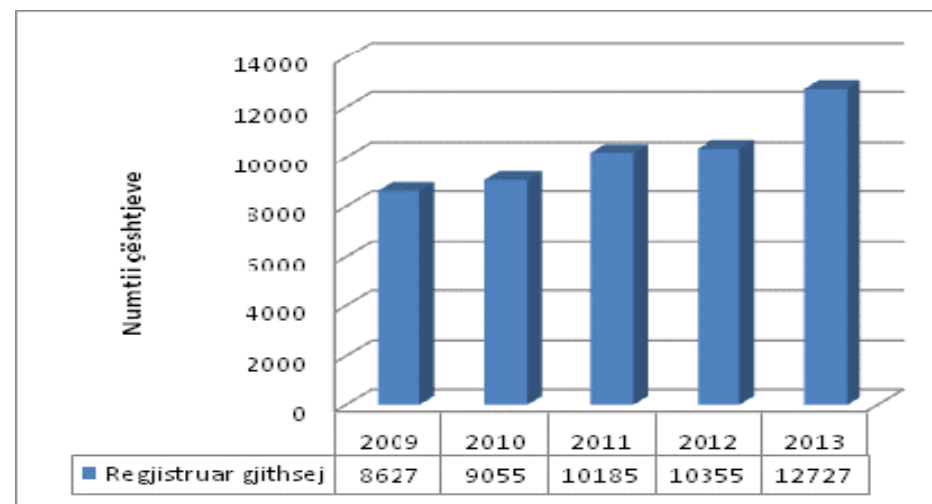


Graphical presentation. No 7 - Review of applications for appeal of a final decision for the period 2011-2014

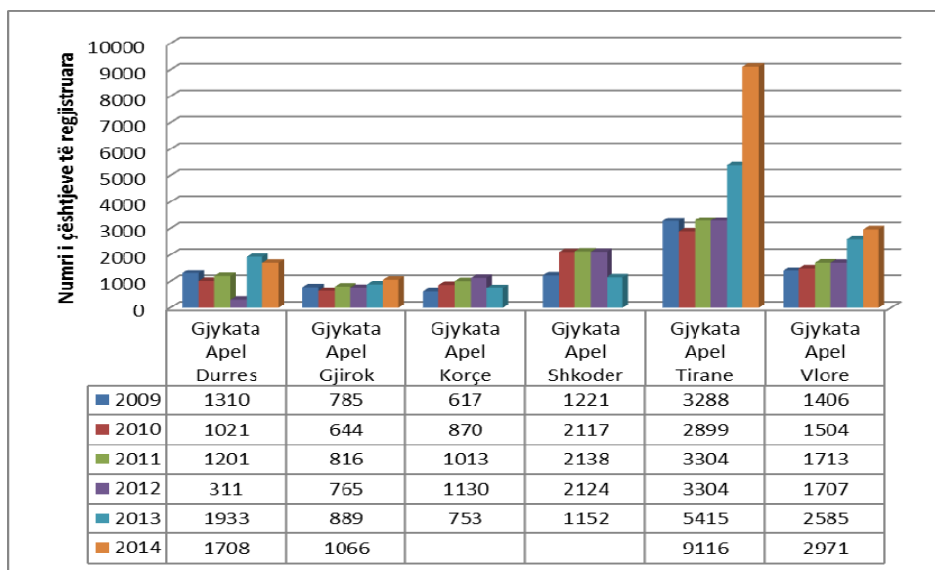


Appendix 2 Overview in the form of graphs / tables of statistical data on issues judged in the Courts of Appeal
2.1 Courts of Appeals, Ordinary Jurisdiction

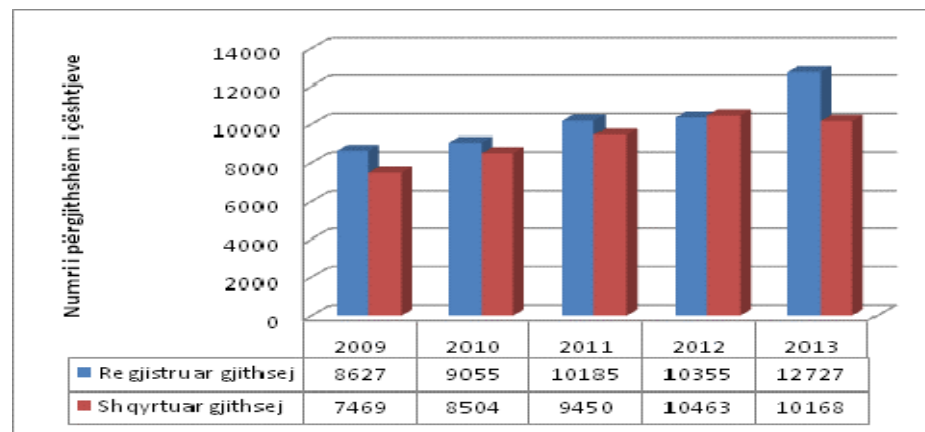
Graphical presentation. No 8 - The total number of registered cases in 6 appellate courts of ordinary jurisdiction



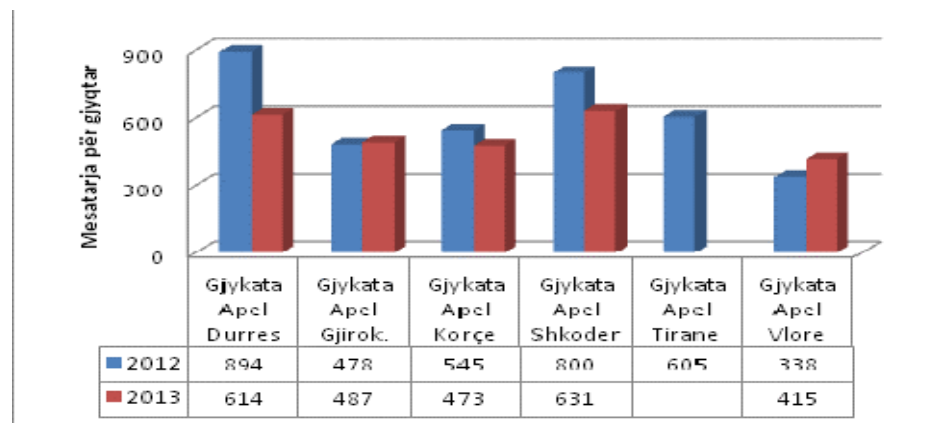
Graphical presentation no. 9 - The number of cases recorded for each court of appeal over the years, from 2009 to 2014.²⁰³



Graphical presentation. No 10 - The ratio between the total number of registered cases and cases adjudicated in the Courts of Appeal

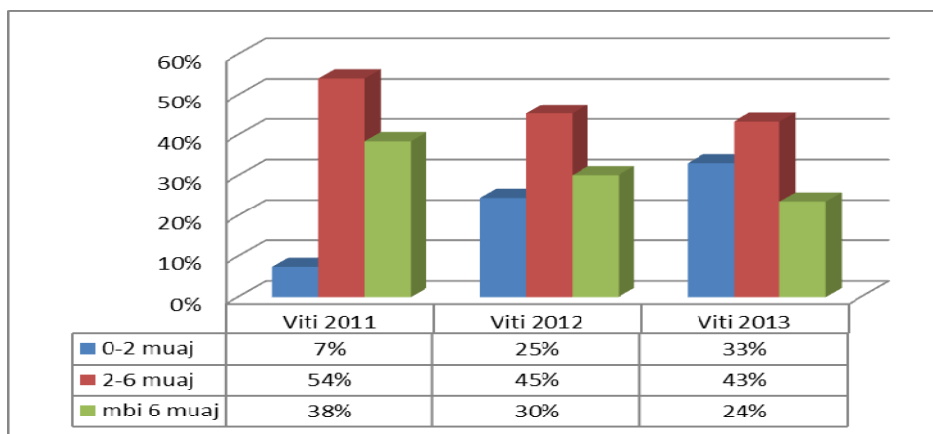


Graphical presentation. No 11 - Workload for case to each judge for the period 2012-2013

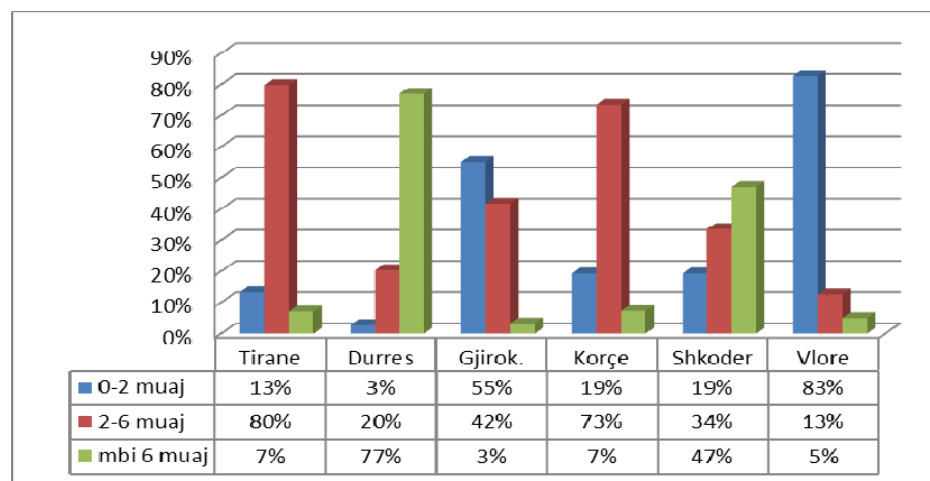


²⁰³ During the draft of this analyse were not in dispose the data on 2014 for the courts of Korça and Shkodra.

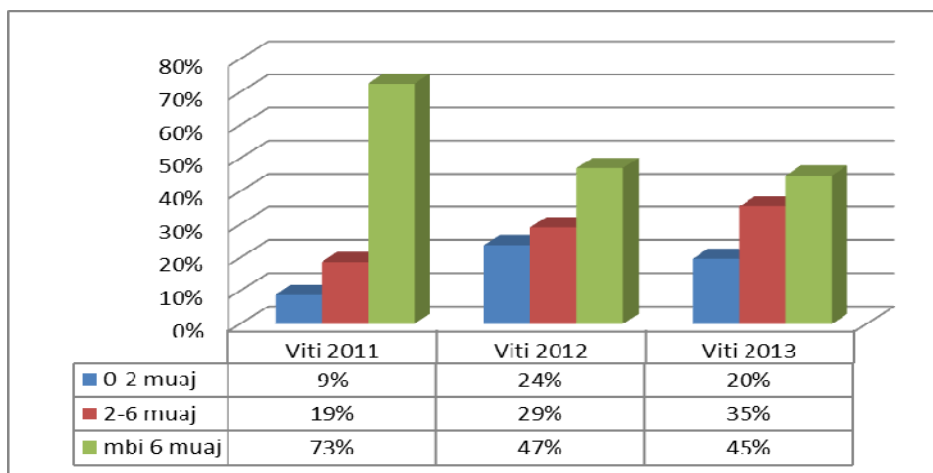
Graphical presentation no. 12 - The velocity of court proceedings in criminal cases for the period 2011-2013



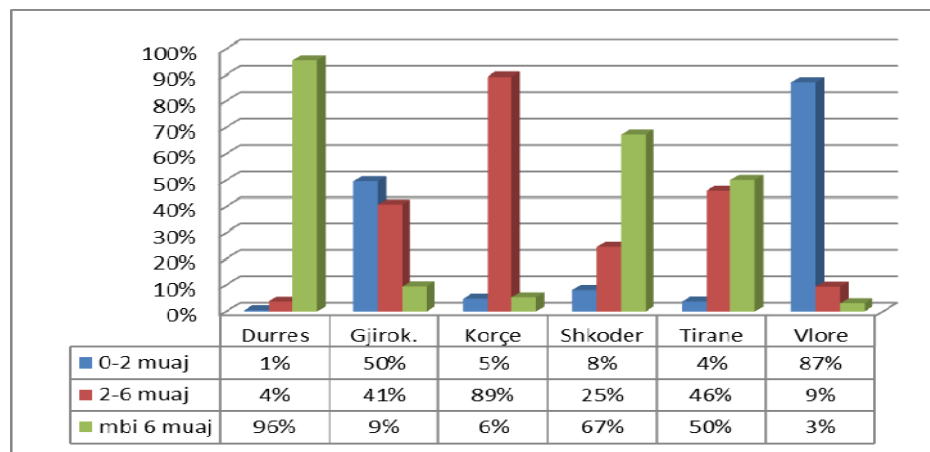
Graphical presentation no. 14 - The velocity of court proceedings in criminal cases for each court for 2013



Graphical presentation no. 13 - Velocity of court proceedings in civil cases for the period 2011-2013

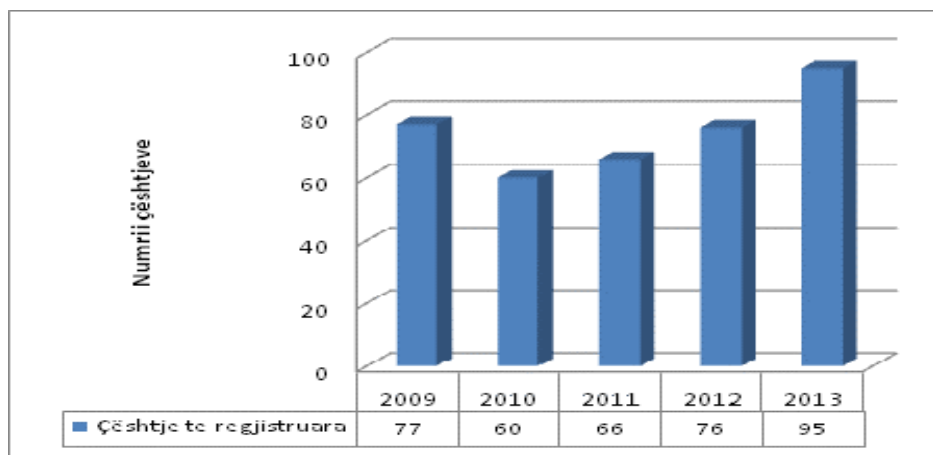


Graphical presentation no. 15 - Velocity of court proceedings in civil cases for each court for 2013

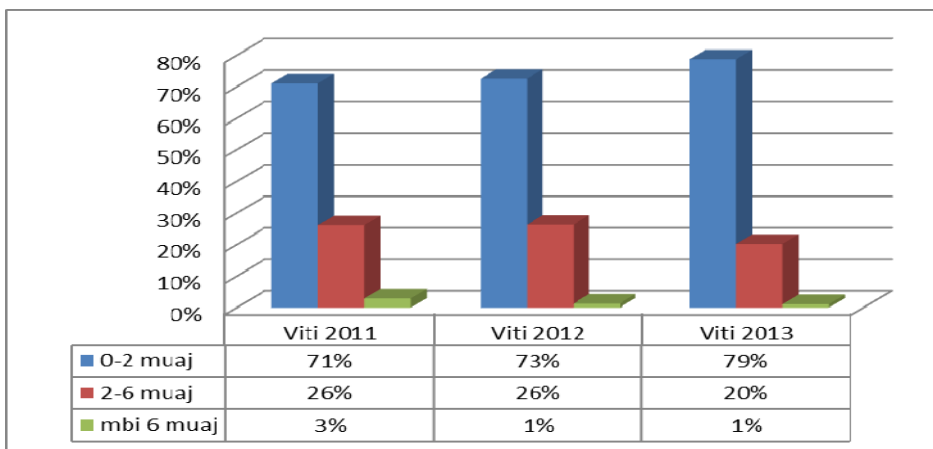


2.1 The Serious Crimes Court of Appeal

Graphical presentation No. 16 - The number of cases recorded for the period 2009-2013

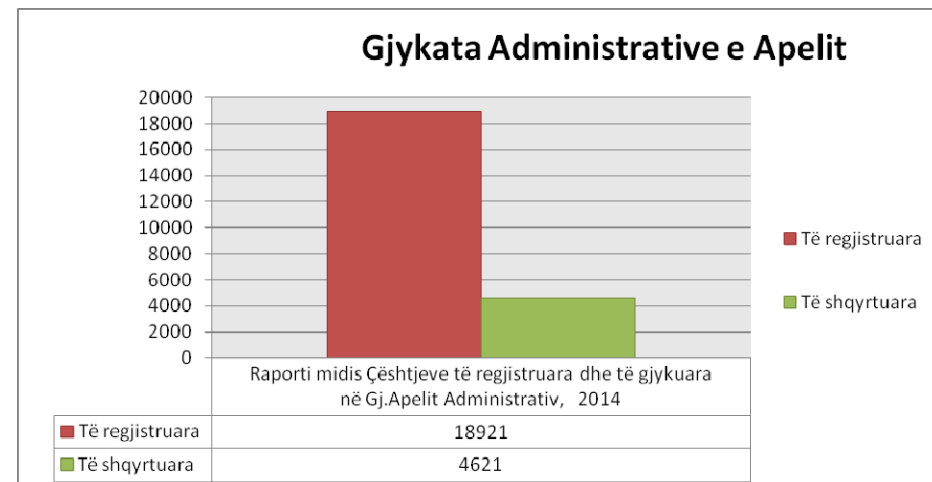


Graphical presentation No.17 - The average duration of the adjudication of cases for the period 2009-2013

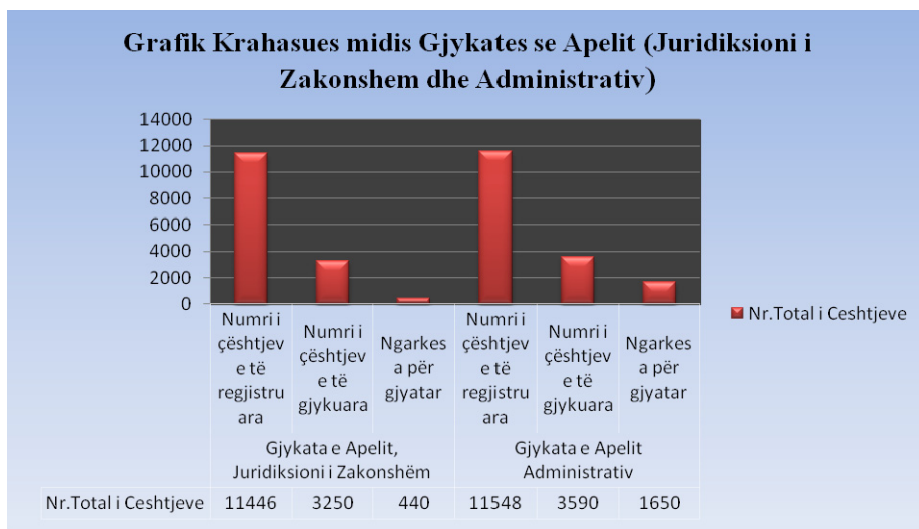


2.1 Administrative Court of Appeals

Graphical presentation no. 18 - The ratio between the total number of registered cases and cases adjudicated in the Administrative Court of Appeal



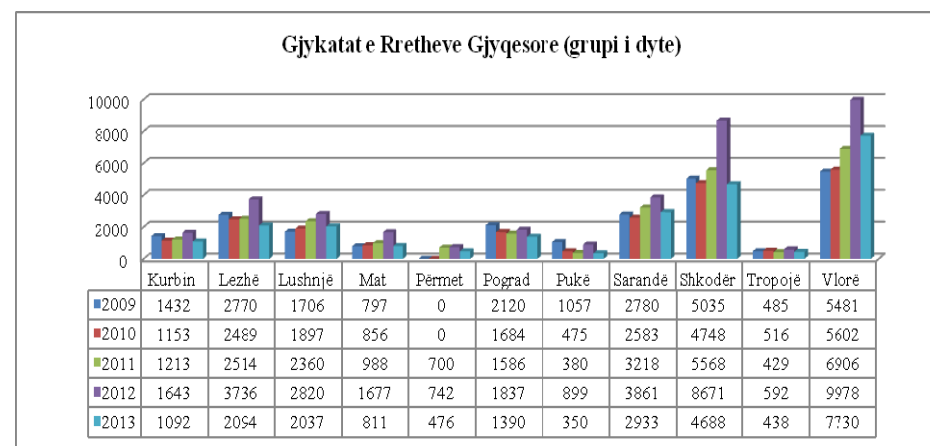
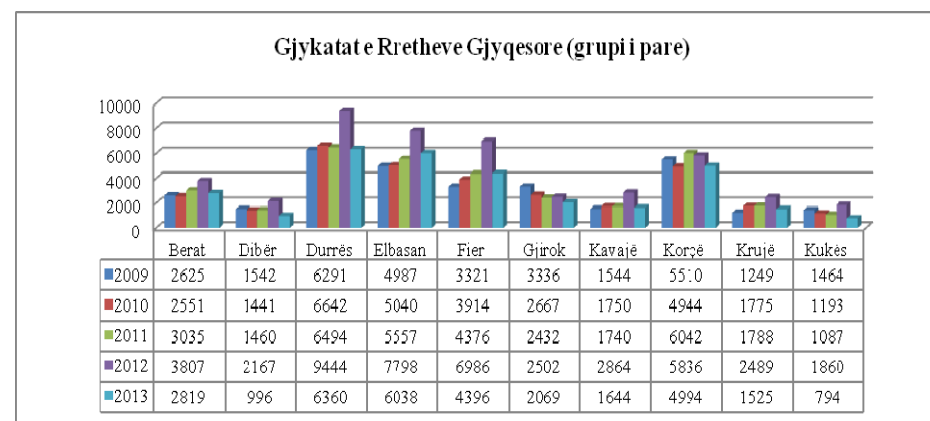
Graphical presentation no. 19 -Comparative Chart between the two Courts of Appeal (Ordinary and Administrative Jurisdiction) for statistical data of the first 9 months of 2014 (January-September)



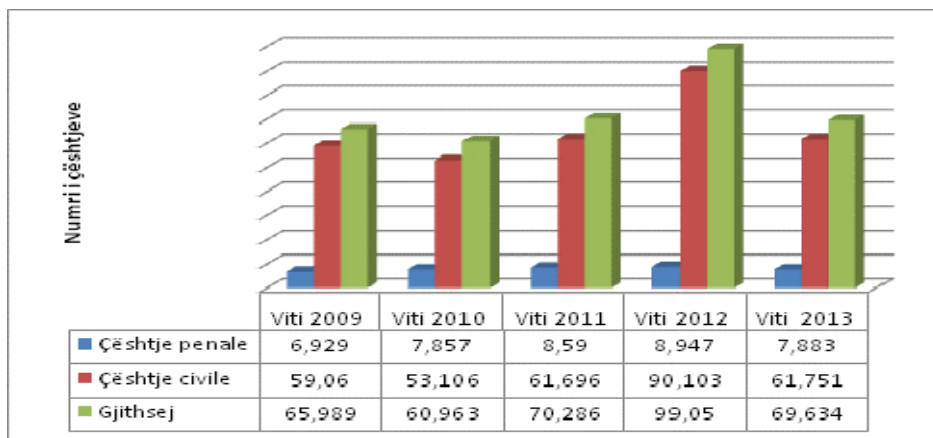
Appendix 3 Presentation in the form of graphs / tables of statistical data on cases adjudicated in the Courts of First Instance

3.1 District Courts, Ordinary Jurisdiction (21 Courts)

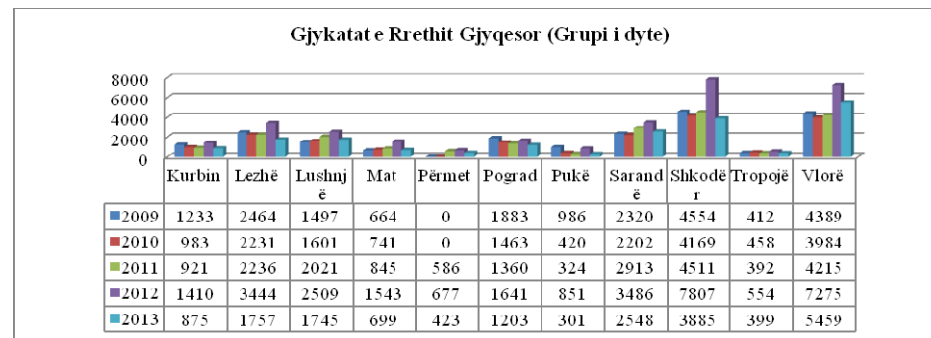
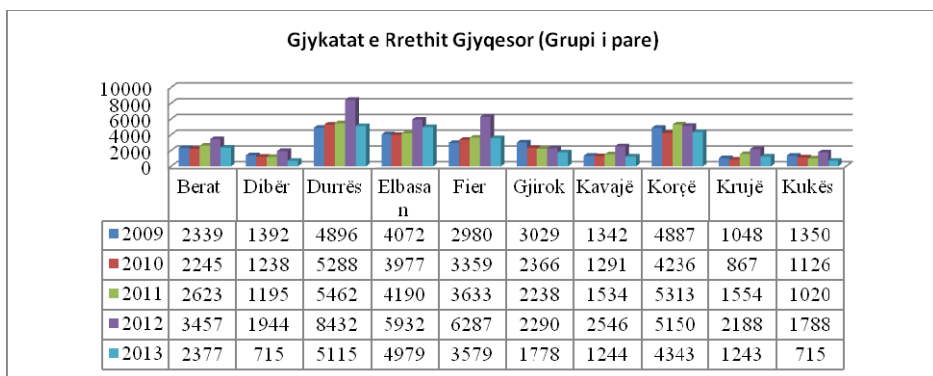
Graphical representation No. 20 - The total number of registered cases in the District Courts of ordinary jurisdiction



Graphical presentation No. 21 - Total number of civil and criminal cases reviewed for the period 2009-2013 by the courts of ordinary jurisdiction



Graphical presentation no. 22 - Number of civil, administrative and criminal cases adjudicated by courts for 2009-2013



Graphical presentation No. 23 - The ratio between the number of cases recorded and the cases reviewed by each court of ordinary jurisdiction for 2012 and 2013

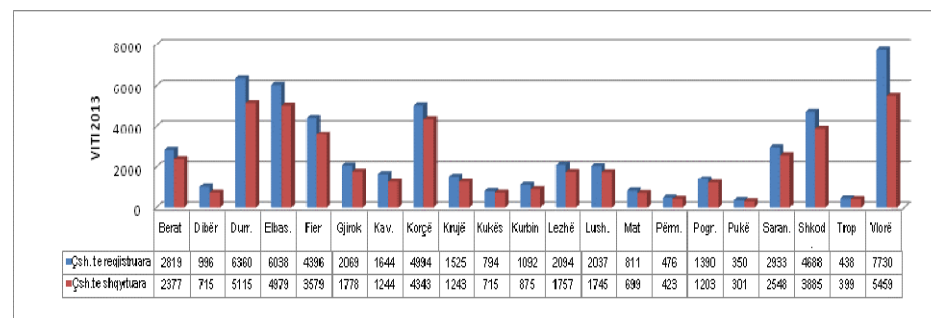
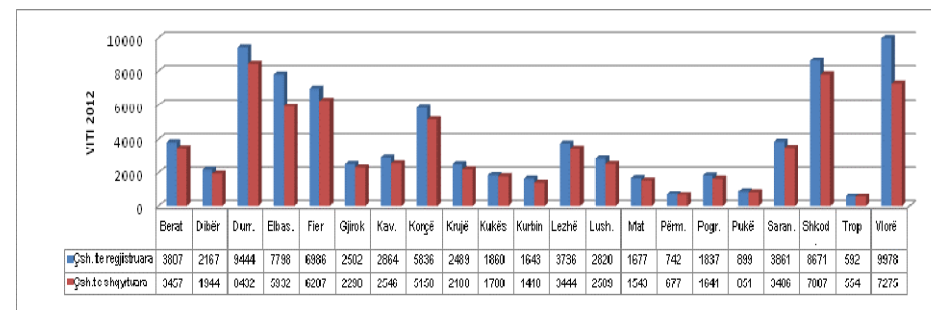
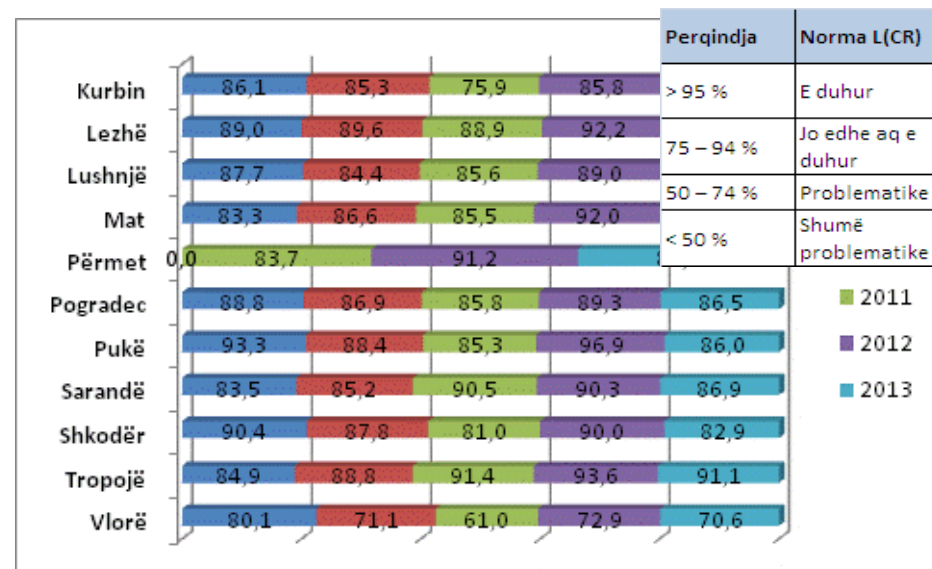


Table 1 – Partial statistical data for some district courts for 2014

Court	Registered	Finished	Accumulated	Case resolution rate (CR)	The needed resolve (days)	time to cases	(Case Turnover Ratio)	Cases per judge (nr)
Berat	3461	3318	591	104%	65 dite		5.61	488
Dibër	n/a	n/a	n/a	n/a	n/a		n/a	n/a
Durrës	3123	3113	861	99.60%	108.57		3.36	233.7
Elbasan	6758	7929	899	n/a	n/a		n/a	n/a
Fier	5020	4773	247	95%	74		0.83	358.6
Gjirokastrë	2236	2188	350	115.90%	474		0.77	507.6
Kavajë	2121	1630	491	n/a	n/a		n/a	n/a
Korçë	5651	4863	788	86%	59.14		6.17	452
Krujë	2045	2124	269	96.30%	46		7.89	598
Kukës	1560	1412	148	95.50%	38.25		9.54	390
Kurbin	1329	1251	78	106%	22.75		4.44	332
Lezhë	4193	3703	490	113.20%	413.29		0.88	838.6
Lushnje	2252	2048	454	82%	81		4.5	292
Mat	1244	1078	164	102%	421		0.866	311
Përmet	448	414	100	80.50%	80		n/a	128.5
Pogradec	1454	1394	247	84,9 %	64.7		n/a	468,8
Pukë	474	453	77	104.60%	62		5.88	176.6
Sarandë	2151	2161	407	109.70%	70.3		5.2	378
Shkodër	5086	4874	940	96%	70.39		5.185	554
Tropojë	n/a	n/a	n/a	n/a	n/a		n/a	n/a
Vlorë	5379	5235	1246	103%	87		4.2	463

Table no. 2 - Statistical data on the rate of liquidation of the cases under district courts for 2009-2013.



Graphical presentation No. 24- Average number of cases reviewed per judge for each court

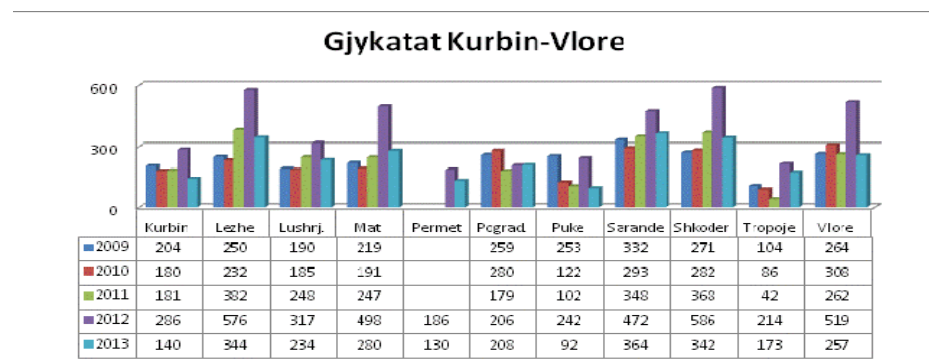
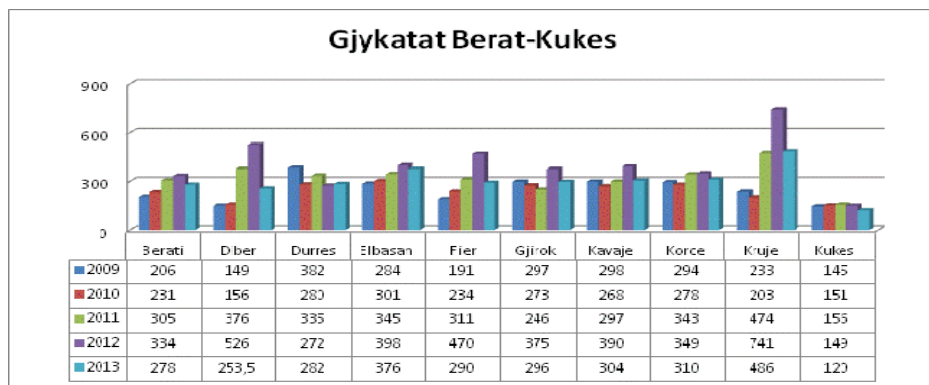
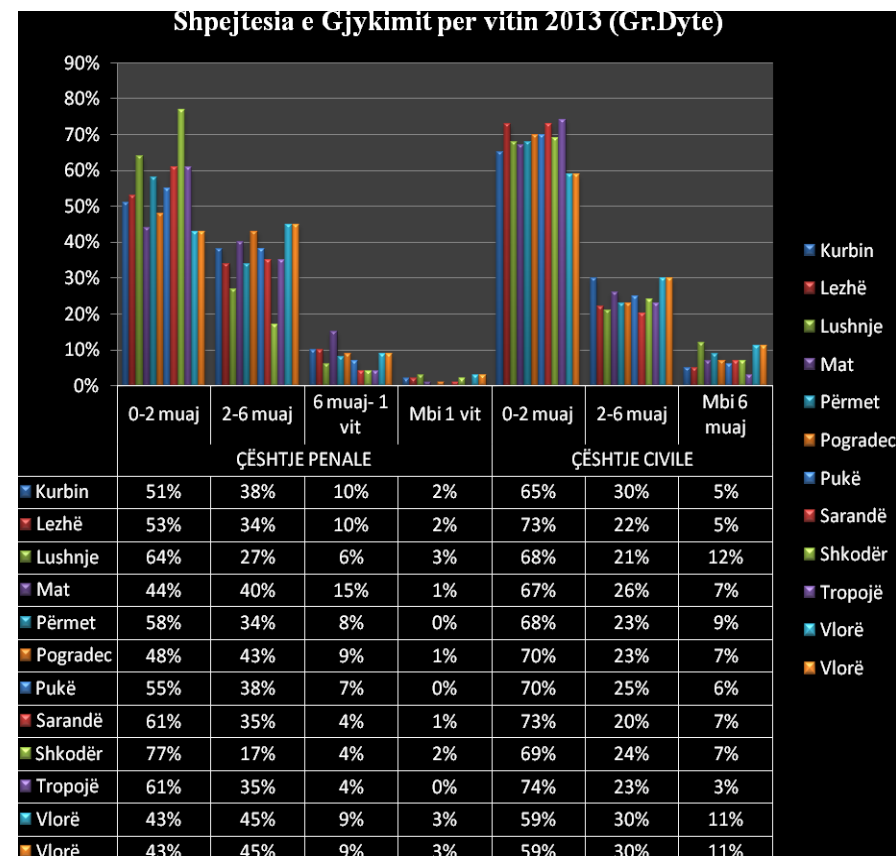
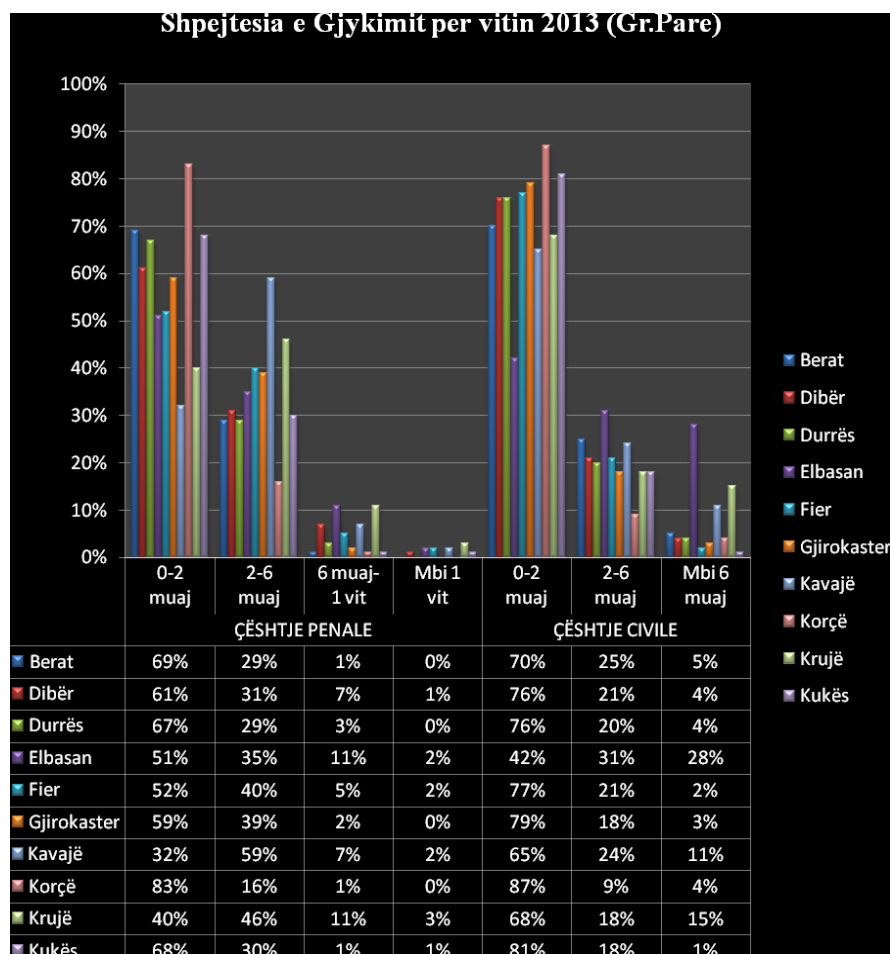


Table no. 3 - Average Distribution of workload in the courts for 2013.²⁰⁴

Gjykata	Çështje të Gjykuara	Penale		Civile		Delegime		Kërkesa Penale	Kërkesa të tjera civile
		I vetëm	Trup gjykues	I vetëm	Trup gjykues	Penale	Civile		
Berat	278	62	5	90	0,7	0	0	39	238
Dibër	253,5	25	4,75	108	0	0	0	70,75	45
Durrës	282	54	11	1414	34	0	0	146	61
Elbasan	376	65	27	99,8	3	0	0	146	88
Fier	290	46	103	94	2	0	0	582	1722
Gjirokastrë	296	26	9	133	1	0	2	201	77
Kavajë	304	17	6	112	0	1	0	122	49
Korçë	310	39	10	146	2	0	1	65	68
Krujë	486	20	66	64	3	2	1	237	1553
Kukës	120	19	4	43	3	3	2	31	21
Kurbin	140	21	2	43	1	4	4	55	65
Lezhë	344	29	7	128	1	1	1	159	72
Lushnjë	234	30	9	44	1	0	0	47	110
Mat	280	21	5	105	0,5	0	1	94	55
Përmet	130	16	0	32	0	0	0	21	60
Pogradec	208	21	21	64	1	0	0	29	92
Pukë	92	20	1,5	52	1	0	0	23	9
Sarandë	364	24	24	114	14	0	0	43	181
Shkodër	342	39	20	171	2	1	0	67	130
Tropojë	173	14	3	83	0,3	0	0	33	41
Vlorë	257	51	17	151	1	1	1	55	76

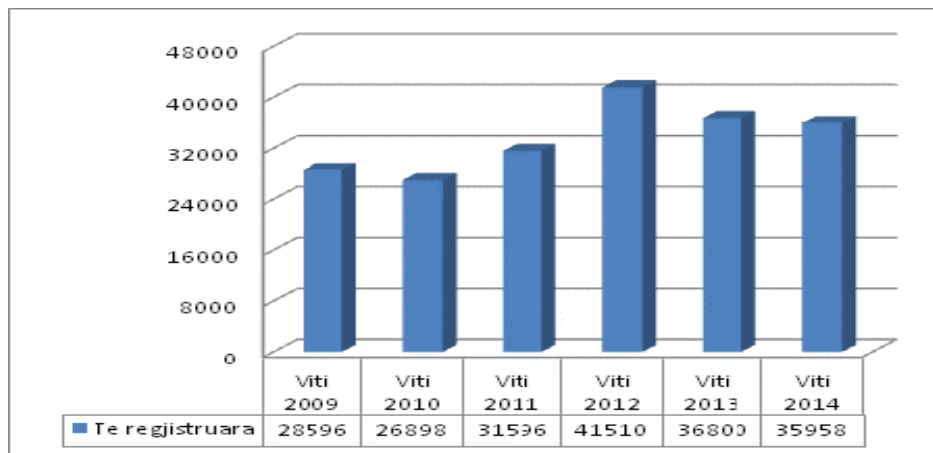
²⁰⁴The average is calculated on the basis of the number of the judges of any courts who have adjudicated the civil and criminal proceedings. In order to reflect clearly the individual case load of the judge and the courts, the number of the civil proceeding that were divided in civil cases with opposing party (plaintiff and respondent, as well as civil cases without the opposing party (only complainant) is added a specific column on civil claims.

Graphical presentation No. 24 Velocity of court proceedings in district courts

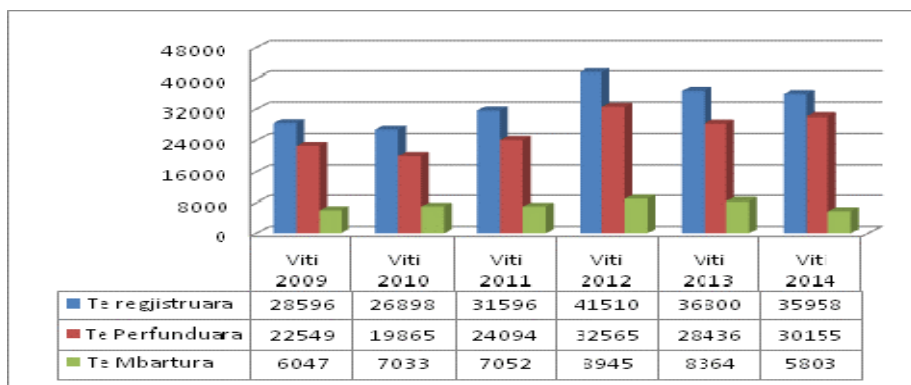


3.2 Tirana District Court

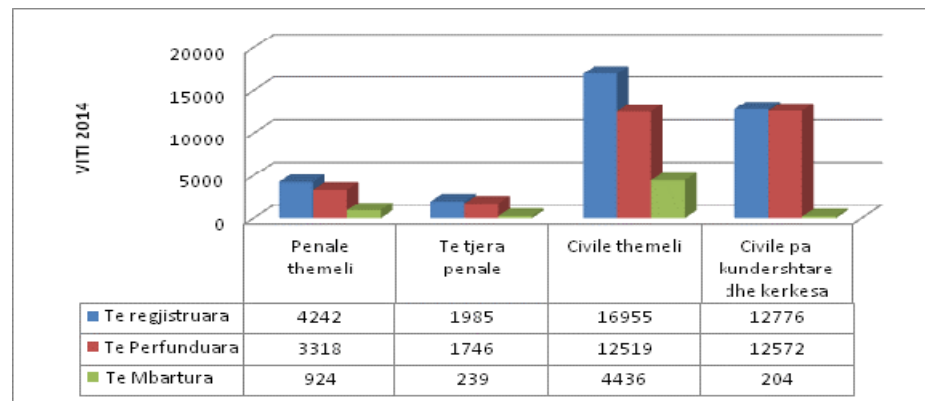
Graphical presentation No. 26 - The number of cases recorded for the period 2009-2014



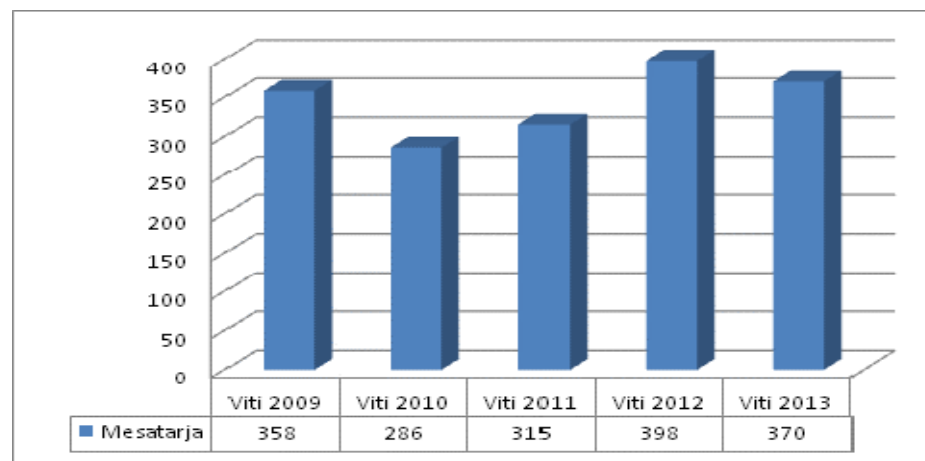
Graphical presentation No. 27 - The ratio between the number of recorded, completed and accumulated cases in Tirana District Court for the period 2009-2014



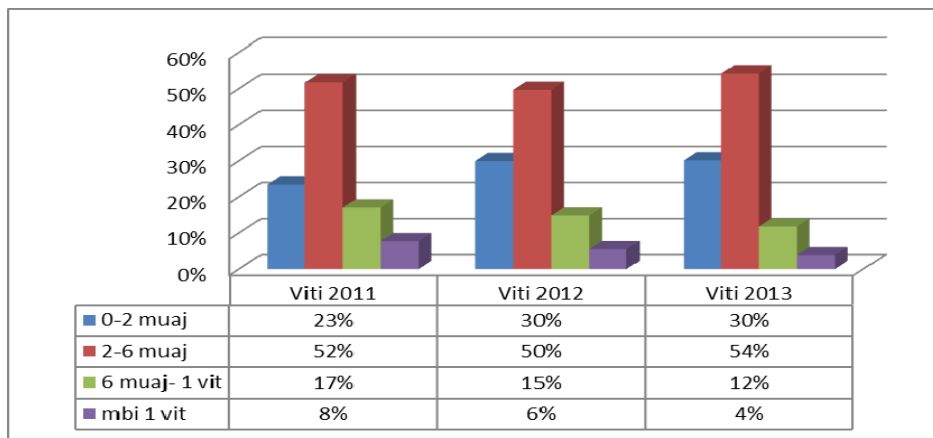
Graphical presentation No. 28 - Statistics on the number of civil and criminal cases recorded, reviewed and accumulated in the District Court of Tirana in 2014



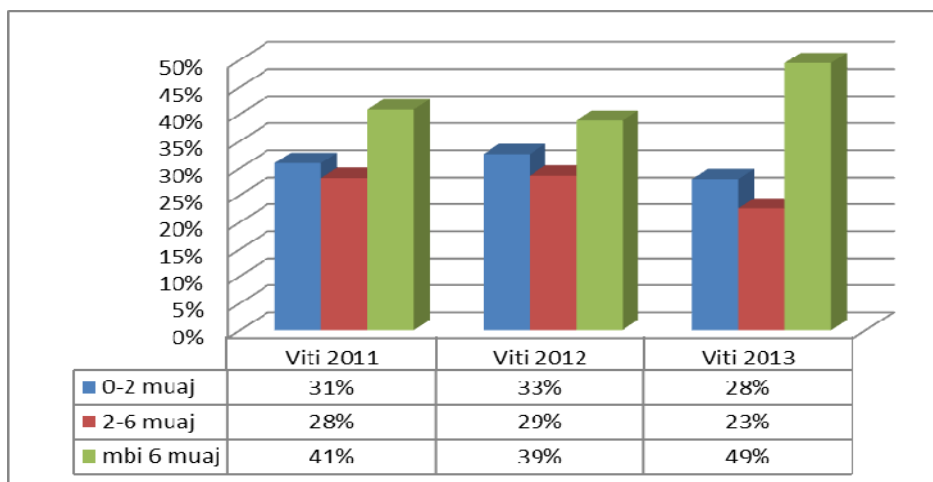
Graphical presentation No. 29 - The average caseload per judge in the District Court of Tirana for the period 2009-2013



Graphical presentation No. 30 - Velocity of court proceedings for Criminal Cases to the Tirana District Court for the period 2011-2013

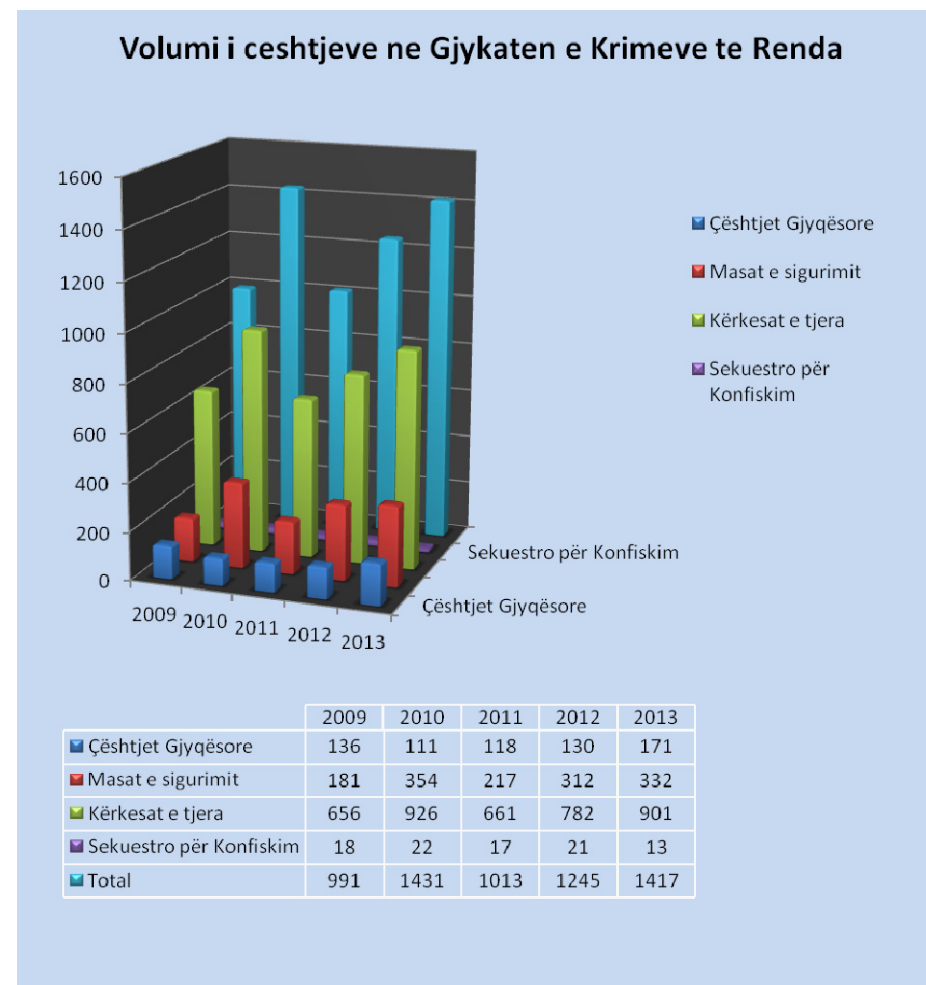


Graphical presentation No. 31- The velocity of court proceedings for Civil cases for Tirana District Court for the period 2011-2013

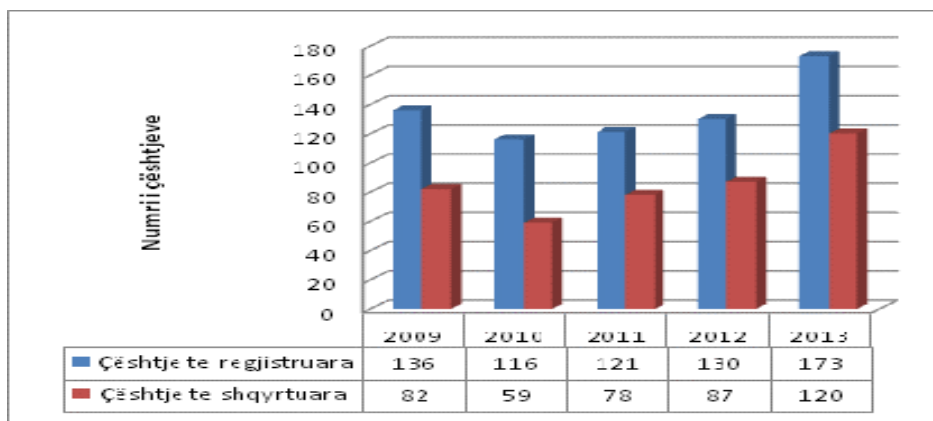


3.3 First Instance Court for Serious Crimes

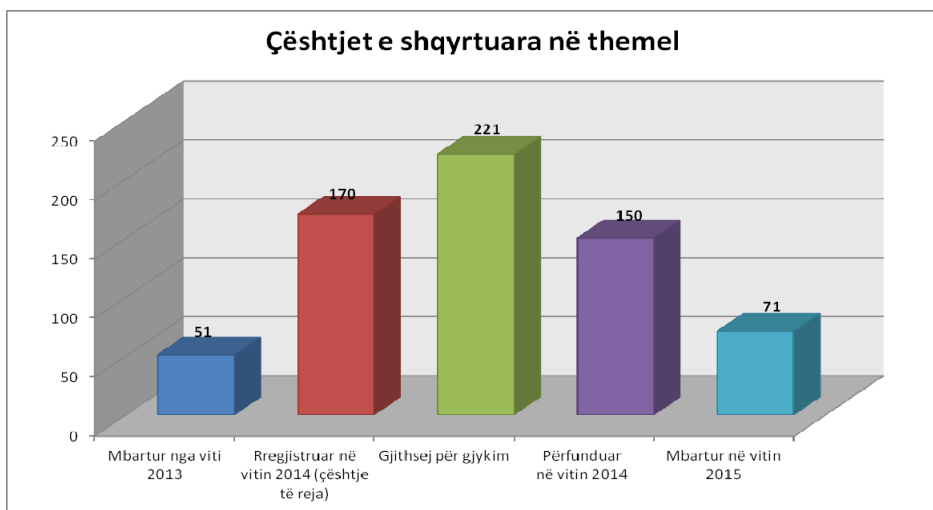
Graphical presentation no. 32 - Statistics on the nature of the cases / claims adjudicated by the Serious Crimes Court for the period 2009-2013



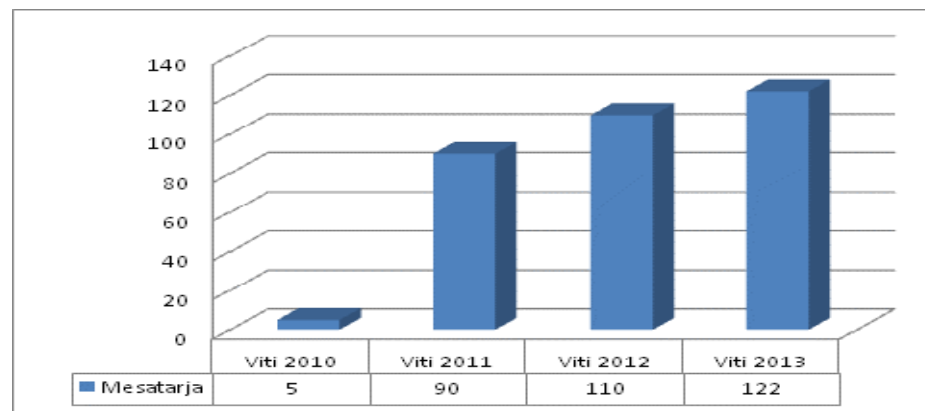
Graphical presentation No. 33-The ratio between the number of registered cases and the number of adjudicated cases in the Court of First Instance for Serious Crimes for the period 2009-2013



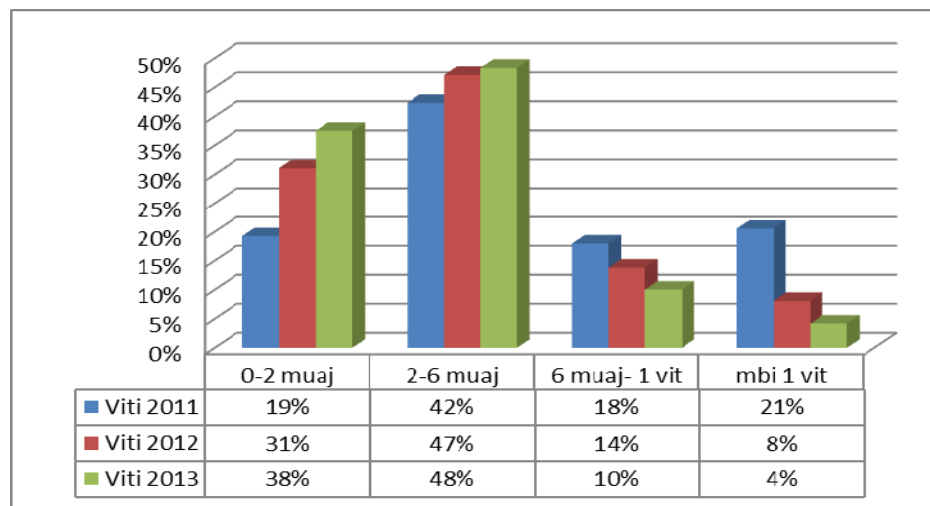
Graphical presentation no. 34 - Volume of cases merits of which have been examined for 2014



Graphical presentation no. 35 - Average number of cases adjudicated on merits per judge in the period from 2010 to 2013

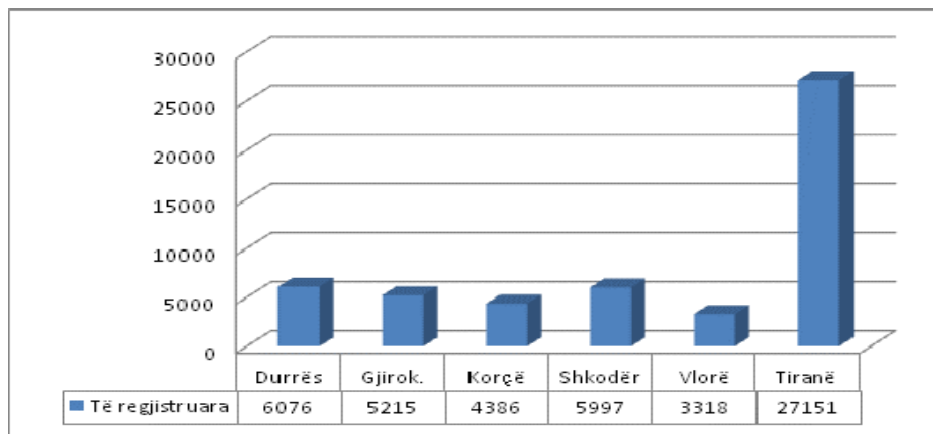


Graphical presentation no. 36 - Velocity of court proceedings for the cases adjudicated on merits in the period from 2011 to 2013 in the Serious Crimes Court

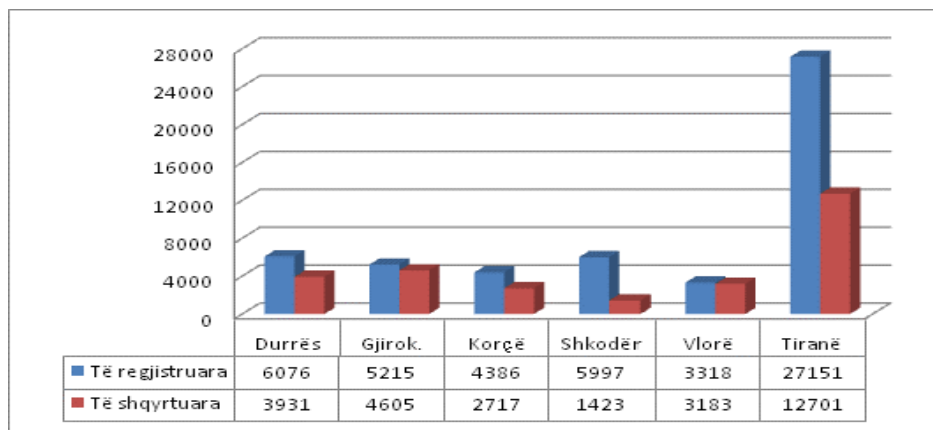


3.4 Administrative Courts of First Instance

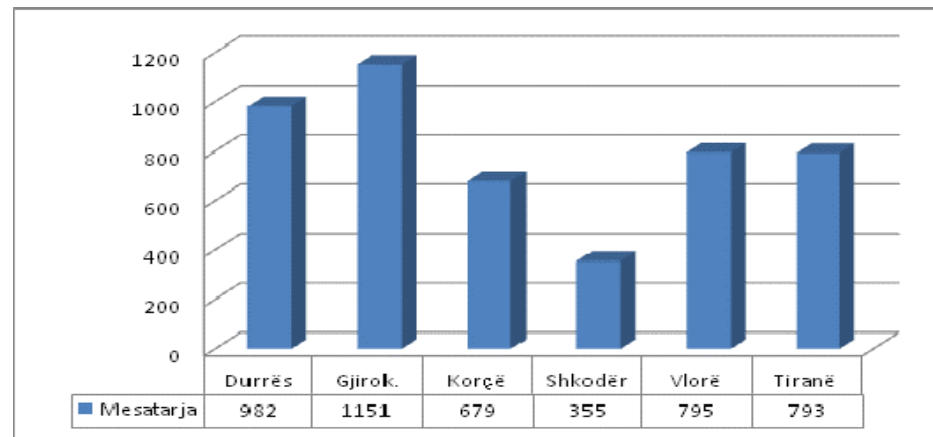
Graphical presentation no. 37 - Number of registered cases in the Administrative Courts of First Instance, 2014



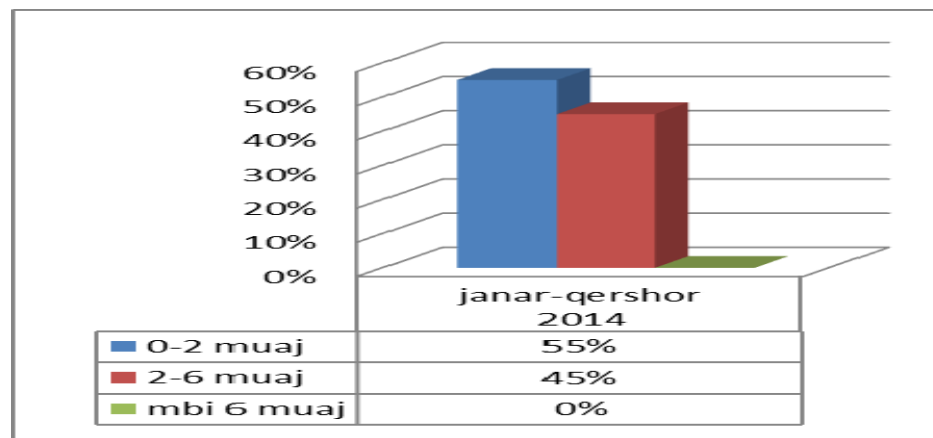
Graphical presentation no. 38 - Number of cases reviewed in the Administrative Courts of First Instance, 2014



Graphical presentation no. 39 - Average number of cases per judge in the Administrative Courts



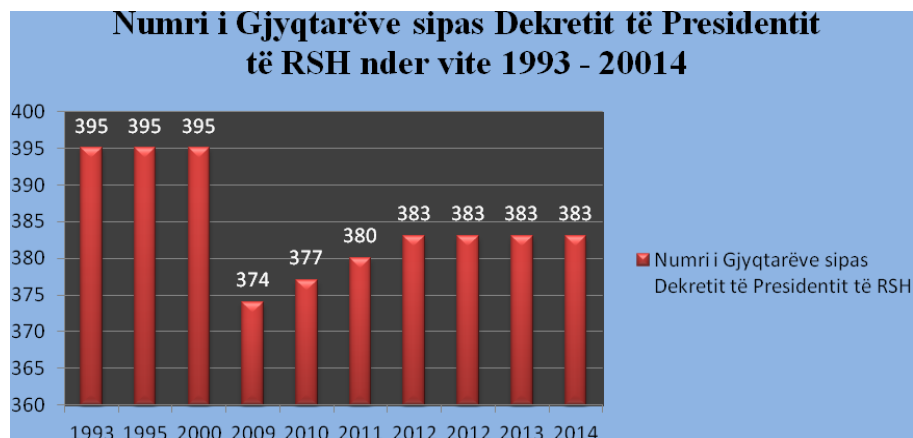
Graphical presentation no. 40 - The velocity of court proceedings in Administrative Courts



Appendix 4 - Statistical data on the efficiency of the judiciary

4.1 Statistics on the number and distribution of judges

Graphical Presentation no. 41 - Number of Judges under the Decree of the President of the Republic of Albania in the period 1993-2014



*Table no. 4 - Distribution by the courts and by territorial division of the country*²⁰⁵

	Courts	Place	Judges in Organic
1	High Court	Tiranë	19
Administrative courts			
2	Administrative Courts of Appeal	Tiranë	7

²⁰⁵ Referring to the statistical data transmitted electronically from the Office of Judicial Budget Administration..

3	Administrative Courts of First Instance	Tiranë	16
4	Administrative Courts of First Instance	Durrës	4
5	Administrative Courts of First Instance	Shkodër	4
6	Administrative Courts of First Instance	Vlorë	4
7	Administrative Courts of First Instance	Korçë	4
8	Administrative Courts of First Instance	Gjirokastrë	4
Serious Crime Courts			
9	Appeal' Serious Crime Court	Tiranë	11
10	First Instance Serious Crime Court	Tiranë	16
Appeal Court			
11	Appeal Court	Tiranë	31
12	Appeal Court	Korçë	6
13	Appeal Court	Shkodër	10
14	Appeal Court	Gjirokastrë	6
15	Appeal Court	Vlorë	12
16	Appeal Court	Durrës	13
First Instances Court			
17	First Instances Court	Tiranë	76

18	First Instances Court	Krujë	4
19	First Instances Court	Dibër	4
20	First Instances Court	Kurbin	4
21	First Instances Court	Mat	4
22	First Instances Court	Korçë	14
23	First Instances Court	Pogradec	4
24	First Instances Court	Shkodër	14
25	First Instances Court	Lezhë	5
26	First Instances Court	Kukës	4
27	First Instances Court	Tropojë	4
28	First Instances Court	Pukë	4
29	First Instances Court	Gjirokastrë	6
30	First Instances Court	Sarandë	6
31	First Instances Court	Përmet	4
32	First Instances Court	Vlorë	14
33	First Instances Court	Berat	10
34	First Instances Court	Fier	14
35	First Instances Court	Lushnjë	5
36	First Instances Court	Durrës	17
37	First Instances Court	Kavajë	4
38	First Instances Court	Elbasan	14
Total			402

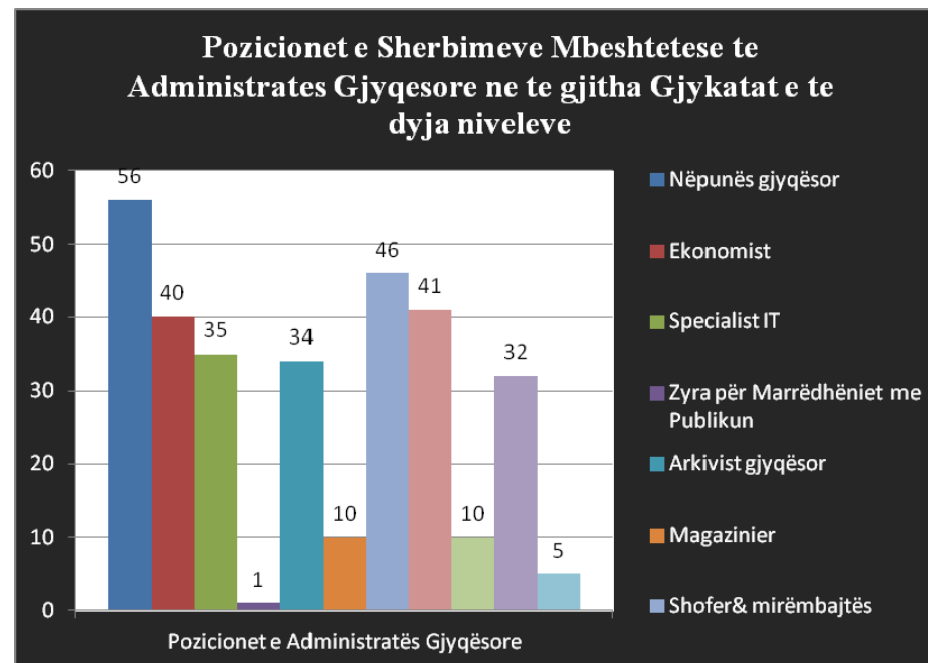
4.2 Statistical data on court administration

Table no. 5 - Distribution of judicial administration employees by the courts:

	Gjykata	Vendi	Administratë në organikë
1	Gjykata e Lartë	Tiranë	112
2	Gjykata Administrative e Apelit	Tiranë	25
3	Gjykata Administrative e Shkallës së parë	Tiranë	38
4	Gjykata Administrative e Shkallës së parë	Durrës	11
5	Gjykata Administrative e Shkallës së parë	Shkodër	11
6	Gjykata Administrative e Shkallës së parë	Vlorë	13
7	Gjykata Administrative e Shkallës së parë	Korçë	11
8	Gjykata Administrative e Shkallës së parë	Gjirokastrë	11
9	Gjykata e Apelit të Krimeve të Rënda	Tiranë	14
10	Gjykata e Shkallës së Parë e Krimeve të Rënda	Tiranë	34
11	Gjykata e Apelit	Tiranë	50
12	Gjykata e Rrethit Gjyqësor	Tiranë	124
13	Gjykata e Rrethit Gjyqësor	Krujë	12
14	Gjykata e Rrethit Gjyqësor	Dibër	12
15	Gjykata e Rrethit Gjyqësor	Kurbin	13
16	Gjykata e Rrethit Gjyqësor	Mat	12
17	Gjykata e Apelit	Korçë	12
18	Gjykata e Rrethit Gjyqësor	Korçë	27
19	Gjykata e Rrethit Gjyqësor	Pogradec	12
20	Gjykata e Apelit	Shkodër	15
21	Gjykata e Rrethit Gjyqësor	Shkodër	27
22	Gjykata e Rrethit Gjyqësor	Lezhë	14

23	Gjykata e Rrethit Gjyqësor	Kukës	12
24	Gjykata e Rrethit Gjyqësor	Tropojë	12
25	Gjykata e Rrethit Gjyqësor	Pukë	12
26	Gjykata e Apelit	Gjirokastrë	12
27	Gjykata e Rrethit Gjyqësor	Gjirokastrë	14
28	Gjykata e Rrethit Gjyqësor	Sarandë	14
29	Gjykata e Rrethit Gjyqësor	Përmet	12
30	Gjykata e Apelit	Vlorë	16
31	Gjykata e Rrethit Gjyqësor	Vlorë	27
32	Gjykata e Rrethit Gjyqësor	Berat	19
33	Gjykata e Rrethit Gjyqësor	Fier	27
34	Gjykata e Rrethit Gjyqësor	Lushnjë	13
35	Gjykata e Apelit	Durrës	18
36	Gjykata e Rrethit Gjyqësor	Durrës	30
37	Gjykata e Rrethit Gjyqësor	Kavajë	12
38	Gjykata e Rrethit Gjyqësor	Elbasan	27
	Totali		887

Graphical presentation no. 42 - Positions of Judicial Administration Support Services, calculated for all courts of the first two instances



CHAPTER V. ANALYSIS OF THE CRIMINAL JUSTICE SYSTEM

I. INTRODUCTION

The scope of work of this chapter is to analyze the current state of the organization and functioning of the criminal justice system in Albania, and identification of key issues that need to be addressed by reforms to improve the situation.

Analysis affects a number of important issues, such as institutional aspects, as well as procedural and material. The first chapter deals with problems related to the prosecution and judicial police regarding their institutional organization, based on constitutional and legal regulatory framework.

The second chapter deals with the positions and procedural activity of the prosecutor from the preliminary investigation phase and beyond during the trial at first instance, on appeal and the Supreme Court.

The third chapter deals with various issues relating to criminal justice institutions, while the fourth chapter deals with the penalty to imprisonment, alternative sentencing, and probation and prison system.

II. REGULATORY CONSTITUTIONAL AND LEGAL FRAMEWORK

1. Prosecution Office and Judicial Police

Constitutional and legal regulatory framework regarding the prosecution and judicial police is as follows:

- a) Constitution of the Republic of Albania, Articles 148 , 149 , 116 , 118 and the following
- b) Criminal Procedure Code of the Republic of Albania, approved by Law No. 7905, dated 21.03.1995, as amended.

- c) Law no. 8737, dated 12.02.2001 "On the organization and functioning of the Prosecutor's Office of the Republic of Albania", as amended.
- d) Law no. 8331, dated 21.04.1998 "On the execution of criminal sentences," as amended.
- e) Law no. 8677, dated 11.02.2000 "On the organization and functioning of the judicial police" as amended.
- f) Law no. 8136, dated 31.07.1996 "On the School of Magistrates", as amended.

1. Criminal Procedure Law

Constitutional and legal regulatory framework in relation to criminal procedural law is as follows:

- a) Constitution of the Republic of Albania, the head of the second "*personal rights and freedoms*", part of the ten "Prosecution Office";
- b) Law no. 9877, dated 18.02.2008 "On the organization of the judiciary in the Republic of Albania";
- c) Law Nr. 9110, dated 24.07.2003 "On the organization of the Court for Serious Crimes in the Republic of Albania";
- d) Law no. 8737, dated 12.02.2001 "On the organization and functioning of the prosecution in the Republic of Albania", as amended;
- e) Law no. 108 / 2014 "On the State Police";
- f) Law nr. 8677, dated 02.11.2000 "On the organization and functioning of the Judicial Police," as amended;
- g) Law nr. 9109, dated 17.7.2003 "On the profession of advocate in the Republic of Albania", as amended;
- h) Law No. 10 173, dated 22.10.2009 "On the protection of witnesses and collaborators of justice";
- i) Law No. 10 039, dated 22.12.2008 "On legal aid", as amended;
- j) Law nr.8331, dated 04.21.1998 "On the execution of court decisions", as amended;
- k) Law 10193/2009 "On jurisdictional relations with foreign authorities in criminal matters", as amended.

2. Criminal Law

Constitutional and legal regulatory framework in relation to criminal law is as follows :

- a) Constitution of the Republic of Albania 1998, Articles 3, 4, 15, 18, 20, 21 and following.
- b) European Convention on Human Rights (and the Additional Protocols) , signed in Rome in 1950 , entered into force in 1953 , the International Convention for War Crimes (Rome Statute) , crimes against Terrorism , Corruption...²⁰⁶
- c) Criminal Code of the Republic of Albania.
- d) Military Penal Code.
- e) Organic laws that provide criminal sanctions (see Decision No.1 / 2011 of the Constitutional Court).

3. Penitentiary System

Constitutional and legal regulatory framework regarding the penitentiary system is as follows:

- a) Constitution of the Republic of Albania, Article 3.
- b) Criminal Code of the Republic of Albania.
- c) Criminal Procedure Code, title IX "Putting judgments to execution".
- d) Law no. 8331, dated 04.21.1998 "On the execution of court decisions", amended by Law No. 10 024, dated 27.11.2008.
- e) Law no. 8328, dated 16.4.1998 "On the rights and treatment of prisoners and detainees", as amended.

- f) Law nr.10494, dated 22.12.2011 "For electronic surveillance of persons whose mobility is limited by a court decision".
- g) Law no. 44/2012 "Mental health".
- h) Law no. 10032, dated 11.12.2008 "On Prison Police".

III. Presentation of current situation

1. Prosecution and Judicial Police

1.1 *Qualification, selection and training*

1.1.1 *Education, initial and continuous training*

Admission to the School of Magistrates is made on the basis of vacancies, determined by the Attorney General, by passing a written examination, which is organized every year in September, and *without the need of a previous working experience*. Persons who do not pass the entrance exam at the MS may retake the following year exam.

The initial training of candidates includes a three -year period consisting of:

- a) one year theoretical program with various subjects of law, common for judges and prosecutors;
- b) one year practice under the supervision of a school pedagogue and under the guidance of a highly qualified prosecutor; and
- c) one year of active practice following the less complicated issues under the direction of a prosecutor (period of professional internship)

At the end of the second year of school, candidates for prosecutors are appointed temporarily by the President to perform a professional internship, upon the proposal of the Attorney General. Over the last year of the professional internship, candidates enjoy the rights and have the same obligations as magistrates

²⁰⁶ Albania signed a Stabilisation and Association Agreement, which paved the way for the process of approximation of national legislation with the European one. This is also one of the main criteria for membership of Albania in the European Union. Acquis communautaire should be adopted in their domestic legal system. See Decision No.20 / 2011 of the Constitutional Court.

The final evaluation of candidates is done by the pedagogical council, on the basis of theoretical and practical results of the internship. The final appointment to vacancies is done by the President, upon the proposal of the Attorney General, in accordance with the evaluation scale from school.

When vacancies are missing, those who are awaiting appointment obtain the salary and other rights of the prosecutor. A candidate for prosecutor, in the absence of vacancies, with his consent, may work in the administration of prosecution, the Ministry of Justice or at the High Court legal until the opening of the vacancy for prosecutor.

Concerning the above, it emerges that the law provides for the appointment of prosecutors the prerequisite of passing the admission examination and a final evaluation of candidates by the School of Pedagogical Council, assessment which is not decisive for the appointment or not of the prosecutors - appointment is done automatically at the end of internship period - but it is taken into account in the selection of the judicial district where they are to perform their duties.

1.1.2 Regarding continuous training, prosecutors have the right and obligation to participate in periodic training to raise their professional level. Judges and prosecutors of the courts of first instance prosecutors and courts of appeal undergo continuous training. The continuous and initial training is conducted by the School of Magistrates.²⁰⁷ Participation in this training is

²⁰⁷ School of magistrates is established and operates under the Law no. 8136, dated 31.07.1996 "On the School of Magistrates", as amended, in order to provide professional training of magistrates (judges, prosecutors), initial and continuous one. The school also conducts vocational training activities of employees of judicial administration, and other legal professions related to the justice system (eg, judicial police officers, etc.). The governing bodies of the SM are: Management Board, Director of the School, the Pedagogical Council and Disciplinary Commission. The Steering Committee is the decision-making authority of the school and consists of 16 members. Two of representatives appointed by the Minister of Justice.

mandatory.²⁰⁸ Continuous training period should not exceed more than 20 days a year and no more than 60 days during five years. Continuous training program is drafted by the Director of the School, in collaboration with internal staff teaching after receiving the opinion of the President of the Supreme Court, Attorney General, Ministry of Justice, the High Council of Justice and the Pedagogical Council of School. Continuous training program is approved by the Board of the School.

1.2 Selection, promotion and transfer of prosecutors

1.2.1 Selection:

Criteria for appointment of prosecutors determined by Law no. 8737, dated 12.02.2001 "*On the organization and functioning of the prosecution in the Republic of Albania*", as amended,²⁰⁹ (hereinafter, "Law on Prosecution Office").²¹⁰ Article 17 of the Law provides that the prosecutor may be appointed in one of the prosecution offices at the court of first instance, any person who has attained 25 years of age, has higher legal education and has completed the School of Magistrates.²¹¹

²⁰⁸ Article 23 of the Law on the School of Magistrates.

²⁰⁹ Changed by the laws nr.9102, dated 10.7.2003 and no. 10051, dated 29.12.2008.

²¹⁰ Before this law, organization and functioning of the prosecution was regulated by Law no. 8265, dated 18.12.1997 "On the organization of justice in the Republic of Albania", which provided, inter alia, for the joint career of prosecutors and judges. This arrangement continued until the adoption of the Constitution of Albania in 1998, which divided the judicial career from that of the prosecution. Promotion and disciplinary proceeding of prosecutors, as part of the judicial system, was disciplined by the High Council of Justice, which was common structure for both judges and prosecutors. The Attorney General was ex officio member of the High Council of Justice, which members were also other representatives of the prosecution.

²¹¹ *Appointed prosecutor at one of the prosecution offices at the court of first instance, shall be a person who meets the following conditions:*

- a) is an Albanian national;*
- b) has full capacity to act;*
- c) has higher legal education;*

Prosecutors are appointed by the President, upon the proposal of the Attorney General, after the latter having received the opinion of the Council of the Prosecutor's Office. Prosecutors are appointed, as a rule, from among persons with higher legal education, having completed the School of Magistrates, but a person who has not completed the School of Magistrates can be appointed, if a) he has worked as a judge or prosecutor; or b) has worked not less than 5 years with the judicial police officer, and fulfil other general criteria stipulated by Article 17 to be appointed as a prosecutor. Number of prosecutors appointed from among the judges, prosecutors and judicial police officers may not exceed ten percent of the total number of prosecutors.

Prosecution Law provides for detailed rules of submission, selection, verification and testing of candidates from among the judges, prosecutors and judicial police officers, appointed by the Attorney General (Article 10). Pursuant to the legal definition, the Attorney General has issued instruction no. 03, dated 11.02.2015, "On the competition procedure for candidates for prosecutors who worked as judges, prosecutors or judicial police officers". Before issuing the instruction, competitive procedures is conducted on the basis of documents and this is done by the Council of the Prosecution Office, in accordance with Article 3 of Regulation no. 79, dated 16.04.2010, "On the organization and functioning of the Prosecution".

Based on the Instruction no. 03, dated 11.02.2015, the selection procedure passes through (i) the announcement of vacancies for prosecutors in at least two

-
- ç) has completed the School of Magistrates;*
 - d) has not been convicted by final judgment for committing a criminal offense;*
 - f) has not been removed for disciplinary offenses from public administration within a period of three years from the date of filing; when the disciplinary offense was committed in the exercise of its function as judge, prosecutor, police officer, notary or lawyer, the term is five years;*
 - e) is not less than 25 years;*
 - ë) has high moral character and professional ;*
 - dh) not removed for misconduct of public administration within a period of three years from the date*

newspapers with national distribution and high circulation and the Public Television and (ii) competition in two stages: written Testing Commission, and hearing by the Council of the Prosecution. The written test is based on two theoretical questions on legislation, international agreements concerning criminal and procedural law and judicial practice, as well as two practical cases which are decisions of the United Colleges of the High Court. The hearing is conducted by the Council of the Prosecution to get information about training, work experience and objectives of the candidate. Evaluation of the written test is the maximum 75 points while for the hearing 25 points. The Testing Commission is established by the Attorney General and consists of three members, two of whom prosecutors of the Prosecution Office General, and the prosecution before the Court of First Instance, respectively, and a lecturer in the School. Prosecution Council submits its opinion on the final evaluation of the candidate to the Prosecutor General.

Law on Prosecution recognizes to Attorney General the authority to appoint directors of prosecution offices; heads of all prosecution offices of all levels who enjoy the status of a superior prosecutor in relation to their subordinates are appointed and dismissed by the Attorney General. The law provides for a competition procedure based on the documents,²¹² and a hearing before the Council of the Prosecution Office.²¹³ The Council gives its opinion to the Attorney General concerning the candidates being associated with the assessment received by each of them in the competition, being an opinion which is not binding for the Attorney General. The candidates for heads of prosecution offices must meet the criterion of experience (not less than five years of work as prosecutors at the same level or higher levels) and performance (to be evaluated "very good" the last two years).

The law on Prosecution Office ***does not stipulate the way of being appointed*** by General Prosecutor, among the qualified candidates who undergo the testing procedures, if they are appointed based on the ranking of test results, and the

²¹² Articles 27/a and 27/b of the law.

²¹³ Article 10.3, letter c) of the law.

transparency obligation, concerning the manner of their appointment. The law does not provide any ground of appeal or contestation concerning the evaluation of the candidates.

The law ***does not provide any legal obligation on priority procedure*** in filling the vacancies with candidates who have completed Magistrate's School, opposed to those who come from the ranks of other professionals. This brings about certain consequences that, eventually not rarely, and in practical terms, prosecutors who have completed Magistrate's School find it impossible to exercise their function, no matter the fact that they receive a salary as prosecutors, meanwhile vacancies are filled with judicial police officers. This kind of practice does not provide support for the professional enhancement of the prosecution office and the standard of the prosecutors aiming a better professional qualification.

The threshold at the age of 25 to be appointed a prosecutor is very low, keeping in mind the responsibility and importance of the work performed. The daily practice shows that individuals exercising the function of a prosecutor might be people who have relatives convicted for serious crimes, which may be of a concern. The criteria of appointing a prosecutor, who has worked as an officer of the judicial police, needs a further evaluation.

1.2.2 Promotion:

Law on Prosecution foresees that promotion of the prosecutor is made "*on the basis of known and objective criteria such as merit and experience, as provided in Article 21, paragraphs 2, 3, and 43 of this Law*". In addition to years of experience to work, conditions for the promotion as a prosecutor to the prosecution office of serious crimes court, court of appeal or to the Prosecutor General's Office are: (a) be distinguished for professional skills and high ethical and moral qualities and (b) a performance assessment of "very good", at two recent times.

The competition for promotion is made on the basis of documents and the hearing before the Prosecution Council. Council gives to the Attorney General

his opinion on the candidates, coupled with the assessment received by each of them in the competition.

When two or more candidates are running who meet the required conditions, Prosecution Council and the General Prosecutor select, according to the score, the candidate with longer experience / seniority in the profession, with more continuous merits / results, as well as more scientific / academic activity. Prosecution Law provides for detailed rules for the rating scale determined by order of the Attorney General. Scoring system for promotion is defined in Article 3 / b of the Regulation "On the organization and functioning of the Council of the Office"²¹⁴.

The existing legal framework does not provide criteria on which the decision of the Prosecutor General is to be based on for promotion of candidates, the opinion of the Council of Prosecution and the ranking in assessment do not constitute binding criteria, nor the obligation of making a reasoned decision regarding their selection. The cases of transfer to another lower position, at prosecution level, as well as parallel transfers without the consent of the prosecutor, for reorganization needs are not arranged in full and on clear and objective criteria. Also, it is not provided the possibility to appeal the results of the assessment or decision of appointment. There is not a standardized evaluation procedure, associated with specific criteria for measuring the skills, competence and integrity.

1.2.3 Evaluation:

The performance evaluations of the prosecutor is made for his professional and personal skills , social skills and attitude , management skills , and for the observation of the discipline at work and discipline.²¹⁵

²¹⁴ Tenure (25 points), performance evaluation (45 points), academic activity (10 points) and the hearing (20 points).

²¹⁵ Article 42 of the Law on Prosecution Office".

Preliminary evaluation of the work is done by the head of the prosecution office. This evaluation serves as a proposal for the final evaluation made by the Attorney General, who may replace the preliminary assessment, because of a fair comparison, nationally, the estimates.

For evaluating the work of the prosecutor, Department of Inspection and Human Resources General Prosecutor's Office carries out planned inspections, no less than once every three years, and holds a permanent list ranking prosecutors to work results.

Prosecution Council examines preliminary assessment of the work and submits its opinion to the Attorney General, which must be given within 15 days. Rules for evaluating the work of prosecutors and ranking criteria of the prosecutors in the permanent list is determined by the Attorney General. In applying this provision of the law, the Attorney General has issued Order no. 221, dated 19.11.2012 "On approval of the Regulation on job evaluation system and professional and moral skills of prosecutors".

The prosecutor's career in Albania is not guaranteed and it has been as such in years. There have been many cases of appointments to executive levels of inexperienced and of young age prosecutors, as well as transfers of prosecutors of the General Prosecutor's Office, at the end of their career, because of age.

Prosecutors' vulnerability to the above mentioned actions of the office-holder is assisted by the simple mechanism of their performance on the basis of the exclusive decision of the Prosecutor General. The role of the council of prosecution is not mandatory or influential in decision-making, unlike the role played by the High Council of Justice for judges.

Financial motivation remains in very low levels for the standard of living. Not only that salaries of the prosecutors have not been increased in a nearly 15-year period, but no incentive payment is offered for certain success or for long working hours for prosecutors as well as for officers of the Judicial Police, and more further for the most basic employees of the institution.

1.2.4 Transfer:

The law regulates the principle of irremovability of the prosecutor from office, except the temporary secondment, service needs, in another prosecutor or the imposition of a disciplinary measure.²¹⁶ A prosecutor may not be transferred without his consent, unless it is dictated by the need to reorganise the prosecution.²¹⁷ The law stipulates that the transfer of the prosecutor can not be done without his consent, unless this is dictated by the needs of reorganization of the Prosecution. Transfer of the prosecutor can only be done at the same prosecution level. To avoid abusive transfers, it is necessary to regulate in full and on clear and objective criteria the cases of transfer to another lower position, at prosecution level, as well as the parallel transfers without the consent of the prosecutor for reorganization needs.

1.3 Professional freedoms and guarantees

Article 46 of the Constitution stipulates that everyone has the right to organize collectively for any purpose. Prosecution Law expressly provides that the prosecutor is free to participate in associations or organizations or non-profit activities aimed at respecting ethics or professional establishment (Article 38).

On the basis of this legal framework the National Association of Prosecutors of Albania (HAAS) has been established and operates, since 2001, , which aims its activity:

- a) to protect and represent the interests of its members in state bodies and social organizations;
- b) ensure compliance with ethical norms by prosecutors;
- c) review cases when affected the interests of the Prosecutor or the members of the Association;

²¹⁶ Articles 25 and 33 of the law.

²¹⁷ Article 24 of the law.

- d) to ensure that the constitutional and legal guarantees to be respected for the prosecutor function;
- e) Undertake initiatives of professional, social, cultural and sports character;
- f) foster the publication of a periodical.

The role of the Association during the 14 years of its activity has been limited, almost insignificant. There is no evidence of significant public or institutional reaction of the Association to the actions of the Attorney General over the years, as no protective reaction against the strikes intervening with the career of the prosecutor even for those cases assessed in violation of law determined by the courts.

1.4 Position and functions of the prosecutor

1.4.1 Appointment and constitutional position of the Prosecutor General

Under Article 149 of the Constitution, the Attorney General is appointed by the President with the consent of Parliament. With the change that was made to this article of the Constitution in May 2008, the mandate of the tenure of Attorney General was limited to a period of five years (versus indefinite period that previously foreseen), with the right to reappointment. Attorney General may be dismissed by the President, upon the proposal of the Assembly for violations of the Constitution or serious violations of law in the exercise of his functions, for mental or physical incapacity, acts and behaviour that seriously discredit the position and image of the Prosecutor.

Based on Article 7 of the Law on Prosecution, Attorney General is elected from among lawyers with experience not less than ten years in the justice system and is distinguished for professional skills and a clean ethical-moral.

Being that the election of the Prosecutor General has a significant political component, the 5-year duration of the mandate, nearly as long as a legislature brings more harm than good.

This duration is insufficient to undertake and ensure the continuation of reforming initiatives and to view their results in practice. In addition, this limited mandate is in asymmetry with 9-year mandate of the judge of the High Court, Constitutional Court and the Chairman of the High State Audit.

On the other hand, the possibility that the Constitution provides for the renewal of the mandate of the Prosecutor General can not provide the necessary guarantees for the prosecutor to keep a distance from political power. The method of his election may push towards a rapprochement with the legislative majority at the end of his mandate, for the sake of his reconfirmation in office.

The issue of addressing the treatment of the Prosecutor General after the completion of his mandate, is intended to be regulated in the law "On the prosecution"²¹⁸, predicting that "after the end of the term, with his consent, he (the Prosecutor General) has the right to be appointed to the post of prosecutor in the General Prosecution Office or in the previous position or in a position equivalent to the previous one ". Despite this legal provision, the problem has not taken a full legal solution. This is because his assignment in other duties is regulated as an "opportunity" rather than as "liability", leaving room for inappropriate interpretation of subjective character.

1.4.2 Functions of the prosecutor

The prosecution has the basic functions of assuming the criminal prosecution and representing the charge before the court on behalf of the state.²¹⁹ By law the prosecutor may be assigned other duties, like putting in execution and enforcement of criminal judgments or the right of intervention in the field of family law (for example, rights to regulate the relations arising from the marriage, adoption procedures, guardianship, etc., that are set out by the Family

²¹⁸ See Article 7, paragraph 1.3 of the law.

²¹⁹ See Article 148 of the Constitution: 1. Prosecution Office exercises criminal prosecution and represents the charge at the court on behalf of the state. Prosecution Office performs other duties assigned by law.

Code.²²⁰). Basic functions remain those related to the institute of the charge: the criminal prosecution and pressing charges before the court. In assuming the criminal prosecution, the prosecutor assisted by the judicial police.

The functioning of the prosecution, under the principle of hierarchy, over the years, has caused adverse effects on its activity with impact on the observance of legality, protection of rights and freedoms of the individual and proceeding according to the principles of objectivity and transparency in decision-making.

Notwithstanding the fact that the law guarantees the decision making process of the prosecutors to be impartial, yet the independence in relation to the higher prosecutor, in practical terms seems to be very limited, especially in the first instance district prosecution office. The decision making process of a prosecutor concerning some main procedural aspects, such as non-initiation of a criminal proceeding, dismissing a case, selecting an appropriate personal security measure, drafting the final discussion or assessment if an appeal has to be applied or not, within a centralised office, seems to be dependent on the decision taking of a higher prosecutor. The designation of a personal security measure in contrast with the law provision (i.e. detention on remand in cases of car accidents), as well as the appeal of almost every court decision given in contrast to the request of the prosecution office, all these represent lack of independence and deficiency in transforming these crucial procedural means in concrete actions that aim above all “being within the limits of a prosecutor”, detached from the judgement and observation of the higher prosecutor. The law on prosecution stipulates the possibility of limiting the power of the higher prosecutor.²²¹, and furthermore there is an order of General Prosecutor that provides a regulation of the appeal and contestation procedure of the higher prosecutor,²²² but in practical terms, the contestation was never applied, apart any sporadic case. Nevertheless, at court session the prosecutor carries out his

²²⁰ Approved by law no 9062, dated 8.5.2003 (see Articles 20, 42, 255, 264, etc.).

²²¹ See Article 3 / c of Law.

²²² See Order of the Attorney General no. 147, dated 19.05.2008 "On the unification of the exercise of functions in the first instance prosecution".

functions in full independence,²²³ yet the proposal for the amount of punishment may not be given, without a prior consent of the higher prosecutor.

Prosecutors are inclined to adopt and comply with the instructions and rules of their higher prosecutors, no matter the fact that they are rarely given in a reasoned and written form, as stipulated in the respective law²²⁴, because the office-holder of the Prosecution, because of reports of trust and the possibility of contacts with the Prosecutor General, may influence the latter to launch a disciplinary proceeding before the Board. On the other hand, the affinity to apply the order and instructions of a higher prosecutor might be a result of being rewarded with the assignment of certain cases; working in certain favourable sectors etc. Within this framework, most of the prosecutors, being adapted and adjusted to this attitude, since a long time, not at all defined as correct, face difficulties in proclaiming their personality and skills while investigating, prosecuting and representing accusation in the court, in practical terms they are no more independent in their decision taking. Consequently, they have no more an utmost autonomy, because the impact might be addressed in a form of a simple suggestion or “a friendly” opinion, on behalf of the higher prosecutor.

In the first instance prosecution office the decision making process in a hierarchical way has to undergo the following, from the deputy head of the prosecution office to the head of the prosecution office. The prosecutor may provide his opinion and assert it, but such cases are just a few. Centralisation has deepened the inclination to face the opinion or suggestion of the higher prosecutor, mainly for two reasons: not to imperil himself by undergoing a disciplinary procedure and benefit personal favours in other cases.

The deep hierarchical regime prevents the promotion of professional courage and the sound development of the prosecutor’s career. Prosecutors are turned into implementers of the orders of their superiors, by losing their individuality

²²³ See Article 25.3 of the CPC

²²⁴ See article 4.3 of the law.

and accountability on the cases. At the same time, this hierarchical order is the cause for political attacks against the Prosecutor General.

1.5 Conflict of interest

Article 3 / c of the Law on Prosecution addresses the avoidance of conflicts of interest of directors of the prosecution and the Attorney General, in relation to specific issues.

Thus, the heads of the judicial district prosecution office, head of the prosecution at the court of appeal, the appellate prosecutor, the prosecutor at the Prosecutor General or the Attorney General, when encountering a criminal case provided for in Articles 16²²⁵ and 17, paragraph 1²²⁶, of the Criminal Procedure Code, it is forbidden to give orders and instructions, in writing, to the prosecutor of the case or affect in any other way.

In this case, the head being in conflict of interest shall notify, in writing, the Attorney General. Attorney General, ex officio or upon request, decide in writing to exclude the head of prosecution office in conflict of interest from the procedure of issuing orders and instructions. In this decision, the Attorney General determines whether and what parts are valid acts which were performed under the orders and instructions given earlier by the head of the prosecution office being in a conflict of interest.

²²⁵ Article 16 (Incompatibility due to family kinship or in-law relationship.) - 1. Not participating in the same proceedings shall be the persons who are among them or with the participants in the trial, spouses, close relatives (ancestors, descendants, brothers, sisters, uncles, aunt, nephews, nieces, children of brothers and sisters) or close in-law relationship (father-in-law, mother in law, daughter-in-law, son-in-law, stepson, stepdaughter, stepfather and stepmother).

²²⁶ Article 17 (Relinquishment) - 1. A judge shall be subject to relinquishing the trial of the case in question: a) if he has an interest in the proceedings or when a private party or a defence lawyer is a debtor or creditor of his, his spouse or children;

In the event that the Attorney General is required to issue an order or give an instruction in a proceeding in which he is in a conflict of interest, he declares, in writing, the situation of conflict of interest and notify the prosecutor, who asked for the issuance of the order or instruction. In this case, order or directive shall be issued by the most senior prosecutor, being a Director in the General Prosecutor's structure.

The law does not specify concrete sanctions that apply in the case of non-declaration of the state of conflict of interest by head of the prosecution office in the conflict.

The legal framework for the regulation of conflicts of interest, supplemented by the provisions of Article 39 of the Law on Prosecution,²²⁷ on the incompatibility of the office of the prosecutor, and the requirements of the Code of Ethics, adopted on June 2014 (hereunder), which provides extensive restrictions for all prosecutors in cases of conflict of interest situations related to promotions, gifts, or financial or family interests prosecutor.²²⁸

²²⁷ 1. The prosecutor is prohibited to participate in a political party or participate in activities of a political nature. 2. The function of the prosecutor is incompatible with the candidacy and with every electoral mandate, public duty or activity, with the exception of educational and teaching activities, which is regulated by order of the Attorney General. 3. A prosecutor is prohibited to obtain double employment, except for activities permitted in paragraph 2 of this Article. 4. A prosecutor is prohibited to take part in the governing bodies of commercial companies

²²⁸ 1. Prosecutors must not: a) Use their duty, to gain privileges for themselves or others; b) Take procedural/ professional decisions influenced by political preferences or his financial interests, his family, friends or third persons, or based on the impact that can have an organization or group which belongs to the prosecutor; c) seek or obtain, directly or indirectly, gifts, favours, promises or preferential treatment, which is given because of his position, by an individual, person or private entity. Only the cases determined by the acts of the competent authorities, which allow the acceptance of gifts or preferential treatment for reasons of protocol are excluded; d) Allow the name and reputation to be used by others in order to gain unfair benefits. 2. The highest prosecutor should not accept services or gifts from prosecutors or employees under his authority. 3. A prosecutor who has applied for promotion, transfer or another position

1.6 Code of Ethics

By Order no. 141, dated 19.06.2014, the Attorney General has adopted a new Code of Ethics, drafted with the assistance of OPDAT mission of the United States of America. With the adoption of the new Code of Ethics, in June of 2014, clear and ethical binding standards are foreseen. Prior to the adoption of this code, a code of ethics adopted by the National Association of Albanian Prosecutors, in 2005 was in effect. The code of ethics of the year 2005 was estimated to be inefficient and non-functional, as it contained no binding norms and sanctions in cases of violations.

The new Code of Ethics provides for the obligations to be implemented by all the prosecutors, associated with disciplinary penalties due to the violations of its norms. Thus, Article 17 of the Code of Ethics provides that "violation of the Rules, when it is not a criminal offence, is a cause for disciplinary proceedings", while some of the most serious violations constitute actions that seriously discredit the image of the prosecutor, to the effect of the implementation of disciplinary measure.

The new code provides the establishment of a special structure, Inspectorate of Ethics, which upon receiving the information on the violations of the Rules by the prosecutor, begins the verification procedure to verify whether there has been such breach. Ethics inspector shall be appointed by order of the Attorney General one of the prosecutors of the Prosecution Office General. Ethics Inspector informs the Attorney General, for the verification results and recommends appropriate, registration of criminal proceedings, disciplinary procedures or organizing special training.

Since December 2014 training prosecutors on recognition and enforcement of the Rules of Ethics has begun

should not exert any influence on persons who are involved in the identification, evaluation or decision on that request. 4. The prosecutor has to comply with the law no 9367, dated 07.04.2005 "On the prevention of conflict of interest in the exercise of public functions" (as amended).

1.7 Inspection System

An important mechanism that makes possible the recognition of investigation and prosecution issues and affects the level of accountability of the prosecutors while exercising their function, is the inspection of their prosecutorial activity. An external inspection is carried out by the Ministry of Justice²²⁹ on the legality of their activity and procedural issues and concerns. This inspection is considered as inappropriate, not only because in several cases, it turned out to be politically enhanced/motivated, but even for another reason, that this kind of inspection cannot assess the relevant case in details and it aims to inspect crucial aspects related to freedom and fundamental human rights (respect for the time limits for the investigation, for pre-trial detention, etc.), that are subject to the inspection of the court and General Prosecutor. (Refer the following).

An internal inspection conducted by the prosecutors of General Prosecutor's Office, in accordance to a well-defined schedule of topics, would be more efficient. Eventually, the increased number of the proceedings under investigation and the confined organisational structure of the prosecutors – inspectors, brings about difficulties in conducting a thorough inspection.

The cases under adjudication, normally are inspected by the appeal of the appellate prosecutors and those of the Supreme Court. Meanwhile, other reference mechanisms has to be well defined, especially for cases when discrepancies during the investigation process are identified.

Nevertheless, still there are deficiencies in the efficiency and quality of prosecutor's activity.

²²⁹ Articles 56 of the law.

1.8 Disciplinary proceedings

The draft Law recognizes the Attorney General the authority to initiate disciplinary proceedings, ex officio or on the recommendation of the Prosecutor. Disciplinary proceedings is based on data obtained from inspection.

Possible disciplinary sanctions are "reprimand", "reprimand with warning for dismissal", "suspension from duty and transfer to another lower position, within the body, for a period of six months to one year" and "dismissal from duty".

Attorney General imposes disciplinary measures "reprimand", "reprimand with warning for dismissal" and "suspension from duty and transfer to another position lower, within the body, for a period of six months to a year" and the President proposes the disciplinary measure "dismissal from office".

The disciplinary procedure provides for the access by the prosecutor to the file and the possibility of his defence, including the right to be heard by the Council of the Prosecution Office. Prosecution Office Council gives its opinion, not mandatory, regarding disciplinary violation, decision belongs exclusively to the Attorney General.

The law does not define the disciplinary measure applied for a disciplinary violation, which is left to the discretionary evaluation of the enforcement authority.

Prosecutors only rarely are subject to criminal prosecution, while the disciplinary procedures started in years have been limited in number.

Removal of directors of the institution is carried out by the Prosecutor General, based on general criteria - failure to perform functional tasks, despite of their importance - and the possibility of appeal to the relevant decision of dismissal is not predicted.

1.9 The rights of aggrieved persons

Prosecutors must ensure that victims are given information about the legal procedures and their rights, and be informed about main developments.

Failure to consider the requests of aggrieved persons during the criminal process for more thorough and qualitative investigations, affect the accountability and transparency of investigation. The prejudice of the investigation and the expression of opinion by the prosecutor before the investigative actions is a concern.

The aggrieved persons are not guaranteed an effective participation in the criminal process

Preliminary investigation stage shows weaknesses and deficiencies in terms of completeness, effectiveness and objectivity of the investigation.

1.10 Prosecution Office Council

1.10.1 Organisation and functions

Prosecution Office Council is organized and operates under the Law on Prosecution (Chapter IV) and Regulation no. 79, dated 16.04.2010 "On the organization and functioning of the Prosecution", approved by the Attorney General, as amended.

The Council is a body elected by the prosecutors, by secret ballot, and consists of seven members, of whom six prosecutors and a representative of the Minister of Justice. A representative of the President of the Republic may also attend the council meeting.

The prosecutors, Prosecution Office Council members, must have over five years of work as prosecutors. They are elected every three years by the General Meeting of Prosecutors. Nominations submitted by a group of no less than 10 prosecutors. The meeting is chaired by the Attorney General.

The composition of the board is as follows:

- a) Three prosecutors, who exercise functions as prosecutors at the courts of first instance;
- b) Two prosecutors, who exercise functions as prosecutors at the courts of appeals;
- c) A prosecutor who performs functions at the Prosecution Office General.

Members of the Prosecution Council can not be the prosecutors, to whom a disciplinary measure is imposed.

The Law on Prosecution Office assigns a special role to Prosecution Council, which has only advisory functions, in support of the Attorney General.²³⁰

The Council performs, among others, important tasks of organizing the contest for the nomination of candidates for the prosecutors, the organization of the competition for promotion and appointment as head of prosecution office, giving the Attorney General opinion on the appointment, promotion, transfer, dismissal and another initiative any disciplinary action against them.

Council gives its opinion on the nomination of candidates just graduated from the School of Magistrates, evaluating each in relation to the specifics of positions declared vacant and needs of prosecution.

Prosecution Council considers the performance evaluation of prosecutors and submit, for approval by the Attorney General, the final evaluation report of the professional skills of prosecutors

The Prosecution Council currently has only an advisory role, in terms of the Prosecutor General, without a genuine impact on the appointment, transfer, disciplinary proceedings and promotion of prosecutors.

²³⁰ Article 10 of the law.

Conceived as a connection mechanism between the Prosecutor General and incumbent prosecutors, for important issues affecting the interests of the latter, such as disciplinary procedures and promotion, the Council has no power in proportion with the position set by law.

1.11 Relations with other institutions

1.11.1 Relations with the Assembly

The law on Prosecution Office regulates relations of the Prosecutor General to Parliament²³¹. Regarding this, we deem that we should address some problems which are encountered in the practice of his activity:

The Constitution foresees that the Attorney General will report to Parliament on the criminality rate that means reporting on issues of a general nature, not concrete proceedings.²³² Despite this constitutional norm, the Law on Prosecution, besides the prohibition of reporting on specific issues, provided that the Attorney General should report "*... for cases sent by the decision of the Assembly.*" It may be that the Assembly should establish a commission of inquiry on a certain case and, at the end of its activity, to come up with a report, which can be forwarded to the prosecutor in the form of criminal charges. In cases of this nature, the way for the Attorney General be called to inform the Assembly on a particular issue is paved, which contradicts the letter and spirit of the Constitution.

1.11.2 Relations with the Council of Ministers

The Law on Prosecution provided the right of the Council of Ministers to transmit to the Attorney General, through the Minister of Justice, "*... recommendations that should be taken into account ... in the fight against*

²³¹ Articles 53-56 of the law.

²³² Article 149. - 4. Prosecutor General shall recurrently inform the Assembly on the criminality situation.

crime”²³³. On the other hand, the law stipulated the right of the Ministry of Justice to control the progress of issues that are part of the annual recommendations issued by the Council of Ministers.²³⁴ This provision of the law, in fact, creates a path for political influence on the activity of the Attorney General, through inspections of the Minister of Justice, if the latter estimates that if the government's recommendations are not met. This provision seems questionable, because this government control mechanism can be achieved by calling the Attorney General to report to Parliament on issues of criminality. Therefore, we think that this issue should be considered in the following reform initiatives.

Further, we estimate that in the international criminal reports, the triangle Office of the Attorney General - Ministry of Justice - Ministry of Interior, must operate at high intensity of interaction. Respective departments of international relations in the first two levels and Interpol Office at the Ministry of Interior are working on everyday relationships, relating to extradition to and from overseas, letters rogatory or recognition of foreign criminal judgments. In addition to the general regulation in an agreement, code or law, more dynamic bylaws (memos, joint orders etc.) need to be signed.

1.12 Judicial Police

1.12.1 Organisation and functioning

The Penal Procedure Code and the specific Law no. 8677, dated 02.11.2000 "On the organization and functioning of the judicial police", as amended.²³⁵ (hereinafter, the Law on Judicial Police), make a distinction between the administrative activities of the police from its procedural activity, as two sides of the same coin. The first is aimed at maintaining public order and safety and the prevention of crime.²³⁶, and the second the application of criminal law and

providing conditions for the criminal prosecution by the prosecutor. In other words, the police carries out procedural functions only after establishing the commission of an offense and it is the obligation of the state to prosecute the perpetrator. Or more simply, judicial police activity begins where the administrative activity ends, where the former activity does not manage to prevent crime.

Given this distinction, the same entity does not face any obstacle to perform administrative activities, as well as procedural activities (eg. state police employee performs administrative activities to ensure public order and security, but upon finding the commission of a criminal, it begins to act in the capacity of the officer or agent of the judicial police). Regarding the above, it is understood that we are dealing with the same body in different conditions, performing different functions respectively. In this regard, it is important to note that the lines of dependence are different, it depends on the type of function performed: administrative activity responds to the administration of origin.²³⁷, while the procedural activity responsible to the prosecutor.²³⁸

Besides CPC provisions, police procedural activity is regulated by the Law on Judicial Police, which determines the rules of assuming judicial functions, and the rules of organization and functioning of the judicial police. Note that procedural functions not only assumed by State Police, but also other types of police that, "... *by special law are recognized such a capacity.*" (Article 32 of the CPC).

²³³ Article 54.1 of the law.

²³⁴ Article 56.2, letter "a" of the law.

²³⁵ Changed by laws no. 9241, dated 10.06.2004 and the Law. 10301 dated 15.07.2010.

²³⁶ See, eg, Article 1.2 of nr.9749, dated 06.04.2007 "On the State Police".

²³⁷ See Article 7.1 of the Law on Judicial Police "Judicial Police Services organization and hierarchy, according to the structure of the public institution where they belong."

²³⁸ See Section 4.1 of the Law on Judicial Police: "The Judicial Police shall exercise its functions under the prosecutor and directed and controlled by him".

1.12.2 Structure

In terms of its structure, the entities performing procedural functions operate within the services and sections of the Judicial police (PGJ). PGJ services are organized and operate in the composition of any police authority that the law recognizes the right of performing judicial functions, and the sections are investigative units operating as part of any prosecution. The staff of the latter consists of:

- i. *officers appointed by the Attorney General, as a rule with legal background;*
- ii. *officers coming from services of different organs that perform judicial functions. Usually, the composition of the sections of the prosecution have no GP agents.*

The law protects the PGJ officers assigned to prosecution sections, in order to ensure the stability of investigative activity. Prior consent of the Attorney General is needed, as a guarantee for the protection of the transfers, while his opposition should be motivated²³⁹. Such consent is not required in cases of promotion, at hierarchical or rank level. The law does not regulate the procedure of appointment of officers of police services across sections of the prosecution, a procedure that was defined in detail in Article 11 of Law no. 8677, dated 02.11.2000 "On the organization and functioning of the judicial police", before the amendments in 2010.

A problematic issue is the composition of sections of JP to the prosecution offices. Their organisational chart has to be updated every two years, determining the proportion of employees designated by General Prosecutor and those designated by police forces, in accordance with the logic of composition of "interforce"²⁴⁰. The inclusion of police officers within the section of a certain prosecution office, aimed not to split the cases and the relevant conducted investigative activity, thus being a connecting point between the

²³⁹ See articles 8.8 and 11 of the Law.

²⁴⁰ See article 8.6 of the law.

prosecutor and the judicial police service. Eventually, with the passing of the years, the connection between officers of the section with their subordinate administration, faded away; it has to be admitted that they were professionally grown up, concerning recognition and implementation of procedures while conducting an investigative activity, but meanwhile they lost their connections and ties with the territory and police services, and were converted into office clerks, similar to the officers of the section having a legal background. The only connection with their subordinate administration remains the salary. Taking into account that the recent legal amendments of 2010 abrogated the competition procedure on the assignment of the candidates in the section, it has to be underlined that the appointment of officers of the service in the sections of the prosecution office, are not based on the principle of transparency and merits. This fact provides a much more problematic situation with consideration to the selection and composition of the organisational chart.

The composition of service personnel of judicial police, including those specialised in specific sectors in the fight against crime, still remains unstable, as a result of frequent movements and transfers. The lack of stability is further highlighted during the rotation of governments, a fact that still keeps police forces closely tied and under certain political impact. This brings about two risky consequences: on one side, lack of stability affects the investigative activity, and on the other side the political impact provides doubts and no guarantee on the objectivity and legitimacy of investigations.

1.12.3 *Ex officio, delegated and executive activity*

The activity of the judicial police in view of criminal proceedings can be *ex officio activities, delegated activities and executive activity for orders of the prosecutor or the court.*

Ex officio activity includes all actions that PGJ is forced to perform to meet the obligations under Article 30, be informed about criminal offenses; prevent the escalation of consequences, look for perpetrators, conduct investigative acts and, in general, to fulfil all that serves the criminal law enforcement. This activity, as a rule, ends with a criminal referral to the prosecutor (Article 293 of

the CPC). But, even after the notification of the prosecutor.²⁴¹, the judicial police did not interrupt its activities, fulfilling all duties assigned by Article 30. Even after the intervention of the prosecutor, it has the right to conduct on its own initiative any investigative actions necessary (Article 294.2). Namely, change conducted in paragraph 2 of Article 294 was intended to promote judicial police to conduct further investigations, even after the intervention of the prosecutor.²⁴².

The delegated activity includes those actions which judicial police carries out based on an order of the prosecutor, as the latter has taken over the management, control and coordination of investigations. It is understood that in this case we are not encountering an imminent situation to justify the ex officio activity. Prosecutor may delegate to judicial police the performance of acts that the law assigns only to him (eg, interrogation of the defendant), or may order to carry out acts that PGJ is not prevented by law to perform (in this case we have no urgent reason). However, even in the performance of delegated or directed acts, if PGJ faces a pressing situation that does not allow reception of an order by the prosecutor, it can act with initiative in the interest of the investigation that is charged to perform, with except those that are exclusively reserved to the prosecutor.

Executive activity involves performing actions that, as a rule, the court and the prosecutor did not commit personally, because of their nature simply executive.

Another serious problem is the way of conducting and reviewing an investigation and reporting on its results. The law on Judicial Police sanctions the fact that the judicial police activity is reviewed by the prosecutor and officers and agents of judicial police are accountable only to the competent prosecutor, concerning the data that was provided and the overall investigation. Furthermore, the law stipulates that submission of data related to a certain

investigation, out of the office of the prosecutor, constitutes a felony. What eventually occurs in reality violates the legal norms. Officers of judicial police services, in any case, apart the prosecutor, notify their superiors at State Police, starting from the head of service, chief of sector, chief of commissariat, director of district police and General Director as well. This action legitimises the fact that officers of judicial police services are an integral part of State Police administration. Because of their administrative hierarchical subordination, reporting to their superiors on the data provided and the ongoing investigation, cannot be excluded or avoided at all. This current situation poses a certain risk to the overall investigation: first, since many people are informed on concrete facts, the secrecy of those facts is threatened, and secondly, the superiors and several chief of sectors at state police is given the possibility to interfere in the investigation process, have a certain impact or confine the results.

The investigative activity functions due to the close collaboration between the prosecutor and the judicial police officer involved in this investigation. As per above, the lawmaker has explicitly stipulated that the directors of judicial police service have to submit to the head of district prosecution office, a list of JPO including their name, and respective title and rank. It is mandatory to update the content of this list, whenever there are changes, such as any promotion, transfer or dismissal of the employees. In practical terms, these rules are not always applied and followed and often the JPO assigned to a certain investigation are not presented to the prosecutor or the prosecutor is not always informed.

The professional background of judicial police officers still remains very weak. In Albania is not offered initial training or continuous development training for them. In addition, majority of judicial police are under the subordination of state police, and the others under subordination of the administration of the prosecution office, thus, not being part of similar training courses. The current

²⁴¹ In urgent cases or where serious crimes occurred, the prosecutor's announcement is made immediately, verbally (Article 293.2 of the CPC).

²⁴² Law nr.9276, dated 16.09.2004. According to the first text of the Code of the GP only allowed to conduct "urgent actions".

situation of Judicial Police of sections, seems a little bit better, as they are involved in the ongoing training courses of Magistrate's School.²⁴³

Apart these disadvantages, there is another fact, the personnel of JP services is not yet used to conduct a methodological work, conduct analyses on the results of a certain investigation and make a kind of deductive reasoning and include it in the periodic report of the prosecutor. As a general rule, their work is considered as finished, done, upon the arrest of the suspected and the publication of the press release on the case. There is a tendency of judicial police to be seceded from the final results of the investigation and here has a certain impact the attitude of the prosecutors to distance themselves from the preliminary investigations performed by the judicial police.

The amendments of the law on Judicial Police 2010, stipulated the possibility of assigning experts of different areas in the judicial police sections at district prosecution offices. This necessity was strongly dictated by the increasing requests regarding the quality of the investigations especially for organised crime, economic and financial crime, cybercrime, etc. Such cases require specific oriented skills, that officers having a police background, do not possess them. Notwithstanding the discretion of the prosecutors to appoint an expert, the involvement of those people possessing special oriented skills, as an integral part of the investigation teams while conducting special investigations, but so far, such specialists are not yet recruited.

The auditory role of the prosecutor on the investigation conducted by JP, still remains low. In addition, proactive investigations, work group does not function properly, officers of the section and services are not capable to work together and jointly assume the responsibilities of the results of their work.

²⁴³ No specific training for judicial police. They can participate in the SM training for prosecutors (voluntary).

The centralised interception, involving persons that are not explicitly related to the investigation, provided obstacles in the application of working group methods. This activity (interception) is carried out by judicial police officers that are not part of the investigation team, consequently they are not motivated to advance the process. This might impact the speed of the investigations, having a slow and not efficient investigation. The outcome of technical actions normally is verbally communicated and, at the end of the investigation, drafting and presenting the final report to the prosecutor, is a tiresome and long process. The working manners and methods do not meet the requirements, and prosecutors cannot exert any influence in the improvement of these manners and methods, mainly as a result of the overall mentality and background of the employees. This current situation is aggravated, because of the fact, that police officers, that are in charge of conducting investigations, (mainly, employees of criminal police structures), are appointed to carry out additional or other administrative work, on order or public security, conducting routine inspections, supervision of public order during protests, riots, or other activities, etc. The performance of these tasks that might have been performed by police officers of public order has a direct impact on time consuming dedicated to the investigations and the decrease of the quality.

2. Criminal Procedure Law

Code of Criminal Procedure provides for rules for the conduct of the prosecution, investigation and trial of offenses, appeals and adjudication of complaints, the execution of court decisions and judicial relations with foreign authorities. The Criminal Procedure Code in its provisions provides two basic concepts of criminal proceedings, prosecution and investigation. In practice it is seen that often these concepts are unified to each other, because their meaning is not provided in the code. Therefore, it is considered necessary that the Code clearly defines their definition and meaning. It is also very important to define clearly the moment when criminal proceedings are initiated, because there are different views on this.

Criminal prosecution is exercised by the prosecutor, who conducts investigations, controls preliminary investigations, files indictments to the court

and take measures for the execution of criminal judgments. The prosecutor also performs other duties assigned by law to the supervision of the of the enforcement of the criminal judgements or the right of intervention in family relationships, for example, rights to regulate relations arising from marriage, adoption procedures, custody, etc.

The Constitution guaranteed the independence of the prosecutor when regulating that prosecutors are independent and subject only to the Constitution and the law. The prosecution is centralized and based on the Criminal Procedure Code, while orders of a superior prosecutor are binding on lower prosecutor.

Preliminary investigations are the first phase of the criminal process, where security measures are imposed, charges notified, unique evidence is taken, searches, seizures, interceptions conducted and the necessary data collected for determining the offense and the identification of the perpetrator. In the Code, jurisdiction of the court for approval of the most important acts of the preliminary investigation stage has been sanctioned, such as those for security measures to searches and seizures.

The Code has provided for deadlines for the completion of the preliminary investigation. At the conclusion of the investigation, the prosecutor decides accordingly to dismiss the proceeding or sending it to court.

Judicial Police, as a special body with certain procedural functions, is depending on the prosecutor and the court. Its function is to obtain knowledge about criminal offences, to prevent the arrival of further consequences, look for perpetrators, conduct investigations and collect everything that serves the enforcement of criminal law. The referral of the criminal offense to the prosecutor shall be made in writing and must contain accurate data concerning the fact and sources of evidence. The organization and functioning of the Judicial Police is regulated by a special law, which determines the mode of operation of the services and sections of the Judicial Police, the conditions for appointment, transfer, disciplinary proceedings, dismissing etc.

Set out in the Criminal Procedure Code are detailed rules for the service of process and interrogation of the arrested or detained, cases of deprivation and restriction of liberty and the conditions and criteria for assigning security measures in their entirety, and the measure of "arrest in prison" in particular and it was regulated that the imposition of security measures shall be made by the court. Special regulation in the Code of Criminal Procedure is done for red-handed arrest and detention of persons suspected of having committed a crime. In the Criminal Procedure Code are defined limits for the duration of detention for each stage of the proceedings.

The juvenile defendant is provided legal and psychological assistance at the presence of a parent or other persons required by the minor and accepted by the prosecution authority. As an exception to this rule, there can be a permission to perform the procedural actions without the presence of these persons only when such a thing is in the interest of the child or when the delay can severely damage the proceedings, but always in the presence of counsel.

Albanian criminal legislation has regulated the right of compensation to the person who is unjustly imprisoned.

In the Code are defined the rights of defence lawyers, guarantees for their implementation and relationship with the defendant.

Court is the body that carries out the delivery of justice. The judgment at first instance is made by district courts, courts of serious crimes and the Supreme Court. Criminal procedure law has defined detailed rules to ensure the impartiality of the court in resolving specific issues, refusing those judges who have prejudiced or are interested on how to resolve the issue.

Code provides for two forms of special trials, summary and expedited proceedings, which aimed at shortening the time and costs of litigation. Judicial review is conducted on the basis of detailed rules that determine the publicity of the hearing, the uninterrupted trial, documenting through minutes, the presence of the defendant at the hearing, taking of evidence, the debate about them etc.

Regarding the timing of completion of the trial in the Code no deadlines are set for its completion.

Judicial decisions should be announced publicly, delivered on behalf of the Republic and be grounded.

Treated in detail in the code are the right of appeal, cases of remedies and remedies, forms and filing of the appeal, terms of notice of appeal, etc. The Code has also foreseen for an unusual tool to challenge the final decision, such as the review of the decision.

Code contains provisions in relation to the execution of criminal judgments. So the court decision is executed immediately after becoming final, while the decision of acquittal, the exclusion of the defendant from punishment and that of dismissing the case, is executed immediately after the announcement. The manner of execution of court decisions is regulated by a special law.

In a separate heading, the code provides for the jurisdictional relations with foreign authorities, defining terms, conditions and rules of extradition, the letter rogatory and enforcement of criminal judgements. Law 10193/2009 "*On jurisdictional relations with foreign authorities in criminal matters*", as amended, provides for additional procedural rules in the field of jurisdictional relations with foreign authorities in criminal matters.

2.1 Preliminary investigations

2.1.1 Position and role of the prosecutor during the phase of preliminary investigations

The Criminal Procedure Code in its provisions provides two basic concepts of criminal proceedings, prosecution and investigation. In practice it is seen that often these concepts are unified to each other, because their meaning is not provided in the code. Therefore, it is considered necessary that the Code clearly defines their definition and meaning. It is also very important to define clearly

the moment when criminal proceedings are initiated, because there are different views on this.

2.1.2 Respecting the time limits of preliminary investigations

Criminal Procedure Code has regulated deadlines within which preliminary investigations should be completed, but has not clearly provided what are the consequences that come in case of expiry of deadlines. This has made that in judicial practice it is also held the view that after the termination of the investigation deadlines, no more procedural actions can be conducted, including the announcement of the indictment, taking as defendant and filing the request for trial. The same problem is also found in cases of revocation by the court of the prosecutor's decision to extend the period of investigation, where the prosecutor is not given a deadline by which to decide about the fate of the case, thus leaving the case without any solution. The Criminal Procedure Code does not clearly define the consequences and especially if the term "investigative actions" is related only to the taking of evidence or not.

2.1.3 Procedural position of the prosecutor concerning the complained cases

The prosecution for criminal offences provided for in article 284 of CPC, may initiate based solely on the complaints of the injured person, who may withdraw it at any stage of the proceeding. But CPC has not stipulated cases of resubmitting a complaint that was once withdrawn.

Notwithstanding the provision of article 58.1 of CPC that stipulates as a general principle that the party injured from the criminal offence or his heirs have the right to request a proceeding against the perpetrator, in the other hand article 284.2 acknowledges only the injured person

2.1.4 Position of the prosecutor, conclusion of investigations and their inspection

CPC has stipulated two ways of conducting an inspection during the phase of preliminary investigations: *first*, through the complaint to a higher prosecutor, that can be carried out for any cause and procedural act, and *secondly* through the court appeal, that is legally restricted/confined and is referred solely to the actions not carried out by the prosecutor, that eventually should have been carried out. Considering these two current existing options, it is necessary to provide a well-established balance among them, and a better provision of the respective competences. For instance, the decision of the prosecutor on the dismissal of a case can be appealed, either in the court, or to a higher prosecutor. In practical terms, the decision of the prosecutor may be abrogated by a higher prosecutor, even when the decision is being reviewed by the court, or already reviewed, and this all happens as there is no clear provision of this situation in the respective legislation.

The law does not explicitly provide the control by the court of the content of the prosecutor's decision to dismiss the criminal case, even when investigations were carried out fully and comprehensively. For this reason, the fact that how it will be proceed in these cases and what position will the court have, remains problematic.

Another problem is the evaluation of the adequacy of investigative actions to pass to the stage of adjudication and the control of quality of the acts of the preliminary investigations that legally is exercised by the superior prosecutor. But what is verified in practice is that the way of completion of the proceedings is the attribute of the prosecutor of the case and it is confirmed by the superior prosecutor only by means of a cover letter and not through a procedural act. The lack of a provision in the law of judicial review of the adequacy of the

investigative actions and the quality of investigative acts, has affected the quality of the indictment presented in the court.²⁴⁴

Currently we find a high number of criminal proceedings where the criminal offense subject of proceedings is of little importance, creating the situation where the prosecutor does not have effective possibilities to focus on qualitative way in the investigation of serious offenses. Some of these cases were brought to the court as a subject of adjudication just like all other criminal offenses.

2.2 First Instance Adjudication

2.2.1 Discipline, development and trial guarantees

A crucial phase of the adjudication process are the pre –trial actions that eventually have to be the starting point. Meanwhile the CPC does not provide any pre – trial session for the judge, prosecutor and the defence lawyer, to determine on the overall development of the process, the steps to be taken, the data and the fixing of the hearing. The arrangement of a pre-trial session would provide predictability, efficiency and a reasonable time limit for the trial to take place.²⁴⁵

The normal and formal participation of the parties in the trial is crucial to a duly and regular process. In daily based judicial practice it is identified that absence of the participating parties in the process, is one of the main reasons of postponing and dragging a trial, especially the absence of defence lawyer. Our CPC lack the proper legal instruments to be used by the judge in the application of legal and effective measures, when defence lawyer withdraws from the task, declines the task without any legal cause, or revocation of ex-officio defence lawyer.

²⁴⁴ Comment made at the round table organized for the Criminal Justice System organized in the framework of the public consultation on the reform of the justice system.

²⁴⁵ Proposal of the Union of Judges.

Similar issues are relevant to the submission of unduly and unfair requests on disqualification of judges, or when parties manifest offending attitudes towards the judge, where the judge has no legal remedies to discipline the parties.²⁴⁶ Also, the judge is unable to take legal actions against lawyers who repeatedly avoid their task, and against the prosecutors who cause delays in the court proceedings due to their carelessness or lack of responsibility.²⁴⁷

The aforementioned reasons, as well the issue of backlog of judges, notification of witnesses and defendants, as stipulated in the relevant legislation, have violated the principle of an interrupted duly trial within a reasonable time limit of adjudication. The exceptional rule of postponing or interrupting the session, not exceeding 15 days, it turns out to be a rule nowadays.

Of high concern remains the fact that judges, unless the principle of freedom of evidence is not stipulated in the Code, are in a difficult position on admitting/refusing instant requests of the parties on obtaining evidences, and for this reason, it is a nowadays practice that the court “*reserves*” the right to express itself later on.

2.2.2 The trial in absentia

The current provisions of CPC with regard to the trial/adjudication in absentia do not sufficiently provide and guarantee the procedural rights of the defendant and do not necessarily present the nine minimal rules stipulated in the Resolution (75)11 of the Council of Ministers Committee of European Council “*Adjudication criteria of absent defendant*”.²⁴⁸

The trial in absentia might be a consequence of the notification system, which is not that perfect, since it provides legal gaps and makes possible for a defendant to be adjudicated in absentia, denying his right to be present in the

²⁴⁶ OPDAT and ICITAP proposal.

²⁴⁷ Euralius III Mission proposal.

²⁴⁸ Euralius III Mission proposal.

court sessions, in line with the jurisprudence of the European Court of Human Rights.²⁴⁹

Default adjudication rules predict short-term within which the request for the reinstatement should be filed, by not guaranteeing the preparation of an effective defence against a decision for which the defendant did not know, especially the defendant who is abroad and is arrested abroad. In the Criminal Procedure Code it is not provided any legal means for the defendant that together with the request for reinstatement, he can request the suspension of the execution of the sentence. In the Criminal Procedure Code, it is not clearly defined the means for the re-adjudication of a person convicted in absentia and it happens that people simultaneously file a request to the court for reinstatement and a request to the High Court for review. Although the High Court has given satisfactory unifying understanding of procedural provisions, there is a need for precise formulations and guarantees.

2.2.3 Special Trials

Criminal procedural legislation introduces and regulates two special kind of judgments: direct trial and trial with accelerated procedures. Special judgments, applied in other countries are the “decree”, “*patteggiamento*”, “system of the plea agreement”, which allow the defendant to profit for collaborating with justice,²⁵⁰ as well as other forms that have a positive impact on cutting costs and length of the trial court.²⁵¹

Based on the report between the resolved cases through ordinary trial with resolved cases through accelerated proceedings, it shows a very high percentage of the resolved with accelerated proceedings. The Code does not

²⁴⁹ “...To tell someone to proceedings initiated against him, it constitutes a legal act of such importance, that need to answer some formal and substantive requirements such as to guarantee the effective exercise of the rights of defendants, therefore, a vague knowledge is not enough”.

²⁵⁰ Proposal of OPDAT and ICITAP.

²⁵¹ Proposal of EURALIUS III mission.

provide for restrictions on the usage of accelerated trial based on the dangerousness of the defendant and offense. This has led for accelerated trial to be applied on all categories of criminal offenses in legal practice on resulted in legal practice areas of special trials (accelerated) apply to all categories and their authors. Although the Italian model is taken, the Code has not followed its legislation rythm, which has changed the wording of the articles for special trials.²⁵².

With consideration to direct trial it can be easily identified that it is applied in a relatively low number of cases, no matter the positive aspects that characterise this trial in the category of special trials. This is as a result of the short time limit given to the prosecutor to prepare the case and present it in the court, providing the relevant and necessary documents, within the given time limit, for instance criminal record certification, uncertainty concerning summoning the defendant, if it has to be carried out by the prosecutor or the court, etc.

2.2.4 New accusations and withdrawal of the acts

The wording of the articles on the new accusations brought about many problems while being implemented. The previous legislation amendments did not provide any solution. These difficulties are closely related to the fact there is no provision on the applicable procedure, the court decision taking concerning the amendment of the legal qualification of the offence; composition of court panel competent in taking a certain decision, subject matter competence, procedural instant of amending the legal qualification of an offence, which contradicts and puts into question the right of the defendant to get acquainted with the accusation, to have the proper facilities and the adequate time limits to defend himself, in accordance to the jurisprudence of Court of Strasbourg.²⁵³ The stand and attitude of Albanian courts is not the

²⁵² Consult amendments with the law nr.479 /1999 and law nr.144 /2000 of the Italian Parliament, that changed articles 441 – bis of the Penal Code of Italy.

²⁵³ Decision of the ECHR case Drassich against Italisë.

same always, notwithstanding the unifying decisions of the Supreme Court and the decisions of the Constitutional Court.²⁵⁴

The wording of the article of CPC on the withdrawal of the acts by the prosecutor, established different case laws as well as difficulties in the procedure to be applied while withdrawing the acts. Returning the acts to the prosecutor is not defined as an exception, as such this brought about its increasing application.

2.2.5 Pronouncing and reasoning the decision

It is already established as a common rule of our case law that the pronouncing of the decision is not reasoned, but only the disposition indicating the articles of the legislation that were applied, whereas the disposition of the reasoned decision is pronounced later on. Highly considering the fact that the right of appeal is closely related to the reasoning of the decision, the pronouncing of just the disposition, brought about the establishment of a case law not stipulated in the current legislation, as otherwise known as “complying with the time limit” aiming to exert of the right of appeal. Consequently, it is necessary the provision of a reasonable time limit in pronouncing and reasoning the decision (article 382 of CPC) on behalf of the court as well as the necessity on amending the provision of time limits for the appeal submitted at Appeal Court (10 days) and the recourse at the Supreme Court (30 days), by explicitly defining that this legal time limit is available since both parties are notified on the reasoning of the decision (nut just the disposition).²⁵⁵

²⁵⁴ Decision nr. 4, dated 10.02.2012.

²⁵⁵ Proposal of Euralius Mission III. Refer to the Report 2007 “*Analysis of crime*”²⁵⁵ Shiko, ndryshimet e bëra me ligjin nr.479 /1999 dhe me ligjin nr.144 /2000 të Parlamentit Italian me të cilët janë ndryshuar nenet 441 – bis të Kodit të Procedurës Penale Italiane.

²⁵⁵ Proposal of Euralius Mission III. Refer to the Report 2007 “*Analysis in appellate proceedings in Albania*”, published by OSCE Presence in Albania, stating that: “*Delays and inconsistencies in the time needed to issue written decisions can compromise the right of the accused person to be tried without any undue delay, in that these factors*

2.3 The right of Appeal

2.3.1 Limits of adjudication in the courts of appeal

The court of Appeal examines the case thoroughly and it does not restrict itself to only the grounds presented in appeal. It examines even the part that belongs to the co-defendants who have not made appeal within the limits provided by the reasons explained in the appeal. The main concern related to this legal regulation is the fact whether the appeal shall be confined or not only to the grounds of the appeal and whether it would have any impact on the backlog of the Court of Appeal. The second issue relates to the extension of the appeal including the co – defendants who did not file any appeal. In these cases, when the appellant is the prosecutor, then based on article 425, in line with point 2, letters a, b, c of the CPC, then the position of the co – defendant in absentia, no matter the fact has filed no appeal, might get be aggravated.

Article 410/2 of CPC, as amended with Law no.8813 dated 13 June 2002, does not comply with the jurisprudence of Court of Strasbourg,²⁵⁶ with the decisions of the Supreme Court of Justice,²⁵⁷ as well as the decision no.30/2010 of Constitutional Court on the guarantees of trial in absentia. The law does not explicitly stipulates the right of the relatives of the defendant to act on his behalf and propose an appeal only in exceptional cases, whoever the defendant expressed his will to be represented by his relatives.

2.3.2 Revision of the case

The current case law indicates some common grounds that bring about the revision of a certain case, and mainly are related to procedural violation of first

may delay the time in which the appealed filed by the accused person if processed and heard by a higher court. While such delays are the responsibility of individual judges it appears that procedural provisions disciplining the timeframe for the delivery of written decisions, and for the submission of appeals, are inadequate.” Page 95.

²⁵⁶ Case *Sejdovic v. Italy*, dated 10 novemeber 2004.

²⁵⁷ Decision nr.354, dated 28.07.1999 and decision nr.386, dated 29.07.2000.

instance courts, such as competences, evaluation of evidences, the protection right, notification of the defendant etc., but there are other cases that indicate violation during an investigation, in the way of obtaining and administering material evidences, expert assignment, etc.

The current case law indicated that: **first**, court of appeal decides on the revision of the cases based on grounds that are not provided by the CPC and, **secondly**, a delay of trial sessions, where courts transfer cases to each – other, without providing any fundamental solution. Thus, it is crucial to consider the possibility of reducing the number of revised cases, or the tendency to revise them contrary to the law provisions.

Another issue to be further considered with regard to the revision of the cases, is based on the fact that the compliance with certain principles are not yet explicitly stipulated in the CPC, such as that of not aggravating and complicating the position of defendant, the proceeding of summary trial when the previous trial has undergone the procedures of a normal trial, and the value of the evidences initially obtained in the first instance court. All this situation brought about difficulties and different case laws.

2.3.3 The final decision and its execution

The sentence of the court is brought for enforcement immediately after becoming final. The decision of acquittal, exclusion of the tried of the punishment and that of dismissal, are brought for enforcement immediately for announcement.

Concerning the characteristics of criminal decisions in their execution point of view, in practical terms was characterised by discrepancies and vagueness. This, might be the proper place to better clarify the main division criteria between final decisions and the decisions that according to CPC, are of immediate execution, before becoming final. The vagueness and discrepancy basically relates to the fact that in CPC there is no division of criminal decisions into divisions that immediately enforced and decisions that become final after a certain period of time. Eventually there is no article in the Code to

define when a decision might become final. In addition, the recent unifying decision of the Supreme Court, apart its positive impact, has disoriented and misled its meaning.

2.4 Trial at Supreme Court

The case law is not presented as an integral part of the legislation, concerning the increased number of revised final court decisions, *first*, after the decision of European Court of Human Rights that indicated violation of fundamental human rights on behalf of Albanian courts, by requiring the re-opening of the cases, and *secondly*, the right of revising the criminal decision for persons subject to extradition, in compliance with article no.10193 dated 3 December 2009 “*On international judicial cooperation with foreign authorities in criminal matters*”.

2.4.1 Primary jurisdiction of the Supreme Court of Justice

Primary jurisdiction of the Supreme Court of Justice creates unnecessary problems with the load of the court and may interfere with its primary role that the review of judicial decisions and unification of judicial practice. Changing the constitutional jurisdiction of the Supreme Court in this regard is necessary. Even the round tables with prosecutors and judges supported the idea of limiting the initial jurisdiction of the High Court for special subjects.

2.4.2 Judgment on appeal, the jurisdiction of the High Court review of the cases

In most European countries, the High Courts are established as a court of cassation, which have limited jurisdiction, only law enforcement issues or those of fundamental importance. This allows the higher judicial authority to concentrate on maintaining uniformity of understanding of the law, the verification of the legality of judicial decisions and legal protection insurance, fulfilling the purpose of cassation. Even the Venice Commission has supported the proposal in the transformation of the Supreme Court in a proper court of cassation.

On the other hand, judicial practice has not been reflected in the law, to increase the incidence of criminal judicial review of decisions final, first, as a result of the decision of the European Court of Human Rights found a violation of rights Albanian district courts, and secondly, as a result of the right to review criminal decision final for persons convicted in absentia for which extradition is allowed, provided the review of the decision.

The round table of judges and prosecutors suggested to limit the cases where the Supreme Court acts as court evidence for review of court decisions, which would contribute to reducing the load of the latter.

2.4.3 Unification of judicial practice

Whenever unification or change of judicial practice is necessary, the Supreme Court has the authority to examine judicial issues in joint colleges' cases that were supposed to be adjudicated in the Criminal College. Nevertheless, Supreme Court cannot exercise its defined and expected role that of unifying the judicial practice, as supposed to be its primary role, because of the backlog. Article 2 of Protocol no.7 of ECHR, that excludes from the right of appeal against criminal decisions for lenient criminal offences, or when the interested party has been adjudicated by the highest court, or found guilty and convicted following an appeal against his innocence, is not reflected in CPC.

2.5 International judicial cooperation

2.5.1 Compliance with EU standards

Articles of CPC on extradition, regatory letters and recognition of foreign criminal decisions are not fully in compliance with EU standards, because Albania has based its legislation in the framework of Council of Europe Conventions. In addition, there are discrepancies with the law “*On international judicial cooperation with foreign authorities*”, especially considering the cases of refusing the application of extradition, application of coercive measures, arrest on behalf of judicial police, and the European Convention “*On the International Validity of Criminal Judgements*”. The

provisions of the CPC, on regatory letters do not stipulate the right and authority of the prosecutor to obtain directly and straightforward evidences abroad, in compliance with the articles of CPC and the International Conventions, thus not going through regatory letters. This working practice brings about considerable delay of preliminary investigations. In addition, it is not explicitly stipulated the decision taking concerning the relevant proceeding that the regatory letter was sent.

In the framework of the process of becoming a member state of EU, procedural legislation, especially that part related to judicial and police cooperation in criminal matters, has to comply with the EU standards.

2.5.2 Procedural status of the person injured by the criminal offence and the minor in the criminal proceedings

Apart from the provisions in relation to the injured party in Articles 59 and 284 of the Code of Criminal Procedure, the procedural status of the person injured by the criminal offence, is weak. There is a lack of regulating provisions and of detailed rights and procedural guarantees, in compliance with the EU minimum standards.²⁵⁸ such as:

- a) Establishment of procedures for the physical protection of victims and their family members;
- b) Right to legal aid when they have the status of party to a criminal proceeding;
- c) Understanding the rights, measures against the risk of psychological and emotional harm;
- d) Avoidance of reiterated questions to the injured party;
- e) Long term physical and psychological assistance for the victims of crime;

- f) Respect of dignity during the interviewing, right to avoid contact between victim and offender;
- g) right to reimbursement of expenses in relation to their active participation in criminal proceedings;
- h) right to complain against the decision-making of the competent body;
- i) Right to protection of privacy;
- j) Right to compensation through restorative justice etc.

In particular, there are no detailed procedural guarantees which constitute EU standards.²⁵⁹, such as non-disclosure for the public of data which serve for the identification of a victim/minor injured party, audio-visual recording of interviews and allowing its use as evidence in court proceedings, rules for the administration of the recording, appointment of a representative for the minor when there is a conflict of interest with the parent / holder of parental responsibility etc.

In cases where minors are involved, the admission of evidence during the preliminary investigations is not carried out despite fulfilment of specific requirements. There is no specification of all the cases where the minor should be questioned in the presence of the parent, psychologist and of the methodology for interviewing the minor. There is no provision which states that minor witnesses under 14 years of age must be interviewed in the presence of the psychologist.

The CCP does not provide for sanctions or consequences in cases of non-observance of the summoning of private parties in the process, their representation by the defence, the summoning in the trial of the injured by the criminal offence and of the person who has filed a complaint, which consequently leads to the loss of importance of the private parties in our criminal process.

²⁵⁸ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012.

²⁵⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012.

As regards cases involving accusing injured parties, there is no clarity in relation to the procedural status of the prosecutor during the trial and whether he is a participant and which is his status. Status of the Prosecutor is confusing, despite the already existing case law, even of the Constitutional Court.

Regarding minors trial, it remains to be assessed if the criminal section for minors should continue to judge, as now, the adult defendants who have committed offenses when they were minors.

2.5.3 Reimbursement of unjust imprisonment

Law nr. 9381, dated 28.04.2005 "On compensation for unjust imprisonment" has set the rule that unjust incarceration compensated maximum of 2 000 (two thousand) for one day of imprisonment and 3,000 (three thousand) for a day custody.

With this arrangement, the legislator had the goal to determine the maximum amount of compensation for deprivation of liberty, limiting judicial discretion in determining the real consequences that have come from unjust imprisonment. It is common practice worldwide, which has found expression in the Albanian court decisions, until the unification of the practice, the consequences that derive are not the same and should be verified case by case. Limiting the maximum amount calculated on a daily basis unjust imprisonment prevents an objective assessment of its individual effects.

At the same time, this rule contradicts the principles set by the civil law for compensation of damage and manner of calculating the damage caused by illegal actions.

2.5.4. Legislation to prevent and combat organized crime

Confiscation and seizure of assets derived from criminal acts constitute a deterrent, preventive remedy in the fight against the most dangerous criminal activities. First attempt to smash crime in this method was through the law no. 9284, dated 30.09.2004. "To prevent and fight organized crime".

Practical implementation of this law revealed many problems and uncertainties. Although all of the above issues, the Supreme Court unified practice through Criminal Unifying decision no. 1, dated 25.01.2007, the law still failed to have a consistency in its application. Because of this, only five years after its entry into force in 2009, the law was repealed altogether and new law no. 10192, dated 03.12.2009, "On the prevention and combat of organized crime and trafficking through preventive measures against assets". With the changes of 2014, in addition to organized crime trafficking and corruption was planned already law titled "On preventing and combating organized crime, trafficking and corruption through preventive measures against assets".²⁶⁰ Basically the purpose of the law is to discourage persons engaged in criminal activity from further involvement in these activities thus depriving them of the motive of the creation and enjoyment of property obtained through criminal street seizure after seizure of these assets.

Although the new law solved some of the problems rising from the implementation of the previous law , in practice it continues to be problematic the effective implementation and thus failure to implement to the best the purpose for which it was approved after all. Summing it up, it results that:

1. It is not well understood the nature of judgment of issues related to the implementation of this law . It continues to be perceived as a judgment of a criminal nature due to the involvement of the prosecutor although the trial procedures and rules of these issues are of a special nature , mostly civilian , although coming from or related to criminal proceedings.
2. Unlike the core of the law, its implementation is viewed incorrectly as linked to a criminal investigation and its outcome . While that may be so, but it can also be an issue independent of a criminal case..²⁶¹

²⁶⁰ See Law no. 24/2014 "On amendments and additions to Law no. 10,192, dated 3.12.2009 "On the prevention and fight organized crime and trafficking through preventive measures against assets".

²⁶¹ See Section 5.1 and Section 24/2 of the law where it is expressly provided autonomy. Specifically in Article 24/2 of the law, the court may decide the acceptance of the request for confiscation of property when:

3. Given that for a criminal case related to the scope of the implementation of this law, apply the rules of the Criminal Procedure Code, we see an inadequate legal regulation resulting in different implementation of the law in practice with regards to the influence that final penal decision in relation to the case under this law.

4. Adjustment of Article 5 of the law is inadequate in terms of how the prosecutor collects data to identify assets arising from organized crime, trafficking and corruption.

5. Article 10 of law is problematic in terms of the rules of the trial, and it is unclear as to how the court should conduct "special actions" that are not contemplated by the law, thus creating a possibility to misuse and wide discretion of the court that can affect the rights and fundamental freedoms.

6. The current practice has shown that the law was not as effected as it was expected to be after its approval.

As a conclusion:

Despite the intensity of legislative changes that has undergone the process of the verification of assets arising from organized crime, trafficking and corruption, it resulted that there is still need for a further verification of the current regulation of the law no. 10192 , dated 03.12.2009 , as amended . This,

a) criminal proceedings initiated against a person dismissed from the proceeding because:

- i) the insufficiency of the evidence;
- ii) the person's death;
- iii) that person can not be taken as a defendant and could not be punished;

b) the person is acquitted liable for:

- i) the insufficiency of the evidence;
- ii) that the offense was committed by a person who can not be accused or punished;

c) the person is prosecuted for an offense, which is included in the scope of this law, but during criminal proceedings changed legal qualification of the offense and the new work is outside the scope of this law.

in order to clarify its application in the criminal and civil process , specifying the nature of the issues it addresses , the prosecutor's position on these issues and the power of judicial decision of final conclusions in relation to eventual court decisions dealing with a criminal case related to this law .

3. Criminal Law

Reform in 2001 - In the general part of the Criminal Code sections were added that provide for the basics, tasks and principles of the Criminal Code, and changed some of its institutes. Other changes were made regarding the criminal liability of foreign nationals, the amount of the fine, the removal of the provision for the punishment of legal persons (which was restored again); determination of aggravating circumstances; calculation of detention, release on parole, etc. In the special part, the most important changes were about criminalizing and penalizing offenses against the person, property, trafficking in narcotic drugs etc. a. It changed the definition of crimes against humanity (Article 74); b. In crimes against life some addenda were made to Article 77 of the Criminal Code regarding wilful murder. The legal reform of 2001 made significant amendments to the Criminal Code on the punishment of counterfeiting of the different types (Articles 183, 184 / a, 185/2, 192/2).

Reform in 2003 - Including elements of offenses pursuant to the norms of international criminal law, particularly the UN Convention "For transnational organized crime" (Palermo Convention), the European Convention "On corruption", recommendations for fighting terrorism etc. Reforms aimed at preventing and combating crime in general and organized crime in particular, such as money laundering, terrorism.

Reform in 2004 - Article 28 "For forms of cooperation" was amended, providing for, in addition to the criminal organization, the terrorist organization, armed gang and criminal structured group especially articles about corruption in all its forms; types and measures of punishment for these crimes are made more severe. Changes and addenda made by Law no. 9275, dated 16.09.2004, are important because they provide for new definitions to specific forms of cooperation, in order to clamp down more effectively on

organized crime in Albania, as the problem. By law no. 9275, dated 16.09.2004, for the first time in article 28 of the Criminal Code the definition of terrorist organization is given. Of interest are the changes made in the articles of the special section, which include offenses against justice, in order to ensure the orderly operation of the criminal prosecution bodies of the court, and to protect the rights of the person in the process. The same goes for a range of other legal changes in the area of corruption, and other figures of criminal offenses

Reform in 2007 -With law no. 9686, dated 27.02.2007, in addition to the changes already made to the reforms of previous years, affecting 166 Articles, these new addenda and changes affected 49 articles. In the provisions of the General Part of the Criminal Code some changes in principle were made: 1. It repealed the second paragraph of paragraph 1 in Article 28, which were providing for some features of the criminal organization, thus rendering that article inapplicable, since it was not clear enough whether they had to be taken all together, or one of them was enough to get people to criminal liability. 2. In section 28 of the Criminal Code terms "terrorist organization", "works with terrorist purposes", "financing of terrorist organizations", have been reformulated 3. The definition of "torture" in section 86 of the Criminal Code, is harmonized with the content of the definition provided by the UN Convention against Torture, in which Albania is a party since 1994.

Reform in 2008 - This reform had been focused on alternative sentencing. An innovation was the creation of "Probation Service". This institution was seen as an effective tool for the control of enforcement of court decisions for execution of alternative sentences. The specific part of the law no. 10023, dated 27.11.2008, contains plenty of new addenda and amendments to the Criminal Code (CC). For these addenda and amendments the Convention "On trafficking in persons, women for prostitution of a minor", the Council of Europe Convention against Torture 2004 and the European Convention "On cybercrime" were taken into account. These changes provided for data protection software and computer systems, as well as the elements of criminal offenses in accordance with the actual needs of our country were.

Reform in 2012 - some addenda and amendments were made to the criminalization of offenses against the person, the right of ownership in the economy, corruption and electoral system, etc

Reform in 2013 - had substantial impacts on the Criminal Code. The criminal punishment is currently imposed for a period of five days to thirty-five years, different from 25 years which it was before. The main element was the hardening of penalties and increase the sentence to life imprisonment²⁶². In the general part, a number of provisions relating to aggravating circumstances, mainly in the field of family relationships, were changed. The focus of the reform of 2013 was special protection dedicated to the life of the person, children and family, public order and security by providing special provisions with severe penalties. Special significance is ascribed to the provisions regulating incitement of hatred, prohibition of homophobia, dictated by international practice. It is worth noting that the sentences containing two main fine punishments were overturned.

Reform in 2014 - mainly touched some specific behaviour of the Albanian society, thus making more severe the criminalization of the elements of criminal offenses of theft of electricity, illegal construction, as well as in the field of public safety.

The current Criminal Code is divided into 8 Chapters for the General and 11 Chapters for the Special Part, each chapter is divided into sections and special headings. The code is divided into 2 parts. General Part which provides for the principles, institutions, criminal liability and exclusion, the manner of determining the sentence, types of sentences, remission of offenses, rehabilitation, aggravating and mitigating circumstances, as well as a variety of

²⁶² Recent cases of *Vinter v. UK* and *Hutcheson v. UK* suggest that life imprisonment sentences that have no possibility of parole violate freedom against inhuman and degrading treatment. *Vinter k. U.K.* (2013) determined that provision; however, *Hutcheson v. UK* (2015) stated that even a small chance of release "under exceptional circumstances" would be sufficient to life imprisonment penalty assessed in accordance with the ECHR.

other institutes on which gave shape to the elements of criminal offenses that are provided in the Special Part of this Code. An important place is occupied by the unified decisions of the Joint Colleges of the Supreme Court and the Constitutional Court, which interpreted the provisions of the general part and the special of the Criminal Code.

Criminal offences are divided into crimes and criminal contraventions, a breakdown provided for in Article 1/2 of the Criminal Code. It should be noted that under this provision, the distinction is made in the Special Part of the Criminal Code

Regarding the Special Part, it is worth noting that this part has undergone constant changes, which occupy about 80 % of the changes in criminal law since 1995 when the new Criminal Code was adopted up to this moment. Criminal Code changes are geared not only to international commitments, but also to the achievements and problems in science, technology, medicine, blood feud and revenge and a number of other criminogenic behaviours encountered in society. After the 2013 reform, with respect to sentencing, the Criminal Code provides for the following maximum penalties in the number of paragraphs:

To fine	Up to 3 month	Up to 6 month	Up to 1 year	Up to 2 years	Up to 3 years	Up to 4 years	Up to 5 years	Up to 6 years	Up to 7 years
302	14	12	35	62	80	12	98	5	35
Up to 8 years	Up to 10 years	Up to 12 years	Up to 15 years	Up to 20 years	Up to 25 years	Not less than 5 years	Not less than 7 years	Not less than 10 years	Not less than 15 years
18	71	3	49	26	3	4	1	2	24
Not less than 20 years	Not less than 25 years	Not less than 30 years	Life imprisonment						
11	2	5	25						

In the category of new criminal offences provided as such in the reform of 2012 and 2013 are the offences of murder (Articles 78 and 79), injuries able to profound psychic distress (Article 88 / a) serious injury in excess of the necessary protection (Article 88 / b) etc. Changes in the years 2012 and 2013 deal with offences that were criminalized because of technological and scientific progress, such as those dealing with the sale of transplants (Article 89 / a), offenses which affect the human rights and freedoms such as kidnapping or hostage-taking (Article 109), trafficking in persons (Article 110 / a), trafficking of women (Article 114 / a), children (128 / b), etc. New criminal offenses were added such as Article 121 / a (persecution), Article 130 / a (domestic violence), etc. The focus of the legislative changes have been especially criminalization and hardening the punishment for offenses against public order and security as illegal possession of weapons, etc. It emerges that with the recent legislative changes in 2014, the criminal offense provided for by article 278 of the Criminal Code provides for a maximum penalty of up to 20 years imprisonment, which equates to the offense of murder. Reform of 2013 alongside the criminal-legal protection of life, focused on the protection of the child and family. Due to the increasing number of murders and violence, new articles were added such as Article 107 / or sexual violence, additions to Article 108 shameful conduct, Article 108/a sexual harassment, Article 109/c Enforced Disappearance. Further changes to Articles: Article 114 Exploitation of Prostitution, Pornography Section 117, and Article 130 forcing or hindering cohabitation or enter into or dissolve marriage. Changes were also made in respect of the offense of trafficking. It added two new Articles: Article 110/b benefit or use of services provided by trafficked persons and Article 110/c actions that facilitate trafficking, being adapted to the European context in the field of trafficking.

Regarding life punishment after the reform of 2013, the Criminal Code provides for this sentence in 25 provisions, respectively in articles : (73 , 74 , 75 , 78 , 78 / a, 79 , 79 / a, 79 / b , 79 / c , 100 , 109 , 109 / b , 109 / c , 110 / a, 128 / b , 141 , 208 , 209 , 219 , 221 , 230 , 230 / a, 298 , 334/1/2). In many other cases, it is even provided only as a single punishment. So despite the decision of the Constitutional Court declaring fixed penalties as incompatible with the

Constitution, the Criminal Code still contains sentences such as in Articles 109, paragraph 3 , 109 / b / 3 , 221 and 334/3.

Regarding the figures of criminal offenses in narcotics it is worth noting that despite the changes, it is not envisaged in the Criminal Code a minimum threshold of keeping drugs for its users. It is worth noting that in many legislations the permitted portion allowed for personal possession of drug users has been foreseen, this is not in the Criminal Code and neither in other acts.

Regarding the use of terms that leave room for different interpretations by the prosecution and the court. Such are the terms "impairment", "other injuries", "consequences", "serious consequences," more than once with the term repeatedly, "or" in front of the children or not" Article 130 / a / 4. Provisions containing lengthy wording were made to be more wide-ranging, transposed from the definitions of Conventions and other international agreements. So for instance, articles for illegal trafficking (Articles 110 / a, 114 / b, 128 / a), articles on active and passive corruption (Articles 164 / a, 164 / b, 245/1), Article 221 (uprising), articles on terrorism (230-230 / c), Article 245/1 (illegal exercise of influence to persons exercising public functions), laundering the proceeds of the offence (Article 287) and others, have been formulated in the form of commentary and not in the concise, clear and accurate articles.

Regarding the specific offences that address criminal behaviour of corruption, after changes to the Criminal Code an important place was taken up by the corruption offenses. In order to obtain a unification of terminology of the Convention against Corruption, the Criminal Code was replaced "giving bribe" and "taking bribe" or the "active corruption" and "passive corruption". Also added were some provisions which were not foreseen before, such as corruption in the private sector, to high state officials or locally elected persons; persons exercising public functions; judges, prosecutors and other judicial bodies; witness , expert or interpreter.

In relation to offenses in the customs area, Penal Code contains 10 provisions to combat smuggling crimes in all its forms or types (articles 171-

179 / a). Also, there are unifying decisions of the High Court on the interpretation of these provisions.

In relation to offenses in the area of justice, they affect the security area of the independence of judiciary, the activity of the normal functioning of the judicial system and other bodies tasked to assist in the implementation of criminal justice and enforcement of judgments of courts. Precisely, for these reasons the Penal Code contained about 40 articles for offenses committed by persons against justice and the other category, criminal offenses committed by specific entities (judges, prosecutors, lawyers, etc.). The first category includes especially: failure to report a crime (Article 300); actions that hinder the discovery of truth (Article 301); support of the perpetrator (Article 302); concealment or destruction of the body (Article 303); obligation to declare the evidence (Article 304); false charges (Article 305), false testimony, false translation etc. The other category includes offenses committed by specific entities of justice: illegal start of the prosecution (Article 313); disappearance or loss of file (Article 313 / a); the use of violence during the investigation (Article 314). There were also foreseen the offenses of objecting and attacking the judge (Article 316), threat and insult the judge or prosecutor etc. But the highest effectiveness of the criminal law in combating corruption appears in clamping down on the passive and active corruption of judges, prosecutors and other justice officials (Articles 319 , 319 / a).

3.1 Structure and institutions

It is found that the general part of the Criminal Code is not very well constructed, it is incomplete and has an imperfect structure; there are formal deficiencies; an unclear legal language which demands for more reflection and attention.²⁶³ In reality, some of the main concepts such as *causal relationship, attempt, and collaboration* are treated insufficiently and therefore, have continuously created problems in practice, by obliging the law implementers to resort to interpretations and do what the lawmaker should have done in the first

²⁶³ Pittaro, P., Criminal Code of Republic of Albania, 2008.

place. For example, how to proceed in cases of concurrence of causes, how is the attempt with inappropriate means or object be treated, how is the sentence going to be determined for the attempted offence²⁶⁴, how to proceed in cases when there exist unknown circumstances or circumstances wrongly assumed by the person; how to proceed in case when consequences are different from the desired ones etc.

3.1.1 Statute of Limitations

Statute of limitations is poorly regulated in the Criminal Code. The legislator has only provided for two provisions, respectively Articles 66 and 67, by not providing foremost the meaning of the statute of limitations itself, and by not mentioning concepts such as time when the limitation starts, interruption or tolling and their consequences, resuming of limitations, waiver right etc. The same is valid also for the prescription of the sentence's execution. The current wording raises many problems, such as: from which moment is the prescription period going to start for attempted offences or continuing offences; to what punishment margin will the prescription period refer to for offences committed by minors (i.e. the sentence foreseen by the provision or to the sentence reduced in half for minors). Moreover, this provision needs to be reworded in the light of increase of many sentences foreseen in the recent amendments, such as the maximum sentence which is already 35 years of imprisonment. On the other hand, prescription times need to be reviewed for certain categories of criminal offences

3.1.2 Rehabilitation

Article 69 of the Criminal Code stipulates conditions for the rehabilitation of convicted persons. The criterion determined by this provision is the passing of a specific period of time ***from the last day of their served sentence***. However this

²⁶⁴ Article 56 of Italian Criminal Code provides for explicitly that the attempted offence is sentenced to no less than 12 years if for that offence the law provides for life imprisonment, whereas for other cases the sentence is reduced to the extent from 1/2 to 2/.

Article is not clear with regard to the rehabilitation of persons, enforcement of sentence as long as it has lapsed or it has been suspended and they have been put on probation.

3.1.3 Amnesty

In the Criminal Code, the wording of the provision related to the meaning of Amnesty (Article 71) is problematic. Is it possible for the amnesty to provide for the replacement of a sentence with a lower one? Who is going to decide for this replacement? Does this imply that the legislator shall take over the role of the court and define sentences? Up to date, practice has shown that amnesty has been granted in the form of exclusion from the criminal prosecution and partial serving of a sentence, but not in the form of substitution of one sentence with a lower one. On the other hand, keeping in mind the cases for which amnesty has been granted throughout the years, there is the problem of amnesty being limited only for a certain category of offences. Furthermore, in this context, the fact whether amnesty should have effect for offences which were not detected at the time when the law on amnesty came into force, remains a problematic issue.

3.2 Methodology for selection of the sentence

The lawmaker is bound by the Constitution to determine some evaluation criteria, which need to be followed by the judge when selecting the type of sentence and adjusting his concrete measure to the context. The criteria set out in Article 48, para 2 of the Criminal Code, are insufficient for the conduct of a full assessment of the type and extent of punishment which needs to be determined for a concrete case, therefore leaving it to the excessive discretion of the court. For example, in Article 53 of the Criminal Code stipulated that the court may give a sentencing which is under the minimum provided for in relation to the respective criminal offence. Amendments of 2013, stipulated that the reduction would not be allowed if there was any aggravating circumstance. But again, the problem with this provision is that it has been left to the discretion of the judges until what limits will they lower the sentence. This problem becomes even more evident if we consider that in many criminal

provisions there exists a gap between the minimum and maximum sentence. Such manner of regulating entails the risk for the normative ratio between the risk of harm and guilt on the one hand and of the sanction on the other hand, to remain unclear and the defining of the actual punishment becomes an unpredictable act of the judicial decision-making. It also affects the right to equal treatment among the defendants being tried for similar facts.²⁶⁵

3.2.1 Application of mitigating and aggravating circumstances

Implementation of the mitigating or aggravating circumstances foreseen by the Criminal Code, constitutes another problem elaborated as follows: *firstly*, in the relation to the fact whether their existence needs to be also subjected to the process of evidencing or some circumstances may be taken for granted (based in the jurisprudence of the Supreme Court); *Secondly*, how to proceed for the assignment of the punishment in the case when such circumstances exist (for example, will the court first of all determine the sentence as if there were no mitigating/aggravating circumstances and then proceed with the sentence reduction/increase?); *thirdly*, up to what extent will these circumstances mitigate or aggravate the respective punishment; *fourthly*, what will happen if there exists more than one mitigating/aggravating circumstances; *fifthly*, what will happen if mitigating and aggravating circumstances coexist / concur?

The raising of these issues results also from the fact that in cases when an aggravating circumstance is foreseen in the separate provision itself, by acquiring the capacity of a qualifying circumstance, it is the lawmaker which foresees the extent in which the punishment shall increase. Whereas when aggravating circumstances are applied, which in essence have the same effect, they are left at the court's free assessment. Therefore, identification of basic criteria for the abovementioned questions shall avoid abuse and subjectivity of the courts and may guarantee the issuing of more just decisions which are based

²⁶⁵ If the defendants are considered differently to similar facts that could implicate a violation of Article 14 and Protocol 12 to the ECHR

in the law, by offering as a consequence guarantees for the equal treatment of defendants.²⁶⁶

3.2.2 Life imprisonment

Sentence to life imprisonment, after the reform of 2013, the Penal Code provided by 25 provisions in articles 73, 74, 75, 78, 78 / a, 79, 79 / a, 79 / b, 79 / c, 100, 109, 109 / b, 109 / c, 110 / a, 128 / b, 141, 208, 209, 219, 221, 230, 230 / a, 298, 334/1/2. But the problem remains that in many other cases the sentence to life imprisonment is predicted as a single punishment as for example, in Article 109, paragraph 3, 109 / b / 3, 221 and 334/3 of the Criminal Code. In this way, despite the Constitutional Court's ruling declares fixed penalties as incompatible with the Constitution, the Criminal Code did not yet reflect this stance.

3.2.3 Fines

One of the punishments provided for by the Criminal Code is also the imposing of fines, which is generally stated in Article 34, amended, of the Criminal Code. But the Code, does not offer any material guidance based on which the court could decide in which cases should it select asset-related sanctions and when not. On the other hand, if the court cannot determine with sufficient certainty the wealth of the defendant, then inaccuracies for determining the framework of such sentences, shall increase in number. The reason for this is that in this case, the judge is given the opportunity to assess the solvency without having preliminary guidance in the law. Meanwhile, keeping in mind that imprisonment sentences should be considered as the last alternative, law 98/2014 introduced article 53/a after article 53 in the Criminal Code, which foresees the replacement of the imprisonment sentence with the paying of a fine to the state. What results from this provision, is the fact that the lawmaker has not foreseen the possibility of extending the payment deadline or of the

²⁶⁶ See for analogy Article 63 of the Italian Penal Code which provides for the way mitigating / aggravating circumstances affect the decrease / increase of punishment

payment by instalments. Furthermore, keeping into account that the majority of convicted persons cannot economically afford to make the payment of the fines, this leads to discrimination due to solvency.

3.2.4 *Supplementary Punishment*

Due to the way in which the Criminal Code has been worded, by providing for the *possibility* (and not the mandatory obligation) for the application of supplementary punishment and their enforcement according to the discretion of the court, it results that most of the time, such punishments have not been enforced (with the exception of article 36 which foresees the mandatory obligation of confiscation) and therefore, they are seizing to be functional. As a result, for example, even though some persons have been sentenced for a criminal offence in relation to their duty, they have not been prohibited from continuing to exercise it. Therefore, it is necessary to review supplementary punishment. In relation to the above, what remains as a problem, is the concept that the obligation for the recovery of civil damages is foreseen in article 60/3 in our Code, not as a supplementary punishment but as one of the obligations of offenders under probation. Considering that civil actions in criminal proceedings are few and non-functional, recovery of civil damages remains an issue which requires an effective solution.

3.2.5 *Alternative punishments*

The increasing use of imprisonment sentence for both the serious crimes and less serious crimes, may result in losing the real value of such punishment, therefore it is necessary to review alternative punishments in order to apply them widely. Criminal law must be more severe for violent criminal offences which threaten life/health, which are committed against minors/women. Moreover, it must be flexible for the other less serious criminal offences through the application of alternatives to punishment. On the other hand, such alternative punishments require improvement in order to enable proper enforcement. Article 59 of the Criminal Code provides for an alternative punishment i.e. suspension of execution of the judicial decision and putting the convict under probation. The condition defined in this provision is that *during*

probation the convict must not commit another criminal offence. The problem which may result in such cases is: what will happen if the person is punished for a criminal offence committed in the past? Should the suspension decision be revoked, even if it is not foreseen by the law? ²⁶⁷ Early conditional release foreseen in article 64 remains issue of concern as well and it is necessary to provide for a limitation by type of criminal offences rather than the extent of punishment imposed.

3.3 *Divergence between the punishment imposed and the gravity of the offence*

Because of frequent amendments to the Criminal Code, a discrepancy of punishments is found (for example, the same punishment is imposed for illegal carrying of weapons as for a case of murder). On the other hand, life imprisonment is foreseen even when *consequences result from negligence*, as in the case of article 110/a ultimate paragraph (trafficking in persons), 114/b, penultimate paragraph (trafficking of women), article 128/b (trafficking of minors) etc. Meanwhile, article 17/2 of the CC of Kosovo foresees that: “*A person is criminally liable for the negligent commission of a criminal offense only when this has been explicitly provided for by law*”. In the course of setting out the sentence, the legislative body shall not only take into account the definability and legal security, but also the concept of the guilt, to the effect of making a fair and proportional judgement. The punishment imposed in each specific case must be fairly proportionate to the gravity of the offence and guilt of the offender.

3.3.1 *Stabilisation of criminal policy based on the gravity of the offence*

The Criminal Code classifies offences by the type of punishment which is foreseen in the provisions of the special part and apparently concept of less serious offences is not foreseen at all. Currently the problem is that the prosecutor's offices and the courts are overloaded with criminal offences of less

²⁶⁷ Article 54 of the Criminal Code of Kosovo provides explicitly for *revocation of suspended sentences due to previously committed criminal offences*).

serious nature. Referring to the Annual Statistical Report of 2013 of the Ministry of Justice, it results that theft is the widely committed offence²⁶⁸. There are numerous cases in the jurisprudence concerning theft of small amounts or values. Consequently, it is difficult to manage effectively the time required for investigation and adjudication and also guaranteeing better quality for investigation and adjudication of serious criminal offences.

3.3.2 *Unification of the structuring of criminal offences*

What is observed in the Criminal Code is the distribution of criminal offences and their improper structuring, resulting in incorporation in different chapters of offences of similar nature.

3.3.3 *Punishment of minors*

Prison sentences for juveniles are not structured or separate and is not seen as the last chance for serious offenses. Children's needs are not taken into account in order to address them in the appropriate institutions and the possibility of reintegration into society.

3.4 *Vague terminology*

The lawmaker must define so clearly the criteria of punishment that the group and margins within which different elements of criminal offences fall, may be identified by the subjects concerned and then they may be interpreted in concrete terms. Moreover, the lawmaker must foresee as thoroughly as possible the conditions of punishment and the areas in which the criminal rules and the scope will be applied. The terminology used in the Criminal Code very often leaves room for subjective interpretation, as the code itself does not define such terms including: “punishment”, “other punishments”, “consequences”, “serious consequences”, “considerable quantities” etc. Moreover, when interpreting and implementing the provisions, it is raised the question of what will be implied by

²⁶⁸ See, Annual Statistical Report of Ministry of Justice, 2013, f.39.

the phrases “repeatedly” or “more than once”; do they mean the same thing? Does the plural used for instance in violence in the presence of “children” include even the case of a child? Therefore, it is necessary for the Criminal Code to be written in a special terminology, explaining the content of respective terms or phrases.²⁶⁹

The accuracy of the terms in the Criminal Code is inconsistent with Article 7 of the ECHR which provides clarity of criminal norms that criminalize certain behaviour in society.

Regarding the clarity of the provisions, the most problematic provisions in respect of offenses in the area of drugs, as with all changes made, not in the Penal Code is a minimum threshold of holding narcotics for its users. It is worth mentioning that in many jurisdictions is provided for maintenance doses allowed for personal use of the drug users, this is not in itself but in the Criminal Code and other acts. Also, in many other provisions are observed formulations that leave room for interpretation or long formulations, to be as wide-ranging, transposed the definitions of Conventions or other international agreements. So p.sh articles for illegal trafficking (Articles 110 / a, 114 / b and 128 / a), provisions for active and passive corruption (Article 164 / a, 164 / b, 245/1), article 221 (uprising), articles for terrorism (230-230 / c), article 245/1 (exercising illegal influence over persons exercising public functions), cleaning products offense (Article 287) etc., are formulated in the form of commentary and not the articles concise, clear and precise.

4. Penitentiary System

The Criminal Procedure Code regulates in concise rules the execution of criminal judgments and in his ninth title "*Putting decisions in execution*" also provides special rules for issues arising during the execution of the decision.

²⁶⁹ In this regard, article 120 of the Criminal Code of Kosovo, is very important as it defines the main terms used in the code thus facilitating the application of criminal provisions.

Important provisions which relate directly to the penitentiary system are originally defined in the **Criminal Code** because it provides : **First**, the categories of penalties which are divided into: 1) main penalties, 2) ancillary penalties and 3) alternative punishments; **secondly**, the manner of determining the sentence (Article 47) and provisions relating to the manner of calculating the sentence and the sentences procedures; **thirdly**, the provisions relating to remission of penalties.

Under Article 29 of the Criminal Code, the main penalties for persons who have committed crimes are : sentence to life imprisonment, the sentence of imprisonment and / or a fine. As for persons who have committed criminal contraventions are imposed main penalties punishable by fine or imprisonment.

Ways of the execution of court decisions are regulated by a special law, namely the Law "**On execution of criminal decisions**", as amended. In addition to provisions of Criminal Procedure Code, the law in question determines who are the subjects that have the power to execute criminal judgments as follows :

The court, which for criminal decisions with immediate execution issues rulings for their execution immediately after their announcement (Article 11 of the Law).

The prosecutor, who is the activator of the execution procedure for all other criminal decisions and based on Articles 463 and 468 of the Code of Criminal Procedure, proceeds himself or orders other bodies to execute decisions under this law and other legal provisions (Article 12). The prosecutor is a very important subject in the process of execution, who is obliged to take all measures for enforcement in accordance with the ruling of the court and the requirements of this law, to control the regularity of execution, to intervene with the competent bodies or file petition with the court for reinstatement of the law, the infringement etc.

On the other hand, authorities enforcing final criminal decisions are State Police, Bailiff Service, state bodies and legal entities as well as the person

convicted, according to detailed rules stipulated in the Law "*On the Execution of Criminal Sentences*". State Police, on the basis of the order of the prosecutor and in collaboration with the judicial police, carries out actions for voluntary execution of sentence of imprisonment putting convicted available to the Directorate General of Prisons, and the punishments foreseen by Articles 3, 7 and 8 Article 30 of the Criminal Code executed by it (Article 16 of the law). Judicial Enforcement Service executes the fine, additional penalties provided for in paragraph 2 of Article 30 of the Criminal Code, court costs and civil liability, set out in the criminal decision (Article 17). While the decisions including ancillary penalties provided for in paragraphs 1, 4 and 6 of Article 30 of the Criminal Code, are enforced by the relevant state authorities or other legal persons or private state on the basis of an enforcement order (Article 18). Finally, the punishment provided for in paragraph 9 of Article 30 of the Criminal Code (the obligation to publish the verdict) is executed by the convict by the order of the court and in the event of his omission, it is executed by the prosecutor (Article 19).

Regarding the execution of a final decision, a very important place is occupied by the execution of imprisonment sentences. These decisions are forwarded to the prosecutor by the court or withdrawn immediately from him to execute. On the basis of this decision and the provisions of the law "*On the rights and treatment of prisoners*", the prosecutor determines the type of institution where the inmate will suffer punishment and the Directorate General of Prisons specify the concrete institution. In view of this process, the prosecutor shall issue an execution order and sends it to the State Police of the location where he lives, has his permanent residence or temporary residence. The body charged with receiving the enforcement order shall notify in writing the convict, setting out the time and place of voluntary appearance with the warning that otherwise the decision will be executed in coercive manner. When the convict does not appear on the day and place, compulsory execution shall apply. Forced execution is realized by taking the convict coercively to the place designated for serving the sentence. This type of execution applies only to prison sentences and punishments prescribed by paragraphs 2 and 8 of Article 30 of the Criminal Code. For all other types of penalties in the event to appear or deviations from the execution, the prosecutor submits a request to change the type of penalty as

set forth in the Code of Penal Procedure. The manner of serving imprisonment and prisoners' rights are regulated by law "*On the treatment of the prisoners*".

Prison System Program in Albania is in place to accommodate detainees in penitentiary institutions, awaiting court decisions and enforcement of judgments for persons being convicted, according to the degrees of security in prison. Program policy seeks treatment of prisoners and detainees according to standards aligned with the European Union, creating a secure system for Albanian society, and the implementation of the program in accordance with the policies of the Albanian Government for the Justice System, obligations Stabilization and Association agreement, as well as any relevant international agreements reforming the Prison System.

Directorate General of Prisons organizes, manages and controls all the penitentiary institutions under its authority. During 2014 it managed 22 penitentiary institutions, of which an Institute for Minors in Kavaja, a special institute in Kruja and Special Health Institute of Prisoners. For the period January to December 2014, there were treated on average **5535 prisoners** in all penitentiary institutions. The total capacities of penitentiary institutions are for **4537 inmates**. While currently, according to statistics resulting from January 2015, there are 2729 convicts and 3014 detainees.²⁷⁰

With the establishment of the institution of Probation Service in September 2009 as an innovation in the Albanian penitentiary system, it was possible to improve the application of alternative sentences and supervision of their execution in practice. Alternative sentences are a good way to make differential treatment of prisoners by special groups to which they belong, as p.sh.: minors, women, the elderly, the mentally ill, people with addictions to narcotics, people who have health problems that require specialized treatment convicts who have parental responsibility for minor children who may not otherwise have parental care, and others. Results of imprisonment for these groups may carry consequences, which not only did not contribute to their rehabilitation and

reintegration, but may have caused irreparable damage which may have adverse impact. Today, we have a probation service, which carries out the functions assigned by law for a period of over 5 years. Probation contribution to strengthening the enforcement of criminal decisions must occupy a significant place in the criminal justice system in Albania, along with other institutions such as courts, prosecutors, state police and prisons.

4.1 Reinstatement in the former situation

If the execution order concerning a decision is issued and enforced in case of a detainee against whom there is no precautionary measure of "arrest in prison", the question raised is what will happen with the continuation of the execution of the punishment when the court accepts his request for reinstatement after time limit of the right to appeal. In practice there are two positions:

First, the position according to which reinstatement after time limit of the right to appeal against a punishment decisions emerges as an immediate need for the prosecutor to revoke the order of execution of the criminal sentence of imprisonment, which implies release of the detainee against whom there is no precautionary measure, proceedings or any other criminal case, or any other punishment imposed against him. Such position is based on article 463 of the Criminal Procedure Code, first paragraph which reads "...the prosecutor shall intervene in all the cases of execution", article 53/4, and also third paragraph of article 55 of the law "On execution of criminal sentences" which reads: "*If there are no legal obstacles, the prosecutor orders immediate reinstatement after time limit of the law and the infringed right*".

Second, the position according to which by reinstatement after time limit of the right to appeal of the detainee, against whom it has been issued even the execution order, is no longer a final decision. In such case, the prosecutor should not act alone, by revoking the execution order; instead he (or the detainee) must submit to the court a request according to the first paragraph of article 463 which reads: "...*The Prosecutor makes requests to the competent court ...*", or based on article 55/1, of law "On execution of criminal sentences", which reads: "*The prosecutor shall submit a request to the court for*

²⁷⁰See the official webpage of the Prisons Directorate General <http://www.dpsh.gov.al>.

reinstatement after time limit of the infringed rule, or recognition of the right of the detainees as regards cases under its competence". On the other hand, the court based on article 470 of the Criminal Procedure Code is competent for the requests in the phase of executions.

This is a result of the fact that the law does not clearly define how to proceed, thus allowing for interpretation of provisions and having two different practices.

4.2 Existence of several punishments

Problems are encountered when two criminal sentences are imposed against a person, one imprisonment and conditional sentence (the court has not been aware of the conditional sentence when it imposed the imprisonment sentence against the detainee). In such cases, it is not clear what the prosecutor should do for the execution of such sentences. Referring to article 56 of the Criminal Code, in principle the merger of an imprisonment and a conditional sentence may be done, because this provision does not expressly request for both punishments that will be merged to be imprisonment ones. In practice, based on the fact that the law is vague, an imprisonment sentence may not be merged with a conditional sentence. Therefore it is necessary to foresee in the Criminal Code even the case of merger of sentences, when one of them is conditionally suspended sentence.

4.3 Educational sanctions

Article 46 of the Criminal Code provides for, inter alia, educational sanctions against minors and specifically placing a minor in an educational institution. Recently, the court has applied this educational sanctions by ordering the placement of a minor in an educational institution, but in all the cases of application of this sanction by the court, decisions have not been executed because in our country there are no such institutions, while criminality of under 14 years of age has been increasing. Under such circumstances it is necessary to improve the legal framework and create such institutions of serving of

punishment by this category considering the specific conditions and rights of this category.²⁷¹

4.4 Medical sanctions

Article 46 of the Criminal Code, in addition to the educational sanctions provides for medical sanctions, inter alia, compulsory medical treatment in a medical institution and compulsory outpatient treatment. In both cases, as there are problems with the institution of application of these medical sanctions, because the persons against whom compulsory medical treatment in a medical institution is imposed, stay in the penitentiary institutions, or in the best case, in the prison hospital, as there is no specific medical institution. Therefore it is necessary to create the proper legal framework and create such institutions. The same applies even for the designation of institutions where persons against whom the compulsory outpatient medical treatment sanction is imposed must be subject to this sanction. The absence of the medical institutions where the mentally incompetent persons need to be treated under Article 46 of the Criminal Code regarding forced medication, consists a serious problem.

According to the information provided by the General Directorate of Prisons, 152 citizens in the penitentiary system subject to the medical sanction "compulsory medical treatment" and "provisional hospitalisation" are accommodated in the penitentiary institutions of Kruja and IVSHB. Citizens against whom the court decision "compulsory medical treatment" is taken, must not be in the penitentiary system.; instead they must be dependent on MoH. MoH must find a short-term temporary solution to accommodate the persons suffering mental disorder against whom the "compulsory medical treatment" sanction is imposed, in separate sectors in the public psychiatric institutions under several specific security measures, until the special institution of legal medicine becomes functional. The judges must review regularly the legal status of persons under the compulsory medical treatment sanction. The prosecutor executing judicial decisions imposing the sanction of compulsory medical

²⁷¹ This being in line with the UNICEF standards

treatment must not place these persons in closed penitentiary institutions and they must follow the progress of their health condition.

4.5 Alternative punishments

4.5.1 Semi-freedom

The application of alternative punishments is constantly increasing, but not all the alternative punishments foreseen in the Criminal Code have been applied in practice. The most frequently alternative used by the court is suspension of imprisonment sentence and placement in probation period, followed by work of public interest, conditional release and stay at home. The alternative of semi-freedom is not applied in practice. Such alternative implies that the detainee must show up in the penitentiary institution mainly during the night hours until the next morning. It requires, by force, the creation of more specific institutions of serving punishment in this regard, because the way such institutions are created and operate in our country so far, does not foresee serving such punishment. The reason for this is because article 58 of the Criminal Code foresees that this alternative punishment applies only for the persons who represent low social risk and who are sentenced to an imprisonment term of up to one year. Therefore, the places where they serve punishment in semi-freedom must be different from the institutions where imprisonment sentence is served, because for the latter, the court, unlike the detainees in semi-freedom, provides for numerous restrictions which consist in stricter security measures and more limited rights during the serving of punishment.

4.5.2 Electronic surveillance

Based on law no. 10494 dated 22.12.2011 *On electronic monitoring of persons whose movement is limited by judicial decision* the necessary infrastructure to conduct such monitoring is created. Until now, the courts have applied house arrest through electronic monitoring in 8 cases only. The problems linked to this kind of special monitoring is the fact that Criminal Procedure Code does not foresee any special application criteria. The law makes no distinction when in article 4 it foresees that this monitoring is applied against persons who are

subjects of the judicial decision a) imposing restrictive measures foreseen in letter "a", "c" and "d" of article 232 of the Code of Criminal Procedure; b) imposing one of the alternatives to imprisonment foreseen in article 58, 59/a and 64 of the Criminal Code; c) imposing supplementary punishment defined in paragraph seven of article 30 of the Criminal Code; ç) issuing a protection order or immediate protection order according to article 17 and 19 of Law No. 9669, dated 18.12.2006 *“On measures against domestic violence”*, amended. This law, in the following part defines that such electronic monitoring is applied only upon consent of the subject (except for letter ç of above-mentioned article 4). The only consequence foreseen by the law in case of refusal of the subject is its consideration by the court when determining the sentence. However, there is no obstacle for the court in case the subject does not consent, not to impose against him an alternative punishment.

In addition to the above-said, it is important to underline that failure to foresee criteria for the application of electronic monitoring is not in compliance with the European standard. Principle 58 of the Recommendation **CM/Rec (2010) 1** of the Council of Ministers **“On the Council of Europe probation rules”**, reads: *“The level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risks posed to community safety”*.

4.5.3 Obligations of the detainee on probation

Based on Article 60 of the Criminal Code, the courts together with the alternative punishment may impose on the detainee one or more obligations including rehabilitation of the detainee from use of drugs and alcohol etc. What is observed from the practice of the Probation Service is the difficulty to make possible the fulfilment of these obligations. The reports sent by the Probation Service to the prosecutor at the end of the monitoring period, in the majority of cases are based only on whether the obligation of the detainees to keep regular contact with the probation service is complied with or not. As regards other obligations imposed by the courts, including for instance the obligation of the detainees to be subject to vocational training or the obligation to give up alcohol or drugs etc. the reports indicate no information at all. The medical

treatment to give up alcohol or drugs takes place at the specialised medical institution as defined by the Ministry of Health, based on the request of the probation service. Such provisions of the law remain simply provisions, not implemented in practice, because further specification for concrete institutions with which the Probation Service will cooperate to fulfil such obligations are required. Moreover, the obligation imposed by the court when the detainee must not be followed by certain persons, mainly accomplices of the criminal offence or detainees is eventually inapplicable because the Probation Service in its reports refers to the interview of the detainee, who in any case informs the service of not having any contact with detainees. In this regard, it is necessary to define that the Probation Service must monitor such obligation in cooperation with the police authorities, because only the latter have information concerning the detainees, the persons with criminal record and accomplices of the criminal offence and they have the possibility to point out the fulfilment of this obligation. The same problems are raised even in the case of non-fulfilment of the obligation for civil damage recovery foreseen in article 60 of the Criminal Code, because it is eventually impossible for the Probation Service to ensure its execution, except for the cases of voluntary fulfilment of the civil obligation. Given the above-said, concerning the obligations imposed by the court it is necessary for their fulfilment to create the relevant structures with which the Probation Service must cooperate. On the other hand, both the Criminal Code and the Regulation of the Probation Service foresee the possibility of change of the imposed obligation or adding other obligations in case of non-execution of obligation by the detainee, without any specification of the case when non-execution of obligation does not depend on the will of the detainee. Therefore it is important for the court prior to determining concrete obligations on the detainee, to have the necessary information on the possibility of their application in practice.

4.5.4 Imposing the alternative sentence in absentia

In the case-law, it may be possible for the alternative punishment against the detainee to be imposed in absence. When a detainee is not informed of the imposition of an alternative punishment by the court or the Probation Service may not make the notification for the establishment of contact of the detainee

with the Service, in order to fulfil and alternative punishment, the consequence will be the conduction of the necessary legal procedures in such cases for the revocation of the alternative punishment. The court is case of non-fulfilment of the alternative obligation shall decide revocation of the alternative punishment which as well is imposed in absence of the detainee. This legal procedure raises the question whether alternative punishment must be applied, against the defendants in absence, as it results in the revocation of alternative punishment.

4.5.5 Revocation of alternative punishment

Concerning revocation of the alternative punishment, the problem is to know the moment the request for revocation of alternative punishment is submitted. The law does not define the time limit for the submission of this request. The absence of a legal provisions has allowed for interpretation of the law and consequently some of the requests are submitted within the time limit of probation, whereas other are submitted after the time limit of the condition (monitoring). Different positions are kept in the case-law when for some of the requests, which are submitted after expiry of the time limit of monitoring, the case is dismissed with the reasoning that the requests are submitted beyond the time limit, whereas in other cases requests are reviewed and it has been decided, accordingly, as deemed by the court.

4.5.6 Start of monitoring of alternative punishments

In the Probation Service practice there are cases of time difference between the date of decision becoming final, date of issue of the Execution Order by the prosecutor and date of first contact with the Probation Service with the detainee against whom an alternative punishment is imposed (which is the start of monitoring). There are several cases when the detainee appears 3, 6 or more months later than the date of the judicial decision and the date of the judicial decision is shall be considered the start of monitoring. From application of this practice, the detainees punished unfairly are placed under monitoring for an effectively shorter time period than defined in the respective judicial decision. Therefore, a legal provision to clearly determine the start of the monitoring period by the probation service is necessary.

4.6 Probation service

4.6.1 Legal status of the Probation Service

Currently, the activity of the Probation Service is governed by Decision of the Council of Ministers, while the European standard foresees: “*The probation service institutions must be given the **proper status**, they must be informed of and be provided with relevant sources*”²⁷². Such activity must be seen as a key element in criminal justice therefore proper attention must be paid.

Probation Service is a centralized body, organized at central and local levels. Its central level consists of the General Directorate of Probation, and Local Offices of Probation operate near the district courts, and constitute the local level. Territorial jurisdiction is determined by the Probation Service Regulation in order to determine which local office of the Probation Service has jurisdiction over a particular case. By Order of the Prime Minister no. 100, dated 28.02.2014, “*On approval of organizational and structure of the Probation Service*” Probation Service as to 12 local offices which it were in 2013, currently has 22 offices attached to the judicial districts, by means of which the aim is to provide a service closer to the needs of the public. Currently the probation service has employed lawyers, psychologists, sociologists and social workers. During 2014 the number of staff in parallel with the opening of new local offices has gone from 108 in 2013 to 134 in 2014.

4.6.2 Procedural position of the Probation Service

Currently, the Probation Service has no status defined in the Criminal Procedure Code during the criminal process. Even through participation of this service in all the phases of the proceedings²⁷³ is foreseen, it is not clear and it is not defined the procedural position of the probation service. Meanwhile,

²⁷² Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules.

²⁷³ See, article 1, letter a) of the Regulation of the Probation Service which foresees: “*The subject matter of this regulation is the definition of rules concerning: a) the role of the Probation Service **at any phase of the criminal proceedings***”.

according to the international standard (basic principles 35-70 of the Recommendation CM/Rec (2010) 1), the position and role to be performed by the probation service in member countries is clearly defined.

Main responsibilities of the Probation Service:²⁷⁴

- a) Oversee and support the implementation of alternative sentences in order to protect public interests and prevention of criminal conduct;
- b) Assist the convicted person performing alternative punishment in fulfilment the obligations and conditions arising from this punishment, and in overcoming the difficulties of his social reintegration;
- c) Cooperation and provision of information and reports before the prosecution and the court under legal provisions;
- d) Defining the methods of implementing alternative punishment in accordance with the law;
- e) Probation Service cooperates with state institutions or local, local community, and with other institutions and non-profit organizations for the implementation of alternative sentences.

4.6.3 Assessment reports

The Probation Service, based on article 31 of the Regulation, at the request of the prosecutor or judge shall submit assessment reports for the person being investigated, the defendant or the detainee. The Albanian courts during 2014 have imposed 3214 alternative punishments “Suspension of execution of imprisonment sentence and probation”, foreseen in article 59 of the CC and 688 cases of “work for public interest” foreseen in article 63 of the CC, but only in a few cases the prosecutor's offices or courts have requested for an assessment report by the Probation Service for the person being tried, prior to taking a decision.²⁷⁵ This results from the fact that ***the law has not defined clear rules***

²⁷⁴ Based on CMD no 302, dated 25.03.2009 “On the approval of the regulation “On the organisation and functioning of the probation service and determining the standards and procedures for surveilling the enforcement of alternative punishments”, Article 6.

²⁷⁵ See, Probation Service report, September 2014

concerning the cases when the drafting of an assessment report by the probation service is necessary, either for the prosecutor's office or the court. Based on the practice, only in a few cases prior to the issue of the decision the prosecutors or the courts have requested the assessment report by the probation service determining whether alternative punishment may be applied. In addition, the fact that no provision foresees *the worth of these reports in the criminal process is a concern*. Given the above-said, it would be recommended to have a binding legal definition, in the case if application of alternative punishments, especially article 59, an Assessment Report from the Probation Service to be received prior to the issue of the criminal decision.

4.6.4 Service quality

Regardless of the quantitative achievement, the fact that the Probation Service has executed and monitored a considerable number of execution orders of the judicial decisions or a considerable quantity of the assessment reports assisting the court and the prosecutor's office, there is no measurement of a qualitative nature. Conditions for personalised treatment of detainees have been created gradually. The work of the Probation Service is based on the assessment of threat and therefore instruments of high professional standards are created. The manner of use of instruments and integration of results obtained based on the work of the probation service is an issue of concern. Impact of these instruments on increasing quality of work is not identified because of lack of measurement, and specifically:

- a) Quality of assessment reports;
- b) Quality of individual training programme;
- c) The nature of intervention during monitoring and their compliance with the individual characteristics. What is their nature: controlling or assisting.

4.6.5 Drafting an individual programme

Article 28 of the Regulation of the Probation Service, defines that the specialist of the probation service builds a tailor-made programme for the detainee

against whom alternative punishment is ordered, determining the frequency of meetings, initially once a week and later depending on circumstances, the frequency will be once per month or more. In practice there are many cases where the courts in the decision imposing the alternative punishment determine even the frequency of the meetings with the probation service varying from once per month, once every two months, once every three months or once every six months. There is no legal obstacle for the court to define the frequency of meetings, but it contradicts the regulation that the probation service must conduct the monitoring and the recommendations of the Council of Europe in this field.²⁷⁶

4.7 Prison system

4.7.1 Respect for the right to information

The problems which are found consist in three aspects:

- a) Some detainees are not informed as foreseen by article 5 of the prison regulation.
- b) Even when they are informed, the information is limited only to the right to meet the lawyer, the right to communicate to the relatives and/or information concerning the rules in the remand institutions.
- c) Distribution of posters (visual information) is not uniform. In some prisons (Tepelena and Vlora), posters are distributed in each cell and hall, whereas in other prisons information is not distributed uniformly, sometimes along the hallways, and other time in the airing spaces. Adding to this the small number of printed posters and almost impossible to read.²⁷⁷

²⁷⁶ See, Recommendation CM/Rec.(2010)1, basic principles no. 53-54-55-56) and Commentary of the Recommendation.

²⁷⁷ See, Report on Conditions in Albanian Prisons and Recommendations for Reform, Rule of Law and Human Rights Department, OSCE, 2013, pg.6-8.

4.7.2 Treatment by the prison administration

Cases of maltreatment in prisons are rarely reported, but most frequently they occur in the police commissariats. Even in the cases of claimed maltreatment, it is reported that they mostly concern the detainees who have no family, the poor or those who have no support. However, much more than maltreatment there are cases of humiliation, for instance the obligation of minors to clean the prison premises. On the other hand, there were claims that detainees who had committed serious crimes and who had strong support outside of prisons were treated with special respect by the prison authorities, because their status was seen as passive pressure for those authorities. (page 9 of the OSCE report). Application of confinement has been used less and less and it has been enhanced the principles of its used as a last resort. It is interesting the fact that all the respondents against whom confinement is imposed report that they are informed of the possibility to appeal against the confinement decision, but none of them has used this rights because they did not trust the commission.²⁷⁸

4.7.3 Material conditions²⁷⁹

Food: even though improvement is observed, in some of the prisons food is quite poor and of low quality especially the meat. Even in the prisons where a better quality is found, the quantity is insufficient therefore very often food is provided by the family members. While article 26 of the Prison regulation guarantees the prisoners the right to a special diet, it is reported that enforcement of this right is impossible.

Ventilation, temperature and light: Generally these are reported to be appropriate, but in some places including Tepelena the windows are too small and there are no adequate premises for ventilation during the winter, consequently the prisoners smoke inside the cells.

²⁷⁸ Ibid, pg. 8-9.

²⁷⁹ Ibid, pg 10-14.

Hygiene conditions: Lack of water and warm water for the showers is reported to be a problem, and the prisoners schedule their time to take a shower, one week before. Many of the institutions do not have the necessary appliances or detergents, even through article 29 of the Prison Regulation foresees the obligation to provide for the relevant means to ensure hygiene. Therefore many of the prisoners have their laundry done by their family members.

Necessary spaces, over-crowdedness: Article 22 of the General Regulation of Prisons provides that detainees must have at least 4 m² per person inside the cells, but over-crowdedness remains a problem. Considering fact that many inmates kept fridges, radiators brought from home inside the cells making the space even smaller. The information received by the General Directorate of Prisons shows that over-crowdedness have been at **24%** over the actual capacity of the Prison institution. The Commentary of the European Prison Rules reads "*even though there is no specific recommendation or study of what the preferred the surface area of the cells must not be less than 9-10 m² per person. Regardless of the character of these rules, the respect for these standards is of special importance in the physical and mental health of the detainees. In case the institution finds it impossible to provide them, it must adjust the prison regime in order to shorten the time spent in these facilities. However, regardless of the time spent in open air, a minimum surface area must be respected definitively, in order to refrain from infringing dignity of individuals*"²⁸⁰

4.7.4 Visits and communication²⁸¹

It is reported that entry and exit is strictly controlled, even though there have been cases of different items including mobile phones or drugs entered into the cells. Concerning family visits, it results that in some prisons this right is not

²⁸⁰ Commentary to Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

²⁸¹ See, Report on Conditions in Albanian Prisons and Recommendations for Reform, Rule of Law and Human Rights Department, OSCE, 2013, f.14-17.

enforced because inmates and family members are divided by iron bars and this situation may be very difficult for the children. The duration of visits is different because of the over-crowding. Generally communication with the lawyer is allowed at any time, but some detainees complain that the lawyers assigned by the court are young, with no experience and they fail to provide professional defence.

4.7.5 Educational activities

The performance of these educational activities differs from one place to another. While in some sites, such as Vlora, there are classes provided by a professional educator, in other sites, like Shënkoll, the only activities that the prisoners of Shënkoll may perform are going to the gym or playing football.

Moreover the time spent outdoors differs from one site to the other depending on the number of prison infrastructure. Inmates of Vlora reported that the rule was observed, and they had the possibility to go out twice daily for one hour and a half, whereas in Shen Koll they may stay outside 6-8 hours. Concerning **employment**, this right is not ensured in all the prisons. What is observed is that they are not paid for the work they perform, but instead they benefit a compensation in the punishment. On the other hand, most of the prisoners had no information of the employment possibility and the conversion of workdays into commutation.

4.7.6 Medical service

The medical service offered in prisons is generally of low quality. The prisons offer only a limited number of basic medications and these are reportedly of an inferior quality. Treatment of mentally ill detainees still needs improvement. A serious concern is the absence of proper and permanent solutions for the accommodation of persons under different treatment.²⁸² The common work of Ministry of Justice and Ministry of Health resulted in a decision to set up a special medical institution for the treatment of detainees suffering mental

²⁸² European Commission Progress Report 2011 for Albania, pg. 19.

illness, including those under compulsory treatment. However, it will take time for this institution to be consolidated and insufficiency of specialised care and treatment for this category of patients is a concern.²⁸³ After adoption in 2012 of the law on mental health, Ministry of Health responsible for specialised treatment of mentally ill persons in prison institutions has neither recruited additional psychologists and psychiatric staff nor allocated a budget to improve the living conditions. There are concerns about distribution and adequacy of medicines, especially in prisons outside the capital. Little progress is made in building a specialised institution for the mentally-ill prisoners under compulsory treatment. Mentally ill persons continue to be held in the Institute of Kruja, which means that prevention of maltreatment and degrading treatment is not ensured.

4.7.7 Staff training

In April 2011, it was approved the decision to include convicts and detainees in remain prison in the category of economically non-active persons ensuring them access to the free of charge health insurance. An issue of concern is the provision of qualified service. Therefore it is necessary the need to add specialised care and improvement of treatment. All the judicial police officers are trained for human rights, but it has not been extended to the civil staff including doctors or psychologists who work within the police forces.

4.7.8 Minors

The strategy and action plan on juvenile justice is not adopted yet. There are no specific rooms in the police stations for children under 14 years of age and no assistance by the psychologist is provided when the minor is interrogated during the night, weekend or official holiday.

²⁸³ European Commission Progress Report 2012 for Albania, pg. 18.

IV. FINDINGS AND PROBLEMS

4.1 Prosecutor's Office and Judicial Police

Appointment, promotion and transfer of prosecutors:

The law on Prosecution Office *does not stipulate the way of being appointed* by General Prosecutor, among the qualified candidates who undergo the testing procedures, if they are appointed based on the ranking of test results, and the transparency obligation, concerning the manner of their appointment. The law does not provide any ground of appeal or contestation concerning the evaluation of the candidates.

Furthermore, the law *does not provide any legal obligation on priority procedure* in filling the vacancies with candidates who have completed Magistrate's School, opposed to those who come from the ranks of other professionals.

The threshold of 25 of age years to be appointed a prosecutor is very low. Specific evaluation criteria for measuring the skills, competence and integrity of prosecutors are lacking.

The current legal framework does not impose any criteria upon which General Prosecutor bases his decision taking while promoting the candidates.

The career of a prosecutor in Albania, is not guaranteed. Financial incentive and motivation still remains low with consideration to the standard of living. Not regulated in full and clearly and on objective criteria, are the cases of transfer to another lower position for prosecutors, as well as parallel transfers without the consent of the prosecutor, due to reorganization needs.

Appointment and constitutional position of the Prosecutor General: 5 - year duration of the mandate of the Prosecutor General is insufficient to undertake and ensure the continuation of reform initiatives and to view their results in practice. The possibility that the Constitution provides for the renewal of the mandate of the Attorney General may not provide the guarantees necessary for the prosecutor to keep distance from political power. The issue of

addressing Attorney General treatment, after completion of its mandate, is problematic.

Hierarchical and centralised system: The Prosecutor's Office is organised in a deeply hierarchical and centralised way, with the lower prosecutors who are subject to the orders and instructions of the higher prosecutors. The lower prosecutors have the right to refuse compliance with the order or instruction of the superior, only if it is manifestly contrary to the law. In practice, there are no cases of refusal, except for any isolated case. The effect of the functioning of the prosecutor's office as a centralised body has had its impact on the activity regarding the observation of legality, protection of fundamental rights and freedoms of persons and principles of transparency in decision-making. The independence of the prosecutors regarding the hierarchical superior is practical limited and the former are implementers of the orders of superiors.

Rights of injured persons: The injured persons are not guaranteed effective participation in the criminal process, therefore is it required a revision of the rights currently enjoyed by them.

Disciplinary proceedings: the law does not define the disciplinary measure which applies for a disciplinary violation; it is left at the discretion of the implementing authority. Moreover, there are no clear definitions concerning the actions which constitute disciplinary violation, including actions which discredit the reputation of the prosecutor, thus leaving room for possible subjective and abusive evaluation.

Disciplinary measures against prosecutors are taken only by the Prosecutor General. The role of the Prosecutor's Council is only advisory and it does not correspond to the role of the HCJ in the judiciary. The law does not specify concrete sanctions to be applied in case of non-declaration of the state of conflict of interest by leaders in the conflict. External control by MD is considered inadequate, not only because in some cases has proved politically motivated, but also because this inspection could not enter into the merits of the case. Efficiency and quality control activity of the prosecutors has shortcomings.

Prosecutor's Council: Currently, the prosecutor's council has only an advisory role to the Prosecutor General, without any impact on appointment, transfer, disciplinary proceedings and promotion of prosecutors. The composition and role of the Prosecutor's Council do not guarantee independence of the prosecutor's office from politics and external interference,

Judicial Police: The primary issue concerns the composition of sections of JP to the prosecution offices. The inclusion of police officers within the section of a certain prosecution office with the passing of the years was the cause that the connection between officers of the section with their subordinate administration, faded away. The composition of service personnel of judicial police, including those specialised in specific sectors in the fight against crime, still remains unstable, as a result of frequent movements and transfers. Serious problems are displayed by the ways of management and control of investigations and reporting on its results. The officers of the Judicial Police Service inform, in any case, except the prosecutor also their superiors at the State Police, which is contrary to legal norms.

In practice the judicial police structures making the investigations are often not known by the prosecutors.

The professional training of the Judicial Police personnel services continues to be very weak. Services personnel of JP does not yet function methodically in order to analyze the results of the investigation and synthesise their periodic reports to the prosecutor.

The Control of the prosecutor on the investigation of the JP continues to be weak. Technical actions of tapping are done from a single center and people who are not related to cases under investigation, thus resulting in investigation being slow, irresponsible and inefficient.

Prosecutor's Office - Judicial Police cooperation: Exercise of functions of the prosecutor is dependent on cooperation with the judicial police. Currently, the manner of organisation of Judicial Police and especially the dualism of this link administratively and procedurally dependent, threatens qualitative cooperation with the prosecutor's office and conduction of investigation. The prosecutors must have a more decisive role in the performance evaluation of

judicial police, disciplinary responsibility and removal of judicial police officers, in particular those of the services.

4.2 Criminal Procedure Law

4.2.1 Criminal prosecution and investigation: The provisions of the Criminal Procedure Code provide for two main concepts of criminal proceedings: criminal prosecution and investigation. In practice, very often, these two concepts are used interchangeably as the Code does not provide for their definition separately. Therefore it is necessary for the code to clearly define their meaning. Moreover, it is important to define clearly the moment criminal prosecution starts, as there are different positions in this regard.

4.2.2 Time limits of investigation: The Criminal Procedure Code regulates the respective time limits within which preliminary investigation must be concluded, but it does not clearly provide for the consequences emerging at the end of investigation. This is the reason why the case-law position is that after expiry of the time limits of investigation, no further procedural action, including notification of the charge, summoning the defendant and submitting the request for trial, may be taken. The same problems are found even in the case of revocation by the court of the decision of the prosecutor for the extension of the time limits of investigation, where the prosecutor is not set a time limit within which to decide concerning the proceedings, thus leaving the case without any solution.

4.2.3 Appeal by the injured person: Concerning criminal offences foreseen in article 284 of the Criminal Procedure Code, criminal prosecution starts and continues only based on the appeal by the injured person. Even if the Code handles withdrawal of or renouncement from the appeal, it does not foresee the re-submission of an appeal which has been renounced and what will happen in these cases. Moreover, unclear, because of the legal formulation of article 284, is the fact whether appeal may be submitted even by other persons, including heirs, apart from the injured person (for instance when the injured person has died without the possibility to file an appeal).

4.2.4 Control in the phase of investigation: Criminal Procedure Code foresees that control in the phase of preliminary investigation may be done through appeal to the higher prosecutor and appeal to the court. Considering these possibilities, it is necessary to regulate the relationship between them and clarify the respective competences. Moreover, the law does not expressly foresee control by the court of the content of the decision of the prosecutor for the dismissal of the criminal proceedings, even if investigation is conducted completely and comprehensively. To this end, the concern is to define the actions that must be taken in such cases and the position of the court.

4.2.5 Quality of acts of investigation: Assessment of appropriateness of investigative actions to move to the phase of adjudication and control of quality of acts of preliminary investigation, is legally done by the higher prosecutor. Such control, *de facto*, is inefficient and it may not be conducted through a procedural act. The absence of such a legal regulation for the judicial control concerning the insufficiency of the investigation acts and quality has had an impact on the quality of the indictment submitted to the court.

4.2.6 Acts of minor significance: Currently it is observed a higher caseload of criminal proceedings where the criminal office of the proceedings, is of minor significance, thus the prosecutor has no effective possibility to be focused qualitatively on the investigation of serious offences. Some of these cases are sent to the court to be tried similarly as all the other criminal offences. A number of these cases are sent to the court being subject to the adjudication as the other criminal offences.

4.2.7 Discipline of parties: In order to provide foreseeability, efficiency and trial within a reasonable time limit it is necessary for the code to provide for the holding of a preliminary hearing, which is currently missing in criminal proceedings. Legal instruments are missing in CPC for taking the effective measures by the judge in the event of abandoning the representation without any legitimate grounds on the side of the defence lawyer, non-assumption of defence by the lawyers appointed *ex officio*, in the event of openly illegal requests, affronting conduct of parties, lawyers neglecting their office etc.

4.2.8 Principle of freedom of proof: The code does not provide for the principle of freedom of proof. That is why in case of filing of requests of parties to obtain an evidence,

the court has failed in taking a clear decision and consequently it has “*reserved*” for later, the right of expression.

4.2.9 Proceedings held in the absence of the accused: Provisions of the Criminal Procedure Code for trial in absence do not guarantee properly the procedural rights of the defendant and they do not adequately reflect nine minimal rules foreseen in the Resolution (75) 11 of the Committee of Ministers of the Council of Europe “*On criteria governing proceedings held in the absence of the accused*”. The current notification system has shortcomings and creates difficulties in the notification of the defendant. The deadline within which the request for reinstatement of the time limit must be made, is short and it does not guarantee effective protection against a decision of which the defendant is not informed. A legal remedy must be foreseen for the defendant to make possible the suspension of execution of the punishment decision, in addition to the request for reinstatement of the time limit for the right to appeal. Moreover, it is necessary for the Criminal Procedure Code to clearly define the means for re-adjudication of the person tried in absence.

4.2.10 Special trials: The ratio of the number of cases settled by ordinary trial with the cases settled by abbreviated trial, indicates a higher percentage of the number of cases settled by the latter. The Code has not provided for restrictions to abbreviated trials in proportion to the level of risk of the defendant and criminal offence.

4.2.11 New charges and withdrawal of acts: In case of modification of the legal qualification of the offence, the Criminal Procedure Code must foresee the procedure and type of decision-making of the court, concerning the composition of the panel competent to take the decision, material competence, procedural moment of the modification of legal qualification, thus guaranteeing the rights of the defendant according to the standards of the case law of the Court of Strasbourg. Moreover it is necessary to review the provisions concerning withdrawal of acts by the prosecutor by clarifying the procedure to be followed and the criteria of application.

4.2.12 Announcement of the reasoned decision: Based on the practice of announcement by the court of the operative part of the decision alone, it is necessary to set a reasonable time limit for the announcement and depositing of the reasoning of the decision (article 382 of the Criminal Procedure Code) by the court and modify the provision for the time

limits for appeal before the Court of Appeal (10 days) and High Court (30 days), by indicating that such time limit starts from the date the parties are notified of the reasoning of the decision (not only of its operative part).

4.2.13 Review in appeal: Article 410/2 of the Criminal Procedure Code, amended by law 8813 dated 13 June 2002 must be adapted to the case-law of the Court of Strasbourg²⁸⁴, High Court decisions²⁸⁵, and Constitutional Court decision no.30/2010 on the guarantees of trial in absence. It must be explicitly regulated in the law the right of the relatives of the defendant to act on his/her behalf. On the other hand, it is to be discussed whether judicial review must be done even at appeal level even beyond the grounds of the appeal. At the same time, the possibility of additional restrictions for remitting the case for retrial is not foreseen and the same goes for the cases of remitting them at variance with the law, although the judicial cases are repeatedly delayed.

4.2.14 Final decisions: In principle, the Criminal Procedure Code does not make a distinction between criminal decisions into decisions which become final immediately and decisions which become final upon expiry of the defined time limit. Currently, no provision in the code defines when the decision becomes final. Even the last unifying decision of the High Court, apart from its positive effects, has further confused its understanding.

4.2.15 High court trial: The reform of constitutional jurisdiction of the High Court is necessary because by assigning cases of original jurisdiction to the competence of the High Court, adjudication is blocked, there is the possibility that judges have already tried the case and therefore the right to appeal before a higher court will be probably denied. On the other hand, in most of the European countries, high courts are established as cassation courts, which have limited jurisdiction, as for instance in the questions of the law or questions of fundamental importance. Therefore, it is necessary to review of grounds of the recourse, considering the fact that the High Court is unable to exercise the required and expected role in the unification of the case law because of the overload, while such unification must be one of its main functions.

²⁸⁴ Case *Sejdovic v. Italy*, 10 November 2004.

²⁸⁵ Decision no.354 dated 28.07.1999 and decision no.386 dated 29.07.2000.

4.2.16 Jurisdictional relations: The Criminal Procedure Code provisions on extradition, letters rogatory and recognition of foreign criminal decisions must be fully harmonized with standards of European Union. In the frame of membership process of Albania in the European Union, the procedural legislation and especially the legislation governing judicial and police cooperation in criminal matters, must be adapted to European Union standards.

4.2.17 The injured and the minor in criminal proceedings: The procedural position of the injured from the criminal offences is weak and the code does not provide for sanctions or consequences in case of failure to comply with the summoning in the process of private parties, their representation by the lawyer, summoning in trial of the party injured by the criminal offence and the person filing the appeal. As regards the cases with the accused injured person, it must be made explicit the procedural position of the prosecutor concerning his role in adjudication. There is no legal norm and elaboration of rights and procedural safeguards of the injured person, in line with the minimum EU standards.

Concerning the juvenile injured/victim, it is necessary to foresee and elaborate the procedural safeguards which constitute standards according to EU standards, to regularly apply the securing of evidence during preliminary investigation, regardless of fulfilment of required specific conditions; to define the cases when a minor must be questioned in the presence of the parent, psychologist and the methodology of questioning a minor.

4.3 Criminal Law

4.3.1 Criminal Code update with the evolution of the society. Criminal code has been amended several times during the 20 years of its existence. Such amendments are made in the frame of international obligations and approximation with the European legislation, and also provision of new elements of criminal offences, in line with the evolution and emancipation of the Albanian society. Criminal code is amended thoroughly 9 times and it has been subject to other patchwork amendments.

4.3.2 Amendments, scientifically based and planned. The amendments to the Criminal Code do not always consider that the code is built upon a plan which is the basis for the main institutes of the criminal law. The partial amendments of some of the institutes of the code have resulted in failure to harmonize other parts. We have to recall here the amendments of 2013 which increased to 35 years the maximum imprisonment sentence, without any reflection of this amendment in the institute of prescription of the criminal offence, prescription of execution of punishment etc.

4.3.3 Use of vague terminology

Because of frequent amendments by different experts, there is use of ambiguous terms, such as more than once or repeatedly, serious consequences, damage, serious injury, non-serious injury, light injury, in the presence of children or even one child is enough, serious consequences, carrying for the purpose to use or not to use etc. Use of such vague terms in the Criminal Code is contrary to article 7 of ECHR which provides for clarity of criminal norms which punish a certain behaviour in society. An important problem is lack of provision of criminal offences in laws other than the Criminal Code. The double punishment of a conduct as both a criminal offence and administrative offence is not in line with the article 7 of ECHR. In the specific laws, the cases of administrative contraventions have not been provide for appropriately. There is no precise legislative technique and harmonisation of punishment.

4.3.4 Standardisation of setting the punishment remains an unsettled issue of the Criminal Code. The code provides for the principles, but it does not determine concrete instructions which must instruct the court or the prosecutor in the request to set the punishment Such provisions are not only issues of the criminal code, but also of other regulations or respective manuals for the formulation and setting of the criminal punishment.

4.3.5 Extinction of criminal offences and punishment. The criminal code makes use of the term extinction of criminal prosecution, which essentially extinguishes criminal responsibility permanently. It must be foreseen suspension, termination, restart of periods of prescription. The time limits must

be adapted to the new margin of punishment currently foreseen in the Criminal Code. There must be foreseen in detail even other circumstances of extinction of the criminal offence, death of the injured person when the criminal offence is followed by appeal or accusing injured persons etc.

4.3.6 Margins of punishment must follow a scientific methodology rather than a trend of the moment for the punishment of a certain conduct. The current criminal code provides for punishment for elements of criminal offences which exceed even punishment for the criminal offence of murder. Punishment must be intertwined with rehabilitation and reintegration of the individual in the society. More severe punishments which have more severe minimum punishment margin, in case the court does not apply alternative punishments, are not always an effective solution.

4.3.7 Clarification of alternative punishment and supplementary punishment. It must be foreseen that in case of criminal offences of a certain punishment margin, the application of such punishments to be compulsory for the first criminal offence, or in case there is an aggravating circumstance, a certain punishment to be or not to be imposed etc.

4.4 Penitentiary system

4.4.1 Clarity of the Criminal Procedure Code concerning execution of decisions: The Criminal Procedure Code handles in general terms the rules on the execution of criminal judicial decisions and its title IX “Execution of decisions” foresees special rules about issues emerging during execution of the decision. However, such issues as the continuation of execution of the punishment decision in case of reinstatement of time limits of the right to appeal and the procedure to be followed in such cases, or the possibility of joining several sentences, among which imprisonment and conditional, are not foreseen explicitly. This is why there are different legal interpretations by the prosecutors and the court.

4.4.2 Educational and medical measures: Educational measures against juveniles exempt from punishment or minors who because of their age are not

criminally responsible are explicitly foreseen as an option in article 46 of the Criminal Code. Even if such measures may, in principle, be considered effective for the minors, they have been rarely taken by the court. Even in those few cases when such measures are taken, their enforcement in practice is not made possible because of lack of respective infrastructure and legal framework. The same may be concluded as regards medical measures, foreseen as well in article 46 of the Criminal Code. Moreover, their enforcement is considered even more problematic as there is no special medical institution, and irresponsible persons are held in the prison hospital. These citizens, who are subject to “compulsory medication” must not be considered within the prison system, but they must be dependent on the Ministry of Health.

4.4.3 Execution of alternative punishments and related obligations: The Criminal Code in chapter VII provides for alternatives to imprisonment. Semi-freedom (Article 58); Suspension of execution of imprisonment sentence and probation (article 59); stay at home (article 59/a); suspension of execution of imprisonment and obligation to perform public works (article 63); conditional release (Article 64). However from the case-law, it is found that not all these punishments are applied similarly. Such alternative punishment as semi-freedom is not applied in the case-law because its application requires creation of open regime. On the other hand, the forms of supervision of execution of alternative punishment as electronic monitoring need clear legal criteria concerning the cases of its application in line with the European standards.

As regards supervision of alternative sentencing, it is a problem to define the moment of considering the monitoring started by the Probation Service. In practice, the date of the court decision is considered the basis for the start of monitoring, but when executed, those who are punished unfairly remain under monitoring for a period relatively shorter than defined by the respective judicial decision, as the date of the decision of the court until the moment of appearance before the probation service is at different time intervals.

Based on article 60 of the Criminal Code, together with the alternative punishment, one or more obligations may be imposed on the convict as for instance rehabilitation of the convict from use of drugs and alcohol etc. What

we see from the practice of the Probation Service is that the reports prepared by this service in the majority of cases consist only in the identification of contacts of the convict with the probation service. There is no data as regards other obligations imposed by the court as for instance the obligation of the convict to be trained professionally, or the obligation to give up alcohol or use drugs etc., because of impossibility to apply them due to lack of infrastructure, institutional cooperation and also lack of clear legal provision of obligations of probation service in such cases.

On the other hand, both the Criminal Code and the Rules on the Probation Service provide for the possibility of changing the obligation imposed or adding other obligations in case of non-execution of obligations by the convict, without specifying the case when failure to execute the obligation is not dependent on the will of the convict. To this end, it is necessary for the court, prior to determining concrete obligations for the convict, to have the necessary information on the possibility of their application in practice.

4.4.4 Revocation of alternative punishment: The Criminal Code provides even for the possibility of revocation of alternative punishment imposed by the court if the defined obligations are not fulfilled. The regulation of the Criminal Code is general and it does not address an important issue as the time limit within which it may be requested revocation of the alternative punishment. Consequently, lacking a legal provision, the decision-making of the court is different.

An issue of concern is even revocation of alternative punishment for the convicts in absence. The reason for this is that as alternative punishment may not be applied for the convicts in absence, because of their absence and lack of knowledge, the alternative punishment is revoked. Such ineffective procedure raises the question of whether to impose alternative punishment or not.

4.4.5 Probation service: Currently, the activity of the Probation Service is governed by Decision of the Council of Ministers, thus the legal status of the Probation Service is not in line with the European standards. This requires the adoption of a special law. On the other hand, the probation service does not

have a clear procedural status, in both the phase of preliminary investigation and judicial process, because the provisions of the rule are not incorporated in the Criminal Procedure Code. It is because of this that in many criminal proceedings in which the courts apply the alternative punishments, there are no assessment reports by the Probation Service. Moreover, the law does not provide for clear criteria of when the drafting of an assessment report by the probation service is necessary, either for the prosecutor's office or the court. No provision stipulates the worth of these reports in the criminal process. Moreover, it is observed the double competence of the Probation Service and the Court, as in the case of defining the frequency of meetings as component part of the individual programmes.

There are shortcomings concerning the instruments for the qualitative measurement of results of this service in the integration of convicts and the continuous training of the staff.

4.4.6 Improvement of the prison system: The aim of the prison system which is guaranteeing security and protecting society from the commission of crimes, may be attained better if the period of serving the sentence serves to returning to the community, as citizens rehabilitated and reintegrated in the society. Therefore, it is necessary for the prison system to be organised and managed according to the international standards and norms, which foundation is respect for human rights and humane treatment of persons deprived of freedom. Moreover, the Constitution of the Republic of Albania, in article 3, reads: "...*human dignity, rights and freedoms...*" are the basis of this state which duty is to respect and protect them", including the convicts. While it is observed that current conditions in prisons are not satisfactory as regards guaranteeing of rights of convicts, providing material conditions in line with the legislation including food, which in most of the cases is provided by the family members; airing, which is limited by the improper infrastructure of some prisons; sanitation which is below the required level and the cleaning products are provided again by family members; necessary space which in many prisons is not in line with the norm foreseen in the regulation, thus resulting in overcrowdedness; medical service which is not a qualitative service; educational activities which in some prisons consist only in additional airing time; training

of staff of prison administration and medical staff which because of frequent staff rotation becomes ineffective etc.

4.4.7 Employment in prisons remains an issue of concern. It results that employment is not offered in all the prisons. Even when offered, the convicts are not paid for their work, instead they benefit compensation in the imposed punishment. However, most of the convicts do not have information of the employment opportunities and criteria which apply to convert workdays into respective commutation. This situation is created also because it is not clear which is the legal framework to be applied for the employment relations of the convicts and their regulation.

4.4.8 Treatment of minors: Treatment of minors is a special problem. The strategy and action plan for juvenile justice is not adopted yet. In the police stations, there are no separate rooms for the children under 14 years of age and very often it is observed that the assistance of the psychologist is not provided when the minor is questioned during the night, the weekend or official holidays.

V. Conclusions

This chapter analyzes the reform of the criminal justice system involving questions of organization and functioning of the prosecution and the Judicial Police, the analysis of criminal proceedings and execution of criminal penalties, as well as an analysis of substantive criminal law and the problems caused by frequent legislative interference in this area.

I. Prosecution and Judicial Police

Prosecution in Albania is a centralized body and its constitutional function is to perform prosecution and represent the indictment in the trial. It is built as a functional structure at each court under judicial organization while the orders and instructions of the Attorney General are obligatory to lower prosecutors. A prosecutor has other duties in the criminal process and beyond established by law. What is verified by the analysis of the situation is that the activity of the

prosecution does not respond properly to the general situation of criminality and organized crime and corruption in particular. Several factors were identified that have to do with the organization and functioning of the prosecution, its reports with the judicial police and the organization itself of the latter, as well as recruitment, career, discipline and independence of prosecutors.

1. Problems related to the recruitment and career of prosecutors.

Prosecutors are appointed and be promoted by the President of the Republic on the proposal of the Prosecutor General, after receiving the opinion of the Prosecution Council. The current practice has shown that the appointments, in particular those outside the School of Magistrates, as well as decisions related to career prosecutors are not always guided by objective criteria and transparent procedures.

Nomination of candidates for the prosecutors who have not completed the School of Magistrates, as well as promotion of prosecutors is made after a competition and public hearing organized by the Council of Prosecution. In the case of appointing a prosecutor, the competition consists of a written test, while in the case of promotion, competition is conducted based on the documents. For the latter law does not provide criteria for the opinion of the Prosecution Council and the valuation obtained in the competition do not constitute binding criteria or obligation of reasoning the required decision.

The preliminary assessment of the work is done by the head prosecutor of the prosecution office. This evaluation serves as a proposal for the final assessment made by the Attorney General, who may replace the preliminary assessment, due to a comparison, at the national level assessments. It lacks a standardized evaluation procedure, associated with specific criteria for measuring the skills, competence and integrity. Also, it does not provide the possibility to appeal the results of the assessment or decision of appointment.

The decisions transferring prosecutors are not based on well-defined criteria concerning the legal causes, which may be due to arbitrary and abusive decisions that affect the activity of the prosecutor.

The appointment of heads of prosecution offices can be carried out by the Attorney General, based on general criteria and also their dismissal based on - the failure of functional tasks, despite their importance - and does not provide for the possibility of appeal against the relevant decision of dismissal.

The absence of objective criteria and transparent procedures regarding the appointment decision, careers, promotion and discipline of prosecutors adversely affects the integrity, motivation and accountability of prosecutors body.

2. Problems pertaining to the independence of prosecutors.

➤ Politicising the selection process and voting for the Prosecutor General

The appointment and dismissal of the Prosecutor General has consistently been criticized as a politicized process. The reason for this are the decisions of the parliamentary majority for the appointment and dismissal of prosecutors General. The Constitutional Court itself, in two cases, nullified the decisions of dismissal before the mandate of the Prosecutor General.

Currently, the Albanian Constitution provides for the appointment of the Prosecutor General by the President with the consent of the Assembly for a term of 5 years, with the right to reappointment. The constitutional changes of 2008 and this appointment model excessively politicizes the appointment process for the selection of the Attorney General and places it under the constant influence of political influence at the end of 5-year mandate based on these criteria. The manner of election of the president and a simple majority required for the appointment and dismissal of the Prosecutor General does not provide the guarantees necessary for him to be and appear independent from sponsoring most.

Further, actual legal wording does not provide adequate guarantees that after the expiry of the mandate of the General Prosecutor the latter shall be ensured a suitable working position, in relation to the dignity and prestige of the office that he has sinned, showing a lack of respect and guarantee for an important public function.

➤ *Absence of intrinsic independence of prosecutors in assuming their constitutional function*

Besides inappropriate influences outside the system, prosecutors are subject to a significant restriction of their independence in relation to the hierarchical leaders, especially in the prosecutors at courts of first instance. Specifically, thanks to the prosecution function as a hierarchical and centralized body, the decision of the respective prosecutor regarding important aspects of the procedure, such as failure to begin investigations, their termination, the choice of an appropriate security measure, the wording of the final submission or assessment whether or not exercise his right of appeal, is mostly dependent on the decision of the superior prosecutor.

The law provides for the opportunity to refuse to fulfil an order or instruction of a higher prosecutor, only if this is manifestly contrary to the law. In practice objection has not been implemented, other than in any separate case. The trend to comply with the order of a superior comes to benefit favours in the assignment of cases or in the performance evaluation or even to work in the preferred sectors. This situation was further worsened by the Prosecutor General guidelines issued in accordance with the law.

Deep hierarchical regime prevents a sound career building of prosecutor and it does not promote initiative and professional growth. Prosecutors are simply implementing orders and consequently they lose their individuality and accountability issues. At the same time, this hierarchical order is the cause for political attacks against the Attorney General that are applicable across the institution.

3. Problems related to the accountability of the General Prosecutor's Office.

As highlighted in the European Commission's Progress for 2014, the lack of accountability of the General Prosecutor's Office remains a concern. Procedures for appointment and removal of key personnel in this office must be transparent, impartial and Prosecutorial Council 's role should be strengthened.

The law does not provide control and accountability mechanisms for the Prosecutor General in connection with his activities. Reporting by the Prosecutor to General Assembly is a means of control, while the Assembly may improperly influence on concrete issues when they are initiated as a result of parliamentary investigative commissions. There is no efficient accountability and accountability mechanisms, to avoid inappropriate interference in the activity of the prosecution.

4. Problems associated with the Judicial Police (PGJ). The Judicial Police is an organization that carries out investigations in criminal cases under the authority and direction of the prosecution. Consequently, the organization has, in its functioning and generally, at the stage of preliminary investigation and the conduct of the prosecution, encountered many problems in criminal justice. It is built in sections at each prosecution, as well as at services in the police structures. This organization is the weakest link of the criminal process and its relations with the prosecution and it failed to provide proper effectiveness.

➤ *Double administrative and procedural dependence of services*

Judicial police also performs administrative activities of the police to maintain order and public safety and the prevention of crime, and such procedural criminal law enforcement and providing conditions for the exercise of criminal prosecution by the prosecutor. Depending on the functions exercised as above, the line of dependency of police officers is different: for administrative activity before administration of origin (ASP), and for procedural activity they respond to the prosecutor.

This double dependency has created problems in everyday work practice, as a result of the movement and transfer of judicial services personnel, in particular the rotation of political power by creating instability and lack of objectivity in performing the judicial police. Judicial police investigation does not provide full and consistent service especially for offenses that extend in time and include a large number of defendants as organized crime, corruption and terrorism senior. Often, this double dependency caused the disclosure of investigative data to the administration leaders, which is contrary to the rules of investigative secrecy, the latter limiting sharing information only with the prosecutor. There are also cases where judicial police officers were subjected to disciplinary action for lack of information to their leaders and hierarchy.

➤ *Recruitment of judicial police officers at sections*

Besides JP officers who are lawyers, the inclusion of other police officers within the section of prosecution had intended to carry out investigations indivisibility and unity of investigative activity, serving as a link between the prosecutor and the judicial police. Over the years, the relationship of the officers of sections with the administration of origin was overshadowed; they lost connections with police services and became office employees, the same as section officers with legal training. This has seriously undermined the quality of the investigation and terminated the facility from other services.

With the amendments of 2010 to the law on judicial police, the competition procedure for the nomination of candidates was repealed sections, adding one more factor in the appointment of officers of the prosecution services in sections that are not subject to the principles of transparency and merit.

➤ *Inter-action with the prosecution office during investigation*

It is found out in practice that prosecutor's deviation from conducting preliminary investigation delegating his functions of the Judicial Police exists in practice. Also, the prosecutor's control over the work of the JP is weak. On the other hand, the Judicial Police has a tendency to consider the investigation concluded with the arrest of suspects by not establishing a connection with the

outcome at the end of their investigation. As a result of deficiencies in the reorganization of the judicial police investigation services are not efficient. Prosecutors do not have a determining role in evaluating the work of the Judicial Police officers, also for measures on discipline, dismissal and transfer, particularly the officers of the Judicial Police services who should be under their authority.

➤ *Training and specialisation of judicial police*

Unlike the models of other countries, in Albania there is not provided initial training nor continuous training program for officers of the judicial police. In addition, most of the judicial police is under police administration, while another grade five is under the administration of the prosecutors' office, not subject to similar programs of their training. Slightly better is the situation with the Judicial Police departments that are involved in the ongoing training of the ASM within its limited capacities.

On the other hand, there is lack of specialists from various fields of expertise, which will affect the growth of the quality of investigations in cases of organized crime, economic and financial crime, cybercrime, etc., That requires special technical knowledge and specialized training.

5. Problems related to the Prosecution Council.

The Council is an elected body by the prosecutors, by secret ballot, and consists of seven members, of whom six prosecutors and a representative of the Minister of Justice. Council meeting may also be attended by a representative of the President of the Republic.

Although it was conceived as a body representative body of prosecutors, as the High Council of Justice for the judiciary, in the current legal regulation this council does not have a genuine impact on the careers of prosecutors, appointment, transfer, discipline and promotion of their. Council organizes competitions for nomination of candidates for prosecutors, competitions for promotion and appointment directors prosecution and the Attorney General gives an opinion on the appointment, promotion, transfer, dismissal and disciplinary action against them every initiative.

The Prosecutorial Council opinions are only of advisory nature and they are not binding to the Attorney General. There has not been carried out a legal, structural and organizational reform of Prosecutorial Council yet to guarantee the independence of the exterior and interior of the prosecution as well as the guarantee of institutional integrity, career, responsibilities and independence of prosecutors. Prosecutorial Council does not function as a body separate from the authority of the Attorney General and it has no decision-making powers.

II. Criminal Procedure

Criminal process in Albania has undergone radical transformations with the entry into force of the Code of Criminal Procedure in 1995, however, still does not answer the criminality developments in Albania and the European Union standards.

1. Preliminary investigations.

Preliminary investigations pose problems related to the regulation of powers and reports to the prosecutor, the judicial police and court authorities in control of this phase of the criminal process.

The current wording concerning the failure to respect deadlines has created serious problems in the judicial practice, which has led to the conclusion that after the completion of the terms of the investigation no procedural action can be conducted, including notification of the charge, arraignment and presentation the request for adjudication. This problem also occurs in cases where the court, on the basis of a complaint, reverses the decision of the prosecutor for extension, without specifying a deadline by which the prosecutor must decide on the fate of the case, leaving in this way without solution issue.

2. Position of the prosecutor, conclusion of investigations and their inspection.

CPC has stipulated two ways of conducting an inspection during the phase of preliminary investigations: *first*, through the complaint to a higher prosecutor,

that can be carried out for any cause and procedural act, and *secondly* through the court appeal, that is legally restricted/confined and is referred solely to the actions not carried out by the prosecutor, that eventually should have been carried out. The law did not regulate the relationship among them, and it has not set out clear powers thus allowing the possibility of repealing the decision by the higher prosecutor, while the complaint is being examined at the court.

The law does not explicitly provide for the court revision on the content of the decision of the prosecutor on the dismissal of the case, and it is not connected to the accomplishment of further investigation acts, thus circumventing the possibility of judicial review with regard to the non-abidance by the criminal law.

Another issue concerns the evaluation on the sufficiency of investigative actions that were carried out in order to move in the other phase that of adjudication, and the inspection of the quality of investigative actions during the phase of preliminary investigation, and legally, this inspection is conducted by a higher prosecutor. In daily practice, it can be easily identified that the way of concluding a proceeding is an exclusive right of the prosecutor of the case that is simply approved by the higher prosecutor through an official letter, instead of providing a well detailed procedural act. Lack of provision in the respective legislation of the judicial examination on the sufficiency of investigative actions and quality of investigation, affected the quality of charges presented in the court.

The prosecutor has no right to terminate criminal cases with little risk, which does not facilitate large burden of prosecution and courts in criminal matters.

3. Problems related to the protection of victims of crime.

The procedural position of the victim of the offense, as well as the prosecutor's role in ensuring their protection is not regulated in accordance with the EU standards, such as forecasting mechanisms for the physical protection of victims and families thereof; respect for the right to legal aid when legitimized as a party to the process; recognition of rights, taking measures to avoid

harming their psychological and emotional; avoiding repetition of the question of the injured party; long-term physical and psychological assistance to the injured; protection of their dignity in question, avoiding direct contact between the victim and the defendant; reimbursement of expenses incurred by the injured as a result of active participation in the process; the right of appeal against decisions of the proceeding body; protection of privacy; the right to redress through restorative justice etc.

4. First Instance Trial

Discipline, development and trial guarantees. A crucial phase of the adjudication process are the pre –trial actions that eventually have to be the starting point. Meanwhile the CPC does not provide any pre – trial session for the judge, prosecutor and the defence lawyer, to determine on the overall development of the process, the steps to be taken, the data and the fixing of the hearing. The arrangement of a pre-trial session would provide predictability, efficiency and a reasonable time limit for the trial to take place.

The normal and formal participation of the parties in the trial is crucial to a duly and regular process. In daily based judicial practice it is identified that absence of the participating parties in the process, is one of the main reasons of postponing and dragging a trial, especially the absence of defence lawyer. Our CPC lack the proper legal instruments to be used by the judge in the application of legal and effective measures, when defence lawyer withdraws from the task, declines the task without any legal cause, or revocation of ex-officio defence lawyer. The same problem also occurs in cases of submission of applications is manifestly unfair to recuse a judge and the offensive behaviour of the parties in the trial. The judge is unable to take legal action against lawyers who repeatedly evade duty and prosecutors that cause delays in the trial due to their carelessness or lack of accountability. These grounds, as well as the judges overload problems, notification of witnesses and defendants, according to the methods provided in the Code notice, causing violation of the principle of trial within a reasonable time.

Code has not regulated the conduct of criminal proceedings, particularly at the stage of trial in the case of failure of the defence and the trial in absentia, causing unnecessary delays in hearings and in some cases the length of the trial.

The trial in absentia. The current provisions of CPC with regard to the trial/adjudication in absentia do not sufficiently provide and guarantee the procedural rights of the defendant and do not necessarily present the nine minimal rules stipulated in the Resolution (75)11 of the Council of Ministers Committee of European Council “*Adjudication criteria of absent defendant*”.

Default judgment rules provide for a short term within which the defendant must apply to be reinstated in time for appeal. This has resulted in an ineffective defence against a decision to which the defendant has no knowledge, particularly for those who are or are arrested abroad. The Penal Procedure Code does not recognize any remedies to the defendant to suspend the execution of sentence. In the Code of Penal Procedure it is not clearly defined what is the procedure for the retrial of a person convicted in absentia and it happens that people also turn to the courts with a request for the reinstatement of the right of appeal and the Supreme Court with a request for review. Although the Supreme Court²⁸⁶ has provided a unifying decision for the procedural provisions, there is a need for precise formulations and guarantees.

Special Trials. Criminal procedural legislation stipulates and sanctions two kind of special trials: direct trial and summary trial.

The number of cases going through normal trial procedures if compared to the number of cases undergoing the summary trial, significantly shows an increased percentage of summary trial cases. The Code does not stipulate any confinement/limitation of summary trials if compared to the danger posed to the society of the criminal offence and the defendant as well. This attitude has

²⁸⁶ Unifying decision no 1 dated 20.01.2011, no 1 dated 10.03.2014 and no 1 dated 19.06.2013 of the High Court.

already established a judicial practice, that summary trials are applied for all categories of criminal offences and defendants as well. Our CPC has not applied the dynamics of Italian legislation that amended the wording of articles on summary trials.²⁸⁷

With consideration to direct trial it can be easily identified that it is applied in a relatively low number of cases, no matter the positive aspects that characterise this trial in the category of special trials. This is as a result of the short time limit given to the prosecutor to prepare the case and present it in the court, providing the relevant and necessary documents, within the given time limit, for instance criminal record certification, uncertainty concerning summoning the defendant, if it has to be carried out by the prosecutor or the court, etc.

New accusations and withdrawal of the acts. The wording of the articles on the new accusations brought about many problems while being implemented. The previous legislation amendments did not provide any solution.²⁸⁸ These difficulties are closely related to the fact there is no provision on the applicable procedure, the court decision taking concerning the amendment of the legal qualification of the offence; composition of court panel competent in taking a certain decision, subject matter competence, procedural instant of amending the legal qualification of an offence, which contradicts and puts into question the right of the defendant to get acquainted with the accusation, to have the proper facilities and the adequate time limits to defend himself.²⁸⁹ The stand and attitude of Albanian courts is not the same always, notwithstanding the unifying decisions of the Supreme Court and the decisions of the Constitutional Court.²⁹⁰

²⁸⁷ Ref, recent amendments of Law no.479 /1999 and Law no.144 /2000 of the Italian Parliament, with regard to the articles 441 – bis of the Italian CPC.

²⁸⁸ Training sesión on topic “New Accuses in criminal process and the role of the Court”, School of Magistrate.

²⁸⁹ Decision of the European Court on case Drassich versus Italy.

²⁹⁰ Decision No.04 date 10.02.2012,

The wording of the article of CPC on the **withdrawal of the acts** by the prosecutor, established different case laws as well as difficulties in the procedure to be applied while withdrawing the acts. Returning the acts to the prosecutor is not defined as an exception, as such this brought about its increasing application, mainly to the detriment of the interests of the defendant.

Pronouncing and reasoning the decision It is already established as a common rule of our case law that the pronouncing of the decision is not reasoned, but only the disposition indicating the articles of the legislation that were applied, whereas the disposition of the reasoned decision is pronounced later on. Highly considering the fact that the right of appeal is closely related to the reasoning of the decision, the pronouncing of just the disposition, brought about the establishment of a case law not stipulated in the current legislation, as otherwise known as “complying with the time limit” aiming to exert of the right of appeal. Consequently, it is necessary to provide for a reasonable time limit in pronouncing and reasoning the decision (article 382 of CPC) on behalf of the court as well as the necessity on amending the provision of time limits for the appeal submitted at Appeal Court (10 days) and the recourse at the Supreme Court (30 days). The time period for the complaint starts to run on the day that the parties are notified on the reasoning of the decision.²⁹¹

5. Appeal Trial

Limits of Examination at the Appeal Court. The court of Appeal examines the case thoroughly and it does not restrict itself to only the grounds presented

²⁹¹ Proposal of Euralius Mission III. Refer to the Report 2007 “*Analysis of criminal appellate proceedings in Albania*”, published by OSCE Presence in Albania, stating that: “*Delays and inconsistencies in the time needed to issue written decisions can compromise the right of the accused person to be tried without any undue delay, in that these factors may delay the time in which the appealed filed by the accused person if processed and heard by a higher court. While such delays are the responsibility of individual judges it appears that procedural provisions disciplining the timeframe for the delivery of written decisions, and for the submission of appeals, are inadequate.*” Page 95.

in appeal. It examines even the part that belongs to the co-defendants who have not made appeal within the limits provided by the reasons explained in the appeal. The main concern related to this legal regulation is the fact whether the appeal shall be confined or not only to the grounds of the appeal and whether it would have any impact on the backlog of the Court of Appeal. The second issue relates to the extension of the appeal including the co – defendants who did not file any appeal. In these cases, when the appellant is the prosecutor, in line with point 2, letters a, b, c of the CPC, then the position of the co – defendant in absentia, no matter the fact has filed no appeal, might get be aggravated.²⁹²

Article 410/2 of CPC, as amended with Law no.8813 dated 13 June 2002, does not comply with the jurisprudence of Court of Strasbourg,²⁹³ decisions of Supreme Court,²⁹⁴ as well as the decision no.30/2010 of Constitutional Court on the guarantees of trial in absentia. The law does not explicitly stipulates the right of the relatives of the defendant to act on his behalf and propose an appeal only in exceptional cases, whoever the defendant expressed his will to be represented by his relatives.

Revision of the case. The current case law indicates some common grounds that bring about the revision of a certain case, and mainly are related to procedural violation of first instance courts, such as competences, evaluation of evidences, the protection right, notification of the defendant etc., but there are other cases that indicate violation during an investigation, in the way of obtaining and administering material evidences, expert assignment, etc. There is not any restriction on the remission of cases for re-adjudication.

The current case law indicated that: *first*, court of appeal decides on the revision of the cases based on grounds that are not provided by the CPC and,

secondly, a delay of trial sessions, where courts transfer cases to each – other, without providing any fundamental solution.

Another issue to be further considered with regard to the revision of the cases, is based on the fact that the compliance with certain principles are not yet explicitly stipulated in the CPC, such as that of not aggravating and complicating the position of defendant, the proceeding of summary trial when the previous trial has undergone the procedures of a normal trial, and the value of the evidences initially obtained in the first instance court. All this situation brought about difficulties and different case laws.

6. Trial at Supreme Court

The original jurisdiction of Supreme Court. Application of this jurisdiction has resulted in an overload of the High Court, decrease of its effectiveness and generally deficient in providing the initial trial. It turns out that there is an unnecessary overload on the activity of the court due to this jurisdiction, which has damaged the primary functions of the Supreme Court, that of the verification of the implementation of laws by lower courts and unify the judicial practice.

Adjudication of appeal, review jurisdiction of Supreme Court In most of the European countries, Supreme Courts are established as Court of Cassation, that have limited jurisdiction, for instance only in legal issues or issues of a certain crucial importance. Venice Commission has supported the proposal for the turnover of the Supreme Court into a Cassation one.²⁹⁵

Regarding the review of questions of fact, case law has not been reflected in the law to increase the incidence of reviewing the final criminal court decisions, which is the result of : (i) the decisions of the European Court of Human Rights

²⁹² Sesionet trajnuese në Shkollën e Magjistraturës Tiranë.

²⁹³ The case of *Sejdovic v. Italy*, dated 10 Nov 2004.

²⁹⁴ Decision no.354 dated 28 July 1999 and decision no.386 dated 29 July 2000.

²⁹⁵ Opinion no.754, “*On the amendments of Criminal Procedure Code and Civil Procedure Code*”, Strasbourg, dated 16 July 2014, page 4-5, [http://www.venice.coe.int/ëebforms/documents/default.aspx?pdffile=CDL-AD\(2014\)016-e](http://www.venice.coe.int/ëebforms/documents/default.aspx?pdffile=CDL-AD(2014)016-e).

Human, which has found the violation of the fundamental rights by the Albanian courts and (ii) the right to review the criminal decision to persons who are required or permitted extradition, according to the law governing judicial relations with foreign authorities.

7. Jurisdictional relations with foreign authorities and adjustment to the UE standards.

Articles of CPC on extradition, regatory letters and recognition of foreign criminal decisions are not fully in compliance with EU standards, because Albania has based its legislation in the framework of Council of Europe Conventions. In addition, there are discrepancies with the law “*On international judicial cooperation with foreign authorities*”, especially considering the cases of refusing the application of extradition, application of coercive measures, arrest on behalf of judicial police, and the European Convention “On the International Validity of Criminal Judgements”.

In the framework of the process of becoming a member state of EU, procedural legislation, especially that part related to judicial and police cooperation in criminal matters, has to comply with the EU standards.

Criminal Law

Penal Code entered into force in 1995 and has undergone many changes, along with the need for interfering and improvement, problems have been created. As a result, the current code has created anomalies in the risk categorization of offenses and the penalties imposed on them; lack of criminal offenses in certain areas; inadequacy of legal regulations in its general part and overall inconsistency with EU standards to respond to approximate meaning of criminal provisions of common interest.

1. Methodology for selection of the sentence. The legislator is bound by the Constitution to determine the evaluation criteria, which the judge has to follow when selecting the type and extent of his punishment. The criteria laid down in the Criminal Code currently are not sufficient to achieve a comprehensive

assessment of the type and measure of punishment, leaving too much room for discretion of the court. This issue is emphasized even more, given that in many criminal provisions there is a large margin between the minimum and the maximum sentence. Also, the lack of methods of determining criminal punishment significantly increases the possibilities of unfair interference and corruption in court, and the risk of unequal treatment of individuals in criminal proceedings.

Constant changes of the Criminal Code have resulted in a lack of harmonization of penalties within the provisions of the Criminal Code (illegal possession of firearms such a practice could be sentenced to the same extent as and murder). While for some offense life imprisonment is foreseen even when the consequences come from negligence.

2. Enforcement of the mitigating and aggravating circumstances. Criminal Code due to subsequent changes determined using two standard for applying aggravating and mitigating circumstances, as qualifying conditions for a category of offenses and circumstances as assessment for other categories of crime. It has to have ambiguity and duality within a legal text, creating anomalies in determining criminal penalties.

3. Unification of constituting criminal offenses. It is frequently found in the Criminal Code that offenses and the distribution are not structured properly, thus offences being similar in nature are scattered in different heads. Offenses are not classified according to their risk. Problem is the rehabilitation institute, which has penal provisions related to serving the sentence, leaving out the cases when – because of the statute of limitations, suspension of the sentence, probation – no sentence was served. For some offenses, life imprisonment is the only penalty, contrary to the position of the Constitutional Court which has declared fixed penalties as incompatible with the Constitution.

III. Penitentiary System

1. For the Educational and medical measures there is the problem of the lack of appropriate institutions for their execution, making the latter impossible.

Persons against whom compulsory treatment in a medical institution is set, they continue to stay in the penitentiary institutions, or in the best case in the prison hospital, as there is no specific medical institution.

2. Alternative penalties. Not all alternative sanctions have been applied in practice. Options given by the court often is the suspension of imprisonment and placement on probation, followed by work in the public interest, bail and staying at home. Semi-liberty option remains unimplemented in practice, due to the lack of institutions and conditions for its implementation. Problems relating to the implementation of electronic surveillance in the fact that the Penal Procedure Code has not provided any specific criterion has limited application and with the consent of the person.

Courts can determine together alternative punishment for the convict one or more punishments, such as rehabilitation of prisoners against the use of drugs and alcohol, etc. Verified in the practice of Probation is the difficulty to make possible the implementation of these punishments, as their execution is currently impossible to ensure the Probation Service, in the absence of the creation and coordination structures which must cooperate.

3. Probation Service. Probation Service currently does not have a defined status in the Code of Criminal Procedure and its procedural position is not legally clear. There are no set rules about the design of an evaluation report by the probation, the prosecution or the court. Practice shows that in very few cases prior to the sentencing, prosecutors or courts have required an evaluation report from probation service may be imposed if the alternative. In addition, nowhere has been foreseen what's the use of these reports in the criminal process.

4. Implementation of imprisonment. Additional problems appear in implementing the terms of imprisonment, in particular material conditions, the state of their prisons and overcrowding. Also, frequent changes of prison staff and prison police training limits their effectiveness.

In their entirety, the findings of the analysis of the chapter " Analysis of the criminal justice system " pose problems, which need to be addressed with concrete measures to ensure the proper functioning of this system.

CHAPTER VI ANALYSIS OF THE LEGAL EDUCATION SYSTEM

I. Introduction

The analysis aims at presenting an overview of the current development of legal education in Albania. Its main objective is to review the need to reform all the forms of legal education. *First*, it aims at identifying the level of knowledge of the legal nature and raising awareness in law enforcement, starting from the legal education of early ages until the undergraduate school system. *Second*, this analysis aims at reviewing the basis of the functioning and guaranteeing the quality of the high legal education system, legal professional education and the level of adequacy of the graduate and professional qualification with the labour market demands.

Based on these objects, the progress of the legal education in Albania is analysis starting from the undergraduate education up to the continuous education of jurists, whose activity has influences the justice system.

II. Constitutional, legal and regulatory framework

The legal framework on legal education consists of legal acts which govern education in general, including the law on undergraduate education and the law on higher education in the Republic of Albania, and also laws which govern special forms of professional postgraduate legal education.

The legal framework may be summed up as follows:

1. Constitution of the Republic of Albania;
2. International Acts ratified by the Republic of Albania;
 - a) Convention against discrimination in education, Paris, 14 December 1960.²⁹⁶;

²⁹⁶ <http://arkiva.mfa.gov.al/dokumenta/unesco-26.1.2010.pdf>, Date of entry into force in Albania: 1.3.1964;

- b) Convention on recognition of qualifications as regards high education in the Europe region, signed on 11.04.2007, Lisbon.²⁹⁷;
- c) Bologna Declaration of 19 June 1999.²⁹⁸;
- d) EU-Albania Stabilisation and Association Agreement (SAA)²⁹⁹, National Plan for European Integration (NPEI) 2014-2020;
- e) Treaty on the Functioning of the European Union (TFEU);
- f) Council Recommendation (2011/C 191/01), dated 28 June 2011 “*On policies reduce early school leaving*”;
- g) Recommendation of the European Parliament and Council (2006/962/EC), dated 18.12.2009 “*On key competences for lifelong learning*”;
- h) Council Conclusions (2009/C 119/02), of 12 May 2009 “*On a strategic framework for European cooperation in education and training*” (ET 2020).

3. Laws:

- a) Law no. 69/2012 "On the undergraduate education system in the Republic of Albania";
- b) Law no. 9741, dated 21.5.2007, “On higher education in the Republic of Albania”, amended by law no. 9832, dated 12.11.2007, Law no. 10137, dated 11.05.2009, Law no. 10307, dated 22.07.2010, Law no. 10493, dated 15.12.2011, Law no. 82/2013, Law no. 51/2014;
- c) Law no. 8136, dated 31.7.1996, “On the School of Magistrates of the Republic of Albania”, amended by law no. 9414, dated 20.05.2005, Law no. 97/2014;
- d) Law no. 9877, dated 18.02.2008, “On the judicial power organisation in the Republic of Albania”;

²⁹⁷ Date of entry into force in Albania: 1 March 2002

²⁹⁸ Date of entry into force in Albania, 2003;

²⁹⁹ Date of entry into force, 01.04.2009.

- e) Law no. 8737, dated 12.2.2001 “On organisation and functioning of the Prosecutor's Office”;
- f) Law no. 9109, dated 17. 07. 2003 “On the profession of the lawyer in the Republic of Albania”, amended by law no. 9795, dated 23. 07. 2007, Law no. 10 047, dated 24. 12. 2008 and also Law no. 91/2012, dated 27. 09. 2012;
- g) Law no. 91 dated 27. 09. 2012 “On the National School of Advocates”;
- h) Law no. 7829, dated 1.6.1994 "On public notary service" amended by Law no. 7920, dated 19.04.1995, Law no. 8790, dated 10.05.2001, Law no. 9216, dated 01.04.2004, Law no. 10137, dated 11.05.2009, Law no. 10491, dated 15.12.2011, Law no. 79/2013, dated 14.02.2013, Law no. 131/2013, dated 29.04.2013;
- i) Law no. 10031, dated 11.12.2008 “On the private judicial enforcement service”;
- j) Law no.10.385, dated 24.02.2011 “On medication in dispute resolution”;
- k) Law no. 8901, dated 23.5.2002 "On bankruptcy" amended by Law no. 9911, dated 19.05.2008 “On some addenda and amendments to the law on bankruptcy”;
- l) Law no.10 018, dated 13.11.2008 "On the state advocate office";
- m) Law no.10 032, dated 11.12.2008 "On Prison Police";
- n) Law no. 108/2014, dated 31.07.2014 “On State Police”
- o) Law no.8328 dated 16.4.1998 “On the rights and treatment of prisoners" amended by law no.8758, dated 26.3.2001 by law no.9071, dated 22.5.2003 by law no.9888, dated 10.3.2008 by law no.10 087, dated 26.2.2009;
- p) Law no. 8331 dated 21.04.1998 "On execution of criminal decisions".

III. Presentation of the legal education situation in Albania

1. Undergraduate legal education

1.1 Undergraduate legal education in Albania

Reform of undergraduate education system (SAPU) in the Republic of Albania, which took place during 2005-2012, reorganised the levels of education and increase the period of compulsory education from 8 to 9 years.³⁰⁰ Undergraduate education consists in preschool education, basic education and secondary education and it is provided by public and private education institutions.

Compulsory basic education is defined by law for all the children over 6 years old, it lasts for 9 years and it is compulsory. The students attend educational institutions providing basic education until 16 years of age. Persons who reach 16 years of age, but who fail completing the basic education, may complete it in part-time schools.³⁰¹

Secondary education, includes general secondary education (gymnasium), vocational training and oriented education (artistic, sports etc). Full-time secondary education may be followed by all the students who complete the basic education, whose are under 18 years old. Formally, organisation, types and forms of the undergraduate education are comparable to European standards. The quality and effectiveness (internal and external) of the system remain an issue of concern. Even though the reforms undertaken in the undergraduate education system during 2009-2013 referred to the average

³⁰⁰ Document of the strategy of development of undergraduate education 2014-2020 (draft), Tirana, 2014, pg 14.

³⁰¹ Document of the strategy of development of undergraduate education 2014-2020 (draft), Tirana, 2014, pg 14.

quality and quantity indicators of EU Members States, they could not ensure their fulfilment.³⁰²

Based on this division of the undergraduate education, the current situation of legal education in existing curricula will be analysed and the identified problems of these curricula are underlined.

1.2 Legal education as part of the general undergraduate education

Currently, legal education is part of programmes and undergraduate curricula in the subject "civic education" or "civics". During the period 1998-2005 the undergraduate curricula included a subject called "Legal Education" which was later removed and currently, it is not part of the undergraduate curricula.

The National Strategy on Education points out even the aims of the field of study linked to social sciences. Therefore the aim is that: "(...) during undergraduate education the students: acquire basic knowledge in the main discipline of social sciences including: history, geography, civic education, sociology, economy, psychology, philosophy etc and: skills to apply them in daily life; ***acquire the basics of civics, ensuring the understanding of the lawfulness, political, social, economic and cultural processes and related issues, through the study of the human experience.***³⁰³"

School texts used in post-graduate education increasingly deal with social and educational problems and phenomena by giving to the rights and obligations the dimension deriving from the law. The impact of the school on the education of the new general with the proper emphasis on the issues which create the foundation of being a citizen, is achieved even through texts which are used in the academic process. The school gives special importance and place to subject including physics, mathematics, biology, chemistry etc and the students spend more time and energy in learning these subjects. However, it is important to

³⁰² Document of the strategy of development of undergraduate education 2014-2020 (draft), Tirana, 2014, pg 15.

³⁰³ For additional information see "Curricula framework of undergraduate education" prepared by the MES, Tirana 2013, pg 38.

assess and handle as similarly important subject even the social sciences subjects which provide legal knowledge and education.

The following part is a summary of the content of school texts dealing with aspects of legal knowledge:

From Grade 1 - 4 in 9-year education, provides legal knowledge in the subject "Social education" structured in six chapters: Culture; People, Places; Environments; Individual development and identity; individuals, groups and institutions: production and distribution; ideals and practices of the society. Social education is focused mainly on: education with the rules of good-behaviour in the society; familiarity with the rules of road traffic; meaning of responsibility in daily life; rights of children and their distinction by the adults; non-discrimination and equality of children. The above-mentioned topics are dealt with in 3-4 classes per year.

From Grade 5- 9 the text schools of legal knowledge are: Social education; civic education; career education and technological knowledge and history. The aim of the programme of the subject of the civics education concerns mostly about education for democratic citizenship which objective is: to prepare the youngsters and adults for active participation in the democratic society, thus strengthening democratic culture; to make the youth capable of fighting xenophobia, violence, racism, aggressive nationalism and intolerance; to ensure and strengthen social cohesion, social justice and the general good; to strengthen civil society through citizens equipped with knowledge and democratic expressions.³⁰⁴

▪ ***For the 5th grade of the 9-year school:***

The text is structured in V chapters. Chapter I "Family"; Chapter II "Community", Chapter III "Governance", Chapter IV "Road education",

³⁰⁴ Programme of the subject of Civic Education, Grade 1 and Grade 6, November 2014, pg 7

Chapter V "Production, distribution, consumption" which provide legal knowledge.

▪ ***For the 6th grade of the 9-year school:***

The subject of **Social education** is divided into four chapters: chapter I topic "Individuals, groups, institutions" concerning the rights and freedoms of man; chapter II "Ideals and practices of citizenship" is an adjusted topic dealing with various issues including discrimination and education of the new generation with the standards of equality etc.; chapter III "Power, authority, governance" provides knowledge of the laws and customs"; chapter IV "Production and distribution" concerning employment relations.

▪ ***For the 7th grade of the 9-year school:***

According to the school curricula, the texts of the **Social education** for the seventh grade of the 9-year school are organised into nine chapter: Chapter I "Individuals, groups, institutions"; chapter II "Democratic state and its citizens", chapter III "Separation of powers in the democratic system", chapter V "Production and distribution", chapter VI "Ideals and civic practices". These chapters consist in information on the law and especially they create the possibility to analyse important elements in the topic "restriction of rights", "decision-making" etc.

▪ ***For the 8th grade of the 9-year school:***

According to the curricula incorporated in respective texts of "**Social Education**", the subject is structured into four chapters: Chapter I "Dependence of the individual on others", Chapter II "Dependence of the individual on the cultural, national and regional environment", chapter III "Link with and dependence of Albania on neighbours", Chapter IV "Global problems" which may transmit legal knowledge and aspects which deal with issues of poverty reduction and employment.

▪ ***For the 9th grade of the 9-year school:***

The subject of "**Social education**" in this grade aims at providing knowledge of concepts and main principles of democracy, features of democratic governance etc. The subject is structured in four chapters: Chapter I handles issues of democracy; Chapter II "Factors which help and hinder democracy"; Chapter III "Functioning of democracy"; Chapter IV "Participation in democracy".

▪ ***For the 10th year of the undergraduate system***

"**Career education and acquiring of skills**" as a text is organised in three main lines. First line deals with the problems of health education, divided into six chapter: Second line deals with "Safe behaviour" with five chapters; Third line deals with "First aid". Such lines provide proper legal knowledge in this area.

▪ ***For the 11th year of the undergraduate system***

"**Citizenship**" is a text organised into 13 lines among which: Line 11 provides knowledge about the consumer, his rights and obligations, settlement of simple problems of the consumer, sale-purchase contract, advertising Line 12 concerns safe road traffic, priorities of the pedestrian, traffic signs, street behaviour. Line 13 provides concerns information, the right to information, freedom of media, consequences of freedom of media etc.

Legal knowledge may be acquired even through the subject of History. The subject of "**History**", similarly as that of the Social Education, is linked to inter-curricula topics: National identity and familiarity with the cultures; human rights; moral decision-making; sustainable development; environment; dependency; peaceful co-living; provide for dimensions which enrich the curricula through the elaboration of focused content which is adapted within the

topics of history. ³⁰⁵ Seen from this perspective, the subject of history and civic education share concepts such as power, authority, law, governance, representation, freedom etc. Skill and expressions: for instance description, analysis, explanation, discussion, research, interpretation etc. ³⁰⁶

1.3 Legal education through education of human rights

Human rights occupy an important place in the subjects of undergraduate education:

- a) in the standards of the subject of civic education;
- b) in the official curricula of the subject of civic education and in the curricula of the undergraduate system, grades 1-12;
- c) Issues of the Convention of the Human Rights are present in school texts of the subject of Civic Education and in various activities which, at school, must be carried out in implementing the curricular objectives;
- d) Human rights are handled even in the framework of inter-curricular activities (inter-subjects) and extracurricular activities (extracurricular activities). Numerous publications by NPOs as well support the development of these activities;
- e) Education of human rights is part of numerous unified programmes of training and qualification of teachers of civic education. ³⁰⁷

³⁰⁵ Ministry of Education and Sports, Institute of development of education, Programme of the subject of history, basic education, third degree, 2014, pg 17.

³⁰⁶ Programme of Civic Education, Grade 1 and Grade 6, November 2014, pg 7 17

³⁰⁷ Commentary: Universal Declaration of Human Rights. For the teachers of secondary school; Author, Marjana Sinani, Milika Dharmo, Xhuli Harasani, Vasilika Hysi, Eralda Methasani. This document is prepared in cooperation with Ministry of Education and Science, UNESCO, with the financial support of the Ministry of Foreign Affairs of Italy.

Elements of legal education which are handled in the education about human rights are mainly: non-discrimination, equality of citizens, human dignity, freedom, justice, equality and rule of law.

One of the novelties of the school for this purpose is even **Student Government**, which being one of the forms of democracy in action, plays a primary role in the education of democratic values and positions and helps the students understand and convince themselves that they may be actors of change at school, in the community and even in the society. Creation of the Government of the students is a concrete model for application of the "Convention on the rights of the child" and several other documents which concern the rights and freedoms of the individual. "Convention on the rights of the child" ratified by the Albanian government provides for several rights to the children and youth among which: "The child has the right to express his/her views freely on issues related to him/her" (Article 12). ³⁰⁸

2. High legal education in Albania

2.1 Development and current situation of the high legal education system Challenges of massiveness

The study of evolution of legal education aims at informing of the dynamics of development, problems and the needs of reforming the high legal education. This viewpoint is extended especially in the last 10 year period because such period corresponds to several reforms pointed out by international commitments, in order to guarantee quality in high education and mobility. Such reforms have had a considerable impact on the current situation of high legal education in Albania.

³⁰⁸ Instruction "On creation and proper functioning of the student government" (prepared in support of the MES programme 2009-2013 and in the framework of the programme of basic education of UNICEF 2012) implemented by MES and Alb-Aid Association pg. 4.

The origins of efforts to develop high education with new mechanisms imposed by the Bologna Process.³⁰⁹ were marked by the adoption of law no. 8461, dated 25.02.1999, "On the higher education in the Republic of Albania". This law was repealed in 2007 with the approval and entry into force of law no. 9741 dated 21.05.2007, "On the higher education in the Republic of Albania", amended,³¹⁰ which constitutes the current legal basis of organisation and functioning of the higher education in Albania. Analysing this legal basis, one finds that neither the law on higher education nor the sublegal acts issued in implementing the law contain special provisions on higher legal education.

Missing a special legal basis, higher legal education is developed within the frame of the higher education in general and it has been subject to the development of this system. However, it has provided particularities which are not found in other branches, needing to be analysed. Thus, this system has encountered extraordinary massiveness of institutions providing such

³⁰⁹ For additional information see: Final report on reform of the higher education and scientific research, Tirana, July 2014, published in http://www.fim.edu.al/reforma14/raport_reforma_arsimit_larte.pdf, accessed on 28.02.2015

The following are some of the main events of development of the higher legal education system:

2001: Albania signed the Lisbon agreement on recognition of qualification and start of the process of recognition of foreign degrees in the country according to the European criteria and standards, foreseen in the framework of the Bologna Process.

2001: Ministry of Education and Science orders the implementation of the ECTS (European Credits Transfer System) in the curricula in Albania.

2003: Albania officially becomes part of the Bologna process. This year is the beginning of review and adaptation of the curricula of higher education according to this system, ECTS and their implementation.

2003: establishment of the Accreditation Council, as an important link of the system of quality assurance.

³¹⁰ Law no. 9741, dated 21.5.2007, "On the higher education in the Republic of Albania" is amended by law no. 9832, dated 12.11.2007, Law no.10137, dated 11.05.2009, law no.10307 dated 22.07.2010, law no.10493 dated 15.12.2011, Law no.82/2013, law no.51/2014

education, establishment of a considerable number of departments and faculties graduating jurists. So far, it results that no special analysis on the consequences of this massiveness on quality, labour made and demands for higher professional legal education is made, while public perception considers it followed by the reduction of quality and worsening of the content of such education.

Therefore, based on the above-mentioned features, in this study we will try to give the solution to some questions raised while analysing this field of education:

1. How does the massiveness of such education affect the justice system?
2. Do the institutions of higher legal education guarantee teaching quality?
3. What is the position of the study programmes and curricula of the law faculties and departments compared to international standards?
4. Is there any alignment between the diploma issued by law faculties and departments with the higher professional education?
5. Is there any alignment between the diploma issued by law faculties and departments with the labour market? etc.

If we were to generally characterise the course of development of higher legal education in the last 10 year period, the first feature which is identified is **massiveness**, not only in higher public education, but also private education. Until 2003, legal education was offered only by the law faculties of public universities, including especially the Law Faculty of the University of Tirana, representing even the historical institution in the development of such education.³¹¹ The Law faculty of University "Luigj Gurakuqi" in Shkodra.³¹²

³¹¹ Faculty of law is established in 1954 known as Higher Law Institute. After establishment of the State University of Tirana, the higher law institute became part of the university, as one of the seven faculties, under the name "Law faculty". In 1965, it was reorganised and it was called "Faculty of Political and Legal Sciences", including branches of political and legal sciences. Such branches prepare, respectively, specialists of the political profile for the central and local bodies of the power and jurists for the justice authorities and state administration. In 1967, the branch of

was established in 1992, the Law Department in the University "Ismael Qemali" in Vlora³¹³ was established in 2003, the Faculty of Political and Legal Sciences in the University "Aleksander Moisiu" in Durres³¹⁴ was established in 2010, whereas in 2013 it was opened the first cycle of Bachelor studies "Legal science in Business" and "Legal science in the public sector" in the University "Aleksander Xhuvani" in Elbasan.³¹⁵ The part-time study system in public universities began as of 2005, because the previous system of distance learning was suspended in 2001.

In addition to public law faculties, the non-public higher institutions were set up as of 2003.³¹⁶ The first non-public institution licensed in this field is the

journalism was opened attached to this faculty, preparing journalists for the Albanian press and radio-television. In 1991, the branch of law was separated from that of philosophy which has replaced the branch of political sciences. Two special faculties were created, while the branch of journalism was transferred to the Faculty of History and Philology (for addition information see: *Internal assessment report of quality, for the academic year 2011-2013, law Faculty, UT*).

³¹² DCM no. 349, dated 10.08.1992 "on the opening of the branch of law and business administration in the University "Luigj Gurakuqi" Shkodër, branch of German language in the University of Tirana and "Aleksandër Xhuvani" Elbasan, branch of tourism in the Faculty of Economy of the university of Tirana and re-opening of the branch of statistics in this University. The second cycle programmes of study were opened by DCM no. 1162, dated 25.11.2009 in the profile "Private and business law" and also DCM no. 682, dated 25.08.2010 in the profile "Constitutional and administrative law"

³¹³ Letter reg. no 4238, dated 04.07. 2003

³¹⁴ Bachelor programme in law was opened by DCM no. 350, dated 12.05.2010, whereas the Master Programme by Order no. 207, dated 31.05.2013; Reorganisation of faculties of universities was done through the DCM no. 685, dated 25.08.2010 "On reorganisation of the university "Aleksandër Moisiu" Durrës".

³¹⁵ DCM no. 565, dated 27.06.2013

³¹⁶ European Investment Bank suggested that for the opening of private faculties initially it would be necessary to trace what the public institutions are failing and what the private ones may provided better. Report "Albania Higher Education Report 2006", European Investment Bank.

Non-Public Higher University School "Luarasi",³¹⁷ initially specialised only in the justice areas, which started its activity in the academic year 2004-2005. Until 2005 it was the only non-public higher school in this field, among 4 other non-public higher schools. However, during the period 2005-2009, the licensing of non-public higher education institutions marked a considerable increase (as shown in graphic 1). 34 new non-public higher institutions were licenses and one public institution, 17 of which consisted as well of law faculties. During the period 2009-2013, two public institutions of higher education and 10 non-public institutions were created, of which 5 consisted of law faculties.

The process of considerable increase of the number of higher education institutions providing legal education was followed by a multiplication of the number of quota in public universities, while the private sector consisted of a greater number of institutions, but lower number of students compared to the public law faculties, a conclusion which is observed even in the data of the Graph no. 5 2.³¹⁸ In the law faculties of the public higher education institutions the overall number of students until the academic year 2014-2015 is 8575 students, while in non-public higher education institutions is 2010 students.³¹⁹ After the closure of the law programmes, it results that the number of students in public law faculties is 4 times higher than in non-public ones.

An important aspect of reforming of the legal education system is even the **system of quality assurance in the higher institutions**, created by entry into force of the law "On higher education" of 1999. After creation of the Accreditation Agency of Higher Education Institution (2001), the Accreditation Council was set up in 2003 as an important link ensuring quality of the higher

³¹⁷ DCM no. 611 dated 11.09.2003. Second cycles of full-time studies are opened by DCM no. 549 dated 16. 08. 2012 in the Professional Master "Administrative Sciences". Order, no.364,dated 04. 09. 2013 on the Professional Master "Criminal law", and also DCM no.548 dated 16. 08. 2012 on the scientific master programme in "international relations".

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*

Education institution which checks the quality in the public and non-public higher education institution. In 2014, at the end of the assessment process, MES proposed to the Council of Ministers the taking of measures against some non-public higher education institutions, resulting in suspension or closure of some of them.³²⁰ Currently, the situation is as follows: 5 law faculties or law departments in the public university, respectively, University of Tirana, Shkodra, Vlora and Durres and Elbasan, and 12 in the non-public higher schools. Of these, 16 law faculties and departments offer studies and diploma of Bachelor cycle and 13 law faculties offer studies in the "master" cycle and 3 law faculties offer doctoral studies.³²¹

2.2 Admission to the higher legal education

The procedures and criteria for admission of students in higher legal education institutions are governed based on law no. 9741/2007, "On higher education in RoA", amended. After entry into force of this law, from the statistical data it is observed that there is an immediate increase of new registration during the academic year 2007-2008 of the non-public universities, while it is clearly seen a disproportionate relationship with the private sector. The number of admissions to the non-public law faculties is increased when the number of quota of admission to the public law faculties is decreased and vice versa. (Graph 3.³²²).

Despite the considerable increase of the number of admissions to the public law faculties, the number of academic staff is increased at a different pace. Graph no. 4 show that in the public law faculties there is a slight increase of the number of the academic staff after the academic year 2008-2009. Despite this, such increase is not similar to the staff increase in the non-public faculty. Such phenomenon is explained by the fact that new academic staff is recruited

³²⁰ Decision of the Council of Ministers no. 539 dated 6.8.2014 "On removal of licenses of some private higher education institutions"

³²¹ Data obtained officially by the Ministry of Education and Sports, Letter reg. no 15127/1 dated 12.03.2015

³²² *Ibid.*

considering the foundation of new law faculties or departments, and also in order to meet the legal criteria to be provided with the licences and also accreditation process criteria.

Such increase in the number of the pedagogues has resulted in the improvement of the relationship between the number of students and the number of pedagogues and it is presented in Graph no. 5. In the public law faculties the ratio is 1 pedagogue per 44 students, whereas in the non-public faculties it is 1 pedagogue per 9 students. However, it must be emphasised that this proportion must be taken with reserve, because non-public higher education institutions have a greater number of part-time academic staff, as it is shown in the data of the Graph no. 6. (Annex).

Concerning the administration criteria, legal regulations include all the areas of study and are applied similarly to the candidate students in law. It must be underlined that such admission criteria do not cover the non-public higher legal education institutions, instead they are made only for the public ones. In concrete terms, **admission in the first cycle of studies**, is done based on the candidacy of the students who have complete the state matura.

The admission quota in the higher education public institutions, for the first cycle of study, is approved by the Council of Ministers on the proposal of the Ministry of Education and Sports. This Ministry compiles its proposal after consultation with the public higher education institutions and recommendations of the Council of High Education and Science. **Based on law, the higher education institutions have the right to define special criteria for the selection of candidates.** Despite such legal regulation, no special criteria are applied for the selection of future law students for admission to the study programmes in law in the public universities, apart from the merit-based classification based on the state Matura quota.³²³ In non-public universities, the criteria are different. For instance, in the European University of Tirana, Bachelor programme, when

³²³ Data obtained officially by the Ministry of Education and Sports, Letter reg. no 15127/1 dated 12.03.2015

deemed reasonable by the Rectorship office, the Faculty is notified of developing the IQ test, or the selection test, to admit the persons who pass the test. In the university "Marin Barleti", the candidates who apply to the law programme must be subject to the logical - psychological test, conducted by a commission of 3 persons (one psychologist, one jurist and one sociologist). In the non-public high school "Bedër" the average grade point over 8 is required and if this criteria is not met the candidates go through an entry exam.³²⁴

Admission of students *in two other cycles of study*" is done based on the results achieved in the preceding cycle. Definition of the average level is done by the universities themselves.³²⁵ and it has been flexible depending on their admission quota and policies, especially for the public universities. For example in the University of Tirana it is considered not only the level of the average grade but also the university of completion of the first cycle of studies. In this way, priority is given to the students graduated in the University of Tirana. Based on this phenomenon, it may be concluded that there are no standard policies for admission of students at the second level of studies.

An important aspect in the frame of admission is the mobility of students. This is a new spirit which derives from the Bologna Declaration and it is an added value to the students themselves. It results that there are cases of mobility between private universities, but the most evident phenomenon is the transfer from one university to the University of Tirana or from some non-public universities or universities abroad to the University of Tirana. According to the data of the Law Faculty of UT; from the academic year 2010-2011 until 2014-2015, 353 students are transfers to this Faculty.³²⁶

³²⁴ *Ibid.*

³²⁵ <http://www.uet.edu.al/index.php/sq/studio-ne-uet/si-te-aplikojme>

³²⁶ Data obtained by the Secretary of the Law Faculty of the UT.

2.3 Study programs at the higher legal education institutions and their approximation to the international standards

The programmes of study in the law faculties are designed according to the provisions of law "On higher education in the Republic of Albania" (amended). In line with the requirements of the Bologna Process, the law programmes are divided into three study cycles:

- a) **First cycle of studies:** Bachelor programme, 180 credits, 3 year;
- b) **Second cycle of studies:** "Master" programme: "Master of Science" (120 credits) "Professional Master" (60-90 credits);
- c) **Third cycle of studies:** Doctoral programme, 60 credits for organised studies.

Upon completion of studies it is issued respectively a first level diploma, second level diploma and scientific title "doctor" for each of the study cycles.

The law foresees the possibility to organise integrated programme of first and second cycle of studies. Such programmes are defined by the Council of Ministers, by the legal studies are not included in these programmes.³²⁷ Moreover, from the legislation is not clear the degree level for the students who complete the programme of the first cycle of studies and professional master programme of 60 or 90 credits. Such inaccuracy includes not only the system of full-time studies, but also the part-time studies.

As regards the content of the programmes of the study cycles, law "on higher education" matches the number of credits for each study cycle, but it leaves it up to the higher legal education institutions to define the credits for each subject. Consequently, the law faculties are free to accord to the subject a

³²⁷ Based on the report prepared by Ministry of Education and Science, only the branches of Architecture, Medicine and Pharmacy are organised in the form of integrated studies. "Report on Bologna Process Implementation 2014", <http://www.ehea.info/Uploads/National%20reports/Albania%202009-2012%20operat.pdf> accessed on 28.03.2015.

different number of credits, regardless of their importance in the education as jurists. ***Currently, there is no act of compulsory nature³²⁸ or policy document to define the group of main subjects necessary for the education of a jurist, which should be delivered in each faculty offering legal education. There is confusion even in the proportion of the compulsory and optional subjects.*** Moreover, in some cases a better distribution of credits is necessary, For example in the University of Tirana there are subjects with 9 credits within one term, while they must be extended to two terms, or the volume of the subjects must be reduced. It has made the number of credits fictitious. Often courses developed by students at universities are not substantially conform to " main pillar " of education of lawyers as they lack a systematic and consistent control of state institutions in their accuracy and standardization.

Concerning the content of curricula, it is worth pointing out that the curricula of some faculties is rich with elements of practical nature. For illustration purposes, it may be mentioned the inclusion of clinical subjects in the law faculty subjects of the UT³²⁹ and other faculties. However there is no guarantee for these subjects to be improved and their continuity to be ensured, acquiring professional personality, with certified lawyers-pedagogues and to be transformed into *pro bono* advocacy centres.

A supervised internship of students is organised for the master programme. However, there is no warranty for the proper functioning of internship, because the connection of the higher education institutions and law practitioners is unclear. There is little access for law practitioners even in the definition of teaching programmes/curricula. Cooperation with them is random, rather than institutional. No cooperation agreements are published on the websites of the universities, while there are no political- administrative provisions for this issue. Moreover, there are no provisions for cooperation with personalities of the internship in the scientific tutoring and student graduation. There is no internal regulation of the manner of inviting such practitioners or professional

³²⁸ In addition to the Instruction no 15/04. 04.2008 of the Ministry of Education

³²⁹ The creation of the Legal Clinic and its inclusion in the curricula was the result of close cooperation with USAID JuST project (Programme for the Strengthening of Justice System in Albania).

subjects in internal bodies of faculties and as external pedagogues or visitors. This is not planned neither for the contributions to be given by the doctoral students who have followed professional rather than academic career.

It has been increase the number of subjects dealing with aspects of professional ethics and anti-corruption. The subject of Ethics of Law is delivered in the Law Faculty of University of Tirana, but it is an optional subject. In addition, in subject including Constitutional Law, Administrative Law and Special Criminal Law, special attention is paid to the treatment of legislation to avoid conflict of interest in the public administration and right to information and declaration of assets, and criminal responsibility of officials involved in corruption. Another evident improvement of curricula is their alignment with the strategies and objectives of EU integration. It is worth mentioning the introduction of subjects concerning European law, and even advanced subjects of European Law, mainly in the second study cycle.³³⁰ Moreover, the curricula consists of subjects which deal with aspects of gender equality and non-discrimination.

However, there is no study for development of curricula following reform in the frame of the Bologna Process. Therefore for instance it is reported that the workload of master students is not studied and some subjects must be revised (foreign language, physical education). Moreover, it was observed that only the law branch of the New York University in Tirana provides programmes in English language. No other law faculty offers subjects in English, except for cases of involvement in common programmes with English-speaking universities (Marin Barleti university). Such observation was made in the frame of an analysis for the adaptation of our programmes in order to increase mobility even with the university students abroad.

³³⁰ Programmes of the Law Faculty of the UT: http://fdut.edu.al/?page_id=90, Programmes of the Law Faculty of the UT <http://www.uet.edu.al/index.php/sq/studio-ne-uet/master-i-shkencave/94-msh/591-e-drejte-publike-nderkombetare-2> Programmes of the Law Faculty of the "Marin Barleti" University <http://www.umb.edu.al/bachelor/area-overview/programi-bachelor-ne-drejtessi.html>, accessed on 01.03.2015

2.4. Knowledge assessment system

A very important aspects in ensuring quality of legal education is the assessment of knowledge acquired by the students in these faculties. Based on the principle of university autonomy, the manner of assessment of knowledge is the choice of the universities and faculties. Thus, the internal regulation of universities and the curricula of the subject defines at the start of each year the assessment forms to be used: written, oral or a combination of both. However, it is observed that the considerable increase of the number of students in these faculties has resulted in the use only of the written exam in the majority of cases.

The exam procedures are as well quite problematic. The assignment of ID to students in order to avoid intervention and pressure for a higher grade is not done properly. Technology to assess knowledge is rarely used, while it is recommended in order to avoid subjectivism of the pedagogues especially because of interventions and third party pressure. Moreover, the faculties do not have a double check on the knowledge assessment. In most of the cases, they have no external assessor for the quality of knowledge assessment, not only to avoid eventual errors, but also subjectivism.

Concerning the final exam, reform in the frame of the Bologna Process has introduced the obligation of each student to submit a paper for a certain number of credits. Removal of the final exam and its replacement with the submission of a paper and also the difficulties of management of this process because of the high number of students have transformed the state exam in a purely formal control.

2.5 Qualification as jurist and validity of the diploma in relation with the market of the professional legal education and in relation to the labour market

The existing legal framework does not define at what phase of studies, qualification as jurist is done. The assessment of the diploma of the Bachelor cycle is unclear, as is the diploma "Scientific Master" and "Professional

Master". Legislation does not specifically govern if the student who have completed the professional master will be entitled to the title Jurist and the status of the latter as part of the second study cycle. This is clearly defined in the education system in Holland, from where the similar scheme is adopted. The students must complete Bachelor studies (180 credits, 3 years) and Master studies (60 credits, 1 year).³³¹ in order to be entitled to the right to be qualified as jurists.

Such unclear understanding of the value of the study cycles results in the system of university admission quota offering a higher number of quota for the scientific master compared to the professional master. "Scientific master" by all the students and the market is considered as the complete programme for professional career and as the only master which opens the way to the academic career. As all the students tend to complete scientific master, the professional master does not have a clear identity as a study programme. The latter is less demanded in the market and less attended, to the extent that very often the annual quota is not completed. In the University of Tirana, during 2012-2013³³², while the full-time scientific master is followed by 1093 students, in three offered master programmes, the full time professional master is followed only by 490 students, in four master programmes offered by this faculty. Such difference is created because of the lack of a legal definition of the value of each diploma. Under such circumstances, in addition to the unclear situation about the continuity of professional career, there is confusion about the nature of the programmes which are offered, as the scientific master was supposed to

³³¹ Those who hold the title Doctor of Science are considered qualified as well.

³³² Internal assessment report of quality, for the academic year 2011-2013, law Faculty, UT).

Academic year 2012-2013

Full-time Bachelor Programme	1624 students
Part-time Bachelor Programme	1576 students
Full-time Master of Science Programme	1093 students
Full-time Professional Master Programme	490 students
Part-time Professional Master Programme	229 students

implement the academic research programme, while the professional master the professional skills programme. In this frame, a discrepancy between the programme and the value of the scientific master with 120 credits in other European countries (Netherlands, Sweden etc) which is of high quality and deep academic profile and the scientific master in Albania, which is marked of massiveness and the professional nature of preparation of students. Thus, based on the above-said, it may be concluded that there is a discrepancy in the preparation for the same title.

Besides the students graduated in jurisprudence in public and private universities in Albania, a considerable number of students graduate in juridical sciences in other countries, some of them with the intention to return to Albania. Article 37, paragraph 1 of law nr 9741, dated 21.5.2007 “On higher education in Albania” (amended), it is sanctioned that, a diploma taken abroad, through the equivalence process, is equivalated with a diploma taken in Albania providing these students the right to continue their further studies and the right to employment. Based on this disposition, the Minister of Education has issued Directive nr. 41, dated 8.12.2009 “On the procedures of equivalentation of diplomas and certificates taken in universities abroad” (amended), which defines in details the procedure of equivalentation. According to the announcement of the Ministry of Education and Sports, dated 19.05.2015, the process of equivalentation is now done through an on-line portal which aims at reducing the time needed for the equivalentation of diplomas as well as the bureaucratic procedures and corruption.³³³

At the same time, besides guaranteeing the principle of equality and non discrimination in the legal aspect of the students graduated abroad, in the last 10-years there have been several efforts to involve the ones who graduated abroad and the young scientists in the labour market. Through the Fund of Excellence programme, it has been achieved financial support for students and

³³³ Equivalentation of diplomas, application in the portal e-albania <http://www.arsimi.gov.al/al/nesroom/lajme/njesimi-i-diplomave-te-huaja-aplikimi-ne-portalin-e-albania> accessed on 20.05.2015

young scientists studying in the countries of EU and USA. This support was accompanied with the obligation for these students to return and work in Albania for at least 3 years.³³⁴ On 15 September 2006, under the direction of the Council of Ministers and the financial support of UNDP, began the implementation of the “Brain Gain” programme, which aims at increasing the role of diaspora and the well-educated emigrants in the country’s development and its EU integration process. It is reported that during 2008-2013, 138 persons have been benefitted from this project.³³⁵ Also, in the frame work of the “Brain Gain” strategy, The Ministry of Education and Science and the public higher education institutions, should plan to have every year vacancies in order to nominate academic staff in these positions, at any time. Besides the programmes lead by the Government, the civil society has been engaged in supporting the higher education institutions to keep or employ in their academic staff students who have graduated abroad. The programme of “Returned Scholars”, supported by the Open Society for Albania” Foundation, provides support for the professional advancement of returned scholars, who are engaged at the basic bodies of higher education institutions. As an illustration would serve the Faculty of Jurisprudence in the University of Tirana, who has benefitted both from the “Brain Gain” scheme and the “Returned Scholars” programme, aiming the engagement of students and scholars who graduated abroad in higher education institutions.

Besides these legal provisions, the governmental policies and the engagement of the civil society, it should be highlighted that the students who graduated abroad face difficulties linked with the lack of flexibility of the Albanian labour market, but also due to the demands in the labour market for jurists with deep knowledge on the Albanian judicial system.

³³⁴ Decision nr. 483 of the Council of Ministers, dated 16.7.2014 “On the financial support of excellent students and civil servants of the public administration (Fund of Excellence)

³³⁵ Presentation of the programme “Brain Gain Albania” <http://www.migrantservicecentres.org/userfile/Bernard%20Zeneli.pdf> accessed on 20.05.2015

2.6 Issues of adaptability among the high education legal programmes and postgraduate professional legal education

The law defines interaction among programmes of the third study cycle and long-term specialisation programmes. The latter are third-cycle study programmes, professionally oriented, providing knowledge for specific professions in the justice area etc. They consist of theoretical knowledge combined with practical application and professional training, but research activity may be included, if deemed necessary. Upon completion of the long-term specialisation study programme a diploma with the title "Magistrate (...)" is issued in political, legal and social sciences followed by their field of specialisation. The doctoral study programmes may be offered integrated with the long-term specialisation study, according to the plan and curricula approved by the respective faculty and university, after the approval of the Ministry of Education and Sports. Such provisions create the possibility of equivalency the long-term specialised programmes with the doctoral programmes.³³⁶ The equivalency of the diploma of the magistrate with the doctoral diploma may be requested. However, we do not think that this may be done in special cases for the needs of the academic staff and it may not be a general rule.

What is observed is that there is no legal regulation or documents of soft law, or any study to equivalence and harmonize recognition of the value of diploma by each institution offering long-term specialisation programme in the justice field. In particular, the School of Magistrates accepts only applications from the students who have completed Scientific Master. The National School of Advocates, based on its internal acts, admits to the school even the students who have completed professional master. Even though such *ad hoc* adjustment may seem reasonable, it is required a more general regulation. Moreover, there is no study on the approach of the curricula to these Schools, while from the point of view of perception, profiling of the high legal education has resulted in debates for the adaptation of programmes in professional schools.

³³⁶ Law no. 9741, dated 21.05.2007, "On higher education in the Republic of Albania", amended Article 26, paragraph 1, 2, 3.

2.7 Current situation and development of the spaces for research in the higher legal education. Development of doctoral programmes.

Scientific research represents an essential element of the existence and quality of academic life. Based on the law on higher education, scientific research is one of the main missions guiding the development of higher education in general. As such, its stimulation is of special importance for several reasons: to assist the strategic needs of the development of the country, make the critical analysis on the evolution of the Albanian case-law, and also, because of the objectives of the higher education in Albania, to be better identified in the international academic circles.

Scientific research is considered a very important element of the Bologna Process. Such spirit was reflected even in the law on Higher education of 2007 and the requests for academic titles. Universities are encouraged to promote inter-disciplinary trainings and develop transferable skills in order to meet the labour market needs. Moreover, one of the important requirements of this European process is the creation and implementation of the qualification framework, where the member states of the Bologna Process are obliged to draft a national qualification framework in line with the European standard. In this regard, the Bologna Process implementation report (2012) reads that Albania has not adopted such national framework.³³⁷ the scientific work is conducted only empirically and it is not assessed in the context of the job and needs of the labour market.

³³⁷ [http://www.ehea.info/Uploads/\(1\)/Bologna%20Process%20Implementation%20Report.pdf](http://www.ehea.info/Uploads/(1)/Bologna%20Process%20Implementation%20Report.pdf) pg. 48 accessed on 01.03.2015

As regards development of scientific research in legal education, several positive initiatives are taken in the following areas:

- a) creation of the doctoral schools in the Law Faculty, UT and Law faculty of non-public higher education institutions, including UET and Marin Barleti;
- b) Autonomous definition of quota for studies at doctoral level in the non-public universities;
- c) Enrichment of the libraries and online academic sources, at the disposal of students and researchers (university subscription in important electronic libraries);
- d) Inter-university cooperation with Albania and abroad. Some of the faculties have sustainable cooperation in universities or institutes of scientific research in the field of law abroad;
- e) There is a considerable number of scientific journals in the field of law, published on regular basis.

However, such steps are considered insufficient and problems are observed in the progress of scientific and research work in the law faculties. *First*, the faculties are not active in research projects. *Second*, doctoral third study cycle is still disorganised and there is confusion in the admission policy and in the control of quality of scientific research. In the case of the Law Faculty of the University of Tirana, approval of the third cycle quota is suspended for the last two years and there is no reasoning for the suspension of this process. In the European University of Tirana and "Marin Barleti" University, the admission criteria for each academic year are published on the respective websites.³³⁸ *Third*, in addition to the doctoral students, the situation is unclear as well about the scientific research done by the academic staff. There is no policy on the profile of candidates admitted to doctoral studies. It has been converted into education not only for the jurists who look for academic careers, but also those who have started or even consolidated their professional career.

³³⁸ <http://www.uet.edu.al/index.php/sq/kriteret-e-pranimit1> accessed on 13.03.2015

Based on the data provided by the Ministry of Education and Sports, until the academic year 2013-2014, public universities, university of Tirana, had registered 373 doctoral students, while the non-public universities had registered 198 doctoral students.³³⁹

There are problems with the organisation of scientific work and scientific research. There is no legal regulation of the scientific work of the pedagogues, thus there is no clear division between the workload of the pedagogue in teaching and in scientific research. Eventually, scientific research is presented simply as a legal criterion for the defence of ranks, academic titles and their annual assessment, but there are no approved indicators of quality of scientific works of the academic staff. Very often, assessment of ranks and academic titles is done based on formal criteria and it considers little the real contribution of such works in the justice system in the country. So far, during the 10 year period, i.e. from 2004 until 2014, 30 applicants have acquired the title "Associated Professor" and 9 applicants have acquired the title "Professor".³⁴⁰ Furthermore, there is no clear planning of the scientific work. In most of the cases, there is no compliance between the orientation of the scientific research at faculty level and the needs and labour market demands in the field of law.

2.8 Inclusion of legal education in the programme of other non-law faculties graduating teachers

Legal education is necessary not only in the undergraduate system, but also in the graduate system of non-law faculties. In order to create an idea about this issue, curricula and programmes of the university of Tirana and university of Durres "Aleksandër Moisiu" were analysed.

³³⁹ Data obtained officially by the Ministry of Education and Sports, Letter reg. no 15127/1 dated 12.03.2015

³⁴⁰ Data obtained officially by the Ministry of Education and Sports, Letter reg. no 15127/1 dated 12.03.2015, reply to question 17

University of Tirana. Below you will see the programmes of non-law faculties in the University of Tirana which have includes legal education.³⁴¹

A) Bachelor Programme:

- Faculty of Social Sciences runs courses of legal profile in the branches: Philosophy - Individual, state, law and Constitutional Law;
- Political Sciences- Constitutional Law, Administrative Law and International Law;
- Administration and Social Policies - Introduction into law, Public Law, Civil Law and Administrative Law.
- Faculty of History and Philology runs courses of legal profile in the branches: Geography - Legal Culture;
- Journalism - Constitutional law and Media law;
- Archaeology - Legislation of cultural inheritance and professional ethics.
- Faculty of Economy runs the courts of legal profile: "Business law" in three branches: Business Administration, Economics and Finance.

B) Master Programme:

- Institute of European Studies runs 13 courses with legal profile focused on European law: European Legislation and Institutions, Diplomacy and International Relations of EU and Politics and Governance in Europe etc
- The Faculty of History and Philology runs the following courses of legal profile: In the Scientific Master: International Relations: International Law and Human Rights; History: Human rights; Cultural inheritance: Legislation of cultural inheritance; in the professional Master: Archive; Archive legislation, Editor: Legislation in the area of publications, Tourist Guide: Legislation and economy

- Faculty of Economy in Scientific Master: Public Administration: Constitutional and administrative law; accounting and auditing: Business law and tax administration legislation; marketing: Commercial law. In the Professional Master: Public Administration: Administrative law; accounting and auditing: Business law; European economic studies: EU institutions and laws.
- Faculty of Natural Sciences in Scientific Master: Science of Food Technology: Food lawfulness.
- Faculty of Social Sciences in Scientific Master: Ethics in Institutions and leadership: Laws and their standards; cases of children and families: Law - children and family and rights of the child and family; social services in criminal justice: Criminal justice and social policies and criminal legislation. In the Professional Master: Governance and public policies: Administrative law and civil servants; administration of social institutions in the justice system: Administrative law, criminology, penology, human rights in the criminal process, advanced criminal law 1 and 2, juvenile justice, ethics and administration of justice.

Legal education in faculties and branch preparing and graduating students in the profile of teaching. The faculties issuing the diploma of the teacher in the University of Tirana, but which are important concerning legal education are.³⁴²: Faculty of Foreign Languages; Faculty of Social Sciences issuing a diploma of Teaching in Social Sciences. Faculty of History and Philology in the Professional Master study programme issuing diploma in teaching in AML, History, teaching in AML, geography, teaching in AML Language-Literature..³⁴³

The combination of the data of the faculties issuing diploma in teaching with the data of faculties including legal education in their branches shows the

³⁴² Data from <http://www.unitir.edu.al/index.php/2014-07-09-10-56-45/programi/me-kohe-te-plote-full-time>, accessed on 28.02.2015.

³⁴³ <http://www.unitir.edu.al/index.php/2014-07-09-10-56-45/programi/me-kohe-te-plote-full-time>, accessed on 28.02.2015.

³⁴¹ Data obtained by the rector office of the University of Tirana.

inadequacy in the current courses of the legal education in branches issuing diploma in teaching. In the curricula of the Faculty of History Philology, branch Teaching in the University of Tirana and also in the Faculty of Education in the University of Durres "Aleksander Moisiu" there is no subject of legal education.

University of Durres "Aleksander Moisiu". Let us see the programmes of non-law faculties in the University of Durres, Bachelor programme which have legal education:

In some branches and faculties there is provided full legal education, as follows:

Science of administration³⁴⁴, a branch which programme is rich of legal education, almost in all the main courses of law. Moreover, it offers the elective course: Environmental law and the compulsory course Maritime, Land and Air Law, a subject which is missing even in law faculties.

In some branches and faculties there are no courses linked to legal education, as follows:

- a) Faculty of Education in the branches: Language Literature, Psychology Sociology, English Language and Low Cycle lack legal education courses. The elements of legal education are found only in the branch Experts in education processes, third year, Labour law.³⁴⁵
- b) Faculty of Information Technology in all its branches has no legal education in its programme.³⁴⁶ Meanwhile, interaction of these areas with the personal data protection and electronic governance are very important and contemporary.

³⁴⁴<http://www.uamd.edu.al/media/users/4/Kurrikula,%20F.S.P.,%20asistent%20administrativ.pdf>, accessed on 28.02.2015.

³⁴⁵ <http://www.uamd.edu.al/>, accessed on 28.02.2015.

³⁴⁶ <http://www.uamd.edu.al/newww/?catë14>, accessed on 28.02.2015.

In some branches and faculties there are courses linked to legal education, as follows:

Business faculty in the branch of Economic Sciences involves two courses which are optional: Civil and criminal law and a compulsory course Business law. The branch Finance-Accounting consists of one elective course: Civil and criminal law. Marketing branch consists of two courses which are compulsory. Business and labour law. Branches Archaeological Tourism Management, Hotel-Restaurant Management and Cultural Tourism Management include two compulsory courses: Business and tourism law. Branch Sciences of Administration consists of two courses which are compulsory. Business law and Administrative law Branch Banking-Finance has a compulsory courts: Business law (Business administration branch) has a compulsory course Business law.³⁴⁷

In the University of Durres, the subject "Environmental law" is part of the optional subjects, in the following branches: Faculty of Professional Studies in the branches Assistant Dentist, General Nurse, Informatics, Mechanics, Construction Management or branches of the Faculty of Economy. ³⁴⁸

3. Legal professional education

3.1 School of Magistrates

3.1.1 Initial training

Law no. 8136/1996, as amended, assigns to the School of Magistrates a primary role in the training of judges and prosecutors, describing a three-year program: a year of learning the theoretical basis.³⁴⁹, a pre-professional theoretical and

³⁴⁷ <http://www.uamd.edu.al/newww/?cat=10> accessed on 28.02.2015.

³⁴⁸ <http://www.uamd.edu.al/newww/?catë12>, accessed on 28.02.2015.

³⁴⁹ During the first year, the program provides for the realization of 18 subjects of which seven are annual and the rest are semester-based.

practical learning year under the supervision of the court and prosecutor.³⁵⁰ or "passive practice", and the third year is related to professional practice or "active practice" in court and prosecution office, ranging from handling the simple cases to more difficult ones.

An important reason for the establishment of the School was to improve the Albanian justice system by providing a post-graduate vocational training for judges and prosecutors. Law no. 9877, dated 18.02.2008, "On the Organization of the Judiciary in the Republic of Albania" put as a criterion for all new judges of first instance, with some exceptions, to have graduated from the school. Law no. 8737, dated 12.2.2001, "On the Organization and Functioning of the Prosecution Office" requires the same for new appointees to the prosecution office.

The school has received much attention and has made many efforts to develop a program of such initial training that graduate magistrates are identified among the ranks of judges and prosecutors with high professional level and are comparable with their counterparts in European Union countries. These qualities are identified during ongoing training sessions conducted for judges and prosecutors through the level of discussion and interactivity of their outstanding quality of judicial decisions. However, no matter how important the initial training is, the number of candidates for magistrate due to attend this training is depending on the vacancies that will be recorded in the judiciary and prosecution. It should be recognized that the number of new graduates may descend and will be depending on vacancies in the justice system.³⁵¹

³⁵⁰ During the second year, the candidates have a program that provides that in addition to theoretical courses that take place twice a week at school, students go also to programmed visits to courts and prosecution offices of first instance, the Court of Serious Crimes, Court Appeals, administrative courts, advocacy and notary offices, the Office of Registration of Immovable Property, the Supreme Court, the Office of the Ombudsman, the Office of Civil Registry at the Municipality, and others.

³⁵¹ Experience has shown that there are years, as it has several years been the case with prosecutors, which may not have students in the initial training for one or more years.

The cooperation of the School of Magistrates with the High Council of Justice, the Prosecutor General and the Ministry of Justice regarding the definition of vacancies in justice, and the appointment of magistrates after graduation under the principle of meritocracy, has been satisfactory.

From 1997 to 2015 the school graduated and are currently being trained for graduation 290 magistrates in 16 generations from 2000 onwards.

3.1.2 Continuous training

Pursuant to Article 23 of Law no. 8136/1996 as amended³⁵², the obligation for judges and prosecutors to pursue continuous training (the law uses the term 'additional'), provides for that a part of this group are judges and prosecutors of the courts of first instance and courts of appeal. In view of this provision, mandatory training schedule is provided in the sense of not exceeding the days set out by law. Thus, continuous training period should not exceed more than 20 days a year and no more than 60 days during five years. This calculation is made such that the training does not become an end in itself, but it serves the needs of judges and prosecutors within an optimum time. From 2011-2015, by 82 to 104 training sessions a year were marked, in which participated 15-25 participants; this is because about 600 judges and prosecutors have to come to school round 12 days a year.

Four main components are connected to the quality of continuous training:

- a) Develop a thematic adequate training program and updating the needs of local judges and prosecutors and the challenges of reform in the justice system and integration processes;
- b) A team of experts, facilitators and moderators of the highest standards in the country in terms of academic and professional for a given topic;

³⁵² This Article was amended also by the Law no 9414, date 20/05/2005, and the law no 97/2014.

- c) Creating groups of interested and motivated participants, diversified and with the same interests on the subject of treatment;
- d) Preparation of training sessions with the right quality.

All these components require effective coordination of school staff responsible for CT, starting with the drafting of lists of participants, expert reports and their agendas, the care of the preparation of files for each training, posting the materials in a website etc.

Formats of training activities on the one hand enable judges / prosecutors with many years of experience to get methodology training in new topics and in turn, the composition of groups of participants makes it possible for those having more experience to distribute it to new generations. On the other hand, new magistrates have the opportunity to influence through their knowledge of standards, being fresh to them, and that are already mandatory in the context of integration processes, etc.

Albanian reality, where there is an active activity in the drafting and adoption of new laws, the obligation of participation in the Continuous Training Program appears necessary. Active and continuous participation has identified the School as a centre of legal opinion, which gives it a unique role in the Albanian justice system.

It is in the best interest of not only the judiciary, but also to the executive power, the legislative power also, for all citizens, that justice system professionals have access to the best and updated training and that they be have an elite educational discussion - professional exchanges with younger colleagues and those with more experience, being Albanian or foreign.

Also, it increases the technical difficulties arising from the growing number of workshops and diversity specialized professional social, legal and financial issues, being treated more and more in continuous training.

3.1.3 Training the trainers

All teachers, even those with full-time and part-time, will periodically engage in training of trainers workshops with the aim to ensure the coherence of programs, thereby increasing efficiency and improving organizational models methodologies teaching.

Local coordinators. School of Magistrates has already built a coordinate system and communication protocols to any court or prosecution office. This initiative, promoted by the Council of Europe experts has enabled the establishment of a network of local contact points, consisting of administrative staff of the courts / prosecutors and judges and prosecutors to enable a more sustainable for interactive communication between judges and School prosecutors. Network development and use of local contact points will allow the school to improve treatment and to reach all the magistrates and even to those who work in distant courts of the country, to establish a stable relationship with them for the exchange of information and documentation related to training and to organize regional seminars with the aim to spread throughout the country knowledge and practical knowledge that the school has collected over the years.

Facilitators, who generally are former candidates for magistrate of the ASM, already judges and prosecutors, are attached to each training session. Their ongoing duties will consist of:

- a) Cooperation in the development of continuous training program theme;
- b) Selection of judicial practice. Facilitators will file with the school a list of cases and unifying decisions of the High Court and decisions of international courts and legal basis, etc. importance of training materials package of each course;
- c) Being present throughout the training;
- d) Ensure that the methodology applied in training is interactive, to make efforts to maintain a balance between theoretical and practical treatment of issues; look for constructive interference leaving room for discussions by the participants;

- e) Preparation of reports with recommendations and suggestions for improved performance.

3.1.4 Scientific publications and researches

Since 2001 the School of Magistrates has published its scientific periodical magazine "Legal Life" since 1998, initially with two editions per year and later with four editions each year. The magazine contains about 300 pages and is published in two languages, Albanian and English and in a circulation in 300 copies. As beneficiaries of scientific publication "Legal Life" are identified judges and prosecutors across the country, as well as students of the School. Also in the front row of the target of this publication are law students, lawyers, notaries, etc. institutions and organizations.

Besides the magazine "Legal Life" School of Magistrates since 2009 has started to publish the second periodic magazine "Magistrate", which comes with two numbers per year. This periodical has in its content selected extracts from scientific research, topics prepared by candidates for magistrates, protected by a scientific procedure similar to Master of Science topics.

Part of the school's current activity is the publication of books, textbooks and scientific and professional monographs such as: Intellectual Property (2002), Court Administration (2004), Private International Law (2002). Since 2009, the publication of texts and books as above has undergone a scientific discussion procedure and approved by the Editorial Board and two assessments, and followed a pace of 3-4 books published per year.

3.2 Education for free legal professions

3.2.1 Description of existing situation with the legal profession education

3.2.1.1 Initial training of lawyers

Training of lawyers educated and schooled to serve the interested customers is the duty of professional legal education conducted at the universities and Law

Faculties of public and private, in the country and abroad, as well as the duty of the National Bar Association, which cares for training further assistants in the National School of Lawyers, for granting permission for the exercise of the legal profession, as well as continuous training of lawyers practicing the profession.

The role of the National School of Lawyers. With the approval of Law no. 91/2012 "On some amendments to Law no. 9109, dated 17.7.2003, "The profession of advocate in the Republic of Albania" as amended" the obligation of attending the training program for lawyers candidates as a condition for the exercise of the legal profession³⁵³, as and the obligation of following the program of continuous training of the lawyers has been defined³⁵⁴. For the preparation, organization and administration of the initial training program for candidates for lawyers and continuous training program for lawyers, the law provides for a new structure - the National School of Advocates, as an organ of the National Bar Association³⁵⁵. This school was set up within a year from the entry into force of Law no. 91/2012,³⁵⁶ term coinciding with the beginning of November 2013.³⁵⁷

While the National Bar School started functioning for training assistant lawyers, and is in its second year, there is a need for consolidation of this entity and its functioning at full capacity, for implementation of the legal obligations in relation to training. To assist the NCA, CAS and at the same time to assist in

³⁵³See Article 25 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania", as amended

³⁵⁴ See Article 6/1 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania", as amended

³⁵⁵See paragraph 4, Article 25/1 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania", as amended

³⁵⁶ Ibid

³⁵⁷Approved by Parliament of Albania on 27.09.2012 and promulgated by the President of the Republic of Albania on 15.10.2012, by Decree no. 7792, Law no. 91/2012 was published in the Official Gazette no. 135 dated 17 October 2012 and entered into force 15 days after publication in the Official Journal (in accordance with its Article 17)

the implementation of new legal provisions, but also the Memorandum of Understanding between USAID and the NCA, JuST program supported the drafting of an Action Plan defining the steps to be followed for the School consolidation and providing CLE nationwide level.³⁵⁸

The school has a one-year academic program at the end of which, assistant attorneys certified to enrol in the exam for advocacy license or permit for practicing the profession. To enrol in the NCA, one should be graduated as "Lawyer" Bachelor + Master's program (four or five years).

The program of professional education of young lawyers has seven core courses: Criminal Law (general and specific); Private Law (civil, obligations, family, commercial and labor); The Civil Procedure Law; Criminal Procedural Law; Public Law (Constitutional Law and Human Rights and Administrative Law); Advocate Vocational (Ethics, Deontology, advocacy technique, writing and legal reasoning). This program is implemented through lectures and practical debate hours, six days a week, in the afternoon, while in the morning assistant attorneys pursue a professional internship at the lawyers and advocacy studios.

During the first year of school, 2013-2014, 257 lawyers were registered, whereof 244 were certified as assistants-lawyers, of whom were licensed 149 new lawyers. So the license exam passing rate was 68%. While during the second academic year, 2014-2015, there have been registered and are attending advocacy school 609 assistants lawyers who attend school in parallel with the professional internship.

The strategic objective for the period 2013-2016 is to organize and consolidate the National Bar School as a national public institution for the training of assistant attorneys and lawyers. This objective is met by the vision that after a period of 1-3 years the NBS will be transformed into an important center to

³⁵⁸ For details, see the Action Plan prepared by JuST CAS / USAID in cooperation with the NCA, prepared by Prof. Dr. Mariana Semini – Tutulani

train as many young lawyers as needed to add to the ranks of advocacy and train all active lawyers nationally. To accomplish the main goal of this strategic plan, the following objectives are specified in more detail:

- a) Establishing an administrative and pedagogical structure capable of adjusting training functions;
- b) Establishing and organising the initial training program to assistant attorneys;
- c) Establishing and organising the Continuous Training Program for active licensed attorneys;
- d) The consolidation of the NBS's status as a public legal person (public entity);
- e) Transforming the NBS into a professional and scientific institution capable to realize studies of academic and professional publications.

3.2.1.2 Legal Continuous Training Program

National Bar Association (NCA) has launched a five-year program in cooperation with USAID Strengthening the Justice System in Albania (JuST), and Legal Training Center ACLTS having one of its goals to strengthen legal education and advocacy in Albania. This initiative has been under way since 2011 and efforts are focused on the design and implementation of a Continuing Legal Education program.

Based on the above, in March 2011, USAID JuST and NCA agreed to jointly establish and fund a pilot program at CLE local chambers of Durres and Vlora, which are two larger chambers after that of Tirana, and, at that time, possessed training facilities. On May 12, 2011, between USAID and the NCA was signed a Memorandum of Understanding "On the Establishment and Implementation of the Continuing Legal Education Program (CLE) for lawyers in Albania", signed by the Chairman of the NCA and the Director of the USAID Mission in Albania. Based on the regulation approved by the NCA, attorneys and assistant attorneys two local chambers would follow 12 credits in various areas of law in which one credit is equal to a training session. Participants were trained on 12 different topics from the fields of law, civil and criminal, family, civil

procedure, criminal procedure, law of obligations, commercial writing and legal reasoning, the European law, ethics and deontology, set on the basis of needs expressed by them. The first year attendance was 324 participants (152 lawyers and 172 assistants), which means about 70% of all attorneys and assistant attorneys registered in Durres and Vlora.

After successfully concluding the first year of this program, in the second year, this program was expanded to a regional third room - Bar Association Fier, taking place in three regional chamber, thus - Vlora, Durres and Fieri. The second year of the pilot program CLE, was launched in March 2013- February 2014, and contained 12 credits for advocacy chamber Fier (according to the themes developed, during the first year in Durres and Vlora) and eight credits with eight new topics for each of the Bar Associations of Durres and Vlora. At the end of the second year of CLE, in February 2014, the number of lawyers and assistants-lawyers trained in two years was 619.

With the approval of Law no. 91/2012 "On some amendments to Law no. 9109, dated 17.7.2003, "The profession of advocate in the Republic of Albania", as amended, it was set already the obligation of following the program of continuous training of lawyers³⁵⁹, which is implemented by the National School of Lawyers, as body National Bar Association³⁶⁰. Specifically, under the law, the lawyers pursue the ongoing training program, organized by the National Chamber of Advocates, and are provided with a certificate of relevant attendance for this program, which aims at updating the lawyers with specific professional theoretical and practical knowledge.³⁶¹ Failure to attend may be cause for revocation of the permit for practicing the profession.³⁶²

³⁵⁹ See Article 16/1 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania", as amended

³⁶⁰ See paragraph 4 of Article 25/1 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania", as amended

³⁶¹ See Article 6/1 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania", as amended

³⁶² Paragraph 3, Article 16/1 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania", as amended, provided for that "in the event of

School, created within the time specified by law, is currently covering only the initial training for candidates for lawyers, while continuing training is still being covered by the pilot program co-financed by NCA and just-USAID. During 2014-2015, the program extended to 6 regional chambers - Vlora, Durres, Fier, Korca, Shkodra and Tirana and is open to chambers lawyers of geographic proximity to the development of training centers. With regard to its completion, preparation, organization and management of ongoing training program for lawyers, it will be carried out by the National School of Lawyers referring to its legal powers. To this end, in December 2013, USAID supported JuST design of an Action Plan for the National School Organizational Development and Advocacy Program Mandatory Continuing Legal Education Nationwide (2013-2016).

3.2.2 Description of current situation in the education of the profession of the notary

The profession of notary was determined by Law no. 7829 dated 01.06.1994 "On Notary", as amended.

Basic training for the profession of notary is the legal education at law faculties and internship at a notary offices, at the end of which candidates undergo a competition for obtaining a notary license. After issuing a license for practicing the profession of the notary, the notary shall be subject to continuous training organized by the Ministry of Justice, the National Chamber of Notaries and the School of Magistrates. Just in 2014 they trained over 300³⁶³ out of 450 notaries from operating activities in the notary field in Albania. An important place is occupied by the training organized in cooperation with non-profit making organisations at home and abroad, as well as notaries organizations of other countries.

failure to meet the obligation of following the continuous training program by the lawyer, Article 46 of this law shall apply".

³⁶³ Information received from the structures responsible for the inspection of free professions at the Ministry of Justice, dated 24. 02.2015.

In order to give an overview of the current situation in the education of notary profession, we have referred to some data³⁶⁴, which are reflected in the following table.

No of licensed notaries	450
No of notaries trained in 2014	300
Institutions being involved in these trainings	Ministry of Justice, NCN, School of Magistrates

Within NCN, the Council Chamber is responsible for the organization of continuous training for notaries. Organization of continuous training should be made taking into account the difference between notaries and assistants. Currently, the offered continuous training is fragmented in terms of content and in terms of time and place.³⁶⁵

3.2.3 Description of the current state in the education of judicial bailiff profession

The bailiff service was, out of a public institution coercively executing the court decisions and other executive titles, being traditionally administrative responsibility of the state, turned into a hybrid institution, public and private, with the last undertaken reform. More specifically, the private offices of execution were created for the first time in Albania, turning it into a private free-lance profession, similar to the Bar and Notary.

The creation of the institution of private bailiffs, in addition to state one, seemed as if it was a successful reform, because it brought a solution to the

many issues that slept for bureaucratic reasons in offices of the state, but in turn brought new obligations with regard to quality of the exercise of the profession.

Due to the increasing number of creditors, a greater attention needs to be paid to their professional, procedural steps and ethics with which to manage this important stage of administering justice, pertaining to the execution court decisions and other executive titles.

Regarding the continuing legal education of bailiffs a few efforts have been made to organize trainings and seminars. During the period 2012-2014 as a result of a memorandum signed between the National Chamber of Private Bailiffs and the ASM, bailiffs are included into the circle of entities that can receive continuous training at the School of Magistrates, as part of the Continuous Training Program. During 2013 the School of Magistrates in cooperation with UNDP, organized two seminars with bailiffs on 21-22 May 2013, attended by 27 bailiffs and 28 to 29 May 2013 attended by 20 agents. On June 24, 2013, the Magistrates in cooperation with the National Chamber of Private Enforcement of the Republic of Albania, conducted a workshop with 22 bailiffs and June 25, 2013, a workshop with 28 execution with the topic: "Changes to Code of Civil Procedure published in Official Gazette No. 67 dated. 05/03/2013" and Instruction no. 5 dated 12.12.2012 "On setting detailed rules for the development of the auction by a bailiff." It appears that a small number of 10-15 year bailiff, have seized the opportunity to participate at mixed activities with judges in civil proceedings seminars.

In the period 2013-2014 four training seminars were conducted by the Ministry of Justice and the School of Magistrates in cooperation with Eurallius the topic: Changes to the Code of Civil Procedure within the Instruction no. 5, dated 12.12.2012 "On setting detailed rules for the development of the auction by a bailiff", dated 24.06.2013; Performance features mandatory under the legal attributes of the debtor, dated 10.07.2014; Liabilities arising from solidarity pledge and mortgage, dated 03.10.2014; Preventing and combating violence against women and domestic violence, in the context of gender justice, at 21-22, May 28-29, 2013. In these four workshops were trained about 190 agents.

³⁶⁴ Information received from the structures responsible for the inspection of free professions at the Ministry of Justice, dated 24. 02.2015.

³⁶⁵ Eurallius, Consolidation of the Justice System in Albania, Project Inception Report for the period 01.09.2014-30.09.2014, p. 163

3.2.4 Description of the current situation of the education in the mediation profession

Mediation, as a modern and contemporary form of alternative dispute resolution, is promoted and practiced even in the Albanian society after 90s.

The approval of the first law on mediation resulted in the creation of mediation centres in Tirana which function as civil society organisations, focused on the promotion, institutionalisation and implementing this alternative for the solution of the conflicts in civil, family and criminal matters. Since 2000, with the support of international organizations (DANIDA, Norwegian National Mediation Service, UNICEF, IFC, EU, USAID, Slynn Foundation, etc.) three to four weekly training programs in the field of service mediation and restorative justice are organized every year. Dozens of information and awareness-raising seminars and workshops are organized for judges, prosecutors (in collaboration with the School of Magistrates), mediators, police officers, lawyers, teachers, local government structures, etc. While conferences are also organized at national and international level to promote alternative mediation and restorative justice.³⁶⁶

The law no. 9090, dated 26.06.2003 "On mediation in settling disputes" foresaw the possibility that in addition non-profit making entities, mediation was also offered as service by profit making organisations, which can be registered as commercial entities. During this period a Mediation Program was implemented in cooperation with the Court. During 2010-2011, in cooperation with the General Directorate of State Police, School of Magistrates, the General Probation Service, FZK a program was implemented for the promotion and consolidation of restorative justice and victim-offender mediation for juveniles and young adults aged 14-21 years, supported by the EU Delegation in Albania and UNICEF. This program continues currently with the support of the EU and the Foundation "Save the Children".

³⁶⁶About 200 persons trained by FSC are licensed by the Ministry of Justice to practice mediation.

The current law on mediation³⁶⁷, passed by Parliament in February 2011, brought about the main innovation in organizing the mediators in the National Chamber of Mediators as a legal entity exercising its activity independently from the state³⁶⁸ and licensed by the Licensing Commission of the Ministry of Justice as a condition for exercising the profession of mediators.³⁶⁹ The law provides also for the completion of the training program and the **vocational training of mediators**, approved by the National Chamber of Mediators, as a condition for obtaining the mediator license³⁷⁰ and the obligation of the mediators to undergo **continuous training**, prepared by National Chamber of Mediators, a training which should not be less than 20 days a year.³⁷¹

The Meeting of the General Assembly of mediators licensed and registered with tax bodies, which was held on July 7, 2013, decided to establish the National Chamber of Mediators (NCM) in Albania³⁷². Since the moment of its creation, the National Chamber of Mediators, in fulfilment of its legal duties, has conducted a series of activities to raise the awareness of the Albanian public on the possibility of resolving disputes through mediation in commercial, family, civil, labor and criminal as well as institutional strengthening and capacity building through initial training and continuing training.³⁷³

³⁶⁷ Law no. 10,385, dated 24.02.2011 "On mediation in resolving disputes" as amended.

³⁶⁸ See Article 7 of Law no. 10,385, dated 24.02.2011 "On mediation in resolving disputes" as amended.

³⁶⁹ See Article 4 of Law no. 10,385, dated 24.02.2011 "On mediation in resolving disputes" as amended.

³⁷⁰ See Article 5, paragraph 1, item "c" of the Law no. 10,385, dated 24.02.2011 "On mediation in resolving disputes," as amended.

³⁷¹ See Article 9, paragraph 2, of the Law no. 10,385, dated 24.02.2011 "On mediation in resolving disputes," as amended.

³⁷² Quarterly Bulletin of the Justice System in Albania - Communicate, Number 11, <http://www.justforumalbania.org/connections-komunikojme-t41-10.html>

³⁷³ Electronic communication dated 24.02.2015, with the Chairwoman of the National Chamber of Mediators Mrs. Drita Avdyli.

With the financial support of USAID, through working groups and experts contracted by JUST / USAID, DHKN has already established the legal basis upon which it conducts its activity and, by adopting the Statute, the General Regulation, Communication Strategy, Training and Curriculum Strategy and 5-year Strategy. The specific objectives and strategic priorities that will be achieved by DHKN for the period 2014-2018 is the increased professionalism of mediators through continuous support to quality education and training.³⁷⁴ With assistance from USAID JuST, it has created a core of Trainers, trained by national and international experts; it has developed an initial training to 200 persons who are licensed by the Licensing Commission of Mediators of the Ministry of Justice and organized continuous training for 38 members of the National Chamber of Mediators.³⁷⁵ Based on the significant powers that the law gives DHKN concerning *initial training* and *continuous training* issues of mediators, DHKN, has a renowned vision as a center of excellence for vocational training of mediators in Albania and as a provider of the training necessary for mediators profession, aiming at guaranteeing the training which provides quality service and promotes inspiring individuals, businesses, and any interested parties to achieve proper resolution of disputes through mediation.³⁷⁶

The model which was set up continued to be implemented in the District Court of Durres and Korca, and in civil, commercial and family matters (2011-2013), supported by the USAID JuST (Project for Strengthening the Justice System in Albania).³⁷⁷

³⁷⁴ Strategic Plan of the National Chamber of Mediators, page 16.

³⁷⁵ Electronic communication dated 24.02.2015, with the Chairwoman of the National Chamber of Mediators Mrs. Drita Avdyli.

³⁷⁶ Vision announced in Comprehensive Organizational Strategy Paper of the Initial and Continuous Professional Education Mediation in Albania, drafted and approved in 2014, page 18.

³⁷⁷ According to data obtained from FSC and JuST, during the implementation of this project they trained 40 mediators; 491 cases referred to mediation primarily by the relevant courts were dealt with and 75 % of them were resolved successfully.

4. An overview on the legal education and training of the employees serving at justice assistance institutions

4.1 Legal education of judicial administration.

Ministry of Justice is organized and functions according to law no. 8678, dated 14.05.2001, which among other things, as part of its scope of activity, takes care of the organization and operation of services related to the judicial system and justice, in general, as well as taking care and controlling the activity of judicial administration, whereby its training has been foreseen (these obligations being provided for in Article 6, paragraphs 7 and 8). The group of chancellors at courts, as a group who need specialized training not only in the framework of judicial administration, but also separately, are appointed and dismissed by the Minister of Justice.³⁷⁸

In exercising its functions the Ministry of Justice controls the activity of judicial administration and the President of the Court recommends taking appropriate measures, including those that may be associated with the training.

Legal education of judicial administration by the School of Magistrates.

The Law on the School of Magistrates provides that besides judges and prosecutors, the schools has to train in its continuous training program also other legal professionals. Within the group of free legal professions related to the judiciary are also trained the judicial administration employees. Total court administration staff trained by the School for 2011-2014 is 141 persons. More specifically, they are trained as follows:

- a) During the year 2011-2012, a total of 76 employees have been trained from the court administration, of which three groups of 22, 12, and 17 participants, in collaboration with the University

³⁷⁸ In accordance with what is provided for in Chapter VI, Article 37, paragraph 2 of Law no. 9877, dated 18.02.2008 "On the organization of the judiciary in the Republic of Albania", amended, the Minister of Justice appoints and dismisses chancellors.

of Utrecht Netherlands, respectively in topics: fair management of litigation, Article 6 of the European Convention of Human Rights; The right of personal freedom, the police, the prosecution and the guarantees of the accused during the criminal investigation; and fair administration of the judicial process. Article 6 of the European Convention of Human Rights. Also during this academic year 25 other people have been trained along with mixed training groups with judges, prosecutors, judicial police officers, etc.

- b) During 2012-2013 there were trained 26 participants from the judicial administration;
- c) During the academic year 2013-2014, 14 participants were trained; and
- d) During 2014 - March 2015, 15 people were trained.
- e) In mixed training sessions, the court administrators are trained in topics such as: Widening access to people in need in the realization of their rights through the courts; Human Rights and the ECHR. Update on the decisions of the ECHR to which Albania is party in criminal cases. Enforcement of international law by national courts in the field of human rights; Judicial ethics. Issues of ethics and ethics in the criminal prosecution and judicial functions; Due Process in ordinary proceedings and the evolution of the case law of the Constitutional Court. CC decision-making regarding individual requirements; Specific training of HCJ inspectors, inspection and evaluation functions; Evidence obtained in violation of the law, non-utility. Invalidation of procedural acts.

4.2 State Advocacy.

State Advocacy is the central institution of public administration, charged exclusively for providing legal assistance for state institutions and public entities. Legal assistance includes advisory service regulated by law No 10018, dated 13.11.2008 "On the State Advocacy". State Advocate is organized at central and local level. The law "On State Advocacy", Article 25 provides that professional skills of state attorneys should be assessed on an ongoing basis at the end of each calendar year, through a professional skill evaluation procedure by Advocate General of the State, given the results achieved in the judicial

process, which they represented during the evaluation period.

Internal Regulation of the State Bar was approved by Order no. 275/1, dated January 14, 2009, of the Minister of Justice, in its Article 7 on the general duties of employees in State Advocacy imposes an obligation to them to participate in activities that help their professional growth.

The State Advocate institution was, since 2008, with the contribution of Spanish experts, assisted in reforming the law on State Advocacy, which was designed according to the model of Abogacía General del Estado (State Attorney General of the Kingdom of Spain). In the context of reforming the law, which was included in the obligation of conducting training and receiving the title "State Counsel" in collaboration with the School of Magistrates a full course of training was completed, as follows:

- **In 2009**, cooperation within the State Bar and the Spanish Agency of International Cooperation for Development (ARCID) "To support the process of selection and continuous training of state attorneys" and in collaboration with the School of Magistrates were trained about 20 State lawyers by the School for a period of three calendar months, March to May 2009. Calendar of training included various topics: *the RA Constitution, the State Advocacy legislation, administrative law, civil law, law of arbitration (BOO contracts, BOT and FIDIC), law of restitution and compensation of property, procurement law, public international law, human rights, the enforcement of decisions of foreign courts, international courts and human rights, European law.*
- **In 2010**, following ARCID project and the "Memorandum of Understanding" between the ASM and the State Bar of 2010, the second phase of selection of the second panel of the State Bar and their continuous training in office was realized. For the period April to June 2010 about 19 State lawyers were trained. Calendar of the training process for State Attorneys contained the following topics: *the RA Constitution in the light of Articles 42, 116-120, 121-123, legislation of the State Bar and the functions of the state attorney, issues related to the problems of the ECHR Article 6*

and Article 1 Protocol 1 of the European Convention of Human rights, administrative law, concession contracts, negotiations, civil law, commercial law, international arbitration, criminal law and European law.

- **In 2013:** In the framework of the EBRD and in programs for continuous training of the School of Magistrates, there were trained (along with judges and prosecutor) six state attorneys on the legal framework for trading companies; on 6 December in the framework of the EBRD and in programs for continuous training of the School of Magistrates, there were trained (from among judges and prosecutors) four state attorneys in the field of "insolvency" in the field of commerce.
- **In 2014:** Albanian School of Public Administration (ASPA), with the support of the OSCE Presence in Albania organized a training on the topic: "Implementation of Administrative Justice System in Albania", 1 -day course, which trained five State Lawyers.
- **In 2015:** On 12-13 March, the Council of Europe organized a training about reporting to this organisation. The training will be attended by a state lawyer and two lawyers, part of the office covering the Strasbourg Court.

4.3 Prison administration

Prison police officers and civil servants exercise their activity in prisons, including: civil administration officials, local civil servants in the institutions of the penitentiary system, the support staff, medical staff, psychologists, expert information, etc. The staff of the prison system is part of the public administration.

Police prison. One of the groups of employees who perform their duties within the premises of sentence to prison is the prison police.

Types of training. In the training sector the following sessions are followed:

- a) Basic Training - for newly appointed officers in the prison system;

- b) Training on duty - which is based on location specific work which includes besides the uniformed staff and civilian, as part of health and education staff;
- c) Advanced training - including employees who have gone above sessions and experience in performing their duties;
- d) Training for ranks - which is realized for employees who meet the criteria to be increased in rank;
- e) Training for civil administrative staff, including health and education staff. Trainings have topics pertaining to: physical and mental health; Emergency medicine, AIDS, drugs, ISST, on communication, ethics, behavior, etc.

Each training session is provided with treatment manuals for specific groups.

The number of trainees for the calendar years 2011 - 2015 shows that there were trained in total 4,692 employees in uniform and multidisciplinary staff (social workers, doctors, psychologists and police officers).

Training institutions are domestic or foreign institution of Ombudsman, Ministry of Justice, UNICEF, ICITAP, AHC, and Trauma Center against Torture, Albanian Psychologist Association "Përthyerje" FZK, etc.

Basic training: General Directorate of Prisons organizes and conducts special training and qualifications as required in the relevant fields, in cooperation with the ASPA. **Prison Training Centre (PTC)** organizes and conducts basic school courses based on the admission quotas set under the provisions of the regulation for all persons declared successful in the competition procedure. The student is a person who has signed the labor contract for admission as an employee of the Prison Police and attending a training course in PTC. He must successfully complete basic training of police in order to be appointed at the police.

The training program in basic police school is developed and updated by PTC and it is approved by the Director of the Prison Police. All the students are given a manual, with which they get acquainted before the start of basic training. The manual contains: a) the duration and content of basic training

program; b) the rules of conduct and performance requirements of the course; c) procedures relating to registration, training, testing, practice and qualifying or not the student. The training program includes compulsory basic knowledge of: a) the treatment of prisoners and detainees, and their rights; b) the cases and methods of use of force; c) cases and methods of use of weapons and other equipment to the prison police; d) the structure and organization of the prison system; e) security schemes. After 15 days of completion of the training, testing PTC organizes the student test through a written exam. The student must attain more than 60% of the points test for successful consideration in training. In accordance with Article 13 of Law No. 10 032, dated 11.12.2008 "On Prison Police", every police officer is evaluated every year. The date on which annual evaluation is completed is the anniversary of the appointment of employees of the Prison Police. Police officers are also assessed when applying for promotion in rank. Evaluations are sent to the central structure of the staff and within one month the interested person shall be notified. Relevant structures of the staff may require evaluations for employees who are punished with disciplinary measures. Police officers on probation are evaluated at intervals of three months for the first twelve months after completion of the training program in the field. Final evaluation completed in last month of probation and it contains a recommendation for confirmation of the appointment and promotion to inspector or exclusion of the employee.

Training of Trainers. Part of the training is the training of trainers of prison police, with the support of OSCE and ICITAP. Training of trainers includes employees of the penitentiary system of the most important sectors, such as social, legal, health and safety. It is comprehensive and ended on December 19, 2014, which marked the graduation of participants.

4.4 Academy of Police

In the process of basic schooling, the police trainees of the Basic Police School, according to the current curriculum, are provided with the knowledge of the general and special criminal law (16 classes), Criminal Procedure (12 hours) and Criminology (20 hours). Also in the process of education for promotion to "commissar" rank, according to the current program, participants gain

knowledge of the following in a substantial number of hours in the constitutional, Administrative Public Criminal General, the Special Criminal and Criminal Procedure law. With regard to the knowledge gained, participants undergo examinations.

Police Academy has signed and implements agreements with the University of Tirana, in the field of education and training. Although not mentioned specifically for education or legal training, this agreement includes education or training in all areas, according to the request and needs of the Police Academy. At its meeting of 25 February 2015, the Council of Ministers has approved Decision "On the organization and functioning of the Academy of Security", and providing for it as a higher education institution.

Currently, the staff of the Academy is working on drafting the curricula. In this context, it is planned that the students of the Faculty of Security and Investigation, to the effect of a comprehensive training in legal field, have curricula similar to those of the Faculty of Law for the subjects: General criminal law, Special criminal law, criminal Procedure, Constitutional Law, Administrative Law, Criminology, Criminology and Migration Law. Also, it is planned to develop educational programs for general knowledge subjects: civil law, civil procedure, public law, Forensics and Forensic Psychiatry. Shortcomings have been found out even with regard to the training of judicial police officers, who have a specific work profile. There is no school for their education and no appropriate rule have been foreseen for the cooperation between the School of Magistrates and the Police Academy for providing the teaching programs for this category of functionaries.

4.5 Albanian School of Public Administration (ASPA)

ASPA is a public institution which activity aims at the vocational training of civil servants, as well as any other individual, local or foreign, which is not part of the civil service and that meets the required criteria.

Professional training of public administration employees includes:

- a) mandatory training during the probation period for civil servants;

- b) Advanced Training for the Group of Employees Leader;
- c) Training for career development of employees of public administration;
- d) Training for professional adjustment in case of changing job requirements;
- e) Training of special character to perform specific tasks for public administration employees;
- f) Development of professional knowledge for public administration employees;
- g) Training and continuous vocational training for employees of the Albanian public administration at central and local government;
- h) preparedness and training of applicants for vacant positions contests;
- i) studies and publications in the field of development of public administration;

In the context of the legal obligations that are charged to the ASPA, it has signed agreements that have targeted training in general,³⁷⁹ with different topics which may include legal education topics, but there is no special training for the legal education. Training where various topics including the legal education in the curriculum encountered "Introduction into Public Administration". For 2012 and 2013, included in the curriculum is the "Constitution", "Law on civil servants", "Administrative Procedures", "Ethics in Civil Service". In 2014 in addition to these were added the "Law on the Organization and Functioning of the State Administration". In fact, the theme of the training can be regarded as basic training and requirements to be observed by any public servant being classified in the "compulsory training during the probationary period for civil servants". However, continuous efforts are obvious to move closer to legal education. Currently we are working to reach an agreement with the School of Magistrates in the use of academic staff and their curricula in training the Group of High Level as Leaders.

³⁷⁹ During 2012, 9 training courses were conducted training 192 individuals; During 2013 two training courses were conducted training 24 individuals; During 2014 28 training courses were conducted training 863 individuals; Only in February 2015, 22 training courses were conducted training 667 individuals. These training courses were general topics and not necessarily legal education.

4.6 Agency of Bankruptcy Surveillance

AMF was established on the basis and in accordance with the law no. 8901, dated 23.05.2002 "On Bankruptcy", amended by Law no. 9911, dated 19.05.2008 ' On some amendments to the law ' On Bankruptcy '. The focus of its activities is the administrator of bankruptcy, as an actor with the role of great responsibility in a bankruptcy proceedings. The Agency has, abiding by all legal provisions, been entrusted to grant, revoke or renew the license for bankruptcy administrators and so far 15 bankruptcy administrators have been licensed.

Bankruptcy administrators exercise their activities, among other things, in accordance with National Standards Measure Bankruptcy Administration and Code of Ethics, sponsored by the Agency. The drafting of these standards and the keeping and processing of statistical data related to the implementation of bankruptcy procedures are some of the responsibilities with which the law imposes on the Bankruptcy Supervision Agency. The Agency, through the certification of the bankruptcy administrators, prudential supervision of their activity, ongoing training and information, aims to mobilize and use all legal mechanisms for the recovery of businesses having started bankruptcy proceedings.

The Ministry of Justice has signed an agreement with the World Bank, IFC, that during the period 2014-2015 it will work on improving the legal framework of bankruptcy in Albania for training needs assessment and the preparation of teaching material, manuals or resources. A roundtable to assess the difficulties and needs of managers was conducted by the IFC and the Ministry of Justice on 13 October 2014, attended by licensed bankruptcy administrators and staff of the FSA.

During 2012, dated October 12 to 13, IFC has provided training for the staff of the Agency from international experts in the field of bankruptcy. The training lasted two days discussing various aspects of bankruptcy proceedings with the main focus of the Agency's role in bankruptcy proceedings.

Through a project funded by USAID ASSIST Impact, Bankruptcy Supervision Agency was interested in training programs related to bankruptcy and insolvency. The program was held on 24 January, 7 February 11, October 12, 2014, and was presented by Yair Barane, Bankruptcy expert. This activity aimed at strengthening the role of the Agency in effectively fulfilling its duties and responsibilities in implementing the law on bankruptcy. The main focus of the training were fraudulent actions and abuses of the parties during the bankruptcy proceedings. Also they addressed specific cases of liquidation proceedings and reorganization of companies and natural persons in Albania.

During 2015 the mandatory training sessions on "Public Administration" were conducted for all staff of the Agency from the School of Public Administration. Besides mandatory training, specialists during 2014 Agency also attended other individual training conducted by the Public Administration School: Training on public administration, financial management and control, risk and audit trail of personal data protection, procurement of goods; Basics of public procurement, management and integrated planning system, monitoring of the medium term budget program.

4.7 The experts to the Justice bodies

4.7.1 The forensic experts in the Republic of Albania (actually 19 experts) are included in the Forensics Institute (FI), which is under the Ministry of Justice. Two of the experts are full time lecturers of the Department on Patological Anatomy-Forensics, whereas three of the experts are part time lecturers of the Medical University.

The forensic experts have medical high education (6 years in the Medical Faculty) as well as 3 years of post university specialisation. Some of the experts have also legal high education (part-time).

Further professional education is carried out both in Albania and abroad. In the context of post-university programs of the respective departments, every 3 months are organised seminars with local and foreign lecturers in Forensics. Further education is realised also through the annual participation to the

Balkans Forensics Academy, member of which we are and through the participation to the World Forensics Academy (member of which we are).

The Institute publishes, every six months, a pan Albanian scientific journal, with an editorial board of forensics' personalities from the Albanian regions, as well as from European countries and others.

The FI has cooperation agreements with several similar institutes in different countries (Greece, Italy, France, Japan, Croatia, England, etc.), where Albanian experts are professionally qualified for periods of 2-3 months. Also, prominent personalities from these countries come to Albania as guest lecturers.

4.7.2. The psychologist and social worker

The presence of the psychologist experts and of the social workers is needed because of minors' involvement in legal proceedings of family law, such as divorce, custody, deprivation of parental responsibility, as well as in cases of minors in conflict with the law for procedures of Courts, the Prosecutor's Offices or Police Stations.

The cases that require the involvement of minors at all levels of investigation and judicial proceedings, including his/her interrogation at the Police Station, Prosecutor's Office and at Court, brought to attention the need to protect and authorise the minor's right to be heard during the investigation and judicial proceedings, in the presence of a professional (psychologist / social worker / sociologist) or in the presence of the legal representative (parent / legal guardian). Assisting a minor with a psychologist, during the interrogation in the police station or prosecutor's Office, or while giving evidence in the Court, as one of the fundamental guarantees of the minor's rights, is very important.

The Family Code sets at the centre of the legal issue the conducting of the psychological evaluation by a psychologist and the family social situation assessment by a social worker or psychologist. Besides the above mentioned family cases (divorce), the psychologist is the expert who has the exclusive legal responsibility and obligation to convey his opinion on the case referred

for all other family cases, which are focused in the minor, his interrogation by the court or the influence of the surrounding environment to his/her psyche, emotions, behaviour and character.

Realizing the importance of the psychologist's role at all stages of investigation and trial, both civil and criminal, emerges the need for his/her involvement in the structures of the judicial system, being confident that it can improve the quality of justice in the country. This has been the request, for several years, of some NGOs operating in the field of free legal services to minors and women, which have identified this as a problem for the trial's progress.

Some of the justice institutions, such as Prosecutor's Office, prisons' departments, the police, etc., have taken into consideration this need and have included a psychologist or social worker in their structures. Considering the above, it is needed to train them as experts, not only when they are employed as full time experts at the institutions, but also when they are registered as external experts. It results that the psychologists / social workers have been trained only in the framework of the relevant institutions, along with other trainings before the trainings at these institutions.

So far there was no institutionalisation, neither a network, nor a register of psychologists and social workers at court. This is because the organisation and functioning of the respective orders of the psychologists and social workers, approved by law, hasn't started yet.

Consequently, there were no training programs and special qualifications for the psychologists and social workers. While the relevant orders have not yet adopted the criteria and procedures for admission of the experts to the network, have not carried out tests for their admission and registration. This has not been performed even by the courts or other justice institutions, e.g. the prosecutor's office.

5. Public's Education and Legal Information

Public access to the knowledge of the law, is essential for ensuring an effective justice system. Thus, information and providing knowledge about the law, rights, law enforcement institutions, responsibilities, etc., are not only related to legal education, but are components of culture and civic need for access to the rule of law. Public legal education is one of the main directions to achieve this comprehensive approach.

Public legal education has nothing to do with specialization in an area of law, but with the necessary knowledge about the every day meaning of the law and the quickest legal solutions to the violations of the rights, which are fundamental in a democratic society where the law is the product of the citizen and for the citizen. Through the development of legal knowledge and increased security that citizens feel in the use of law, public legal education contributes also to strengthen a more active citizenship and for a greater social cohesion.

The objectives and purposes of public's legal education in a non-exhaustive way include:

- 1) The combination of providing the necessary information and knowledge development, enhancing the capacity for understanding and the necessary skills to take the appropriate decisions in situations related to legal rights and obligations;
- 2) Provide the opportunity for citizens to orient themselves within the broad spectrum of law, recognizing their rights and obligations, and therefore in some cases enabling the preliminary identification and avoidance of possible future problems or their escalation;
- 3) A greater participation and role of law professionals;
- 4) The citizens' support to (i) recognize the rights (ii) understand the role and functions of the institutions and mechanisms for establishing justice; (iii) understand the concept of citizenship in the rule of law; (iv) update knowledge on the legislation of the area of interest.

Legal education is the first orientation or prophylaxis to protect and prevent law violations by increasing vigilance, awareness, education in the spirit of the law

and providing concrete 'directories', available to citizens to receive the specialized support and assistance. Consequently, this form of education is mainly intended to inform, facilitate and enable citizens in relation to law and justice, rather than to provide specific solutions for each specific case.

The forms of realization of public's legal education include:

- 1) Continuous and massive information and awareness on general issues, problematic on a certain aspect. Media campaigns aim to inform and raise awareness in a fast and short way on a specific phenomenon, while more stable sources, such as a website or a phone line aim a constant support for more detailed information on certain areas. Each approach has of course its advantages, but the choice always depends on the desired purpose to be achieved through legal education in a specific case.
- 2) Preparation, publication and distribution of informing materials on a specific problem, such as domestic violence, consumer's rights, etc; newspaper articles
- 3) Success or not success scores, which reflect the right or wrong attitude;
- 4) Information on specific institutions, services and their role in the citizens' protection or Access to justice, such as mediation, notary, legal aid, etc.
- 5) a website which can be specialized in specific areas of law to which citizens are exposed in their daily activities. This legal education is of permanent nature and has a greater consultative and guiding purpose, in exercising the citizens' rights, rather than to prevent their violation;
- 6) open days in various state institutions and unified public schedules;
- 7) meetings with various law professionals

Public legal education can be organised and provided by various sources and in various forms. It may address the general public, policy-makers or certain segments of society with a particular need.

An important principle of legal education is also the language used. Given the fact that legal education is addressed to the public, composed of different strata, it is important that the language used when providing information be simple and understandable. One reason why the law often remains a difficult

instrument to ordinary citizens is precisely the use of a difficult and technical language and the text wording.

The institutions that provide public legal education

Currently we believe that such activities, capable of providing legal education of the public were conducted, but at random, unplanned and disorganized.

It is the obligation of a number of state institutions to engage in this direction. Such as the parliament; courts; municipalities, bar chamber, chambers of bailiff, notary and mediation, universities; NGOs; public radio-television; the Ombudsman, the antidiscrimination Commissioner, the Commissioner for the protection of personal data, etc. It was found that, though in some cases there are legal provisions related to the public information, there's no subsequent activity of these institutions.

IV. Findings and problems

1. Main findings and problems with the pre-university education

The analysis of textbooks and curricula are found to have sufficient potential topics to provide adequate legal information. The structure of the textbook that deals in the form of Civic Education has the chapters needed to deliver their legal knowledge;

Although the possibility exists, given the title of the topic or chapter, the information is more social and moralising rather than legal. This is because the group of co-authors of textbooks does not have specialists in the field of law;

Rubrics with practical examples, illustrations and questions often does not aim at obtaining important legal information;

Information relating to criminal and civil liability is missing;

The information explaining the illegal behavior that imposing liability is missing;

The information concerning the right of residence, name, surname, assistance, food pension, inheritance, etc. is missing;

Information related to maternity, paternity, parental responsibility, etc. is missing.

Way of teaching by teachers leaves much to be desired related to shortcomings in the treatment of subjects with legal information;

Pedagogical Studies Institute organizes continuous training with social education teachers occasionally. Usually this subject is taught by history teachers, who during their university education are not trained with appropriate legal subjects to explain legal concepts for students;

No proper importance is ascribed to various activities to encourage more active participation of students in them, in order to be able to absorb legal education themes being treated in them;

Legal education, regardless of the case in which it is involved, should be given the same prominence as the subject of Language and Mathematics and not initially underestimated by teachers as well as parents. Let us not forget that legal education can prevent crime;

Legal education is limited to freedoms and human rights, the latter having priority by international organizations in addressing and implementing their programs in undergraduate education.

It sought to strengthen knowledge on ethics, attitude, dress, behaviour, communication with each other;

There is a lack of “ascending spiral” of knowledge from one class to another. Thus, some themes are repeated from one age group to another without being

accompanied with the most advanced knowledge or being incomplete. Thus, for example, given the traffic rules in the elementary level, secondary school repeats the same form.

Alternative texts by different authors create difficulties with the centralized and continuous training of teachers who teach them. However, their programs are unified by the Ministry of Education and Sports and the differences are associated with the nature of the treatment.

2. Main findings and problems with the higher legal education

In the past 10 years important steps have been conducted for the development of higher legal education in the context of the development of university education. Important reforms to legal education in the approach with the Bologna Declaration, have been launched; the curriculum system is reformed, being transformed into a system of 3 + 2, as to four years, with several new programs in order to clarify legal requirements and procedures for obtaining academic degrees etc. It involved the European system ECTS and programs are designed according to the standards of the Bologna Declaration. This makes it possible for law students to get involved in exchange programs with other European countries.

These reforms have been accompanied by a substantial increase in higher legal education institutions, not only public but also private by strengthening pluralism of legal education. They are open to new programs of study at public universities not only full-time, but also part-time. All these students have increased access to justice studies. The number of students in the faculties and departments of justice and the number of graduates in this field increased significantly. Changes were made also to the procedures for admission to the Faculty of Law, especially with the creation of the system of state exam for secondary school graduation.

While highlighting the achievements of last decade, we come to highlight some problems that originate due to different causes. Some of them come from the system and legal provisions, while others stem from mismanagement of this

new system. However, these problems are highlighted as a consequence of a quick scan of legal education in the country, and not by any in-depth analysis of the system. In the following we are summarizing some of them:

There has been no analysis or special study on higher legal education in Albania. Therefore there is no strategy for the development of this education, or any part of a special strategy within the strategy for the development of Higher Education.

Higher legal education does not dispose of a general database at national level, nor of data for students, staff and programs;

There has been no specific study or analysis, associated with features that are offered by the study in the field of justice and the need to harmonize its labour market, as well as professional legal education institutions;

There is no analysis of the progress of studies with the new program of the 3 + 2 system. The law provides for the possibility to organize integrated programs first and second cycle, but these programs are determined by the Council of Ministers and legal studies are not included so far in them; It is not clear what are the criteria and bases that are followed by the Council of Ministers to establish these programs and why justice were never analyzed.

No specific studies exist on legal HEI academic staff or a database at national level, therefore it is difficult to draw conclusions on the quality offered. Nor do we have studies or databases for salaries and remuneration of academic staff and consequently we cannot take a comparative look at the whole market, or public-private relations in particular;

A significant number of new institutions of higher education (IHE) as private entity have been established. However, licensing is not following the logic suggested by the EIB, under which, for the opening of private universities the failures of the public HEIs should have been traced in advance, so that privates could provide better (the report of the European Investment Bank). The public

perception is that the goal of creating private law schools is to cover the high demand for this branch of study, rather than the real needs of the labor market;

There is no specific policy document on admissions at the Law Faculty, therefore one cannot judge on access policies for students being capable qualitatively, in connection with the people in need who have the ability to pursue this education, or with the minority groups, or antidiscrimination measures.

Law schools programs are enriched with new subjects. However, legal ethics and other ethical subjects do not occupy an important place in the curricula of these public or private faculties or departments. There are no legal mechanisms for the professional bodies to express themselves and to help evaluate and improve them.

There are not enough programs offered in English, in order to facilitate the mobility of students.

The process of accreditation of the faculties of Justice has been partial to the national level. It is conducted by the Accreditation Agency internally and not by any impartial international institution.

The quality of implementation in practice of teaching programs in universities, appears questionable. Despite positive developments recently with the opening of clinical programs, a good part of the subjects completely lack practical elements. Also, there is no effective planning, pursuing teaching practices;

Faculties enjoy autonomy to assign to subjects a different number of credits despite the weight that they have on the training of a future lawyer. There is a nationwide standardization that appear indispensable for the qualification of a lawyer;

Control and evaluation procedures of knowledge turns out to be biased. There is a double check on the assessment of knowledge. Faculties, in most cases, do not implement technology to guarantee transparency in the assessment, and not

external evaluation of the quality of assessment of knowledge in order to avoid possible errors and especially subjectivity due to different pressures;

The law does not make clear at which phase of the study the qualification as a lawyer is attained. The legislation does not specify whether to enjoy the title "Lawyer" only student who has completed the second cycle of studies Master of Science, or the student who has completed Master Professional and the latter's status as part of the second cycle of studies. It is not clear what value Bachelor degrees have in the labor market. This uncertainty includes not only the system of full-time study, but also part-time;

As a result of the general lack of regulation regarding the qualification as a lawyer, legal institutions offering postgraduate professional qualifications, such as the School of Magistrates and Lawyers School, are using different criteria for the admission of candidates;

Profiling into the cycle Scientific and Professional Master in each of the profiles, public, civil, and criminal, does not create conditions for a lawyer to be fully educated. This reduces the standing of the graduate to be more flexible in the labor market, as well as the acceptance tests in professional postgraduate legal education;

The current system has created a tendency for academism and legal academic qualifications inflation. Passing over to the higher cycles of study has become a common occurrence. Consequently, an increasing number of graduating students enrol in programs aimed at third cycle studies. In these programs, which consist of academic qualifications, lawyers who have completed a full professional qualifications are also admitted, thus mixing scientist profession of law with that of the practitioner. This phenomenon is created because of the uncertainty of policies in determining university admission quotas in the third cycle programs by the Ministry of Education;

In connection with the provision of academic titles, there is also inflation, this being due to formal control over the works and falling short of being substantial in connection with the publications of candidates. The transition from a degree

and scientific title to another is accomplished within a short period of time and does not take into account any policy needs of the faculty for these titles; Law faculty lecturers are not subject to any form of pedagogical training since the moment of employment and onwards;

Scientific research, despite the positive developments, does not appear to be at satisfactory levels. There is do breakdown between the scientific and pedagogical workloads. Faculty does not provide enough support for teachers or researchers involved in scientific research. Furthermore, neither the by-laws in accordance with the law "On Higher Education" do not recognise the load with scientific terms, or the separation of staff under the direction of teaching science. Faculty does not provide for grants in the budget available to researchers to enable them to conduct research activities or their participation in scientific conferences, or their management results is not effective enough.

The library's fund of the public law schools does not have updated publications and faculties do not have free access to databases of the largest legal online publications.

Legal education as a whole is involved in several bachelor non-legal faculty programs at the university, and partially in some other branches;

Regarding faculties issuing diplomas for teaching it emerges that they do not have their legal education program in their master's programs. Legal education courses are conducted in the bachelor programs, but considering the legal basis, teachers must complete the second cycle of studies to obtain such title;

In some programs it is evident that it is no proper selection of legal course has been made in order to have priority for a certain branch. There is a repetition of the same general courses, regardless of the profile of the school. The fact that generally, the legal education courses in non - legal faculty are by choice, does not guarantee the legal knowledge, particularly from teachers who will teach in subjects based on the above analysis and will have a duty to provide legal knowledge.

3. Findings and problems found out at the School of Magistrates

3.1 Findings and problems at initial training

The young age of judges and prosecutors graduating from the School of Magistrates, who mostly come directly from the ranks of the recent graduates of the in Law Faculties, 62% come from recent graduates of the Faculties of Law and 32% have an experience of several months to 7 years. (More specifically, from a total of 290 magistrates graduated in the School of Magistrates, 188 came immediately or a few months after graduation, 81 magistrates had one to three years experience at work when they were enrolled at the school and 16 candidates have been enrolled at school with an experience of three to five years and only five candidates had experience over 5 years. So when they started to work as judges or prosecutors after graduation, the magistrates were young. More specifically, 188 magistrates have graduated at the age of 24-25 years, 94 magistrates who graduated were from 26-28 years old, and only eight candidates have graduated over 29-30 years. Their average age is about 26 years old. The young age is a cause for not properly managing the case or situation thus leaving room for mistakes. The maturity and experience among the professionals who administer justice is an important feature in the rendering of justice, meaning law enforcement pursuant to standards and evaluating also the social impact of the court decision;

Difficulties in recruiting candidates due to the inability of assessing the indicators of integrity, ethics, social and moral behaviour, honesty, etc.;

Difficulties in testing and disqualification of competitors due to problems associated with their psychological model, their mental health from the viewpoint of ability or inability to perform the profession of judge and prosecutor;

The difficulties of assessing ethics and behavioural elements of communication during the attendance of the three-year educational program of initial training;

Difficulties in the assessment of the active practice year of the candidates and the impossibility to give a fair and objective assessment to their product a few months (decisions or acts).

3.2 Main problems and findings in the continuous training

Lack of awareness of judges and prosecutors on the need for continuous training. Their participation in the last three years is around 60 %, while the law of the School of Magistrates provides for a minimum and a maximum mandatory training days per year;³⁸⁰

The system of evaluating judges by the High Council of Justice provides that the overall volume of training activity occupies a twelfth part and is inserted to the third group of the assessment;

Lack of specialization of judges, in criminal, civil, family judges in all courts in the country, thus hindering their specialisation and their training and expertise in various fields. This refers to the fact that judges are assigned to sections at the beginning of each calendar year, decided by the President of the Court;

The need to increase the interest and participation as trainers in seminars and ongoing training to enhance the quality of coaches with experience from the judiciary and prosecution. Closely related to this issue, there is a need to prepare teaching materials of serious, contemporary and quality. Also, the methodology should be improved and tend towards interactivity;

School infrastructure is insufficient to carry out more than two seminars a day, because the facilities are insufficient to ensure the implementation of all training activity, being academic and administrative;

³⁸⁰ The number of days required for mandatory training for each judge or prosecutor is not more than 20 days a year and not less than 60 days to five years.

Inadequate structure of the number of administrative support staff needed for the implementation of initial and continuous training of judges and prosecutors, as well as publications, while just in continuous training around 600 judges and prosecutors are trained at the school for at least 12 days a year;

Financial insufficiency of the school, which obtains its major support from the state budget, and the secondary support from various international partners who might be interested in the realization of its activities according to the law in force in the field of training and publications.

4. Main findings and problems in the legal education for free professions

4.1 Findings and problems in the education of the legal profession

The creation of the National School of Lawyers is estimated as an important step to in order to put the legal formation of lawyers on strong institutional bases;

Legal changes which relate mainly to the initial training of candidates for lawyers and their continuous training, being the obligations that law assigns to NCA, are changes which are assessed as positive and have an impact on the development in the education of lawyers;

The determination of the obligation to follow the continuous training for lawyers is expected to have a significant impact on the quality and effectiveness of their work;

Initial training curricula and courses contain subjects of ethical nature which appear essential for the formation of a lawyer with the necessary professional integrity;

National School of Lawyers has begun work on the initial training, but does not yet have a functional structure for continuous training;

4.2 Findings and problems of the education of notary profession

The initial formation of notaries is incomplete. Testing for obtaining a notary license is not enough to check their knowledge and to give the opportunity to get involved then in a quality professional public activity;

Current education for beginners to practice notary is not enough. In practice there are cases where the candidates for notaries are fresh graduates;

It is noted that there is a lack of continuous training for notaries in order to obtain new knowledge and update them during the course of their career;

National Chamber of Notaries has not taken initiatives pertaining to the initial formation of candidates for the notary and further for their continuous formation;

Lack of an initial and continuous training for notaries has brought many problems in civil legal transaction involving judicial conflicts which could be avoided if the professionals in this field were well informed and trained;

Shortcomings are found with the provision of quality services for the preparation of acts, which according to the law must be edited by notaries;

Standards of transparency in the testing of candidates for notaries need improvement, so that the result out of control enables testing of knowledge for the profession of lawyer in this field and pave the way for acceptance of notaries with professional integrity.

4.3 Findings and problems in the education of the profession of judicial bailiff

Enforcement service is organized as a public and private service and this has brought the contest of two services to increase the rate of execution of court decisions;

A continuous training program prepared by the DHKP of bailiffs or the Ministry of Justice is missing;

Legal education level is low for bailiffs and consequently also their performance in terms of professionalism;

Licensing of bailiffs is not directly connected to their professional skills and their specific training coupled with the opportunity to be trained before licensing and the obligation to get training after licensing.

4.4 Findings and problems in the education of the profession of mediation

Initial and continuous training of mediators is still at early stages of development, and it remains a priority for DHKN as a new institution to strengthen the structures of initial and continuous training of mediators;

They organized a series of activities connected to public awareness on the possibility of resolving disputes through mediation in commercial, family, civil, labor and criminal law.

5. Findings and problems in the legal education and training for employees serving in the auxiliary institutional of justice

Judicial Administration does not have a specified program for continuous training, but so far realized by the School mainly in mixed groups in the Continuous Training program along with judges and prosecutors;

A training organized with the chancellors of the courts is missing, although the School of Magistrates has separate training sessions with them. The Ministry of Justice does not have a plan or program of training in terms of *judicial administration*;

State Advocacy has a working load of great importance because of the representation of legal issues before judicial and arbitral bodies within and outside the country. Therefore, although the legal basis foresees the importance

of professional improvement, again there is not provision of the obligation to attend a minimum of days or hours of training per year;

The initial intensive training program twice per three months is met for each preset state advocate before taking office, but this process does not continue with a sufficient intensity;

State Attorney has good cooperation relationship with the School of Magistrates and the School of Public Administration Training based on the Memorandum, but it lacks a program and a continuous training calendar;

Prisons Administration has programs and training courses based on the system for newly admitted employees, as well as continuous ones to advanced levels, but the latter is more reduced;

Prison administration has detailed regulations for basic training, but should be programmed and better specified continuous training, for which there are not a lot of data;

Prison police training system has a more organized and more comprehensive than the part of civilian staff that operates within these institutions;

Police Academy has a rich curriculum in legal education course also due to the nature of training provided by the institution and the close relationship with the justice system. The absence of a specialised school for the judicial police officers and cooperation with the school of magistrates have been found out in the context of education of these functionaries.

During various general training sessions at the *School of Public Administration* the basic legal education topics are included.

Deficiencies in training special legal education are found, such as legislative drafting techniques, evaluation of the impact of legislative interventions, implementation of legislation, etc.

FSA is a new structure with small administrative staff and at a young age that makes individual effort for his professional, however needing a continuous training in advanced levels, taking into account that the areas of bankruptcy are highly technical and with a high degree of difficulty;

Legal education of the staff and administrators of bankruptcy is at minimum limits and it is not organized on the basis of a plan or program of continuous training. This makes bankruptcy administrators encounter problems in understanding and applying the law on bankruptcy, the implementation of the procedures set out therein and in institutional relations with the courts;

The Ministry of Justice has an agreement with IFC, where among other things, provided for the period 2015-2016 is the continuous training of administrators, staff FSA, bankruptcy judges, etc.;

5.1 Findings for the experts of the judiciary bodies

With regard to the forensic experts. There was no ongoing planned training for the forensics. Their qualification in Albania and abroad was done in the framework of different projects, as well as by the University.

With regard to the psychologist and social workers experts. There's neither institutionalisation, nor a network and it also doesn't exist a register of psychologists and social workers, at court. The structure of their services is unclear. It hasn't started yet the organisation and functioning of the respective orders of psychologists and social workers, which have been approved by law. There were no special training and qualification programs for psychologists and social workers, with regard to the provision of their expertise in the field of law. The respective orders have been approved by law, but their functioning hasn't started yet.

5.2 Findings for public's education and legal information

The state institutions don't have projects and plans to promote and facilitate this form of education. It doesn't exist a national strategy for the legal

education of the public. There is no good coordination and planning of the ongoing legal education of the public. There is no distribution of institutional duties and of the civil society for the ongoing legal education and information of the public.

V. Conclusions

This chapter examines the current state of the education system of justice starting from pre-university education and to continuing education of lawyers, to highlight the findings and the main problems that hinder the proper functioning of this system. Analysis of legal education in Albania includes a variety of elements and factors which are very important for the progress of the whole justice system. At the conclusion of the review of the current state of all forms of legal education received in the evaluation on this analysis, problems are identified related to legal education in undergraduate education, in the legal university, postgraduate professional education, including the School of Magistrates and Freelancers, as well as continuous training of lawyers in other institutions.

These findings are as follows:

In analyzing the legal education in undergraduate education, it was concluded that legal education is treated as part of Civic Education subjects and some other subjects. However, the content of information on the legal norms has more like a moralising rather than a legal character. It concluded that legal education is given priority to education through freedoms and human rights, supported by international organizations that promote the implementation of these programs in undergraduate education. However, they do not have sufficient knowledge on the Constitution and legislation.

In the past 10 years, important steps have been conducted for the development of higher legal education at the university level. Reforms have been taken for the legal education towards the Bologna Declaration, including the European system ECTS in the higher education level, and modifying programs and curricula according to the Bologna Charter standards. This has enabled the

mobility of students and academics in the universities of the countries of Europe where the system is implemented based on the Bologna Declaration. These reforms have also increased access for undergraduates to justice significantly increasing the number of students and faculty of the departments of law and as a result, the number of graduates in this field.

They created new institutions of private higher education (IHE) in law. However, licensing is not following the logic suggested by the European Investment Bank, under which, for the opening of private universities will be recorded in advance what services are failing in public HEIs, which privates could make better offer. The public perception is that the goal of creating private law schools cover the high demand for this branch of study, rather than the real needs of the labor market requirements.

There has been no analysis or special study on higher university education in law in Albania, affiliated with features that offers the study in the field of justice and the need for its harmonization with the labor market, as well as professional legal education institutions. Therefore there is no strategy for the development of this education, or any part of special strategy in the context of the Strategy for Development of Higher Education. There is no general database at national level for the Higher legal education, in terms of students, staff and programs.

There is no analysis of the progress of studies with the new program of the 3 + 2, adopted to implement the obligations deriving from the Bologna Declaration. The law provides for the possibility to organize first and second integrated programs cycle, but these programs are not including legal studies. It is not clear what criteria were followed by the Council of Ministers and the Ministry of Education to determine which programs have the features needed for integrated cycles and why "Justice" was never in the analysis. Pursuing legal education models of the region and provision for final integrated study 4 + 1 or 5 + 0, the Albanian legal education is not valued enough in the framework of reform in higher education.

It is not clear what value Bachelor degrees have in the labour market. This uncertainty includes not only the system of full-time study, but also part-time. As a result of the general lack of regulation regarding the qualification as a lawyer, legal institutions offering postgraduate professional qualifications, such as the School of Magistrates and Lawyers School, use different criteria for the admission of candidates. There is a categorization of the executive agencies of jobs and requirements in relation to the level of degrees appropriate for the respective country.

The process of accreditation of the faculties of Justice has been partial at the national level. It is conducted by the Accreditation Agency internally and not by an impartial international.

In connection with legal education curriculum, the universities enjoy autonomy to grant credit numbers of different subjects despite the weight that they have on the formation of a future lawyer. The quality of implementation in practice of teaching programs in universities, appears questionable. Despite positive developments recently with the opening of clinical programs, a good part of the cases having no practical elements. Also, there is no efficient planning of monitoring of teaching practices; there is no nationwide standardization instrument that appears necessary for the qualification of a lawyer (at the level of policy documents by executive agencies or common rules of higher education institutions).

The current system has created a tendency for inflation of academism and legal academic qualifications. Passing on higher cycles of study has become a common occurrence. Massive attendance at the programs of the 2nd cycle, scientific master, has made an increasing number of graduating students, aiming to enrol in programs of the third cycle of studies, PhD. In these programs, which consist academic qualifications, under current law, graduates and lawyers are admitted and who have completed a full professional qualifications as those of the ASM, thus mixing up the scientist profession of law with that of the practitioner. This phenomenon is created because of policy uncertainty in determining university admission quotas in third cycle programs by the Ministry of Education.

In connection with the provision of academic titles there is also inflation, thanks to the framework in force that puts the emphasis on quantitative criteria and therefore more quantitative approach than substantive, on the quality of teaching and research profile of the candidates. The transition from a degree and scientific title to another is carried out within a short period of time and not taking into account any university policy needs to be able to read, and they are not regulated as academic qualifications and scientific progress to full-time professors HEI. The possibility of applying for titles by the external staff has influenced their devaluation and inflation on academic degrees and titles.

The teaching load of teachers is quite high. The current framework on working time ratings of teachers is problematic, thus leaving teaching of many important elements of academic processes aside, such as dissertations leadership, instructional leadership practices, participation in juries of doctoral, evaluation committees academic titles etc.

Scientific research also is not part of the basic elements of faculty teaching workload. Despite positive developments, scientific research does not appear satisfactory. There is no division of the workload of professors in scientific and pedagogical activity. Implementing Provisions of the Law "On Higher Education" do not recognise the load with scientific profile, or the allocation of staff according to the scientific and educational direction. HEI also do not provide enough support for teachers or researchers involved in scientific research with them. Although the budgets of the departments and faculties provide for the budget to enable them to conduct research activities or their participation in scientific conferences, their access and usability to support scientific activities is bureaucratic and difficult. In this context, the department unit has difficulty to obtain the funding needed for their financial autonomy to such an extent. The lack of legal personality has limited their autonomy.

Procedures in exams and testing questions are problematic. Ciphering the names in order to eliminate interferences and pressures for a higher grade is not carried out by appropriate means. No knowledge assessment technology to avoid the subjectivity of teachers, particularly because of interference and pressure from third parties, is in place. Regarding the final testing, reform

within the Bologna process has brought the obligation of each student to submit an assignment with a certain number of credits. Removing the final exam and his replacement by submitting a paper, and the difficulties of managing this process due to the extremely high number of students, has made the state exam to be just under a very formal control. State exam to test the level of training of students at the end of university studies has brought about a fall in quality.

School of Magistrates and its impact on the formation of future judges and prosecutors is a success story. However, this institution is, in terms of initial training, in order to increase the quality of future prosecutors and judges, encountering difficulties in recruiting candidates because of the impossibility of assessing the indicators of integrity, ethics, social and moral behaviour, honesty. Also, difficulties are found in the design of tests impacting the disqualification of competitors due to problems associated with their model of psychological and mental health. Regarding continuous training, it is pointed out that there is a lack of awareness of judges and prosecutors on the need for continuous training, partly as a result of low weight that training occupies in the evaluation of judges by the HCJ. The School of Magistrates is encountering the challenge of the recruitment of trainers who come from the ranks of the judiciary or prosecution and increase the quality of materials prepared for continuous training.

Legal education for the free professions, lawyers, notaries, enforcement and mediation service is a component that directly affects the quality and progress of their activities in order to provide them with the knowledge necessary to ensure the preservation of the integrity and respect of deontological norms of conduct of the profession.

Legal changes which relate to the initial formation of candidates for lawyers and continuous training is considered to have contributed positively to the development of education and training of lawyers. Despite this, the School of Advocates has not developed capacities in order to accommodate legislative changes regarding mandatory continuous training of lawyers.

Regarding legal education for the profession of notary, it turns out that the way of the formation of candidates for notary is not enough and there are deficiencies both in the forms of initial training, as well as in continuous training in order to obtain new knowledge and update existing knowledge in the course of their career.

Besides notaries, the level of legal education for bailiffs appears to be low, and consequently their performance in terms of professionalism is estimated problematic. It is worth mentioning that the licensing of bailiffs is not based on their professional skills and prior training obligation.

As regards the legal formation of intermediaries, the National Chamber of Mediators is newly established and it is estimated to have made positive efforts to train young mediators in cooperation and with the support of international institutions.

The analysis of the training provided by the institutions being auxiliary to justice highlighted the need for continuing legal training organized for all these institutions. Some of them, such as the Prison Administration and the Police Academy have established structures and service -functioning in continuous training. Some other institutions, such as the State Bar and the Prison administration were observed in to conduct training with sporadic nature through collaborations with the School of Magistrates. Overall, there is a general lack of standardized plans and periodic training of staff in these institutions.

The analysis did not conclude any institutionalization of legal education for citizens. Until now a legal education is carried out through projects and initiatives of non-profit organizations operating in this field and with the support of international partners. But there is no coordination or responsible institution to promote, organize and monitor this important event.

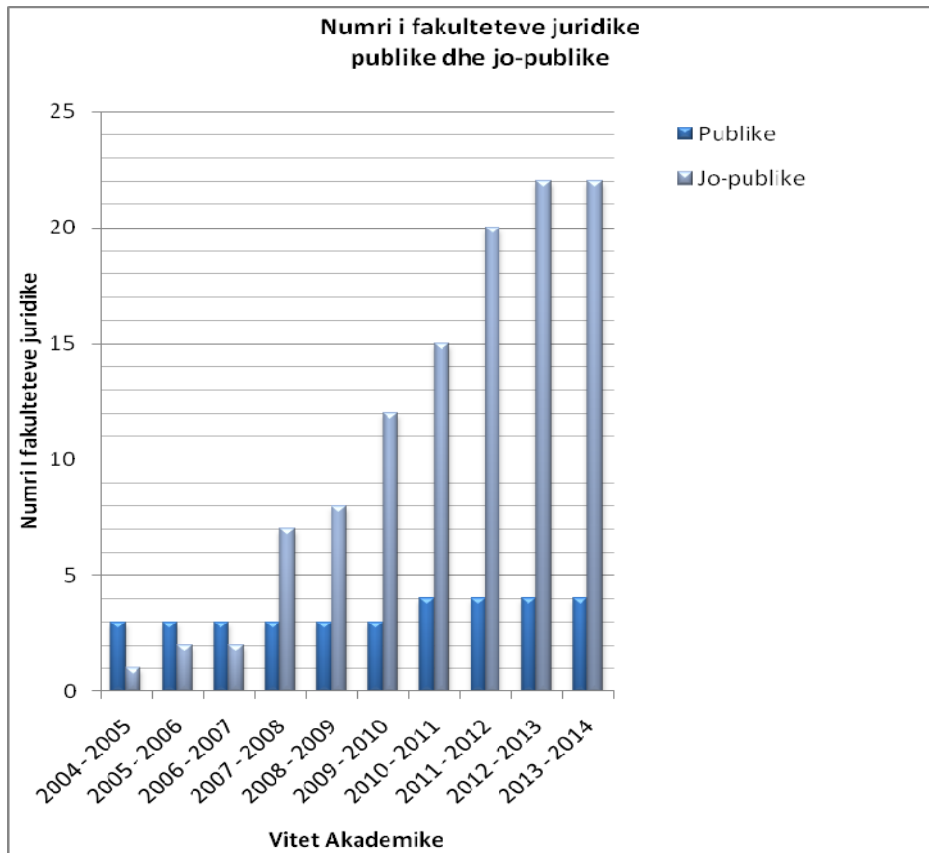
In their entirety, the findings of the analysis of the chapter " Analysis of education justice system " problems which need to be addressed with concrete legal measures.

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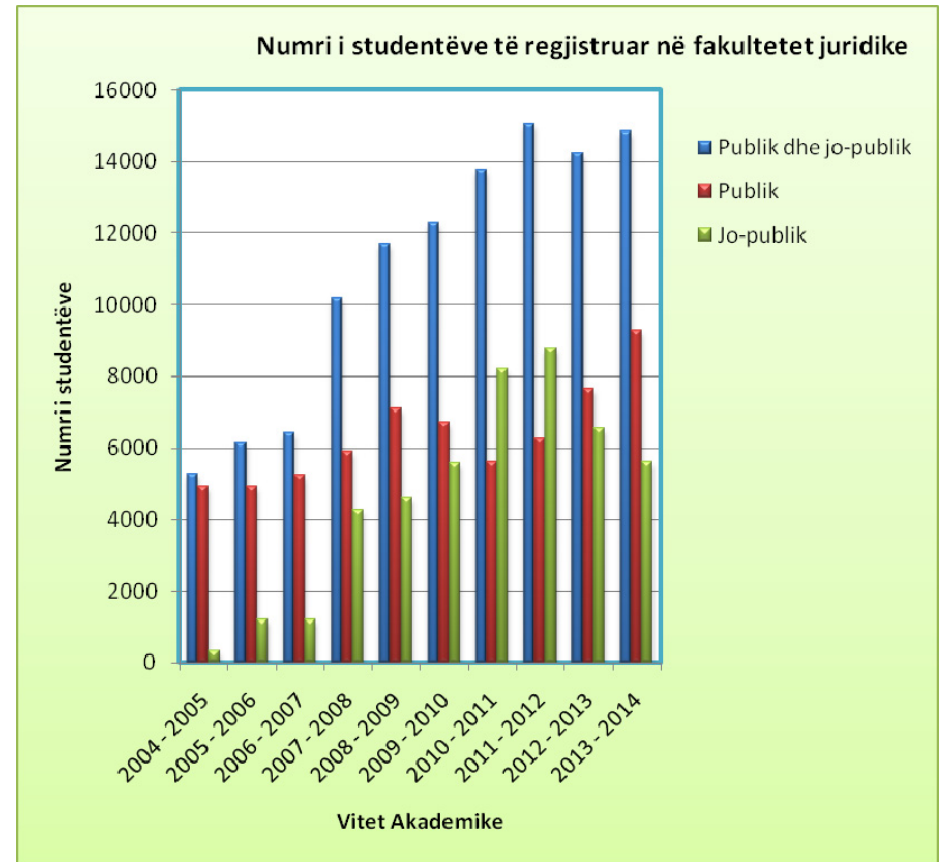
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Appendixes

CHAPTER VI “ANALYSIS OF JUSTICE EDUCATIONAL SYSTEM”

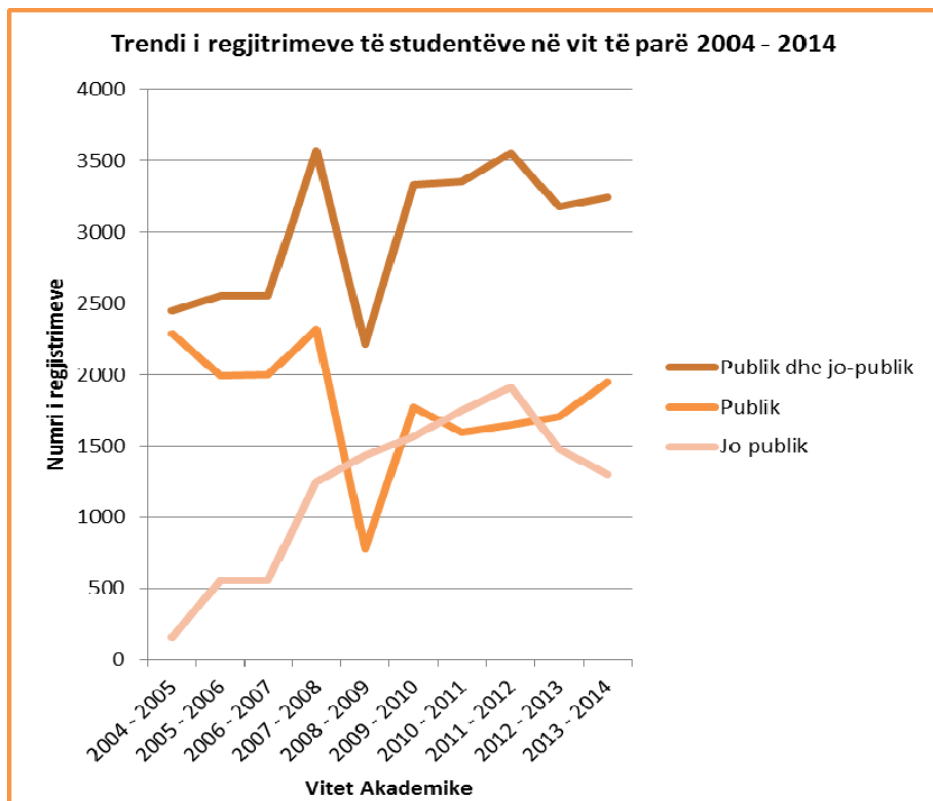


Graph nr. 1.³⁸¹

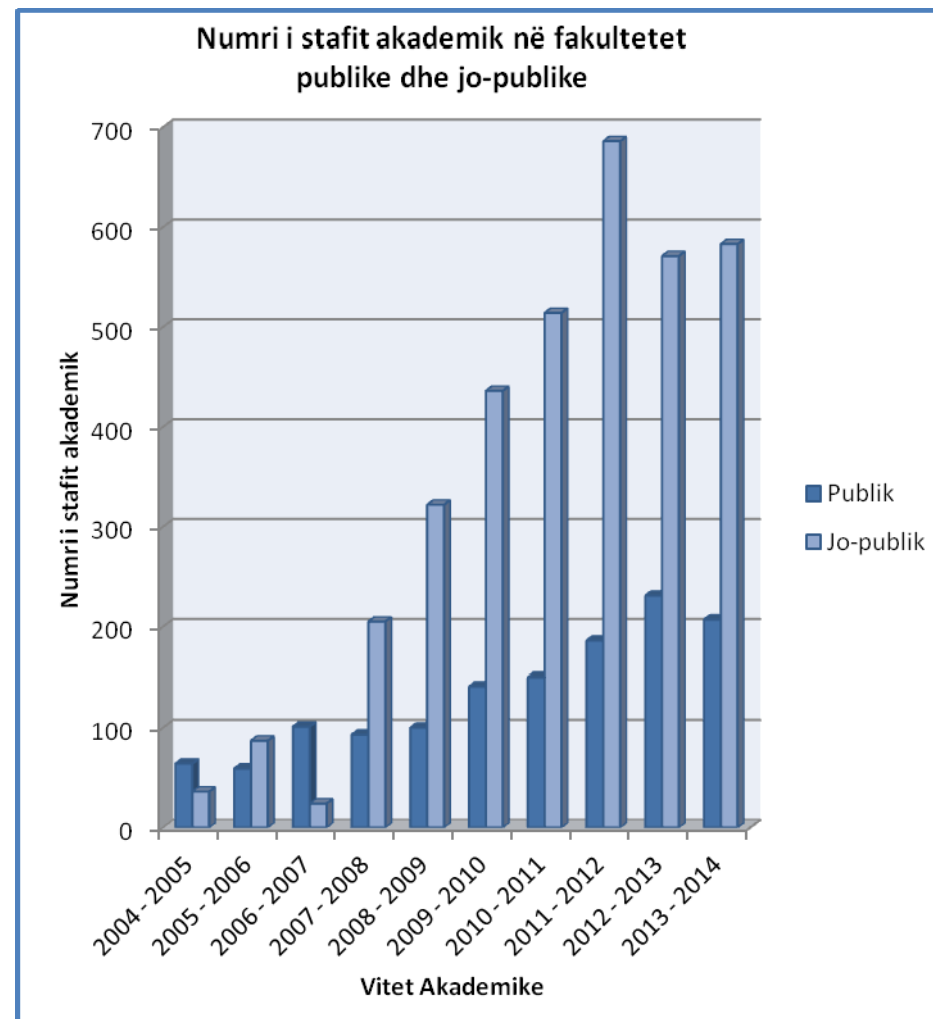


Graph No 2

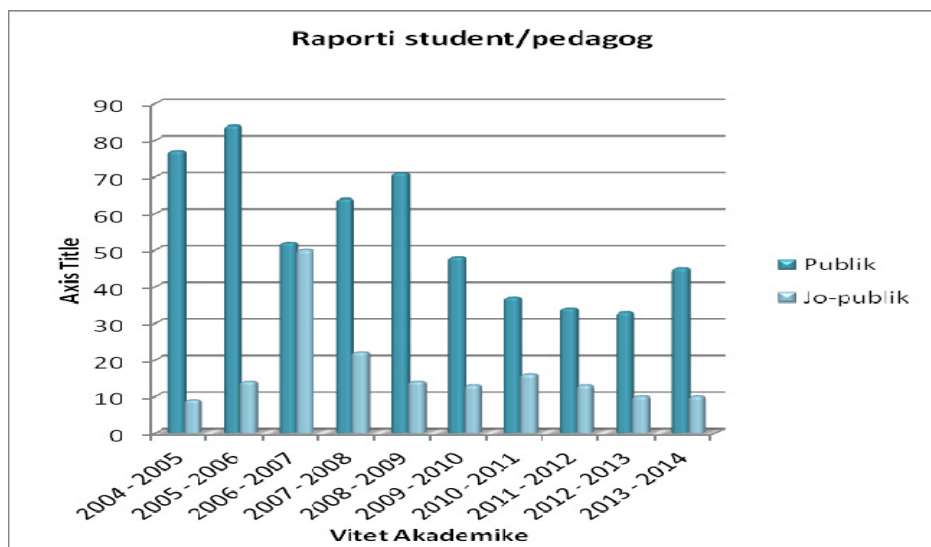
³⁸¹Data taken officially from the Ministry of Education and Sports, Letter Nr.15127/1 Prot., dated 12.03.2015



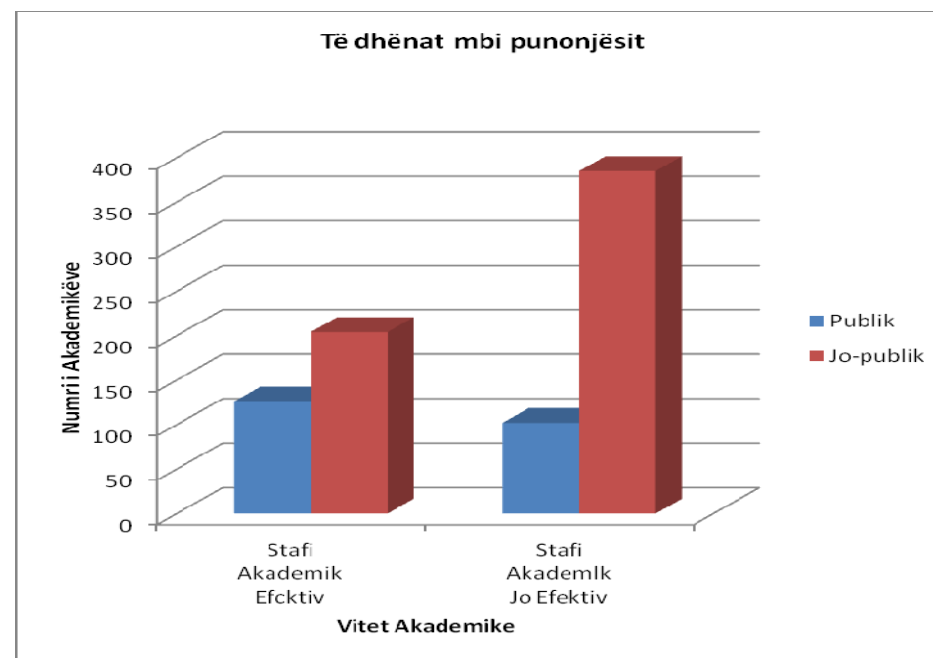
Graph no 3



Graph no 4



Graph no 5³⁸²



Graph no 6

³⁸² The letter of the Ministry of Education and Sports , Nr.15127 / 1Prot . , Dated 12.03.2015 , clarified that this report is not completely real because:

- a) The total number of students does not include the correspondence or part-time students;
- b) The number of teachers were included as full-time teachers and part-time who have different rates of teaching ;
- c) The lecturers of the law faculties are engaged in the process of teaching legal subjects in other faculties developing these subjects.

CHAPTER VII. ANALYSIS OF THE JUSTICE SYSTEM FOR LEGAL SERVICES

I. INTRODUCTION

Legal services are an important part of the justice system in a country. Provided with professionalism, competence and practicing in respect of the Constitution, laws and moral norms in a democratic society, they allow for the protection of individual's rights and fundamental freedoms, and guarantee the delivery of justice, based on the principle of impartiality and independence of the judiciary.

This paper, based on a well-defined structure, will make a more detailed consideration of five legal services offered in the Republic of Albania, namely:

1. Advocacy
2. Notary
3. Bailiff Service
4. Mediation
5. State Advocate

The right to a due process of law relates to guarantees provided to the parties in a trial, in terms of respecting the essential principles of the process. The jurisprudence of the Constitutional Court³⁸³ has recognized as a component of due process, also the right to defence counsel and the right to be heard. In a democratic society, the advocacy service plays an important role in ensuring the rule of law and an efficient protection of human rights.

The notary in the Republic of Albania is a public function which is performed by a private person, who meets certain inherent conditions to be qualified as a free professional. The notary in the Republic of Albania performs legal activities to the service of individuals and legal entities, through drafting of acts

³⁸³ Decision of the Constitutional Court of the Republic of Albania No. 12, of 06 June 2005.

and performance of notary acts, in accordance with the Constitution and legislation in force.

Bailiff Service has the mission of compulsory execution of executive titles, according to the procedural rules set out in the Code of Civil Procedure.

And negotiated settlement of disputes through reconciliation was and is part of the Albanian tradition.

State Advocate is an institution that represents the interests of the state before the court and provides legal assistance for state institutions and public entities.

II. CONSTITUTIONAL AND LEGAL REGULATORY FRAMEWORK

1. LEGAL PROFESSION

Constitutional regulatory framework and other laws and regulations, which mostly affect and are related to the activity of a lawyer and that provide rules for implementation are :

Kuadri rregullator kushtetues dhe akte të tjera ligjore dhe nënligjore, të cilat më së shumti ndikojnë dhe janë të lidhura me veprimtarinë e avokatit dhe që parashikojnë rregulla për zbatim janë:

Legal acts :

- a. The Constitution of the Republic of Albania, Article 28 thereof;
- b. Law no. 7895, dated 27.01.1995 " Criminal Code of the Republic of Albania ";
- c. Law No. 7905, dated 21.03.1995 "The Code of Criminal Procedure of the Republic of Albania "
- d. Law no 7850, dated 29.07.1994 " Civil Code of the Republic of Albania ";

- e. Law no. 8116, dated 03.29.1996 " Code of Civil Procedure of the Republic of Albania ";
- f. Law no. 9062, dated 08.05.2003 " Family Code ";
- g. Law no. 9109, dated 17.7.2003 " On the profession of advocate in the Republic of Albania ", as amended;
- h. Law no. 10,039, dated 22.12.2008 " On legal assistance ", as amended.

2. NOTARY

Legal acts that are related to the activity of the notary and that provide rules for implementation are :

Legal acts :

- a. Law no 7850, dated 29.07.1994 " Civil Code of the Republic of Albania ";
- b. Law no. 8116, dated 03.29.1996 " Code of Civil Procedure of the Republic of Albania ";
- c. Law nr.7829, dated 06.01.1994 " On Notary ", as amended;
- d. Law no. 9901, dated 14.4.2008 " On traders and commercial companies ", as amended;

3. JUDICIAL BAILIFF SERVICE

Constitutional and legal regulatory framework is summarized in the following references :

1) *The Constitution of the Republic of Albania, Article 42, 142.*

2) *International Agreements*

- a) Law no. 8137, date 31.07.1996 "On the ratification of the European Convention "On the Protection of Fundamental Rights and Freedoms";

- b) Law no. 8036, date 22.11.1995 "On the ratification of the Convention on mutual legal assistance in civil, commercial, and criminal area between the Republic of Albania and the Republic of Turkey";
- c) Law no. 7760, dated 14.10.1999 "On the ratification of the "Convention between the Republic of Albania and Greece on judicial assistance in civil and criminal matters";
- d) Law no. 8624, dated 15.06.2000 "On accession of the Republic of Albania on the "Hague Convention "On the protection of children and cooperation regarding adoptions abroad";
- e) Law no. 9359, dated 24.03.2005 "On accession of the Republic of Albania on the Convention "On relations with the children";
- f) Law no. nr. 9443, dated 16.11.2005 "On accession of the Republic of Albania in Convention "On jurisdiction, applicable law, recognition, application and cooperation regarding the parental responsibility and measures for the protection of children";
- g) Law no. 9446, dated 24.11.2005 "On accession of the Republic of Albania on Convention "On civil aspects or international abduction of children";
- h) Law no. 9554, dated 08.06.2006 "On accession of the Republic of Albania on Convention "On notification and delivery abroad of the judicial and extrajudicial documents in civil and commercial areas", etc.

3) *Laws:*

- a) Law no. 8116 dated 29. 03. 1996 on the "Civil Procedure Code of the Republic of Albania";
- b) Law nr.7850, dated 29.07.1994 on the "Civil Code of the Republic of Albania";
- c) Law no. 9062, dated 08.05.2003 on the "Family Code";
- d) Law no. 7895, dated 27.01.1995 on the "Criminal Code of the Republic of Albania";
- e) Law no. 10031, dated 11.12.2008 "On Private Bailiff Service";
- f) Law no. 8730, dated 18.01.2001 "On the Organization and Functioning of the Bailiff Service";

- g) Law no. 8678, dated 14.05.2001 "On the organization and functioning of the Ministry of Justice", as amended;
- h) Law no. 8894, dated 14.05.2002 "On Loan Recovery Agencies";
- i) Law no. 8537, dated 18.10.1999 "On Securing Charges";
- j) Law no. 8331 dated 21. 04.1998 "On Execution of Criminal Sentences";
- k) Law no. 9381, dated 28.4.2005 "On Compensation for unjust imprisonment";
- l) Law no. 9235, dated 29.7.2004 "On Restitution and Compensation of Property";
- m) Law no. 33/2012 "On Registration of Real Estate";
- n) Law No. 10 428, dated 02.06.2011 "On Private International Law".

- e) Labour Code, in Chapter XVII, provides that mediation, conciliation and arbitration as legal remedies for settlement of collective labour disputes;
- f) Law no. 10385, dated 24.02.2011 "On mediation in the settlement of disputes", constitutes the framework law for the functioning of the institute of mediation;
- g) Law no. 7501, dated 19.7.1991 "On land", as amended;
- h) Law no.9669, dated 18.12.2006 "On measures against domestic violence", as amended;
- i) Law no. 9901, dated 14.4.2008 "On entrepreneurs and companies", as amended;
- j) Law no. 33/2012 "On registration of real estate".

4 MEDIATION

Constitutional and legal regulatory framework is summarized in the following references:

International acts:

- a) Convention (Directive) 2008/52/EC "On certain aspects of mediation in civil and commercial matters", with CELEX no. 3 2008l0052.
- b) Other legal and sub-legal acts which mostly affect and are associated with the activities of mediators and that provide implementing rules are:

Laws:

- a) Civil Procedure Code provides for the procedures followed by the judge to settle the case by conciliation. Articles 25, 108, 158 / b, 171 / b, 461;
- b) Criminal Procedure Code;
- c) Civil Code, in a separate chapter (Chapter XV): Articles 973, 974, 975, 976, 977, 978, 979, 980 and 981;
- d) Family Code - Article 134;

5 THE STATE ADVOCATE OFFICE

- a) Law no. 10018 dated 13.11.2008 "On State Advocate", as amended.

III. INTRODUCTION OF THE CURRENT SITUATION

1. LEGAL PROFESSION

The activity of the legal profession obtained its distinctive and modern profile at the time of the establishment of an independent Albanian state with the declaration of independence on 28 November 1912. This profile was materialized legally with the approval of the first Albanian law on the organization of the legal profession in December 30, 1922 law that was amended later, referring to best experiences of that time.

Advocacy institution was abolished during the dictatorship (1967-1990). In the early 90s it resumed its activity, and which was made possible by Law no.

7541, dated 12.18.1991 "On the Legal profession in RA"³⁸⁴, creating the legal basis of the profession according to contemporary standards and the structures of advocacy organization were created in the center and districts in 2003-2005, with the approval of Law no. 9109, dated 17.7.2003 " On the profession of advocate in the Republic of Albania ", as amended³⁸⁵ (here and on the law no. 9109/2003) This law was also accompanied by other acts : the Statute of the NCA 's³⁸⁶, Attorney Ethics Code³⁸⁷, passing subsequently to concrete steps, such as selecting the governing bodies of the Bar in the center and districts.

The adoption of these acts that laid the groundwork for the creation of an independent profession, self regulated and financed, outside the political influence or any other influence. Advocacy is subject to principles of moral integrity, confidentiality, respect for the rules of ethics, elimination of conflict of interest, avoiding activities incompatible with the independent exercise of their duties, protection of customer interests and respect for the courts. The jurisprudence of the Constitutional Court has determined that : "... in principle, the lawmaker allowed to regulate the profession of lawyer on matters of public interest. However, regulation / intervention should not undermine the autonomy of the profession "³⁸⁸.

The profession of lawyer can be practiced by every Albanian citizen who: i) obtains permission (license) to practice according to the procedure specified in Article 25 of Law no. 9109/2003, as amended and ii) registered with the tax authorities. With regard to obtaining the relevant permits to the legal profession, the fulfilment of certain essential criteria stipulated in Law no. 9109/2003, as amended is required, whose implementation is overseen by the

³⁸⁴ Law no7541, dated 18.12.1991 "On legal profession in RA", (repealed) replaced by law no 7827, dated 31.5.1994, which was amended by law no 8428, dated 4.12.1998.

³⁸⁵ Amended by law no 9795, dated 23.7.2007; law no 10 047, dated 24.12.2008 and law no 91/2012, dated 27.09.2012.

³⁸⁶ Approved on 10 Prill 2005 by the General Council of NCA.

³⁸⁷ Approved by decision no 31, dated 12 november 2005 by the General Council of NCA.

³⁸⁸ Decision nr. 7, dated 12.03.2010 of the Constitutional Court.

governing bodies of the NCA's. While practicing his profession, the lawyer should be identified by the number of permits to exercise the profession, as well as the fiscal code or office where he lives. Besides the unique number of permit for any lawyer, the latter shall present to the competent authorities the identity card of a lawyer, which according to the rules established in the Statute of the NCA's, is given annually to the lawyer as he regularly pays membership duties.

Currently, NCA has been set up in 13 local chambers of advocates in districts. NCA governing bodies and chambers of advocates are, respectively : (1) General Council and (2) the Board.

According to statistics submitted by the NCA (National Registry), in 2014 8015 lawyers are practicing (active and passive) of whom 2,098 are lawyers practicing actively. The lawyers that can represent clients in the first and second instance are the 1540 trial lawyers, while 558 lawyers can represent in any instance of adjudication (including the Supreme Court and Constitutional Court).

NCA is unanimously accepted as a member with observer status in the Council of European lawyers - European Lawyers for law and justice (CCBE) at a Plenary Session of the Organization held on May 24, 2008, Hungary. With membership in the CCBE, NCA has adhered to the Charter of Fundamental Principles of the Legal Profession in Europe and the Code of Conduct of European Lawyers, whose underlying principles remain important respect, which among others are : respect for the rule of law and fair administration of justice, independence and self -regulation of the legal profession of a lawyer.

Also, NCA has cooperated closely with the CCBE - Council of European lawyers - European Lawyers for justice and law, the Lord Slynn Foundation of Hardley and the Bar Council of England and Wales, in implementation of the project "Improving the legal and institutional base of National Bar Association, with special focus implementation of the rules of ethics of lawyers ".

NCA has undertaken a five-year program in cooperation with USAID Strengthening the Justice System in Albania (JuST), and Legal Training Centre ACLTS having as one of its objectives the strengthening of the legal profession and legal education in Albania, since 2011 and works for the development and implementation of a Continuing Legal Education program. On May 12, 2011, between USAID and NCA was signed a Memorandum of Understanding " On the Establishment and Implementation of the Continuing Legal Education Program (CLE) for lawyers in Albania ", signed by the Chairman of the NCA and Mission Director USAID in Albania.

Recent legal changes dated 09.27.2012, which were made to law no. 9109/2003, as amended, targeted new sanctions foreseen in connection with the behaviour of lawyers, new rules and procedures related to their vocational training, which is already being implemented by a specialized structure as the National Bar School and determining the liability of lawyers professional insurance by January 2014.

1.1 Structure of disciplinary measures for advocates and disciplinary proceeding

Before the legislative changes of 2012, the conduct of the disciplinary process in NCA had specific problems with regard to the malfunctioning of the structures assigned with the examination of complaints against advocates, and the very complicated way the examination of these complaints had to go through, the meeting of the formal conditions by the complainants, compliance with the deadlines, etc. As a result of these problems, only a limited number of disciplinary measures were taken against advocates for violation of professional standards or rules of ethics. This did not respond to the stage and problems affecting the Advocacy and the quality of its service delivery.

The legal amendments which came into force at the end of January 2013, addressed the issue of the complaints, which do not meet the formal conditions for filing the complaint, by providing in the law the establishment of the NCA Complaints Commissioner, who not only receives the complaints, but also

explains to the complainants the process of their review, as well as guarantees the proper recording and acceptance of the valid complaints.

In order to improve transparency and public confidence, besides advocates who are members of the Disciplinary Committee, which is the main body that the law empowers to review complaints against advocates, also representatives from the Ministry of Justice, HCJ, academia, etc, are members to such committee. The inclusion of representatives outside the advocate profession does not violate the independence of the profession because the majority of them, 6 out of 9 members are advocates elected by the General Council, therefore the external members never form a majority in the Disciplinary Committee.

With the entry into force of the legal amendments, a total of 182 complaints were filed at the Complaints Commissioner.³⁸⁹ The first meeting of the Disciplinary Committee was held on 29 April 2013. A total of 17 Committee meetings were held, during which the Committee reviewed 104 complaints, while the rest of the complaints will be reviewed in the following meetings. The disciplinary measures³⁹⁰ taken by this Committee vary from minor ones,

³⁸⁹ Out of which 13 cases were sent back for lack of legitimacy. In 7 cases the parties were withdrawn. The Complaints Commissioner has brought for disciplinary proceeding a total of 130 complaints.

³⁹⁰ Some of the measures taken:

1. Revocation of license of advocate - 3 cases.
2. Suspension of license - 2 cases.
3. Written warning for professional misconduct– 1 case.
4. Counselling for a proper behaviour in the future - 8 cases.
5. Fie for violation of the Code of ethics - 2 cases.
6. Restitution of paid amount - 7 cases.
7. Partial restitution of payment -3 cases.
8. Settled by agreement– 4 cases.
9. Suspended while waiting for the completion of the judicial processes - 4 cases.

such as "*a written warning for professional misconduct*" to "*suspension and revocation of licenses to practice the profession of advocate*".

With the establishment of the Disciplinary Committee in 2013, a total of 167 complaints were registered only regarding this case by the Court of Serious Crimes, claiming that the court appointed advocates had failed to appear at court hearings. The Disciplinary Committee has suspended the license of the first advocate of this case, and has given a written warning to three other advocates.

1.2 Determination of the obligatory initial training for assistant advocates and continuous training for advocates

One of the novelties of the Law of 2012 is the introduction of the duty for compulsory attendance by candidate-advocates.³⁹¹ of the initial training, and by advocates of the continuous training, well as the establishment of the Albanian National School of Advocates. These changes serve, especially to the strengthening of professionalism of persons who seek to practice advocacy, increasing not only the quality of the service, but also their awareness of the importance that the correct practicing which is in accordance with the law and rules of professional ethics of advocates, has for the protection of human rights and fundamental freedoms.

International conferences held by the National Council of Advocates of Italy, during 2008-2010 on the harmonization of training programs for European advocates and adoption of the "*Rome Declaration*" pave the way for an institutional cooperation of the NCA with the Italian Superior School of Advocates, signing a Cooperation Agreement on 14 December 2011 in Rome. The agreement signed was oriented towards exchange experiences on

³⁹¹ One of the fundamental criteria to be granted the license for practicing the profession is: *Full Attendance of the School of Advocacy and being provided with the respective certificate.*

organizing activities in the field of continuous training for advocates and candidate-advocates in Albania and the support to the NCA in establishing and organizing the National School of Advocacy in Albania. In the framework of this cooperation, the Initial and Continuous Training Regulation was developed, and several training sessions for lecturers of the School of Advocacy were held.

The provisions on the National School of Advocacy were introduced in the amendments adopted.³⁹² in the Statute of the NCA. The National School of Advocacy is an organ of the National Chamber of Advocacy, which deals with the preparation of training programs, organization and administration of the initial training for candidate-advocates, and continuous training for advocates, based on Article 25§1, paragraph 4 of Law 9109/2003. The General Council of the NCA adopts the statute of incorporation of the National School of Advocacy and regulations on the training proposed by the National Chamber of Advocacy.

National Bar Association has launched a five-year program in cooperation with USAID Strengthening the Justice System in Albania (JUST), and Legal Training Center ACLTS having as one of its objectives the strengthening of the legal profession and legal education in Albania, since 2011 and works for the development and implementation of a Continuing Legal Education program.

With the adoption of the Law no. 91/2012 "On some addenda and amendments to Law no. 9109, dated 17.7.2003,"On the profession of advocate in the Republic of Albania" as amended, the obligation to attend the training program for candidate-advocates, as one of the condition to practice the profession of advocate is already introduced³⁹³, along with the obligation of advocates to attend the continuous training program.³⁹⁴ For the preparation, organization,

³⁹² Amendments were adopted by the General Council of the NCA on 2 February 2013.

³⁹³ See Article 25 of Law no. 9109/2003

³⁹⁴ See Article 16/1 of Law no. 9109, dated 17.7.2003, " On the profession of advocate in the Republic of Albania", as amended

and administration of the initial training program for candidate- advocates and of the continuous training program for advocates, the law has provided for the establishment of a new structure - the National School of Advocacy, as a body of the National Chamber of Advocacy. ³⁹⁵ It should be noted that the legal amendments made also the continuous training for advocates obligatory. More specifically, under the law, the advocate shall attend the continuous training program organized by the National Chamber of Advocacy, which provides him/her with the respective certificate of attendance of this program, which aims to update the advocates with specific professional, theoretical and practical knowledge.³⁹⁶ Failure to attend such program shall constitute a ground for revocation of the license to exercise the profession of advocate.

The School, established within the time specified by law, is currently only covering the initial training of candidate-advocates, while the continuous training is still being covered through a pilot program co-financed by NCA and USAID- JuST. During 2014-2015, this program is extended into 6 regional chambers - Vlora, Durrësi, Fieri, Korça, Shkodra and Tirana and is open to advocates of chambers which are geographically close to centres where the trainings are held. Upon its completion, the preparation, organization and administration of the continuous training program for advocates, shall be performed by the National School of Advocacy, according to the powers the law confers to the school. For this purpose, in December 2013, USAID- JuST supported the design of an Action Plan for the Organizational Development of the National School of Advocacy and the Mandatory Continuous Legal Education Program Nationwide (2013-2016).

1.3 Definition of the obligation for professional insurance of advocates

The legal amendments to 2012 require that for all practicing advocates, an insurance policy shall be used from 31 January 2014. The law does not specify what should the insurance policies cover, or any limit for damage compensations. The NCA has contacted several prestigious companies such as *Lloyds London* and *Allianz Global Insurance Company*. Besides, the NCA has contacted also local insurance agencies, which do not provide such insurance contracts. Other than the lack of internal market, another reason why foreign companies do not want to engage in Albania is the inability to calculate risk. On the other hand, the existing difficulties are posed also by economic aspects.

Also, in addition to compliance with legal obligations, the NCA has undertaken a number of other initiatives, such as: the publication of the "Avokatia" journal, a periodical exclusive publication of the NCA. The purpose of it is that this journal serves as a genuine tribune of law, first for young advocates, but also for the entire category of legal practitioners in Albania. It can be said that this journal, through the legal opinions it provides, has already created a admirable doctrinal jurisprudence.

2 NOTARY

The organic act regulating the profession of notary in the Republic of Albania is the law no. 7829, dated 01.06.1994 "On the Notary", as amended, (hereinafter law nr.7829/1994). Based on this law, the notary activity consists of drafting and verifying the contents of legal actions or legal acts committed before the notary, by entities of private law according to the law. The actions of the notary are formalities necessary to ensure the legitimacy of private legal actions, which may have establishing, modifying, or ceasing effects on the rights or obligations of parties subject to the law. Thus, a notary serves as an

³⁹⁵ See paragraph 4 of Article 25/1 of Law no. 9109, dated 17.7.2003, "On the profession of advocate in the Republic of Albania" as amended.

³⁹⁶ See Article 16/1 of Law no. 9109, dated 17.7.2003, " On the profession of advocate in the Republic of Albania", as amended

assistant to the court because, among others, he/she drafts the legal documents and verifies the authenticity of documents.³⁹⁷

The system of organization of the notary in the Republic of Albania is based on the continental model of the notary, and is organized in a proportional allocation of notaries (members of local chambers of notary) according to judicial districts, in proportion to the population. Thus, the notary service is extended all over the territory of the Republic of Albania, by providing the society a service which is capillary distributed in the territory of the country.

In the Albanian system, the notary is organized in local chambers and in one National Chamber, which are legal entities that serve for the protection of the rights and interests of notaries, and promote the notary professional enhancement and training. Within the National Chamber of Notaries, the Council of the Chamber is responsible for the organization of continuous training for notaries. The organization of continuous training should be done taking into account the difference between notaries and assistants. Currently continuous training is being offered fragmented in terms of content and in terms of time and place.

The Ministry of Justice exercises a supervisory and control power over the notary system, taking care of the welfare of this system, and monitoring from the legal point of view the system of notaries, so that it is consistent with the needs of society and development of a free economy and so that the exercise of such public function by private professionals is rational and transparent.

This power of the Ministry of Justice ensures the essence of the public function of the notary. The notary organization in Albania has the features of exclusivity of the service by the National Chamber of Notaries, the mandatory membership of the notary in it; the power of the Chamber to set mandatory rules; power delegated by the public authorities by law. In this type of organization, the

³⁹⁷EURALIUS IV, *Inception project report for period 01 September 2014 – 30 November 2014*, p. 141.

control of the legality of the activity of a notary is necessary and it is carried out by the Ministry of Justice, in the way provided by the law. Even in the case of free professions, likewise the notary, the principle of checks and balances is applied, which presupposes the mutual dependence or inter-dependence as a network of mutual cooperation and control.

Also, measures taken by the Ministry of Justice, that notaries have a special account through which have to go all amounts under transactions to citizens, have made notaries to strongly support the formal market, especially in real estate transactions by thus combatting tax evasion and strengthening the legal guarantee on these transactions.

In order to increase the efficiency of services provided by the Notary, in the course of fulfilling its main objective the integration of Albania, the Ministry of Justice is investing in terms of implementation of information and communication technology in Albanian notary system to ensure accuracy, transparency, speed and minimum time in service to the citizen.

During its implementation in practice, the organic law on the notary has undergone several reforms and amendments, in order for it to fit and be in full harmony with the social development and changes, that have occurred in Albania after the regime change and the development of an economy based on the free private initiative and closer to the public.³⁹⁸ Specifically, the law on notary has been reformed in 1995, where some addenda were introduced to provide the power of the Ministry of Justice to make consultations with the Chamber of Notaries in order to decide on the number of notaries in certain judicial districts. With the 2001 reform, the law on the notary was adapted to the development of the Albanian society, by introducing necessary changes in

³⁹⁸ Law no. 7829/1994 has been amended 7 times: by Law no. 7920, dated 19.04.1995, law no. 8790, dated 10.05.2001, law no. 9216, dated 01.04.2004, law no 10137, dated 11.05.2009, law no. 10491, dated 15.12.2011, law no. 79/2013, dated 14.02.2013 and law no. 131/2013, dated 29.04.2013.

the organization and financing of the notary. So, it was specified the oath that the notary must make before starting the task, by providing for a Deontology Code in performing the public function of a notary by private persons. Another reform was later in 2004 undertaken by the Assembly, which aimed to increase the quality of the notary function, improve the services provided by notaries, and increase transparency in the recruitment method and practice of profession of notary. The aim of the 2004 reform was to consolidate the function of the notary, specifically focusing on clearly stipulating the duties and rights of the notary.

Digitalization of notary activity has been one of the core priorities of this actor in improving the justice system. The Electronic System *One Stop Shop*; interaction with the electronic register of registration of real estate for the electronic realization of real estate transactions; computerization of the activity of notaries through the establishment of Albanian Notary Registry, have been successful measures that have a direct influence on improving the service provided, enhancing transparency and increasing public confidence in this important actor in the justice system.

Another very important reform is the one of 2013, where the authority to open and issue a certificate of inheritance was shifted from the court to the notary. Interventions in legislation to enable this shift brought positive effects, such as:

- the simplification of the procedure;
- reduction of costs;
- shortening of time needed for the realization of the process, and
- reduction of the courts' workload.

A significant part of this reform is the new system "Electronic Register of Notaries" (RNSH), which, being an automated system for notary acts management and their processes, makes possible the registration of notary acts into a national central system. The Albanian Register of Notaries is round-the-clock operational, with these acts being possible to be conducted any time. The system functions in the format of a digital archive, where each participating actor has been assigned the respective privileges and security level.

RNSH contains: a) data pertaining to the notarial acts and transactions; b) data pertaining to testaments; c) data to the succession certificates; ç) scanned documents of notarial acts and transactions; d) data on parties, individuals and entities; dh) further additional information on the working procedures for notaries; e) reference data of inter-action with other data bases; ë) reference data for the communication among the notaries, chambers and other stakeholders; f) data on reports and statistics.

Interested entities able to access this system are: a) Ministry of Finance; b) Tax Directorate General; c) Money Laundering Prevention Directorate General; ç) State Police, Prosecution Office or other investigation authorities; d) High Inspectorate of Declaration and Control of Assets; dh) as well as any other interested entity specifically set out in the decision of the Council of Ministers. Just these entities shall have access at the reporting or statistical level to the effect of monitoring or reporting on the notary transactions.

Referring to Article 16 of Law no. 7829/1994, the total number of notaries who exercise their activities in the Republic of Albania should be in reasonable proportion to the total number of population, and the number of transactions. The total number of notaries is defined by the Minister of Justice, on the basis of population and workload of the notary, after having received the written opinion of the National Chamber of Notaries. The Law on Notary provides that vacancies shall be filled through the mechanism of transfer and when this is not feasible, through competition.

Within the period 2010 – 2012, the number of notaries increased by 38.44% in Albania, thus topping the list of countries with the highest increase in Europe (CEPEJ Report on European Judicial Systems - Edition 2014).

The number of notaries and the methodology applied to establish it falls within the powers of the Ministry of Justice. Under Article 16 of the Law on Notary, it built on two criteria (1) on the number of population and (2) on the number of transactions. Referring to INSTAT data, the 2001 census came up with 3,069,275 inhabitants (the number of notaries being 294). The recent census dating to 2011 came up with 2,831,742 inhabitants (number of notaries being 443).

Currently in the Republic of Albania are serving 450 notaries. These figures indicate that it is worthwhile to analyse and, as appropriate, revise the methodology applied and that of the territorial assignment of notaries.

3. JUDICIAL BAILIFF SERVICE

The Bailiff service is organized into the State Bailiff Service and Private Bailiff Service. The dualistic system of bailiff service means that the functions of the State Bailiff Service can be performed also by private operators certified for this purpose. This type of system gives the individual the proper freedom to choose between the public service and the private service. The bailiff service carries out its functions through the bailiffs.

The bailiff service represents the second phase in the process of rendering justice through its materialization, in application of the right of the creditor and in execution of the debtor's obligation, which are parties to a civil process.

3.1 State Judicial Bailiff Service

The bailiffs service is an activity which was recognized also by the old legislation of the Albanian state, which from 1991 until 2001 remained under direct subordination of the district courts, as an executive subsidiary to their activity.

The way of organization and functioning of the state bailiff service is regulated by Law no. 8730, dated 18.01.2001 "On the Organization and Functioning of the Bailiff Service" (hereinafter Law no. 8730/2001) and operates under the subordination of Minister of Justice, who specifically deals with this service that operates as such even today, namely, autonomous and independent from the levels of the judicial system, and under the direct hierarchical and centralized subordination of the Ministry of Justice.

The state bailiff service has a centralized setup, extended throughout the territory of the Republic of Albania. Such service is organized into:

- a) the Central level- General Directorate of Bailiff Service and
- b) the local level: 22 bailiff offices, organized within the jurisdiction of each district court of first instance, which administratively are dependent to the General Directorate.

The Ministry of Justice presides over the system of executing civil decisions and executive titles. At the central level of hierarchical structure of the Bailiff Service, the Director General shall be responsible for the steering, coordination and controlling the Bailiff Service, the streamlined implementation of the legal and sub-legal acts, as well as the practices in the field of the procedural activity of enforcement; he shall prepare and issue orders, internal instructions and methods for tackling the issues in the course of execution; he shall organise and follow up the professional education and training of the bailiffs; he shall follow up the observation of the professional ethics in the course of execution activity, as well as representing the Bailiff Service in the relations with third parties.

The bailiff offices shall, within the jurisdiction of each first instance judicial district, consist the local level of organisation and they shall administratively be under the Directorate General. The bailiff offices are legal entities and they are composed of the head of the office, bailiffs, as well as administrative and technical personnel. Any bailiff office shall make the necessary procedural arrangements for the effective execution of the executive titles.

With its establishment, the state bailiff service had a total of 113 bailiffs, distributed in separate jurisdictional offices, according to courts, all over the country. Finally, the number of state bailiffs is determined by an order of the Prime Minister, based on the proposal of the Minister of Justice. Thus, by order of the Prime Minister no. 129, dated 25.03.2014, "On the approval of the layout and organizational structure of the bailiff service", as amended by Order no. 165, dated 19.05.2014, the total number of employees of this service is 81.³⁹⁹

³⁹⁹ 14 employees of General Directorate of Bailiff and 67 employees distributed I 22 local offices (Local Office of Tirana– 18 employees; Local Office of Durrësi – 5 employees; Local Office of Vlora – 5 employees; Local Office of Berati – 4 employees; Local Office of Elbasani – 4 employees; Local Office of Shkodra– 4 employees; Local

Currently the function of a bailiff at the State Bailiff Service is performed by 57 persons (out of these 22 bailiff assume also the chair of the bailiff's office).

3.2 Private Judicial bailiff service

The history of the establishment of the private bailiff service, as a functional activity dates back to 1915, two years after the creation of the Albanian state. During the years 1915-1917-1922-1924-1925-1928, the bailiff activity is documented in many written documents (preserved until today by the state archives), as an activity, which was performed by a special office. The enactment of civil legislation in 1929 by the government of that time was accompanied also by some addenda to the bailiff's law.

The necessity of a private bailiff service today is closely related to the execution of judicial decisions, or executive titles, which over the years has left much to be desired in Albania. In November 2004, the *National Action Plan on Regulation of the Justice System* was developed, which foresaw that in 2005-2007 the legislation on the execution of court decisions, would be approximated, following a structure based on international and EU standards, through the establishment of the private bailiff service.

In 2008, the Ministry of Justice launched the reform of the bailiff system by putting into operation the private bailiff service for the first time. The private bailiff service is organized according to Law no. 10031, dated 11.12.2008 "On

Office of Gjirokastra– 3 employees; Local Office of Fieri – 3 employees; Local Office of Kukësi – 2 employees; Local Office of Lushnja – 2 employees; Local Office of Saranda – 2 employees; Local Office of Dibra– 2 employees; Local Office Lezha – 2 employees; Local Office of Korça – 3 employees; Local Office of Përmeti -1 employee; Local Office of Mait – 1 employee; Zyra Vendore Pogradec -1 employee; Local Office of Puka – 1 employee; Local Office of Kavaja – 1 employee; Local Office of Kurbini – 1 employee; Local Office of Kruja – 1 employee; and Local Office of Tropoja – 1 employee).

Private Bailiff Service”, as amended⁴⁰⁰ (hereinafter law no. 10031/2008) specifying the criteria to be met by the citizens, who perform the task of the private judicial bailiff, the status, disciplinary measures, fees as well as relations with the state institutions and other private and public entities. This law applies to private bailiffs, who perform their procedural actions for the compulsory execution of executive titles.

Although this law regulates a new field of activity, the practice has shown how difficult it is to create a fair practice, suitable and dignified for the public service, which was previously available only through the state authority (State Judicial bailiffs). Also, although the execution procedure is defined and provided for in the laws and regulations, there are again noted violations and problems in the way and handling relations (disputes) between creditors and debtors during the enforcement process.

From the point of view of organization, the National Chamber of Private Judicial Enforcement is responsible for the maintenance and representation of the entire executive body of the National Chamber of Private Judicial Enforcement consisting of the General Assembly, the highest body of representation and decision-making which chooses every four years leading bodies forums of the Chamber, such as the President, Vice President, Secretary General and seven members of the Governing Council. General Assembly of the National Private Judicial Chamber adopted the *Statute of the activity of private judicial bailiff* which was accompanied by unified modular coming to help all enforcement entities, to have a ready-made model in paper and practice for all procedural actions carried out during the enforcement process.

Also, the Chamber has issued several directives implementing issues that require urgent legal solutions. These guidelines serve as a reference

⁴⁰⁰ Law no. 10031/2008 was amended 3 times: law no. 10137, dated 11.05.2009, law no. 36/2012, dated 29.03.2012 and law no. 80/2013, dated 14.02.2013.

implementation for as long as the issues and problems for which they are issued do not take a legal solution.

The private bailiff service, currently guarantee the execution of decisions, enabling the rendering of justice in the quickest time possible, under the motto *"a delayed justice is nothing else than an absent justice"*.

The liberalization of this service was accompanied also with several resulting advantages, which consisted on:

- a) the reduction of the budget costs and reduction of workload for the state bailiff service;
- b) the increase of bailiff service quality, through the provision of a more motivated service which is equipped with logistic means as well as financial and human resources;
- c) new operators, to deal with the execution of executive titles, entered the market in conditions of free competition;
- d) new employment opportunities for lawyers;
- e) reduction of the corrupt phenomena within the state bailiff service.

The task carried by a private bailiff is considered a public function delegated, given the importance of the execution procedure of executive titles. Among the measures taken to guarantee the functioning and accountability of the service are: (i) completion of the legal framework that guarantees the operation of this service; (ii) the implementation of the Electronic Management System for bailiff (ALBIS). This information system that is built is meant replacing manual processing procedures with electronic procedures in order to increase the productivity and performance at work, shortening the time to completion of the procedures and execution of each case, and to make enforcement system more transparent. ALBIS has implemented a web-based solution, which is used by / and bailiffs serves public and private in the whole territory of the Republic. ALBIS respects the fulfilment of duties and legal procedures realizing digitalization of information managed by the bailiff by registering cases, automation of processing the case under relevant stages within the executive offices, archiving and publication of aggregate data and analytical. Also, this

system provides managerial structures of the Ministry of Justice, General Directorate of Enforcement, Private Bailiffs Chamber that, through detailed reports and analysis, to monitor performance, to inspect the observance of legal proceedings and make an organization and good management job. Case Management System (ALBIS) is accessed by each user via the Internet. Entry into the system provided by the personal credentials of each user; User name and initial password is provided confidentially through official procedures by the Ministry of Justice.

Law no. 10031/2008 has provided that the financial fees that would be used by private bailiff operators would be defined by the Minister of Justice and Minister of Finance. These fees were subsequently detailed in Guideline 1240/5 dated 15.09.2009, while only in September 2010 the first 58 private bailiffs were licensed, following a public competition. Almost 90% of the competitors participating in the licensing exam and ultimately certified after the exam represented the state bailiff body.

The Minister of Justice is the state authority to grant the license to seekers to exercise their activity as private judicial bailiff in accordance with the requirements of the law 10031/2008, in full respect of specific eligibility criteria such as: degree of the Faculty of Law career of 3 years as a lawyer, as well as testing the knowledge of a public competition.

In 4 (four) year period of private bailiff service today, the service has around 230 certified private bailiffs, of whom 150 are active. A special attention requires the legal position of the parties in the enforcement process. Practice has identified cases where enforcement entities have violated the rights of the parties, exceeding the forecast contained in legal terms, creditors, debtors, escrow, or mortgagors. Almost in every case, such violations have been due to the ambiguity in the interpretation of the laws and regulations. Like any new service and increasing the already private bailiff service requires a new dimension in terms of legal regulation and discipline, in order to guarantee the legality of their activities, as well as the fulfilment of international obligations stemming from membership of Albanian state in several international organizations.

4. MEDIATION

Through the decree nr.5009, dated 11.10.1872 "On state arbitration " state arbitration was founded. In the early 90s, there were changes to this law through the law no. 7424, dated 14.11.1990 "On the State Arbitration " and in 1993 the state arbitration was dissolved by decree nr.682, dated 11.04.1993 "On the distribution of State Arbitration ".

1995 to 1999 period. The origins of the development of mediation in Albania were marked by the collaboration of the High Court of the Republic of Albania with the DANIDA Program (Danish Government), to establish a nongovernmental structure (Foundation "Conflict Resolution and Reconciliation of Disputes", FZK), for the promotion of the mediation alternative as part of the Program for Strengthening the Justice System in Albania. With the support of the Council of Europe for the first time in Albania a Law "On mediation and resolution of disputes by conciliation" was drafted and adopted with no. 8465 and date 11.03.1999.

1999 to 2003 period. Approval of the first mediation law led to the creation of mediation centres in Tirana and in eight other towns in Albania, such as Korça, Shkodra, Berati, Vlora, Dibra, Mirdita, Durrresi, etc., which functioned as civil society organizations, focusing on the promotion, institutionalization and implementation of this alternative dispute resolution in civil, family and criminal matters. Since 2000, with the support of international organizations (DANIDA, Norwegian National Mediation Service, UNICEF, IFC, EU, USAID, Slynn Foundation, etc.) every year, a total of 3-4 weekly training programs in the field of mediation service and restorative justice were organized. Dozens of workshops and information and awareness activities have been organized for judges, prosecutors (in collaboration with the School of Magistrates), mediators, police officers, advocates, teachers, local government

structures, etc. Also conferences on national and international level on the promotion of mediation alternative and restorative justice were organized.⁴⁰¹

2003-2011 period started with the adoption of a second law governing mediation in Albania with, i.e. Law no. 9090, dated 26.06.2003 "On Mediation in the Settlement of Disputes". This law provided the possibility that besides non-profit entities, mediation could be provided also by profit-making entities, which could incorporate as commercial entities. In addition, the law also included commercial disputes, among those which could be resolved by the mediation alternative. This law was prepared in the context of a cooperation of the Ministry of Justice with the World Bank. In Albania, upon the adoption of the law, the MEDART centre was established focused on the resolution of commercial disputes by arbitration and mediation.

2011 to 2015 period. By Law no. 10385, dated 24.02.2011, "On Mediation in Dispute Resolution".⁴⁰² (hereinafter no.10385 / 2011) were changed some of the legal and institutional procedures and approaches dealing with this alternative of dispute resolution.⁴⁰³ The law on mediation in force, adopted by the Parliament in February 2011, brought an important novelty to the organization of mediators in the National Chamber of Mediators as a legal entity exercising its activity independently from the state.⁴⁰⁴ and also introduced the licensing by the Licensing Committee at Ministry of Justice, as a condition for practicing the profession of mediator.⁴⁰⁵ The law also provides for the completion of the *training program and vocational training of mediators*, adopted by the National

⁴⁰¹ Around 200 people trained by FZK were licensed by the Ministry of Justice to exercise the profession of mediation.

⁴⁰² Approximated to EU Directive 2008/52 / EC "On certain aspects of mediation in civil and commercial matters", with no. CELEX 3200810052.

⁴⁰³ With the support of IFC, the EU Delegation and UNICEF, in 2010 a working group of experts was created, which in cooperation with the Ministry of Justice developed the draft law "On Mediation in Dispute Resolution", which was later adopted with some changes to the existing law no. 10385 dated 24.02.2011.

⁴⁰⁴ See Article 7 of Law no. 10385/2011

⁴⁰⁵ See Article 4 of Law no. 10385/2011

Chamber of Mediators, as a condition to obtain a license as a mediator.⁴⁰⁶, as well as the obligation of the mediators to undergo *continuous training*, prepared by National Chamber of Mediators, which should not be less than 20 days a year.⁴⁰⁷. Given that alternative dispute resolution through arbitration process was not fruitful, with Law no. 122/2013 dated 18.04.2013 all the provisions of the Chapter Arbitration in Civil Procedure Code were abolished. In the transitional provisions of this Code it is provided for the implementation of the new provisions for arbitration.

National Chamber of Mediators organizes its work independently from the state, with a mission to support intermediaries, as well as to enable the functioning and strengthening of the mediation process, as a new alternative extrajudicial solution, to resolve disputes in accordance with the law. Creating DHKN has been described as an achievement of the justice system and a step forward in accepting the international standards governing the choice of alternative means for resolving conflict and disputes.

DHKN has signed memorandums of understanding with several institutions, such as the Magistrates School; Judicial District Courts of Durres, Vlora, Korca, Vlora Court of Appeals, as well as the probation service and the Police Directorate of Tirana. The statistical data show that during 2014, there were registered 213 cases for mediation, but only 78 cases were solved.

Mediation is considered as a highly effective solution and moreover it is in line with the requirements of the Stabilisation and Association Agreement and the principles of the European Union, which consider mediation a very good alternative for conflict resolution.

⁴⁰⁶ See Article 5 § 1, letter “ç” of Law no. 10385/2011

⁴⁰⁷ See Article 9§2 of Law no. 10385/2011

5. STATE ADVOCATE

The State Advocate Office was introduced for the first time in the Albanian legal system by Law no. 8551, dated 18.11.1999. At the time of its establishment, the state authorities were not obliged to seek legal advice from the State Advocate. Later on, the demand for legal representation by the State Advocate became compulsory for public institutions, only after the completion of the first instance trial.

In 2006, the State Advocate office underwent several changes, shifting from the subordination from the Prime Minister (as it had been since its inception), to the Ministry of Justice.

In 2008, the State Advocate institution was changed radically by the Ministry of Justice with the contribution of Spanish experts, with the entry into force of law no. 10018, dated 13.11.2008 "On State Advocate", which was modelled after the *Abogacia General del Estado* (General State Advocacy of the Kingdom of Spain).

The institution of the State Advocate is headed by the General State Advocate and is organized in two levels, namely, the national and local level. At central level, the State Advocate office consists of: a) the office of legal representation in national courts; b) the counselling and inter-ministerial coordination office; c) the office of representation in foreign and international courts as well as international arbitration; d) the inspection office.

At local level, the State Advocate office consists of: a) the local offices, which operate at each court of appeal, where they exercise their territorial jurisdiction. Currently there are 6 offices at the local level, namely, the Office of Tirana, Durresi, Shkodra, Korca, Vlora and Gjirokastra; b) similarly at local level also the state advocates attached to ministries exercise their functions.

The structure of the State Advocate Office was adopted by Order no. 9 dated 23.01.2009 of the Prime Minister of Albania. Currently, the State Advocate Office comprises a total of 45 state advocates, both at central and local level.

Pursuant to the legal framework in force, the State Advocate Office is an institution that has the exclusivity to provide legal aid to state institutions and public entities. Legal aid includes counselling and court representation.⁴⁰⁸ Both these elements are virtually always mandatory, in the sense that the interested public administration body should seek advice or representation to the State Advocate whenever the legal activity or judicial case represents a "financial" or "asset" component.⁴⁰⁹

Through preliminary counselling on legal actions that foresee financial effects, through legal opinions on the draft - contracts and through participation in the negotiation of significant contracts, the State Advocate Office plays a key role in safeguarding the public property interest.

The State Advocates are currently at the stage of representing cases of high financial value (starting from 1 million Euro, where by damages are claimed against the Albanian state amounting to 350 million Euro). In the meantime, it emerges that the State Advocacy "is dealing" on average with round 80 - 100 cases per month. It is worth highlighting that the cases have steeply increased in the recent months, since the Administrative Court is functioning at a fast pace.

The State Advocates at local level are, along the same line, facing cases which in most of the cases involve considerable financial amounts. Specifically, referring to the statistical data possessed by the State Advocacy for the first six-month period 2014 (January - June 2014) regarding the financial amounts in

judicial proceedings represented by the State Advocacy at local and central level, there turn out to be:

Referring to the court level	Total financial amount of won cases	Total Financial Amount of lost cases
Cases at First Instance and Appeal Court	7.935.423.571 ALL and 738.7 ha	896.297.611 ALL and 260.5 ha
Cases at High Court	124.083.043 ALL and 78.7 ha	67.825.685 ALL and 154 ha
At TOTAL	8.059.506.614 ALL and 817.4 ha	964.133.296 ALL and 414.5 ha

Along the functionality period, the State Advocacy has consolidated its activity, thus facing an increasing volume in representation and protecting the property interests of the state before the Albanian and international courts. (Arbitration Court and European Court of Human Rights).

On the other hand, with the entry into effect of the new law (law 2008), the work volume of the State Advocates increased considerably, including all types of contracts within the legal advice towards the public institutions and their legal representation throughout the instances of the judiciary. It has been found out specifically:

- a) increase of cases to be represented before the Court of Strasbourg;
- b) increase of cases to be represented before the Arbitration Courts (mainly concessionary contracts);
- c) doubling the work load of the local courts specifically the cases under the jurisdiction of the administrative courts.

⁴⁰⁸ See Article 2 § 2 of Law no. 10018, dated 13.11.2008 "On State Advocate Office"

⁴⁰⁹ See Articles 2 and 5 of Law "On State Advocate"

IV. FINDINGS AND PROBLEMS

4.1 LEGAL PROFESSION

The postponement of proceedings due to absence of lawyers is a problem in the activity of the judiciary. In the legal profession, an attorney is necessary to be provided with the identity card of a lawyer (which is based on annual membership fees in NCA) and a tax number registered with the tax authorities. It lacks identification mechanisms to enable the fulfilment of obligations by the fiscal authorities in order to avoid tax evasion.

Another set of issues is connected to the provision of the state legal aid, specifically the existence of parallel systems of advocates, mainly in criminal cases. Based on the Law on Legal Profession and other acts, NCA prepares annually a list for courts, prosecution offices and police stations with advocates *ex officio*, same as it acted prior to the approval of the Law on Legal Aid by the Assembly in 2008. Very low payments are observed within this system, which are paid out of the budgets of courts and prosecution office, same as provided for in the Codes of Procedures, which - it should be highlighted, were not changed with the approval of the Law on Legal Aid. This system also proved to be problematic also with regard to the random choice of lawyers out of the list for certain cases by the judges or prosecutors (the latter are in open conflict of interest, as set out in Article 49 of CPC). On the other hand, the State Commission of Legal Aid shall, by way of competition, select the advocates who are to offer legal aid in criminal, civil and administrative cases, based on another reward system (much more useful than the one of *ex officio* advocates). Not quite clear are also the issues surrounding the deadline by which the state institutions shall respond to the advocate or the judicial proceedings where the court acts upon such a request. Practice has indicated that the requests addressed to the state institutions go unanswered.

Another issue which has brought about problems in the practice of practising the legal profession is the categorisation of advocates into two categories: (i) advocates who may represent their clients just before the first instance and appeal; and (ii) advocates who may make representations before all instances,

under the requirements of the Law on Advocates. This categorisation which was made by NCA to the effect of implementing the law and in the context of enhancing quality of representation (before the High and Constitutional Court) has not gone down well with the community of advocates.

4.2 NOTARY

Findings and associating problems:

It has been identified that the framework law on the notary is, due to the frequent amendments, neither efficient nor practical, thus dictating the need for drafting a new law, in compliance with the European standards, dictated by the integrating processes of the Albanian state towards the EU.⁴¹⁰

The establishment and functioning of the Notary School is imperative. This requirements is dictated out of various factors: Thus, it can be established that: (1) requirements of the recruitment of new notaries are low and the testing system does not provide any guarantees for their high qualification; (2) the age to become notary is held to be relatively low. The increase of the age requirements would be advisable to the extent that it would allow the candidates to have more experience and training.⁴¹¹ The establishment and functioning of the School of Notaries for a 2-year period (1 theoretical year and 1 year internship) would consequently bring about the increase of age.

The presence of the School of Notaries would provide a solution to the set of problems posed in the situation of the continuous training of notaries.

In the current situation, despite the incorporation of the subject of notary into the curricula of our universities, a schooling structure or program for candidates

⁴¹⁰ EURAIUS Mission IV, *Analysis of the justice system in the Republic of Albania/ DRAFT ANALYSIS ON THE PROFESSION OF NOTARY*, 02.03.2015

⁴¹¹ *Ibid.*

for notaries is missing. The internship of the candidates for notaries within the notarial offices is considered as an initial training for notaries, however, this phase (internship as notary assistant) did not yield the appropriate results in terms of their professional capacities.

National Chamber of Notaries has no adequate capacity to establish a comprehensive program for initial training as well as continuous training of notaries ".

Increasing the number of notaries is a matter of concern for the National Chamber of Notaries. Although Article 16 of the Law " On Notary " provides the criteria of population and number of transactions criteria, it turns out that these criteria are violated.

There is no cooperation and coordination NCN 's activity with the Ministry of Justice, on a range of issues, in which the presence of the Chamber is either non-existent or minimized. The competition, which is implemented by the Ministry of Justice in respect of the licensing of new notaries is not organized in cooperation and interaction between the Chamber and the Ministry. Participation of the Chamber is not evident through its representative bodies and lacks legal powers to organize exam Chamber of acceptance for new notaries.

The application of disciplinary measures has not been accompanied by the establishment of a special structure within NCN's - Disciplinary Board nor with the cooperation that must be achieved between the Chamber and the Ministry. In the current situation the Ministry did not take into account the suggestion of the Chamber, it decides *a priori* despite recommendations that can be given to it.

No " financial obligation " is sanctioned for notaries to pay to ensure the functioning of the electronic system for their continuous training and professional character activities.

A set of problems which might have an impact on practising the profession of the notary and on the guarantee offered to the citizens concerning all the transactions they get done is that the notaries do not have the information in the system, in case an immovable property is contracted (based on a service contract) more than once by different notaries. This has, very often caused insecurity among the ranks of citizens, as they are obliged to the approach the respective authorities for seeking their right. Practice has identified problems with the payment of taxes against the state for the real estate transactions for reasons of failing to control the notary in this regard.

Practice has recorded cases of loss of the right to practice the profession of notary due to the appointment to an official duty, contrary to the principle of legal certainty and acquired rights. Gaining the license should not bring about its revocation, in case of assuming a public function.

A specific policy for the service to the vulnerable strata is missing. Thus, with regard to the impossibility of paying the notary expenses, it has been foreseen in Article 28 of the law "On the notary", that the natural person not being able to pay for the notarial service may be excluded by the very notary or upon the decision of the Notary Chamber Council. No resilient approach exists with regard to covering the notarial expenses for the vulnerable groups.⁴¹²

A problem consists also the insurance of notaries concerning their liability to third parties. Many notaries have been ensured while the attempts of the insurance companies did not yield successful outcomes.

Currently, no register of persons, whose capacity to act has been deprived of, exists and this has remained just with the National Chamber of Notaries, the latter distributing to all local chambers the lists being sent by the courts.

⁴¹² *Op cit.* note 41

The best practice currently with regard to the succession certificates, accomplished by notaries, is a prerequisite for other acts which can be done by them.

4.3 BAILIFF JUDICIAL SERVICE

4.3.1 State Bailiff Service

Missing cooperation with the stakeholders (institutions) involved in the execution process. Problems are being found out with regard to coordination and cooperation among the institutions covering the property titles or other issues connected to accomplishing certain acts in the context of executing the order.

The professional capacities and facilitating the conduct of continuous training, as well as qualification in compliance with the best standards and practices are low and this is another finding to the effect of improving the service.

The infrastructure and physical working conditions, specifically the missing technical means for utilising the ALBIS system contribute to the service quality being low. The efficient use of the electronic management system of enforcement cases consists another set of problem requiring timely address and concrete measures.

4.3.2 Private Bailiff Service

Execution within a reasonable period of time is one of the main guarantees of due legal process. **In this context, simplification of bailiff** procedures remains a problem that requires solutions and we specifically refer to the phase when an enforcement order is released. Despite all the improvements made to the legislation, still there are situations of ambiguity and legal vacuum in the provisions of the Civil Procedure Code, which does not guarantee the rights of

the parties in an enforcement process. Also, it failed to make comprehensive improvements to discipline the private bailiff service⁴¹³.

With the amendment affected to the CPC by way of Law no 122/2013, specifically Article 564 and 610, it was purported to accelerate or facilitate the conduct of enforcement proceedings over the immovable properties put as collateral for creditors as Banks or Non-Bank Financial Institutions. However, practice indicated that the main goal for accelerating the process and avoiding the hindrances has not been attained. Practice has indicated that the courts find it impossible to conduct an investigation process and judicial evaluation within a time period of 20 days, this being the validity of the suspension measure, not to mention subsequently even the time needed for examining the complaint before the appeal court.

The private bailiff service may be offered even by the commercial entities (legal entities) set up in accordance with the Law no 9901, dated 14/04/2008 "On Businessmen and Commercial Companies", however, these entities being bound by the obligation to have employed individuals certified as private bailiffs. This legal provision has paved the way for the establishment of commercial entities - enforcement companies by persons not certified as private bailiffs

There is a legal ambiguity as to when a private judicial bailiff resumes his activity after a temporary suspension of his activity. More than 40 licenses of private bailiffs (out of 230 such ones) are to date not being applied / not conducting enforcement activity due to their legal ambiguity.

It has not been clearly determined when the private bailiff may operate with his own personal seal and when should be provided with a seal from the company. This being a problem which may, at any moment, bring about the de-

⁴¹³ A comment made in the round table organised on the “ Legal Services and Freelancers” in the context of public consultation for the reform to the justice system.

legitimation of conducting procedural acts by private bailiffs, being employed by enforcement companies.

Professional shortcomings are evident with a considerable part of the enforcement staff, as well as the unjustified delays during the process of foreclosure of executive titles, missing transparency and commitment.⁴¹⁴ The activity of the bailiffs is largely not characterised by professionalism and impartiality in the process of the forceful execution of the executive titles.⁴¹⁵ There are significant shortcomings in the initial training, transitional and ongoing training of private bailiffs.

Problems occur with the use of electronic ALBIS, which is not fully functional because of the need for a continuous support and demand for a further push towards its implementation. Not met are the needs for ongoing training of bailiffs to work with all system functionalities ALBIS.

Another considerable problem encountered by the judicial bailiffs is the information with regard to the *immovable properties of debtors*. There are inaccuracies in the immovable properties registration system and missing information in the ownership cards, as well as problems with failure to abide by or misinterpret the material law.⁴¹⁶ However, observation of legal time periods set out percussively by law are very often infringed, thus bringing about delays in enforcement.

Over the four years of existence of the private enforcement service, the enforcement service at large has continuously been associated with the set of problems surrounding the additional certificates and progressive increase of values, monetary obligations being enforced on behalf of various financial banking and non-banking institutions operating in Albania. This refers to the

⁴¹⁴ A special Report of the Ombudsman "On the situation emerged as a result of failure to enforce final judicial decisions", 2012.

⁴¹⁵ *Ibid.*

⁴¹⁶ *Collateral and its impact on the economy*, Banker Magazine, Publication of Albanian Association of Banks;

changeability affected to the obligation certificate by the creditor (Bank or Non-Bank financial Institution) after the enforcement proceedings have been instituted or upon its completion by introducing an increasing value of the obligation, as a consequence of the passing of time and calculation of penalties and debt interests under the contractual conditions and percentages, thus making the work of the enforcement concerning the execution of the obligation more difficult.⁴¹⁷

The Civil Procedure Code sets out the assets which shall not be subject to attachment, in order for the debtor to have sufficient means to live, as a measure of respect for privacy and human dignity of the person. It is very often the case in practice that this restriction is not abided by in the course of enforcing the judicial decisions and other executive titles.⁴¹⁸

The enforcement of the decisions of the national courts, specifically those involving state institutions as parties remains slow and continue to undermine the legal security.⁴¹⁹

To the effect of having the enforcement service performed by the private enforcement entities, the fees approved to this effect shall be paid. It is a fact that practice has seen cases of evading the principles and rules set out in *Instruction no 1240/5, dated 15/09/2009, or in the Model Service Contract*, due to the establishment of specific relations "*Creditor - Enforcement Entity*", as a consequence allowing partial payment of enforcement fees at various procedural moments.

⁴¹⁷ Execution entities have raised this issue in the National Chamber of Private Judicial Bailiffs and which dispose of through the Implementing Directive (temporary) no. 61 Prot. dated 02.09.2015 (website www.nchb.al), until when this severe problem even for the perception of the public takes an appropriate legal solution.

⁴¹⁸ *Ibid.*

⁴¹⁹ European Commission, Progress Report 2014 for Albania, Brussels.

4.4 MEDIATION

The implementation of the Law no 10385/2011 did not attain its aim yet. With this institute remaining relatively new, specifically in the institutional aspect, it is found out that it has not been appropriately implemented in the field of the law. The law is simply a translation of the Directive 2008/52/EC "On some aspects of mediation in civil and commercial matters, thus falling short of analysing the mediation practice in Albania. Despite the attempts to strengthen this institute over the years, it has not been as yet possible to attain its effective applicability in practice.

The Law no 10385/2011, as amended, has not been harmonised to the remaining part of the legislation, mainly the Codes, since these acts does not provide for the necessary room of mediation. This makes the judicial practice to be restricted in terms of acknowledging and implementing the institute of mediation. Settlement through mediation of international commercial disputes is not regulated in accordance with the requirements of the UNCITRAL Model Law "On international commercial mediation", which provides an important set of guidelines for states with regard to the definition of relations with commercial nature, as well as those international trade regarding some procedural elements that are closely linked with the nature of commercial disputes. There are no legal provisions ensuring the recognition and enforcement of foreign acts of agreement on the territory of RA.

The courts have not been active in calling in the mediators and referring to them the solution of certain types of cases, specifically those of family and property related character. On the other hand, the courts do not instruct the individuals/parties towards having their disputes resolved by mediation, thus making this a mandatory norm in the activity of the judiciary. The CPC provisions connected to mediation have not been met yet.

The continuous training on improving the qualifications of the licensed person sis flawed.

4.5 STATE ADVOCACY

Practice has identified drawbacks in terms of the effective implementation of the "*principle of exclusiveness*" being connected specifically to the powers of the State Advocate concerning the advise and representation of the public administration bodies and public entities. The assistance of the State Advocacy is requested too late by the state authorities, very often when judicial proceedings have progressed irretrievably, at variance with the state interests. Very little or no assistance/advise is sought during the preliminary procedures of drafting or entering into the contracts by the public institutions. This causes the set of problems surrounding the lack of knowledge in the phase of representation by the State Advocates before the judicial panels for these contracts at a second stage.

In practice, State Advocate faces every day large number of matters of civil and administrative nature where the party is one of the institutions of public administration. Despite the volume of cases,⁴²⁰ there are no offices at ministries *with one or several state lawyers to practice counselling and representation functions*. The situations of overlapping of competencies between the State Bar and the Bar of the institutions in the exercise of advisory and advocacy functions have not been regulated.

The practice of several years of operation of the State Bar has shown that due to frequent movement and failure to create a genuine tradition of institutional and professional quality has reflected low quality with the state attorneys. There is clearly sanctioned "*the Status of State Advocates*". Just practice has shown that the lack of such a legal guarantee for State advocates has negatively affected the stability, quality and continuity normal exercise of their functions.

Another problem is represented by the capacity building of state attorneys through their ongoing training. The low level of payment for lawyers adversely

⁴²⁰ Specifically, the greatest volume of cases submitted to the Ministry of Finance, Ministry of Energy and Industry, Ministry of Urban Development and Tourism

affects the quality of protection issues / vested interests of the Albanian state even for the recruitment of the State advocates, who are not in proper professional levels.

There are shortcomings in the regulation of mandatory counselling cases of the public administration body with the State Advocacy. Administrative practice is not unified in this regard due to the lack of specification of cases required for prior consultation. Meanwhile, a necessity has emerged for involvement in compulsory preliminary consultation regarding public contracts for execution of works, supply of goods or supply of services, taking into consideration when contracts and procurement services have a huge financial value and certainly a considerable impact on institutions.

A more efficient and functional arrangement in terms of representation of the Republic of Albania by the State Attorney before the European Court of Human Rights and before the Court of Arbitration is missing.

V. Conclusions

This chapter analyzes the current situation of legal services including free professions as lawyers, notaries, judicial enforcement, mediation and aims to document its functions and state attorney. From this analysis we have identified problems in providing these services. Their importance lies in the fact that those provide to the citizens the necessary legal tools to protect and exercise their rights, as well as guarantee and restore those rights when they are violated.

Findings and problems in this chapter are as follows :

Legal profession:

The data of National Bar Association confirms that it has registered 8,015 lawyers, of which only 2,098 are active in exercising the profession. Of this number, only 558 lawyers can represent entities in all instances (including Supreme Court and Constitutional Court).

Separation of lawyers into two categories: (i) the lawyers who can represent their clients only in district court and the appeal court; and (ii) lawyers who represent all instances, is not generally welcomed by the community of lawyers.

The postponement of proceedings due to absence of lawyers remains a problem in the activity of the judiciary. Legislation in force lacks an arrangement which on the one hand does not infringe the right to have a lawyer / legal representative, but on the other hand to ensure respect of the public interest, where appropriate, to the development and completion of a certain process.

Identification of mechanisms to enable reporting and verification of income in order to avoid tax evasion, in the exercise of the profession, remains an issue to address.

Another issue of the advocacy service is one that has to do with the provisions of legal aid by lawyers paid by state funds, especially in the case of criminal matters. On the one hand, there are found much lower fees than the usual fees to justify legal service offered in this case, on the other hand, it turns out that this service may not meet the interest on which is provided. Generally, the professional level of lawyers selected to provide legal services in such a case, it is not convenient.

Another problematic aspect is the cooperation of lawyers with state institutions. Practice has shown that applications addressing the state institutions remained unanswered. There are uncertainties about the limits of the right of the lawyer to seek information and / or documentation from state institutions, but also on the time within which state institutions have to respond to the counsel.

The recent changes to the law on the legal profession were the basis for the establishment of the National School of Advocates, which is focused on the preparation, organization and administration of the initial training program for candidates for lawyers and continuous training program for lawyers. It is still too early to consider its impact on the system, both positive and negative sides of this new structure.

Notary:

The notary organization system in the Republic of Albania is based on the continental model of notary and is organized in a proportional distribution of notaries under judicial districts in proportion to the population.

Increasing the number of notaries remains a matter of concern for the National Chamber of Notaries and it is not made in respect of the rule of determining the number of notaries in accordance with the population. Currently in Albania 450 notaries practice their profession today. From 2010 to 2012, the number of notaries rose by 38.44 %, making it one of the countries with the highest growth in Europe.

Conditions and criteria for recruiting new notaries do not guarantee a quality selection in terms of knowledge and high professional level that a notary should have.

The form of organization of selective testing for notaries does not guarantee a selection of professional quality candidates worthy of the notary profession.

Also, the age for becoming a notary is considered relatively low.

Work environments of many notaries have shortcomings in terms of the conditions for the practice of notary.

In the current situation, despite the inclusion of the subject of the notary into our universities, a proper education facility for notary candidates is missing. Obtaining a previous experience of candidates for notaries at notary offices did not provide adequate results of professional skills which are required for this profession.

On the other hand the Notary Chamber does not have the adequate capacity to establish a comprehensive program for initial training as well as continuous training of notaries.

The Notary Chamber does not play an active role in the selection of new notaries. The presence of the Chamber is inexistent or minimized in the process.

The National Chamber of Notaries lacks a special structure for the application of disciplinary measures. In the current situation, the Ministry of Justice decides on the application of disciplinary measures, despite recommendations that may be granted by the National Chamber of Notaries.

The system is not unified and notarial archives have deficiencies which entail serious problems to notarial practice at the expense of citizens (e.g. notaries have no information on when a real estate is contracted more than once by different notaries or other similar situations that create legal uncertainty among citizens).

The law does not provide for the right to suspend the license of the notary. Practice has revealed that certain persons have lost the right to exercise the notary license due to the appointment to an official duty.

A special policy for notary service delivery to vulnerable groups is missing. There is no consistent approach of notaries to cover the vulnerable groups, while the format of the notary act is mandatorily required by a number of state authorities (e.g. Offices of Real Estate Registry).

A major problem encountered recently and which has caused controversy is the lack of insurance of notaries in connection with civil liability to third parties. There are very few notaries who are insured and efforts by insurance companies to standardize the relevant policy has not been successful.

Judicial Bailiff Service:

Bailiff Service is organized as a dual system: the State Bailiff Service and Private Judicial Enforcement Service. Currently the enforcement service is provided by 57 people, while the Private Bailiff Service licensed 230 private bailiffs.

Despite remarkable improvements brought about by the Private Enforcement Service in terms of reducing the time for execution of executive titles, the bailiff service continues to have problems.

In the first place, there is a lack of cooperation with the actors (institutions) involved in the execution process.

Abiding by legal deadlines set preclusively by law often lead to delays in execution.

The execution of court decisions, particularly those where parties are state institutions remains slow and continues to undermine legal certainty. Practice has identified cases where enforcement entities have violated the rights of the parties, exceeding the forecast contained in legal terms, creditors, debtors, escrow, or mortgagors. Almost in every case, such violations have been due to the ambiguity and inefficiency of the bailiff to make a fair interpretation of the laws and regulations.

The enforcement process is accompanied and ends with the issue of additional costs for the debtor.

Speeding up or facilitating the development of the enforcement process on real estate for creditors encumbered by a bank or non-bank financial institutions as a result of the legislative changes is not reached. The experience shows that the court is unable to develop a process of investigation and judicial evaluation within a deadline of 20 days during which valid measures of suspension.

The legal framework leaves open the possibility of establishing commercial entities – enforcement companies by uncertified persons as private bailiffs and who can control their enforcement activities even though they don't have the skills and knowledge certified by law.

Provision, which exempts from the obligation to sit for the qualification examination to persons who on 30.12.2011 were bailiffs at the state enforcement service may still serve to fill the market with private judicial bailiffs, despite not being tested.

There is legal uncertainty in cases where a private bailiff is subject to temporary suspension of activity, where this activity can be resumed or when the cancellation of the relevant re-registration can occur.

The professional capacity of state enforcement service, opportunities for the development of continuous training and qualification in accordance with standards and best practices are missing.

Professional shortcomings are evident on the part of the executive staff, unjustified delays in the processing of compulsory execution of executive titles, as well as the lack of transparency and commitment in the performance of duty. Infrastructure and physical conditions of work of state enforcement service especially lack technical means to use ALBIS system and this causes the quality of service delivery to be low.

ALBIS electronic results system is not fully in place, because of the need for continued technical support and request for a further push towards its implementation, leading to problems in the registration of enforcement issues.

Mediation:

The implementation of the Law no. 10385/2011 on for mediation has not achieved its goal, since this law has not been harmonized with the rest of the legislation, mainly with codes that do not provide adequate space for mediation. This makes even the judicial practice to be limited in relation to the recognition and enforcement of mediation institute.

Courts are also not active in calling mediator to address those issues resolving some kind, particularly those of family character and properties of small value.

Although this remains a relatively new institution, especially in its institutional aspect, it can be concluded that there has not been implemented properly in the field of law.

The register data indicate that licensed as intermediaries are 367 natural persons and 3 legal persons, while exercising the function of mediator in practice are 51 subjects as natural persons and two entities persons.

State Advocate:

State Advocate institution is run by the State Attorney General and is organized at central and local level. State Attorney currently has in its composition 45 State lawyers.

The practice of a few years of operation of the State advocates has shown that due to frequent moves and failure to create a genuine institutional and professional tradition, the professional level of state lawyers it is low.

Finally, the volume of work of the State Advocacy increased significantly, including legal advice for any kind of contract where the parties are the public institutions and their legal representation at all levels of the judiciary. This increase in workload has affected the reduction of legal service quality and performance of the State Advocates in litigation.

The assistance of the State Advocate is requested too late by state authorities, often when the proceedings have taken an irreversible course, contrary to the interests of the state.

Another problem is the lack of preliminary and continuous training for professional capacity building of state attorneys. Low levels of remuneration for State Attorneys affects the quality of protection issues / interests of the Albanian state wealth. But of course the low wage also affects the recruitment of State Advocates who do not meet the necessary professional requirements.

In their entirety, the findings of the analysis of the chapter " Analysis of the justice system for legal services " address problems which need to be addressed with concrete measures to ensure the proper functioning of this system.

CHAPTER VIII. ANALYSIS OF ANTICORRUPTION LEGAL MEASURES

I. Introduction

There is a dual relationship between justice system and corruption in the society. On one hand, justice system is the only subject or instrument for criminal approaches in the fight against corruption. Conversely, the justice system itself is subject to corruption.

The main factor that affects the success of the fight against corruption is the integrity and honesty of justice system officials themselves (prosecutors and judges). Other factors include: i) the quality of the criminalization of corruption (i.e the quality of predicting the corruption offenses in the Criminal Code), ii) the quality of legal arrangements and mechanisms aimed at ensuring the impartiality and integrity of prosecutors and judges, iii) the quality of work procedures of prosecutors and judges to investigate and prosecute corruption; iv) a clear division of responsibilities between the various actors in the investigation and adjudication of corruption; v) the adequacy of financial, material and human resources available to the prosecution and the judiciary; vi) the intensity and quality of the interaction between different agencies in the investigation process; and vii) the quality of the severity of the criminal policy against corruption. This analytical paper explores all these issues, describes the relevant legal regulations and the results of the system and identifies problems that require solutions.

Despite regular measurement of public perception for judicial corruption, there are no specific forms of studies of this corruption in Albania. Although not officially documented, concrete forms of corruption and granting / getting illegal benefits are materialized in Albania. While it is clear that not all judges and prosecutors are corrupted, there is no doubt that the phenomenon is present in all courts and prosecution offices in the country, at all levels. While it is difficult to find direct evidence of corruption in the ranks of judiciary and prosecution, some interesting findings on this issue are provided by the judges themselves. So, in October 2012, the Center for Transparency and the Right of

Information conducted a survey with 58% of the total number of judges. 25% were of the opinion that the justice system is corrupted, while 58% believed that the system was perceived as corrupted. 50% of judges were of the opinion that the judicial system was not free from political influence. It seems reasonable to believe that these perceptions have a real basis, while a large number of judges themselves believe them. Moreover, it is not hard to conclude that many of the officials of the justice system possess assets that exceed any expectation of a reasonable man.

Despite regular measurement of public perception for judicial corruption, there are no specific forms of studies for this corruption in Albania.⁴²¹ The experiences of other countries can help to understand specific forms of corruption in our system of justice. In 2009, the Council of Europe conducted a survey of the types of judicial and prosecutorial corruption in Ukraine.⁴²² The study listed several examples of corruption of judges and prosecutors as follows:

- a) Informal contacts between judges, prosecutors and lawyers, the latter often become intermediate for corruptive payments...⁴²³
- b) Intermediating by persons who have connection / or influence on judges or prosecutors...⁴²⁴
- c) Lack of internal controls or not effective checks and lack of ethical rules applying to the judges and prosecutors...⁴²⁵
- d) The assignment of cases to trial based on criteria such as "object / value in front of the issue"...⁴²⁶

⁴²¹ *Analysis of the Criminal Justice System of Albania*, pp 170-173 (OSBE 2008).

⁴²² Council of Europe, *Corruption Risks in Criminal Process and Judiciary* (April 2009).

⁴²³ *Id.* at 42-43.

⁴²⁴ The report noted that in some cases these intermediaries speculate claiming they are searching for bribery on behalf of the judge or prosecutor and turn it (bribe) if the party loses trial

⁴²⁵ In the absence of effective evaluations and inspections, or clear ethical norms, judicial authorities tend to go out of control.

- e) Short connections between the heads of courts and prosecutor's offices with representatives of politics or businesses as a result of which they (the heads) exercise of corruptive pressure on their colleagues...⁴²⁷
- f) The opening of cases by the prosecution with the intention of obtaining a payment from the suspect,⁴²⁸ or "buying" of an investigation by a business / which seeks to tarnish the image of his / her rival...⁴²⁹
- g) Acceptance or seeking bribes from judges in order to reimburse amounts paid for appointment to the posts they hold...⁴³⁰
- h) Exercising of an excessive discretion by prosecutors to not seek prison security measures or to not require security measures for the property etc...⁴³¹
- i) The benefit of gifts, employing relatives to well paid work positions, payment for services or trips, buying expensive phones, free repair of vehicles, free use of vehicles or properties, the payment of loans, payments for fuel or raw materials. etc...⁴³² The beneficiaries of these favors can be judges / prosecutors as well as their families.

An interesting finding of the study was the fact that only a tiny fraction of interviewed linked the judicial and prosecutor corruption with low salaries of judges and prosecutors...⁴³³

If the Albanian public perception (shown above) is correct, it must be admitted that these forms of corruption are present in Albania. In fact, public opinion believes, and some close observers of the sector, claim that some prosecutors and judges pay to be appointed or transferred to important positions (profitable according to the logic of corruption) for example in Tirana or other major

⁴²⁶ *Id.* at 47.

⁴²⁷ *Id.* at 17, 37, 43.

⁴²⁸ *Id.* at 30.

⁴²⁹ *Id.* at 62, 71.

⁴³⁰ *Id.* at 37.

⁴³¹ *Id.* at 75-76.

⁴³² *Id.* at 57, 64.

⁴³³ *Id.* at 6.

cities. The figures allegedly paid for these positions are staggering (100,000 to 300,000 euro for some positions), it is natural to be believed that these justice officials will be corrupted to recover (and possibly multiply) them. Unofficial data circulating in the public and consistent in time, suggests that the cycle of corruptive payments begins with corrupted judicial police officers who accept payments to destroy evidence at the scene. Furthermore, corrupted prosecutors accept payments to not start an issue or to not bring charges (1000 to 2000 Euro for a standard issue). Worth mentioning is the perception about the figures that appear to be paid to change the security measure of the detention to house arrest or obligation to appear (60,000 to 80,000 euros). Corrupted judges postpone the schedule of the first hearing session or condition the final decision (sometimes even revealing the decision) in anticipating of bribery. Moreover, there are indications that some judges do a double game by taking bribes in advantage from both sides. If not enough, giving bribes does not provide often the desired result. In fact, there are a lot of stories which show that the lawyers (or other intermediaries) who seek bribes, allegedly in the name of the judge or prosecutor, and keep it to themselves.

Although not documented as in Ukraine, the situation in Albania does not seem to be quite different with regard to concrete forms of corruption and mode of delivery / or receiving illegal benefits. It seems that typically, bribery is not given directly but through the mediation of a third person (the word "realtor" commonly used in the jargon) although personal contacts of interested persons are not exempted concerning the relations with the judge or the prosecutor. Often the broker is a relative of the family of a judge or a prosecutor, a mutual friend, or a lawyer. In any case, the broker is a person who enjoys the confidence of the judge or the prosecutor because of old private relations or stable contacts of work. In general there is evidence of a well-defined structure of figures that are paid for different services. There are also voices that speak about the default partition of illegal benefits between the judge / prosecutor and brokers or persons within the office of the judge / prosecutor who seem to take a percentage for facilitating the transition of bribes from the corrupter to the corrupt.

In any case, the parties during a corruptive process avoid transaction calls. The payments are made in cash. Often, illegal profits were sent abroad or were given to relatives / family members of the judge / prosecutor, or trusted third parties.

Though cash payments are the preferred form, illegal benefits seem to take a host of other forms such as providing opportunities for business, employment of relatives, forgiveness, fictitious sales or sales at favorable prices of real estate as land parcels, apartments on the coast etc.

Courts and prosecutors are not the only corrupted actors in the system. It is likely that the administrators and chancellors also participate in corruption. The most likely case has to do with lots and assignments of cases for trial. Judges have publicly complained in the annual analysis of the courts, that issues "with profit", were not assigned to them, while the preferred judges were given these judgments regularly. There is evidence that the chief judge instructs the administrators of networking computing / chancellors of the courts to appoint issues for particular judges. Since the assignment of cases is already computerized, this practice can only happen in cooperation with court administrators. The audit of electronic registration management still lacks even the lottery and distribution of cases in those courts where electronic management system exists.

The situation in recording and distributing the issues to the prosecution body is not computerized and is performed manually by the leaders of the prosecution. It is clear that the management of issues, leaves room for subjectivity and lack of transparency.

While it is clear that not all judges and prosecutors are corrupt, there is no doubt that the phenomenon is present in all courts and prosecution offices in the country at all levels.

Against this perception and documented data on issues such as: i) unjustified assets of several judges and prosecutors; ii) non-meritocratic appointments and promotions; and iii) the difficulties faced by service users of court and

prosecution, investigation and punishment of judges and prosecutors for corruption are disappointing. In fact, only in 2014, 2 (two) judges of the first instance court decisions were sentenced for corruption (none of them has not yet received final decision). No prosecutor has ever been convicted for corruption up to date (the case of a prosecutor is under investigation). Six judges are criminally denounced by the High Inspectorate of Declaration and Audit of Assets and Control of Interests (ILDKPKI) for non-disclosure or concealment of property.

As shown there is a profound asymmetry between the public perception of judicial corruption and the state of punishment of justice functionaries.

II. Legal framework

Criminalization of corruption in Albania is regarded adequate by the Third Round of GRECO Assessment (Group of States against Corruption). In other words, the quality of formulation of the relevant legal provisions and severity of the envisaged sanctions in law is appropriate to enable an effective fight against corruption. Sanctions provided for in the Criminal Code for corruption offences vary from 6 months up to three years for various forms of active corruption and from 4 to 12 years for different forms of passive corruption.

III. PRESENTATION OF CURRENT SITUATION

1. Accountability and integrity

Rules of conduct serve to guide and monitor the behaviour of judges and prosecutors. They are approved by legal provisions or developed by the judiciary and prosecution in the form of self-regulatory instruments. In the case of Albania, judicial and prosecution rules⁴³⁴ of conduct include: a) prohibitions

⁴³⁴ Rules on Ethics and Conduct of Prosecutors “approved by Order No. 141 of the General Prosecutor on 19 June 2014, based on several international standards. ”

or inconsistencies; b) ethical standards⁴³⁵; c) rules of conduct during the judicial process, aiming to ensure the impartiality of judges; d) rules on extrajudicial conflict of interests; and e) rules regarding the declaration of properties.

1.1 Rules aiming at accountability and integrity

1.1.1 Inconsistencies and other legal barriers

Prohibitions or inconsistencies include limitations to specific activities and statuses for different categories of public servants, including limitations after employment. According to law, being a judge is incompatible with any public, private or political activity or an activity other than teaching at University up to six hours a week.⁴³⁶ Judges cannot be members of political parties, cannot be involved in political activities, directly participate or not in the administration or management of companies or act as experts or arbiters. In addition, the Law on Conflict of Interest⁴³⁷ prohibits the Supreme Court judges and judges acting as HCJ members to possess shares of ownership in profit organizations. This prohibition also applies to their spouses, adult children and parents in law.

Law no. 44/2014, dated 24.04.2014 has brought some changes in view of the above. Firstly, the judges and prosecutors of each level⁴³⁸ (namely, not only members of the Supreme Court and members of the High Council of Justice) have become part of the circle of officials to whom prohibitions apply for concluding contracts with a public institution as a party. Secondly, the circle of persons related to the official to whom the same prohibitions apply as for the

⁴³⁵ Ethical standards cover both judicial and extrajudicial activities of the judge.

⁴³⁶ Involvement of judges in the teaching process is regulated in detail by HCJ Decision no. 287/2 dated 19 July 2011 on the Academic Activity of Judges.

⁴³⁷ Law of 2005 on the Prevention of Conflict of Interest in Exercising of Public Functions, as amended.

⁴³⁸ Article 21/1 of the Law on prevention of conflict of interest in exercise of public functions

official (circle of relatives as per these changes, includes also the cohabitor of the official and the cohabitor's parents).⁴³⁹ has become wider.

As regards the prosecutors, Constitution is the first act aiming to regulate and prevent inconsistencies with the prosecutor's function. In its article 69, first paragraph, letter a the Constitution provides: "*The following may not run as candidates or be elected as Members of Parliament, without resigning from duty: a) ... prosecutors*". Unlike the judges for whom article 143 of the Constitution provides: "*Being a judge is not consistent with any other state, political or private activities*", this constitutional provision does not apply to prosecutors.

Further, the organic law no. 8737, dated 12.2.2001 "*On organization and functioning of Prosecutor's Office in the Republic of Albania*" expressly regulates cases of inconsistencies with the prosecutor's function, providing for in its article 39: "*1. The prosecutor shall be prohibited to participate in a political party or in activities of political character. 2. The prosecutor's function is incompatible with the candidacy and any election mandate, public position or activity, save the educational teaching activities regulated by order of the Attorney General. 3. The prosecutor shall be prohibited dual employment, except for the activities under the second paragraph of this article. 4. The prosecutor shall be prohibited to participate in the steering bodies of commercial companies*".

Apart from the above organic law, the law no. 9367, dated 7.4.2005 "*On prevention of conflict of interests in exercising of public functions*" applies as according to its article 4, the provisions of this law specify binding rules to be implemented by: a) **every official, when he/she participates in decision making for acts of the prosecution bodies...**. Further, article 33 of the law, *inter alia*, provides for that the Attorney General cannot actively possess shares or parts of any form in the capital of a commercial company.

⁴³⁹ Neni 24/1 i ligjit Për parandalimin e konfliktit të Interesave në ushtrimin e funksioneve publike

1.1.2 Ethical Obligations

Judicial Ethics

International standards⁴⁴⁰ and existing best practices provide significant guidance on standards of ethical conduct of judges. Most important are Bangalor Principles, which defines six " values " Independence, Impartiality, Integrity, Fairness, equality and competence and proper care.

In Albania, the National Judicial Conference (NJC) adopted a Code of Judicial Ethics in December 2000 and amended it in 2006. The code, which is binding for judges and court personnel, includes rules on the independence and impartiality of judges, the performance of judicial functions and extra-judicial activities. Typical issues of judicial ethics such as the conflict of interest (rule 3 and 12), *ex parte* (separate) communications with the parties involved in the case (rule 9), and inadequacy of political activity (rule 18) are addressed in this Code. The Code provides a broad elaboration on the standards mentioned above.

Judges may report ethical violations by their colleagues to the Standing Committee of the National Judiciary Conference (NJC), the Committee of Verification of Mandates and Long-term Professional Development (Ethics Committee). If a judge is found in violation of a requirement of the Code of Ethics, the Committee will submit a recommendation to the Inspectorate of High Council of Justice (HCJ) and the Ministry of Justice (MoJ). If the ethical breach is also a disciplinary breach (most of the principles of Code of Ethics are also deemed as a disciplinary violation of the Law on Judiciary), then a

⁴⁴⁰ The standards include Basic Principles of the United Nations on the Independence of the Judiciary, the European Charter on the Statute for Judges, Bangalor Principles of Judicial Conduct, the Council Recommendation of the Committee of Ministers CM / Rc (2010) 12 on " The judges : independence, efficiency and responsibilities "⁴⁴⁰, Opinion No. 4 of the Consultative Council of European Judges (CCJE) and the European Network of Councils for the Judiciary (ENCJ) ⁴⁴⁰ Judicial Ethics Report 2009-2010 ⁴⁴⁰.

disciplinary proceedings will be instituted. If the violation is not important, it results in a recommendation (by HCJ) to the judge, or it will be included in his / her evaluation file.

The Ethics Committee was set up by virtue of the Law no 77, dated 26/07/2012 "On the organization and functioning of the National judicial Conference" with three functions: a) providing advice to judges on matters of ethics they may encounter (judges themselves are assumed to refer to the Committee in such cases); and b) making recommendations to the HCJ Inspectorate or MoJ Inspectorate on ethical aspects of conduct of judges, and c) making recommendations to the School of Magistrates for the new or existing programs connected to the improvement of the continuous professional improvement of the judges and other employees of courts. Allegedly, HCJ and MoJ Inspectorates have increasingly used the Committee recommendations under the inspections and verification of complaints.

Prosecutor's ethics

As for the prosecutors, "Rules of Ethics and Conduct of Prosecutors" are approved by Order No. 141 of the Attorney General dated **19 June 2014**. **These rules are based** on international standards such as Recommendation Rec (2000), 19 "On the role of prosecutor's office in the criminal justice system" European Guidelines "On ethics and conduct of prosecutors" *Budapest Guidelines*".

Key aspects of ethics such as independence, impartiality (article 4-5); fairness and justice (article 8); professionalism (article 6-7), integrity, conflict of interest and external activities (articles 10-12), institutional and inter-institutional relations (articles 13-16) are reflected in the Rules of Ethics and Conduct of Prosecutors. The essence of all these rules is that prosecutors must comply with two basic principles: the rights of individuals, and effectiveness of criminal justice system as a whole. Therefore, given that criminal justice plays a key role in enforcement of the rule of law, then the compliance of prosecutors with rules of ethics and conduct is of particular importance and should be held mandatory and priority for every prosecutor.

Obligation for the implementation of the Rules of Ethics and conduct of prosecutors is enshrined by Article 17, according to which the violation of Rules, when it is not a criminal offence, represents a ground for initiation of disciplinary procedures. Also, paragraph 2 of this article specifies those rules of ethics and conduct, violation of which seriously discredits the reputation of the prosecutor and constitutes disciplinary violations in the meaning of Article 32 of the law "On organization and functioning of Prosecutor's Office in the Republic of Albania". From the wording of Article 17, it is clear that any breach of ethics and conduct constitutes a disciplinary breach/misconduct, if not a criminal offense, thus without making a distinction between ethical violations and disciplinary violations, as well as violations from each other, on the basis of their importance.

The inspection for Rule Enforcement is primarily given to the head of prosecutor's offices, which is provided as one of its competences in the law "On organization and functioning of the Prosecutor's Office in the Republic of Albania". Further, the specific authority responsible for the enforcement of rules is the Prosecutor - Inspector of Ethics within the Department of Inspection and Human Resources of the General Prosecutor's Office. Prosecutors can report in writing to the Inspector of Ethics for breaches of rules committed by their colleagues, superiors or subordinates, but only after no more than ten days are left to these entities to report the violations committed by them.

Within 10 days after being notified of the possibility of violation of rules, the Inspector of Ethics will initiate the verification procedure to prove whether such breach is true and will inform the Attorney General about the verification results, and recommend him/her, as appropriate, the registration of criminal proceedings, initiation of disciplinary procedures, or organization of special training. The prosecutor concerned is notified with a copy of information. Then, the Attorney General will decide on the breach, whether it is found that there was one.

1.1.3 Rules of conduct during the judicial process /criminal proceedings

Besides the prohibitions / restrictions on certain activities and statuses, judges (as well as other employees of the public service) should also address the conflicts of interest arising from the performance in office. According to the Codes of Civil and Criminal Procedure.⁴⁴¹, a judge is bound to be self-excluded from a case in the following circumstances: a) he / she has an interest in the proceedings or any of the parties or lawyers is his/her debtor or creditor or spouse or child; b) he / she is the custodian, attorney or employer of the defendant or of one of the parties, or when the defense counsel or lawyer of one of the parties is his/her close relative or his / her spouse relative; c) he has given advice or shared opinion about the judgment in question; d) there is disagreement between him / her or his / her spouse, or one of his / her close relatives and the defendant or one of the parties, e) his / her close relatives or his / her spouse relatives are caused harm as a result of a criminal offense; f) or his / her relatives of his / her spouse relatives exercise or have exercised the functions of prosecutor in the trial; g) he / she is under the conditions of one of the inconsistencies provided for by the Code; h) when there are other threats to the impartiality. Any of litigants may submit a request that a judge be disqualified from a case for the same reasons; presidents are the authorities to decide on these issues. Records on self-exclusion, disqualification and re-assignment of cases are kept at any particular court.

As for the prosecutors, like judges, apart from certain prohibitions / restrictions of their activities, proper care should be shown to prevent conflicts of interest in fulfilling their duties. Under the Code of Criminal Procedure, the prosecutor has a duty to waiver when there is a reason of partiality, such as: a) when there is interest in the proceedings or when a private party or a defence lawyer is his/her debtor or creditor or of his spouse or his children debtor or creditor; b) when he / she is the custodian, agent or employer of the defendant or of one of the private parties or when the defender or representative of one of these parties

⁴⁴¹ Code of Criminal Procedures, Articles 17-19; Code of Civil Procedures, Articles 72-75

is his / her close relative or her/ his spouse relative; c) when he / she has given advice or an opinion on the subject of proceedings; d) when there are disagreements between him / her, his / her spouse or any of his relatives with the defendant or one of the private parties; d) if any of his / her relatives or spouse relatives is violated or harmed by the criminal offense; f) when any of his / her relatives or his /her spouse relatives performs or has performed the functions of the prosecutor in the same proceedings; e) he / she is under one of the conditions of incompatibility provided for by Articles 15 and 16; h) when there are other main reasons of partiality.

1.1.4 Declaration of assets and financial interests

Judges are required to periodically disclose their assets and financial obligations under the Law on Declaration of Assets. In April 2014, the Parliament adopted several amendments to the Law on Declaration of Assets as a result of which the assets of judges will be inspected more often. Under the adopted legal changes, all ordinary judges must be audited every four years. During the years 2013 – 2014, High Inspectorate for Declaration of Assets (HIDA) has conducted a complete audit of the assets of all judges. As a result, in 2014 HIDA has reported to the prosecutor's office six cases related to judges, including a senior member of the High Council of Justice (HCJ). The cases are not yet concluded.

The same obligation for periodic declaration of assets is also relevant to the prosecutors. All first instance judicial district prosecutors are every 4 years subject to a full audit to verify the reliability and accuracy of the data contained in their declaration of assets and private interests.

When the results of the verification of declaration show that resources do not cover or justify the declared assets, or when a declaration, whether submitted or not to full audit, is subject to evidence from legitimate sources of hiding of interests and any other private data, which are mandatory to be declared or when there are false declarations, then an administrative investigation is initiated by the Inspector General. Any violation of the obligations set out in the law no.9049, when it is not a criminal contravention, is an administrative

offense which is fined according to the limits set by law and procedures for the implementation of administrative measures, and appeals of these cases are regulated under the Code of Administrative Procedure and provisions of Law no. 10279, dated 20.05.2010 "*On administrative contraventions*".

1.1.5 Donations

Another form of unlawful conduct during trial is the confession of a promise or taking directly or not profits, gifts/donations or favors by virtue of (namely, in relation to) office the position of judges (Article 32/2 of the law on judiciary). This form of behaviors represents a serious violation and gives rise to the judge dismissal. Soliciting and taking, directly or not, gifts/donations, favors, premises, preferential treatment by someone, are also prohibited for judges (and their relatives) under article 23 of the law on conflict of interests.

A similar prohibition is also foreseen for the prosecutors. It is prohibited the confession of a promise or taking, directly or indirectly, profits, gifts, favors or preferential treatments by virtue of office (provided for in article 23 of the law "*On prevention of the conflict of interests for exercising of public functions*"). At the same time, article 11 of the "*Rules of ethics and behaviour of prosecutors*" expressly provides for the prohibition of such profits and even in the relationship between the highest level prosecutor and his subordinate prosecutor. Pursuant to article 17, the violation of this obligation constitutes an act seriously discrediting the prosecutor's reputation, a violation which under article 23 of the law "On Prosecution Service" represents a disciplinary violation and can lead to dismissal.

1.2 Instruments providing for accountability and integrity

Apart from the mechanisms regulating behaviour and supporting the integrity of judges and prosecutors, in order to be operational, a justice system needs to have proper tools to identify and address proper behaviour.

1.2.1 Transparency of judicial proceedings / criminal proceedings

Transparency of judicial proceedings

Open justice is a prerequisite for the proper administration of justice and increase of public confidence of courts. As such, the open door policy of courts is a powerful tool to prevent corruption. Under Albanian law, court hearings are open to the public (including media). In special cases criminal hearings may be held behind closed doors to protect the following interests: a) public morality; b) public order; c) private life; d) interests of juveniles; e) classified information; f) trade secrets; g) any other reason that is considered detrimental to the justice interests.⁴⁴²

Open hearings of court proceedings are based on the requirement that decisions are reasoned and publicly disclosed. Decisions of the Supreme Court are published in the Official Journal. Despite growing publication of judicial decisions in the electronic management system and information for judicial cases (ICMIS) and in the other information system applied by some courts, judicial decisions are not regularly published. Copies of the court decisions may be obtained based on requests for information.

In 2013, Albania adopted rules to provide digital video recording of court hearings. The system is expected to cover all courts until June 2015. The use of digital video recording can be traced by date, issue, location and judges, due to an application developed with the assistance of USAID project to strengthen the Sector of Justice in Albania. This means that court presidents and MoJ may identify whether a judge has used or not recording technology in a specific trial. The project has also provided regular training for judges and court personnel. This mechanism has significant potential to increase the transparency of court proceedings and discourage inappropriate behaviour of judges in the courtroom.

⁴⁴² Articles 26 (1) and 173, Civil Procedure Code and articles 339 (1) and 340 of the Criminal Procedure Code.

Transparency of criminal proceedings

In the context of criminal proceedings, transparency has another significance. The execution of investigations and criminal proceedings, for its very nature, is not subject to the same principles of transparency as the completion of judicial process because the law itself provides for the maintenance of confidentiality and secrecy of inquiry. This does not mean that investigation should not be transparent in the sense that the prosecutor should make decisions and provide written orders which should be also based on reasonable grounds. According to Article 5 of the Rules of Ethics and conduct of prosecutors, the latter should not allow the suspect, the person under investigation, or defendant to become subject to violence, pressure or torture, especially to force them to blame themselves or find themselves guilty based on explanations obtained in violation of the law. They must also respect the rights of all persons to be equal before the law and act with objectivity and impartiality, avoiding any discrimination and prejudice about political affiliation, ethnic, social, cultural, religious or gender, sexual orientation, age, status, physical or mental disability. Transparency in the conduct of investigation mostly refers to the principle of equality of arms, in particular, informing the defendant or his defence lawyer about the evidence in accordance with law and the principle of due legal process and hearing, fulfilling the obligation to keep the subjects of criminal proceedings duly informed about their role in the process and their rights, especially that of defence lawyer. On the other hand, the person concerned, in the cases provided for in the Criminal Procedure Code can apply to the Court to reject the decisions made by the prosecutor, and in this context, the judicial verification is estimated as a means to enhance transparency in the implementation of investigation.

1.2.2 Complaints against judges and prosecutors

Complaints against judges

An effective process of acceptance and treatment of complaints against alleged inappropriate behaviour (including corruption) is a key tool for the treatment of poor behaviour by judges. Complaints can give rise to an inspection of the

concerned judge's activity, and eventually, to a disciplinary or criminal proceedings against a judge. In addition to independence, it is also important that the investigation process of complaints is a due process for the respective judges and is implemented in a transparent manner.

Anyone can file a complaint against a judge to the High Council of Justice (HCJ) or to the Ministry of Justice (MoJ) and both institutions have overlapped mandates to investigate complaints. Regarding the complaints filed with HCJ, article 16/1/a of the Law on HCJ is also ambiguous: "HCJ Inspectorate verifies (investigates) or submits to the Minister of Justice for treatment, the complaints of citizens or other entities referred to HCJ in relation to the actions of judges found in breach of the due performance of their rights". After the completion of an investigation, the Minister of Justice has the power to institute a disciplinary proceeding or not, which means that for a HCJ investigation to lead to a criminal proceeding, this has to be initially submitted to the Minister.

MoJ and the HCJ have raised internal mechanisms (inspectorates) and internal procedures. Coordination is essential to avoid duplication of efforts and to achieve consensus on the type of complaints that are most suitable for verification by the HCJ or MD. It is clear that the MD serves more as a tool for information exchange. No agreement has been reached that which type of complaints must engage each inspectorate nor HCJ law or MD - in does not provide guidance on this issue. In 2007, the HCJ unilaterally introduced a distinction between the two types of inspections and the procedure provided for their treatment :

- a) Inspection of the activity of a judge, who will be treated by the HCJ Inspectorate (IKLD);
- b) Inspection of the activity of a court that would be handled by the MoJ inspectors.

Although this decision was practically challenged by MoJ, the legal remedy is unilateral and non- binding on the Ministry. As such, it can be questioned (or not taken into account) by the Ministry at any time. Practically, the MoJ has supposedly observed such a division to the extent that it does not conduct

inspections of judges. However, it does not delegate them to HCJ but to the president of the court where the judge serves, requiring the latter to investigate and report them to MoJ Inspectorate.

HCJ decision regulates in detail the process of investigation of complaints against the allegedly improper behaviour. An investigation (verification) takes place only after the Inspector in Chief has held the complaint as admissible. The process of complaint 'verification' is an administrative investigation to be finalized within a period of 30 days from the complaint registration. The verification deals with: i) operation/verification of the judge's duties; ii) facts and circumstances regarding the performance, including the respect of law, solemnity, planning and work organization, behaviour during trial and out of court, undue delays, lack of professional ethics or review in reasoning of the decision; iii) fact or circumstances that may be deemed violations of ethical requirements provided by law or other related acts. Findings of the verification procedure are included in a report filed to the HCJ Deputy Chairman. If the verification finds a minor violation, the judge shall be made a recommendation or facts are taken into account for the purposes of evaluation of the judge in question. If violations are deemed to require a disciplinary proceeding, the report recommends the file be sent to the Minister of Justice, who is the only subject that may formally initiate disciplinary proceedings. If the violation constitutes a criminal offence, a reference is recommended to the Prosecutor's Office.

Complaints for ethical violations are submitted to the Ethics Commission of the National Judicial Conference about an opinion on the situation that is used to strengthen disciplinary proceedings against the appointed judges or for the purposes of evaluation.

According to IHCJ annual report, during 2013 HCJ received 883 complaints of which 246 were held admissible.⁴⁴³ IHCJ found violations of judges in 177

⁴⁴³ Rules on admissibility are provided for in Article 24/2/a/b/c of HCJ decision on Organization and Functioning of the Inspectorate. Claims/applications that can be

cases. 18 cases were submitted to the Minister of Justice to initiate disciplinary proceedings. Three referrals were submitted to the Prosecutor's Office. In 2014 HCJ received 478 complaints against judges, although no data were submitted for subsequent investigations. Within two years, the largest group of complaints deals with delays in judicial proceedings.

Complaints against prosecutors

The Law "*On organization and functioning of Prosecution Service in the Republic of Albania*" has not considered the option of submitting the citizens' complaints about the performance of duties by prosecutors (as the law on HCJ expressly provides for the opportunity of citizens to submit to that institution the complaints against judges). However, although there is a lack of such express provision, it does not mean that citizens cannot file their complaints to the heads of Prosecutor's Offices or to the Attorney General. These complaints can latter give rise to the conduct of inspection to the prosecutor, as envisaged by Regulation no. 78 dated 16. 04. 2010 "*On conduct of inspection and initiation of disciplinary proceedings*", a procedure to be subsequently addressed.

1.2.3 Inspection

Inspection of courts

The courts are inspected under two approaches: thematic inspection focused on a specific case, for instance treatment of corruption criminal offences by the courts and territorial inspection, for organization and functioning of a specific court. These inspections can furnish helpful information on the conditions and practices of courts representing risks of corruption, for instance cases that are not assigned by random selection, implementation of hearings in the judges' offices etc. The competency for inspection of courts is assigned to the Minister

resolved via judicial complaint, claims/applications on the exclusion of judges and those related to the private life of judges are not held admissible.

of Justice⁴⁴⁴. However, the HCJ Inspectorate and MoJ Inspectorate are practically involved in thematic and territorial inspections of first instance and second instance courts. Practically, the inspectorates of both institutions find it hard to collect evidence as some institutions refuse disclosure in that the law envisages the disclosure only to the prosecution service.

Inspection of prosecutors

While inspection of prosecutors means the control of the prosecutor's working activity in exercising criminal prosecution, representation of prosecution in the trial, enforcement of criminal judgments, other duties provided by law and ethical moral conduct in discharging his functions. Inspection of the professional activity of prosecutors of all Prosecutor's Offices is carried out by the Department for Inspection and Human Resources. Inspection of the prosecutor is realized based on a motivated order of the Attorney General and can be:

General Inspection, taken place on the basis of annual schedule of inspections approved by the Attorney General. This type of inspection aims at the implementation of full inspections at every Prosecutor's Office not less than once every three years and has generally a cognitive character for information about the working activity carried out by all prosecutors of the prosecution service, for the purpose of assessment of skills and professional career of prosecutors;

Thematic or partial inspection carried out by virtue of the order of Attorney General for a group of criminal offences or for special criminal proceedings that are found challenging in terms of the enforcement of criminal and procedural law or orders and instructions of the Attorney General;

Verification inspection, which examines recommendations and suggestions of inspections conducted by the Ministry of Justice for prosecutors and different local Prosecutor's Offices. A ground giving rise to inspection can be the fact when following the identification of various complaints, it results that the prosecutor wrongly enforces the criminal and procedural law or orders and instructions of the Attorney General or information addressed to the Attorney General by different directorates at the General Prosecutor's Office or heads of first instance or appellate Prosecutor's Offices by which concrete disciplinary violations are presented for certain prosecutors in the activity of their investigative or judicial activity etc. However, it should be taken into account that if prosecutors prove to be "*incapable*" by the end of assessment of professional skills, the prosecutor's inspection will be *compulsory*.

Inspection is carried out based on the order of Attorney General, specifying the type of inspection, prosecutor/s to be inspected, period that is subject to inspection, deadline for the completion of inspection and prosecutors of the Directorate for Inspection and Human Resources assigned for its implementation. In each case, the prosecutor/s who carry on the inspection should inform in advance the heads of Prosecutor's Office, at least three days beforehand, save urgent circumstances, as well as the prosecutor/s inspected by virtue of the order of Attorney General for the exercise of inspection.

By the end of inspection a final report will be drafted to be sent by official letter to the relevant Prosecutor's Office. The inspected prosecutor is entitled to submit his objections in writing about the inspection report. Based on inspection results, if violations are found, proposals will be made to the Attorney General for adoption of relevant measures such as the initiation of disciplinary proceedings or suspension from office.

1.2.4 Performance evaluation

Evaluation of judges' performance

Although it is not a direct anti-corruption instrument, the evaluation of ethical and professional performance of judges can provide key perspectives for their

⁴⁴⁴ Article 6/9, Law on the Ministry of Justice, Article 31/1, Law on High Council of Justice.

integrity and ethical standards. Findings of the evaluation process regarding various aspects of the judges' performance such as their capacity to settle cases within a reasonable time limit or their ethical profile during trial and out of the court, or their communication skills can be also indicators of improper behaviour, including corruption.

The responsibility for evaluation of first instance and appellate judges belongs to the High Council of Justice (HCJ).⁴⁴⁵ HCJ regulates the evaluation details (criteria in particular). HCJ itself monitors the process and examines the complaints of judges against the evaluation results. Judges at first instance and appellate courts should be evaluated at least once every three years.

The evaluation process consists of three stages: firstly, the judge is evaluated by the President of the Court where he serves. This is usually followed by a self-assessment of the judge. In the second phase, the HCJ Inspectorate prepares a report with findings on the performance of the judge and proposes scoring/results for the judge. Then, HJC decides on the evaluation.⁴⁴⁶ Result/possible outcomes of the evaluation process (scores include "very good", "good", "average", "poor")⁴⁴⁷.

Evaluation of prosecutors' performance

As regards the evaluation of prosecutors, the head of relevant Prosecutor's Office is the one to supervise the observance of prosecutor's ethics, discipline at work, planning of his/her work and accomplish legal obligations for the professional evaluation of prosecutors. The prosecutor's job evaluation and professional and moral skills will be carried out by the head of Prosecutor's Office in the form of a written act, according to the application form no. 1

⁴⁴⁵ Article 1/dh, Law on HCJ.

⁴⁴⁶ This process and its phases are included in HCJ decision no. 261/2 dated 14.04.2010 "On the system of evaluation of judges", article 2/3.

⁴⁴⁷ A judge considered with a "poor performance" can be discharged. On the other hand, a judge that is held "admissible" will be re-evaluated within one year from the last evaluation.

attached to the Regulation "On the system of job evaluation and professional and moral skills of prosecutors". In this application form, the Head of Prosecutor's Office describes the prosecutor's activity carrying out an overall assessment and briefing on each indicator and skill as well as on professional and moral flaws that are crucial for a fair evaluation. It should be taken into account that the said Regulation contains a detailed description of all criteria for the evaluation of prosecutors' job and these criteria should cover almost every individual aspect.

The proposed assessment should be submitted to the prosecutor who considers it for recognition and further decides thereupon, if he agrees and then he has to sign it within 8 (eight) days from the submission of the proposed assessment. After that, with a possible statement of the prosecutor, the assessment is submitted to the Department of Inspection and human Resources of the Prosecution Office General and to the Prosecution Council. The latter, after the assessment of the evaluation as above, shall submit for approval to the General Prosecutor the final evaluation report of professional skills of prosecutors, on which the Prosecutor General must express himself within 15 days. In the final act of the assessment of the prosecutor, the Prosecutorial Council submits its opinion on the prosecutor's assessment, with one of the estimates : a) very good; b) good; c) enough (in cases where the prosecutor is rated " Fair " he shall be re-evaluated within a year); d) Weak (evaluation " incompetent" constitutes cause for the initiation of the procedure for the removal of the prosecutor).

1.2.5 Disciplinary process

Disciplinary process against judges

According to the Constitution and law on Judicial Power, the judges bear disciplinary responsibility for legal violations and implementation of acts and conduct harming their reputation and integrity. Article 32 of the Law classifies disciplinary violations as follows:

- a) "very serious" infringements including among others: the refusal or non-declaration of assets, concealment of assets or false declaration of assets;

receiving, directly or indirectly, gifts, favors, promises or preferential treatment because of their duty. "These actions can be carried out for illegal benefits in the context of corruption. If a judge is found guilty in the commission of these offenses he / she is removed from office.

- b) "serious" violations where, in the context of actions that can be performed for illegal benefits, include among others: repeated and procedurally unjustified delays if it could harm the constitutional rights of the parties or the rendering of justice; interference or any other influence exerted on another judge; violation of ethical norms of the court; obstruction of inspection activities of inspectors. These actions can be carried out for illegal benefits in the context of corruption. If a judge is found guilty in one of these offenses he / she shall be liable to be transferred to a lower court for a period of one to two years.
- c) "minor" violations include in the context of actions that can be performed for illegal benefits among others *ex parte* contacts (individual communications) with the parties during the trial. These actions can be carried out for illegal benefits in the context of corruption. If a judge is found guilty in one of these violations, he / she shall be punished by warning or reprimand.

Minister of Justice is the only responsible stakeholder for the initiation of disciplinary proceeding while HCJ is responsible for the implementation of disciplinary proceeding and adoption of disciplinary measure against the judge⁴⁴⁸. According to article 31/1 of the Law on Judicial Power, the disciplinary process is set in motion by the Minister of Justice, based on findings of HCJ or MoJ inspections. A disciplinary proceeding is regulated in detail, in HCJ decision Nr.137 dated 21.2.2003 "Regulations on disciplinary proceedings of judges". It is not clear neither in the organic law nor in the regulations, how long as a disciplinary measure is in the file and when it is remitted.

From 01/2013 to 10/2014, HCJ Inspectorate submitted 43 files in relation to 23 judges to MoJ, of which 24 files are related to delays. Since December 2014, the Minister initiated disciplinary proceedings against 8 judges: one proceeding was withdrawn by the Minister, as for the other six judges HCJ terminated the disciplinary proceeding by imposing sanctions, while one is still ongoing. In 2013 a total number of 105 warning notices were announced, 21 for delays in reasoning of judgments and 72 regarding the poor organizational job causing delays.

In many aspects, the system of disciplinary proceedings appears inappropriate. However, the current division of roles between the MoJ and HCJ in the disciplinary process is problematic since it does not guarantee independence and efficiency in the fight against corruption. The fact that only the Minister of Justice has the power to initiate disciplinary proceedings against judges is a real concern as it enables the Minister to freeze proceedings upon his/her free will. Giving the authority to initiate disciplinary proceedings to the minister is supposed to create a kind of "quasi - court", in which the Minister acts in the role of 'prosecutor' and HCJ impartial role of 'judge'. However, the MoJ position has very little sense because in each case it is based on the presidents of courts or IHCJ for collection of necessary facts to base its decision or initiate or not disciplinary proceedings. Indeed, HCJ remains both a 'prosecutor' and a 'court'.

Disciplinary proceedings against prosecutors

The initiation of disciplinary proceeding is ordered by the Attorney General on the basis of a motivated judgment, after he is introduced to the inspection report of the Department for Inspection and Human Resources and objections of the inspected prosecutor.

The proceeding is based on data obtained from the inspection on which the prosecutor that is subject to proceeding is informed beforehand. After the issuance of order by the Attorney General, the Director of the Department for Inspection and Human Resources compiles the report on initiation of disciplinary proceeding, which includes detailed data on violations referred to

⁴⁴⁸ Article 147(4) of the Constitution and Article 2(ç) of the Law on HCJ.

in the order for initiation of disciplinary proceeding, and other data administered in the personal file of the prosecutor related to his/her previous evaluations, disciplinary measures against him/her, if any, or other indicators related to the prosecutor's ethical-moral attitude. A copy of the prepared file will be also made available to every member of the Prosecution Council. At the Council of the Prosecutor, the prosecutor has the right to defend himself. The opinions given by the Council of Prosecution for disciplinary violations, said Attorney General within 15 days of submission, arguing his position.

Referring to the law " *On the organization and functioning of the prosecution* " a violation of work discipline among others will be considered: serious or systematic delays in proceedings or other obligations or failure to fulfil the tasks entrusted; revealing a secret of the investigation or other information of a confidential nature; committing acts that seriously discredit the image of the prosecutor; committing acts which, by law, are incompatible with the functions of prosecutor. But the law did not provide for their classification depending on the severity of the violation. However these actions can be performed for illegal benefits in the context of corruption.

The prosecutors will be subject to the following measures for breaches of discipline: a) reprimands; b) warning notices for dismissal; c) demotion within the prosecution system; ç) dismissal. The disciplinary measures provided for in letters "a", "b" and "c" of the first clause of that article are taken by order of the Attorney General and are recorded in personal file of the prosecutor. Dismissal is performed by the President of the Republic, upon proposal of the Attorney General.

2 Investigation of Corruption

2.1 Institutional Framework

The institutional structure for investigation of corruption is characterized by four major developments. In 2007, the Directorate specialized for Economic and Financial Crime, including a Unit for Fight against Corruption was set up at the Albanian State Police (ASP). Similar with an anti-corruption unit a

directorate was set up at the Police Directorate of Tirana, and a number of offices were set up in seven other district police directorates but they do not have any anti - corruption specific unit.

In the same year a key step was launched with establishment of the Joint Investigative Unit in Tirana, a mechanism for coordination of economic related offences investigation, by bringing a number of representatives of some law enforcement agencies under the management of the Prosecutor's Office of Tirana. The Joint Investigative Unit was set up by virtue of a Memorandum of Cooperation entered into between six law enforcement agencies, respectively the Ministry of Interior, Ministry of Finance, State Supreme Audit Institution (then), High Inspectorate of Declaration and Audit of Assets and State Information Service. In 2009 JIUs were set up in six other districts (in Shkodër, Durrës, Fier, Vlorë, Gjirokastër and Korçë) and an eighth JIU was set up in Elbasan in April 2014.

In April 2014 a third significant step was taken when amendments to the Criminal Procedure Code transferred jurisdiction on four offenses of corruption (active and passive corruption by senior officials, local elected representatives, judges and prosecutors) from JIUs to the Court for Serious Crimes. Therefore, these offences are investigated and prosecuted by the Prosecutor's Office for Serious Crimes (POSC).

Eventually, by virtue of the new law "On State Police" the National Bureau of Investigation (NBI) was set up in August 2014. This is a new body within the State Police, charged with investigation of corruption and other major corruption related crimes. The NBI should be set up when the law takes effect in January 2015.

2.1.1 Police

Existing units

A specialized anti - corruption unit under the subordination of the Central Directorate for Economic and Financial Crime, within the Police, has the duty

to investigate 36 offenses. These offences include not only 22 corruption related offenses referred to in the Executive Summary, but also 14 other offenses, including various types of fraud, smuggling, tax evasion etc. There is an anti - corruption unit in the sector against economic and financial crime at the Police General Directorate. Outside Tirana, regional units fighting economic and financial related offences investigate corruption offences along with some other offences. Orders made by these structures.⁴⁴⁹ are often changed.

National Bureau of investigation

The new law “On State Police” was passed in August 2014. The law, which takes effect in January 2015, includes a major reform of units that investigate charges of corruption, by the establishment of the National Bureau of Investigation (NBI). This law has been a subject of constitutional review and CC has announced ad as incompatible with the Constitution of Chapter VI " National Bureau of Investigation " (Articles 27-36) of Law no.108 / 2014 " On the State Police ".⁴⁵⁰. CC However, this decision has not been issued in its complete format.

2.1.2 Prosecution office

The prosecution service in Albania is organized at three levels corresponding to the hierarchy of courts. To put it otherwise, a Prosecutor’s Office is attached to the respective court at district or appellate level and discharges its responsibilities (investigation and criminal prosecution) in relation to those criminal offences for which the Criminal Procedure Code imposes jurisdiction to the relevant courts. Another Prosecutor’s Office, the Serious Crimes Prosecutor’s Office (POSC) at the Serious Crimes Court (SCR) of Tirana,

⁴⁴⁹ The respective legal instruments are the Order of the State Police General Director no. 557, dated 15.4.2014 "On determination of offences which comprise the scope of the State Police activity”, and the Order of Minister of Interior no. 548/3 of April 2014, as amended in October 2014, which sets out the State Police units.

⁴⁵⁰ http://www.gjk.gov.al/web/NJOFTIM_P_R_MEDIAN_982_1-94.php

follows up cases for which SCR has proper jurisdiction.⁴⁵¹ The General Prosecutor’s Office also prosecutes cases reviewed at the Supreme Court, including first instance cases against the highest level state officials provided for that court under the Constitution.

Jurisdiction of each prosecution level on corruption offences depends on criminal offences under investigation and the level of official involved, and they can be summarized as follows:

Joint Investigatory Units (JIU)

JIU have jurisdiction over 44 offenses which are widely recognized as financial and economic crimes. These offenses include various forms of fraud and counterfeiting, smuggling, offenses in connection with bankruptcy, financing of terrorism etc. Of these, 18 offenses are "related to corruption", according to the definition used by the consolidated statistics system. These offences are presented as follows:

- a) Corruption in public sector (7 offences).⁴⁵²
- b) Corruption in judicial system (7 offences).⁴⁵³

⁴⁵¹ Five appellate prosecutor’s offices deal with cases appealed by the district courts. The sixth appellate prosecutor’s office attached to the Court of Appeals for Serious Crimes with the General Prosecutor’s Office deal with cases appealed to the Supreme Court.

⁴⁵² Article 244 (Active corruption of persons exercising public functions); 244/a (Active corruption of foreign public officials); 245/1 (Exercising of unlawful influence on public officials); 248 (Abuse of office); 256 (Misuse of state contributions); 259 (Passive corruption of public officials); 259/a (Passive corruption of foreign public officials).

⁴⁵³ Article 312 (Active corruption of witness, expert or interpreter), 319/a (Active corruption of the judge or official of international court), 319/b (Active corruption of foreign and domestic arbiters), 319/c (Active corruption of members of foreign judicial juries), 319/d (Passive corruption of the judge or of official of international courts), 319/dh (Passive corruption of domestic or foreign arbiters), 319/e (Passive corruption of a member of foreign judicial juries).

- c) Corruption in the public sector (2 offences).⁴⁵⁴
- d) Non – declaration and false declaration (2 offences).⁴⁵⁵

Joint Investigation Units have the intention to create investigation specialized teams to work in close cooperation for investigation of corruption and financial crime. Specifically, the Memorandum of Understanding under which the JIUs are set up provides for the following mechanism:

- a) The Prosecutor’s Office, Police, Tax and Customs Offices appoint full - time members at JIUs (see Table 1 for the exact number of members appointed). A prosecutor from each Prosecutor’s Office of Appeals is assigned to handle the appealed cases that are investigated and prosecuted at the first instance by the JIU.
- b) Four other agencies designate points of contact at every JIU: the General Directorate for Prevention of Money Laundering (GDPML), Supreme State Audit (SSA), High Inspectorate for Declaration and Audit of Assets and Conflict of Interest (HIDAACI) and the State Intelligence Service (SIS). These officers do not have the status of judicial police officers.

A number of orders of the Attorney General and the Police General Director along with the additional MOU entered into between the Attorney General and other institutions represented at the JIUs provide detailed guidance on issues such as appointment of judicial police officers, relationship with other law enforcement agencies and with other non- enforcement agencies, procedural issues such as settlement of jurisdiction conflict cases and transfer of cases, and the form of the prosecutor’s office requirements for other institutions regarding different categories of issues.

⁴⁵⁴Article 164/a (Active corruption in the private sector) and 164/b (Passive corruption in the private sector).

⁴⁵⁵Article 257 (Illegal benefiting from interests) and 257/a (Refusal for the declaration, non-declaration, hiding or false declaration of elected persons and public officials or of any other person who has the legal obligation for declaration).

JIUs have helped to improve quality of investigations, because of:

- a) Strengthened cooperation between prosecutors and representatives of other law enforcement agencies working with JIUs’ prosecutors, judicial police officers at the police and customs and tax authorities;
- b) Strengthened cooperation with other agencies due to consistent coordination mechanisms provided for in the MoU;
- c) Increased capacity to conduct financial investigations, seize assets and increase use of special investigative techniques (SIT);
- d) Joint training of law enforcement officials, forums and materials provided by donors;
- e) Improved visibility and accountability due to increased public profile of JIUs and special reporting on achievements.

Prosecutor’s Office for Serious Crimes (POSC)

Since April 2014, the Prosecutor’s Office for Serious Crimes has been responsible for investigation of four corruption offenses:

- a) Active corruption of the senior state officials and local elected representatives (Article 245)
- b) Passive corruption of senior state officials or local elected officials (Article 260)
- c) Active corruption of judges, prosecutors and other officials of the justice bodies/system (Article 319)
- d) Active corruption of members of foreign judicial juries (Article 319/c).⁴⁵⁶

As part of the same package of amendments, the law on prevention and combating organized crime and trafficking through preventive measures against property ("Anti-Mafia Law") was amended to include the same offenses as original offences for civil forfeiture. This means that POSC may institute

⁴⁵⁶Passive corruption refers to research or receiving a benefit, whereas active corruption means giving or offering of a benefit.

proceedings for forfeiture or confiscation of proceeds of corruption involving the above officials without a criminal conviction and on the basis of a lower standard of proof. In September 2014 it was set up the Unit for Investigation of Corruption and Assets at POSC.

General Prosecutor's Office (GPO)

The General Prosecutor's Office performs three functions regarding corruption issues:

- a) It follows **cases** that are appealed to the Supreme Court after the decision taken by the court of appeals.
- b) The Department for Investigation of Economic Crime, Corruption and Organized Crime at the General Prosecutor's Office is responsible to investigate and prosecute corruption cases involving the President, Prime Minister, members of the government, members of parliament and judges of the Supreme Court and Constitutional Court, in the first instance.⁴⁵⁷ However, it may conduct investigations with assistance of the JIU or POSC.
- c) Under the main MoU that establishes the JIU and order of the General Prosecutor's Office, the same department is responsible for monitoring the progress of specific corruption cases investigated by regional JIUs (and by prosecutor's offices in other districts where there is no JIU in place) and the POSC. JIUs send notification to the General Prosecutor's Office twice a month, informing the latter on any other economic crime registered and on decisions made by prosecutors (reversal of cases, referrals to court, etc.). According to the prosecutors, important issues are immediately reported.

⁴⁵⁷It has original jurisdiction when adjudicating criminal charges against these officials (Article 141).

The Department may recommend the Attorney General to appoint a JIU or prosecutor of the POSC to handle issues at other districts.

- d) The Department is also responsible for providing connection, communication and information sharing with central representatives of the Ministry of Interior, State Intelligence Service, General Directorate of Taxation, General Directorate of Customs and Financial Investigation Unit.
- e) The Attorney General may undertake an investigation if the district prosecutor neither dismisses a case, nor institutes prosecution within the prescribed period (Article 305 CPC).

2.2 Investigation unit resources and specialization

2.2.1 Personnel

Police

The anti-corruption sector at the Economic and Financial Crime Directorate at the central level has five judicial police officers. The same sector for Tirana has 8 officers. Regional divisions against economic and financial crime have specialized officers. Prior to 2013, a judicial officer was appointed to deal with cases of corruption in Economic and Financial Crime Sector in the districts.

The new Law on the State Police has several provisions aimed at ensuring sustainability (and therefore specialization) of the personnel working in the respective positions. For example, Article 43.5 of the law stipulates that no police officer may be transferred before serving two years in office.

General Prosecutor's Office and the Prosecutor's Office for Serious Crimes

Department for Investigation of Economic Crime, Corruption and Organized Crime at the General Prosecutor's Office consists of four prosecutors and a judicial police officer. None of them is specifically attributed to corruption

offences. In 2014 a senior prosecutor with experience in investigation of economic and financial crime was assigned as the Head of Department.

After establishment of the Unit for Investigation of Corruption and Assets at the Prosecutor's Office for Serious Crimes in September 2014, a prosecutor delegated by the General Prosecutor's Office was assigned as the Head of Unit. Two prosecutors from the POSC and 2 judicial police officers were eventually assigned at the unit.

In the case of PKR 's, due to reduced staff, few corruption cases have been transferred to their jurisdiction.

Joint Investigation Units

Each regional JIU consists of a supervising prosecutor (Head of JIU), several prosecutors and judicial police officers and a combination of police law enforcement officers, tax and customs authorities. The JIU supervising prosecutor is also deputy head of the regional prosecutor's office, therefore the status of these units is further strengthened. In practice, delays in the assignment of State Police (SP) representatives are observed.

After being assigned at JIU, tax and customs officers are physically located within the premises of JIU (respective District Prosecutor's Office) and managed for all practical purposes by head of JIU. The judicial police officers assigned by SP are not physically located in JIU premises and daily managed by their superiors in SP. It has a negative impact on the ability of JIU to act as a team. This factor has gotten worse by the frequent changes of judicial officers assigned at JIU.

2.2.2 Trainings on corruption investigation

The training of judges and prosecutors is conducted by School of Magistrates. The Police Training Center (PTC), a specialized department at Police General Directorate is responsible for police training.

The establishment of JIU highlighted the major need for specialized training of law enforcement officers on intelligence, investigation and adjudication of corruption. Likewise, the need to include trainings at all levels of law enforcement has become evident, given that the tasks of three agencies (police, prosecutor's office and judiciary) are stages related to the same criminal process.

An extensive assistance has been offered to Albanian law enforcement agencies regarding investigation and criminal prosecution of corruption and related crimes. A series of trainings have been conducted in 2010 on SP and JIU concerning corruption investigation⁴⁵⁸ by Millennium Challenge Corporation (MCC). The European Council Project /European Union against Corruption in Albania (PACA) has prepared a full training program of trainers (police, prosecutor's office and judges) on SM and PTC concerning the investigation and adjudication of financial and economic crime (including the discovery and seizure of assets, including material and training methods. The program resulted in the certification of 8 trainers from SP, prosecutor's office and judiciary and was finalized with an agreement according to which, SM will include training material in its curricula and will use certified trainers. Both MCC and PACA assistance are established to enable SM and PTC provide continuous training on investigation and adjudication of financial and economic crime.

Other assistance projects funded by donors during 2013 comprised: two trainings for judges, prosecutors and police by an EU Twinning Project "investigation and adjudication of money laundering during 2013; training by US police and prosecutor's office for judicial police officers regarding seizure of assets; training by German International Development Agency (GiZ) for judges, prosecutors and police on transboundary cooperation in the investigation and adjudication of corruption and organized crime; training of

⁴⁵⁸ In this context, we include advanced digital methods of the scientific police on SP Cyber Crime Unit and trainings on various topics for JIU prosecutors (*Defence in adjudication, Techniques of Financial Investigation, Analysis of Digital Evidence, Cyber Scientific Police and Banking Evidence.*).

judges and prosecutors on financial investigation and money laundering by British Police College; and training of judicial police officers on methods of fight against money laundering and corruption by the French Embassy.

2.2.3 Infrastructure, budget and equipment

In order that investigation and criminal prosecution of corruption criminal offenses become efficient, specialized law enforcement units (Unit against Corruption at Police Department against Financial and Economic Crime, Joint Investigation Units and Unit for Investigation of Corruption and Assets at Serious Crimes Prosecutor's Office) require necessary physical and technical infrastructure.

It is hard to isolate the budget and equipments assigned to these specific units within existing law enforcement agencies. Physically, the SP Sector against Corruption, JIU, POSC unit are situated within the premises of their main organization and face equal lack of job positions and equipment encountered by other units' counterparts. Particular attention is not paid to specialized units.

Despite material assistance offered for JIU, GPO and (occasionally) SP by United States Department of Justice, (OPDAT) during MCC 2010-2011 Program and its continuous assistance.⁴⁵⁹, specialized units against corruption face substantial lack of functional equipment and other material resources. For instance, according to prosecutors and police, the number and quality of wiring/hearing equipment for surveillance are insufficient. Those few types of equipment used for recording conversations last only 2-3 hours. According to the head of a JIU it has hindered the use of these pieces of equipment to collect evidence.

⁴⁵⁹The assistance package comprises of office equipment (computers, printers etc), as well as technical equipment for the investigation such as camcorders, digital recorders, digital audio recorders, recovery of evidence equipment etc.).

Regarding the wiring of electronic communications (telephone conversations, electronic mail etc) during investigations, they are centralized in the Surveillance Unit at PP (see Section 5.2.1.1). Likewise, it has been reported that POSC possesses equipment on wiring of electronic communications but fails to use them. GPO hires the wiring equipment by a specialized Italian company. If Albania pursues with the decentralization of wiring in eight regional centers (where JIU are located), problems will emerge due to the need to install equipment at POSC and 7 districts outside Tirana where JIU are located.

To sum up, there clearly a lack of technical equipment necessary for the investigation of corruption cases both in police and prosecutor's office and problems in terms of quality of the existing equipment. These issues are triggered not only by insufficient financial resources, but also by inadequate knowledge on the need for these pieces of equipment.

2.3 Techniques used in corruption investigation

The investigation of corruption offenses is based on a largely pro-active investigative method. The consolidated system of data concerning the corruption offenses and organized crime as such defines the proactive investigations that use special investigation techniques. However, prosecutors and police widely understand that the investigation is proactive if :

- a) It has been initiated *ex officio*;
- b) It is based upon information by another ongoing investigation or a mutual procedure of legal assistance;
- c) It is based upon reasonably unclear premises (for instance only a gossip or information) requiring support by more credible evidence;
- d) It comprises the shift from one original criminal offense to another (for instance from fraud to corruption);
- e) It uses special investigation techniques.

The proactive investigation is formally institutionalized within JIU structure among departments on direction development. Despite one of more reasons

shown as above, the proactive investigation is not properly involved in police practice in Albania. The prosecutors deem that police tends to notify a criminal offense and afterwards await orders instead of conducting preliminary investigation.

In general, criminal investigations are conducted by means of one or more methods as follows: testimony, interrogation, supervision, search, seizure and surveillance (Criminal Procedure Code, Title IV). The nature of corruption criminal offenses is specific. Typical corruption occurs in secrecy and with the consent of both parties and can leave no physical trace, which hinders the traditional investigation methods. The investigation of corruption criminal offenses basically relies on the following:

- a) Investigators are aware of a criminal offense before it occurs.
- b) General information on corruption of an official or a particular group,
- c) Persons involved in corruption criminal offenses must use financial system to deposit /legalize profits or gain wealth through these profits

The first two factors render very important i) use of "proactive collection of information" and use of informers and ii) use of special investigation techniques. The third stresses the need to conduct financial investigations, in order to discover funds and assets used for corruption purposes or provided as a result of corruption. The first item weights on the argument of this document that police must be more proactive in the initial stages of investigation (see as above).

According to KPP of Albania, special investigation techniques include as follows:

- a) Wiring of electronic communications (telephone, fax, email, text messages, radio messages etc);
- b) Surveillance with video /or audio in private or public places;
- c) Registration of incoming and outgoing telephone numbers;
- d) Use of location tracking devices;

- e) Undercover operations, which consist of simulated actions (for instance the delivery of a bribe) and infiltration by undercover agents in groups involved in criminal activities.

2.3.1 Surveillance/interception

The wiring and surveillance, registration of numbers and use of tracking device can be used on a person against whom the criminal proceeding has initiated – thus, when the person is suspect, but there is insufficient evidence to raise charges officially.⁴⁶⁰ Wiring, surveillance in private places and registration of numbers is allowed when the person under surveillance is suspect for committing a crime punishable by a maximum term of at least seven years imprisonment (for surveillance in public places, two years). Wiring or surveillance requires authorization of a judge, if the delay will not seriously harm the investigation, a case in which the prosecutor orders the wiring /surveillance and notifies the court within 24 hours;

Legally, the wiring of communications is conducted in a centralized fashion, including not only the monitoring of telephone conversations, but also the signals transmitted by surveillance device. According to article 223 of the Criminal Procedure Code, wiring of communications can take place only through the installed device in "assigned venues", "authorized and checked by district prosecutors". Article 23.2 of the law 2003 on wiring of electronic communications defines that "the assigned place" is located within the premises of GPO. After the termination of the period, all wired conversations are recorded in CD format and returned to the prosecutor who supervises the investigation in JIU or POSC.

⁴⁶⁰Likewise, the intelligence agencies can conduct preventive wiring or surveillance in order to discover and prevent criminal or unconstitutional activity (including corruption). In these cases, the collected information cannot be used as evidence in court.

According to statistics from the Consolidated System, in 2013 the wiring/surveillance was used in 54 cases with 653 cases registered at the prosecutor's office. This figure amounted to 39 cases in the first half of 2014.

2.3.2 Covert operations

The undercover operations can shape up in two forms: simulated actions and infiltration of secret agents. The simulation is of particular importance in light of proactive corruption investigation. A judicial police officer or agent or an authorized person by them can be assigned *inter alia* "in order to simulate a corruption offense" (article 294/a). The simulation requires a preliminary authorization of the prosecutor and its use is not limited by any threshold (sentence) of the criminal offense. It can be carried out by one of the parties involved in corruptive actions or a judicial police officer. It is prohibited the use of simulation to "provoke" a criminal offense that would not have been committed and if provocation is proven, the simulation results cannot be used as evidence (article 294/a.3).

The simulated actions have been used in a recent case related to the arrest *in flagrante delictum* of a judge for bribery. According to statistics; the simulated actions have been used in 29 cases in 2013, but only in 3 cases during first half of 2014. The infiltration has not been used in any cases in 2013 and in 2 cases during first half of 2014.

2.3.3 Financial Investigation

Financial investigation is an increasingly important component of the corruption investigation with the possible exception of criminal offenses involving corruption detection in cash. These investigations often involve cooperation with the anti-money laundering unit and they require efficient access to information for banking institutions and above all, proper training of police and prosecutors to carry them out.

2.3.4 Access of law enforcement agencies to information

In order to discover and investigate corruption offenses efficiently, the law enforcement authorities must have access to information owned by several other governmental/public institutions. These institutions in Albania include the General Directorate for Prevention of Money Laundering (UAML), tax authorities, the High State Audit (HSA), Immovable Property Registration Office (IPRO), High Inspectorate for Declaration and Control of Assets and Conflict of Interest (HIDAACI), National Registration Center (NRC) and National Licensing Center (NLC).

Information can emerge from one of these institutions to law enforcement institutions (generally the Prosecutor's Office) or due to a request by the prosecutor (information upon request) in a particular case or through proactive notification from an institution.

2.3.5 Reception of Information upon Request

Currently, the law enforcement agencies receive information from other institutions through written requests, which claimed institutions reply in the same way. According to prosecutors and police, it takes 30-60 calendar days to receive requested information, but in some cases it takes longer; in one case, it took six months and three papers to receive information from a mobile telephony operator regarding a murder case. These time limits are very long and can harm investigations, given the time limits for termination of preliminary investigation. This situation can deteriorate with increasing use of special investigation techniques. According to an interlocutor by the prosecutor's office, the number of requests addressed to mobile telephony companies has been increased by 30% in the first half of October 2014.

The government has taken measures to improve access from the prosecutor's office to other databanks.⁴⁶¹ The PP and the National Coordinator against Corruption have identified 24 databanks, in which access is considered useful for the investigation and proceeding of corruption criminal offenses.⁴⁶²

Each of these databanks is at different stages of development varying from being entirely online and open to the public (for instance licenses and companies) to partially electronic (for instance the Registration for Immovable Property). The Prosecutor's Office has already partial access to several registers like public procurement portal and register of vehicles (as well as public access to NRC and NLC that are open to the public). Currently, the only institution that has provided full online access is Ministry of Justice for the Registration of Criminal Background and even in that case solely for GPO.

There is confusion concerning what is understood by "access to databanks ". For some agencies it implies full interaction of databanks, according to which databanks of different agencies share a common format that allows exporting of direct data from one databank to another. This interaction must be implemented (legally) through "gateway" of the government administered by the National Information Society Agency (NISA) and imposes specific technical requirements for participating agencies. Despite all agencies in the

⁴⁶¹The manual on Five Priorities for which the Albanian government is committed to improve efficiency of corruption investigations, *inter alia*, through "Further facilitation of access [of law enforcement agencies] to databanks and respective registers to conduct investigations ".

⁴⁶²The databanks are the Civil Register, Criminal Status Register, Immovable Property Register, Legalized Property Register, Public Procurement Portal; HIDAACI Register of persons submitted to full control of their declaration of assets; Fixed and Mobile Telephony Subscribers' Register; national registers of taxpayers, customs, vehicles, ships, construction permits, coast guards, reimbursable medicaments, Public Health Information Systems, whole trade and retail medicament shops, Social Insurance Institute, environmental permit, licenses, companies, companies which manage water supply, nongovernmental organizations, public and private education institutions, notaries, bailiffs and power supply companies.

mentioned list (including GPO) have applied to NISA for the registration in "gateway" of the government and several agencies have already been registered and share physical connections, the rest either are not physically connected, or are not technically appropriate to be registered.

Legal experts agree that according to law, PP has the right to be familiar with the information in all databanks and the direct electronic access is an instrument to achieve that. The only legal condition for access is that PP considers the law requirements for data protection regarding confidentiality and data safety. In April 2013, the Attorney General approved an instruction (prepared together with the Commissioner for the Protection of Data) "On protection, processing and safety of personal data in the system of the Prosecutor's Office ".

Nevertheless, another key to discovery and proactive investigation is the need to unify information from different sources. Experts from PAMECA project observe that currently there is no authority in Albania to coordinate, analyze, control and collect criminal information provided by SP, UAML, HIDAACI, High State Audit, Internal Audit Service, Military Police, Penitentiary Police, Forestry Police, tax and customs investigation authorities, different financial surveillance and control institutions etc. Particular parts of criminal information can appear uninteresting or inappropriate but when united, they can create alert signals or display a criminal offense. Likewise, there is no network to share information among respective authorities.

2.3.6 Proactive notifications from other institutions

The institutions that can and must provide information proactively are especially those which perform functions of surveillance, controlling or investigative nature. From the perspective of the fight against corruption, HIDAACI, HSA and UAML bear special importance. The full nature of information that can and must be provided from each institution is clearly different: in the case of HIDAACI, it mostly deals with different criminal reports against persons for whom HIDAACI concludes of having violated legal provisions on failure to report or concealment of assets. In the case of HSA, the

information provided deals with criminal reports based on inspection findings; nevertheless, as based on other documents for the subject, it is normal that high control institutions regularly submit all their criminal reports to the prosecutor's office. For UAML, the information can also include a notification any time there is a report for suspicious transaction (STR) concerning a politically unexposed person (or a person included in the list of senior state officials owned by PP).

Currently, there is no consolidated information for the data provided by these institutions to the prosecutor's office. The criminal reports from these institutions to the prosecutor's office have been fairly scarce; although in the case of HIDAACI they have significantly increased during 2014.

Regarding the way how the prosecutor's office uses notifications from HIDAACI and HSA, both institutions claim that the prosecutor's office has failed with charges against the suspects or in the event of several HSA notifications, it has requalified the alleged criminal offenses as contraventions, based upon the fact that there is insufficient evidence to prove that the given acts are intentional. According to HSA, JIUs have not been consistent in decisions for criminal offenses that are "good" and that are not "good".

For several years there has been an ongoing clash of opinions between GPO and HIDAACI, the latter claiming that prosecutor's office places in the shelves HIDAACI files, and the first claims that filings do not contain sufficient information.

3. Corruption adjudication

The judiciary is the last link in the chain of institutions that fight corruption. The role of judiciary in this process is performed through decisions made by criminal courts that examine and decide on corruption charges.

3.1 Substantive competence of courts on corruption issues

Substantive competence of criminal courts on various offences (including corruption offences) is defined in the Constitution and in the Criminal Procedure Code. Our legal system lacks a legal definition of the concept of "corruption offences". However, law enforcement institutions (police and prosecutor's office) and the Ministry of Justice have agreed to consider as such (offences of corruption) 22 offenses for which statistics are collected and reported separately under the Consolidated System for Corruption Statistics. The competence to judge these 22 (twenty-two) offense is divided between various criminal courts as follows:

- a) The courts of ordinary jurisdiction are responsible for adjudication of 18 (eighteen) offenses of corruption.⁴⁶³
- b) As a result of amendments to the Criminal Procedure Code in March 2014, the Serious Crimes Courts (in the first instance and appeal) have been responsible for the adjudication of 4 (four) corruption offenses provided for in the following articles: 245 (active corruption of senior officials or local elected officials), 260 (passive corruption of senior officials or local elected representatives), 319 (active bribery of a judge,

⁴⁶³ Under Article 74 of the Criminal Procedure Code these are the offences provided for in the following articles: 244 (Active corruption of persons exercising public functions); 244/a (Active corruption of foreign public officials); 245/1 (Exercising of unlawful influence on public officials); 248 (Abuse of office); 256 (Misuse of state contributions); 259 (Passive corruption of public officials); 259/a (Passive corruption of foreign public officials); 312 (Active corruption of the witness, expert or interpreter); 319/a (Active corruption of the judge or official of international court); 319/b (Active corruption of foreign and domestic arbiters); 319/c (Active corruption of members of foreign judicial juries); 319/d (Passive corruption of the judge or of official of international courts); 319/dh (Passive corruption of domestic or foreign arbiters); 319/e (Passive corruption of a member of foreign judicial juries); 164/a (Active corruption in the private sector); 164/b (Passive corruption in the private sector); 257 (Illegal benefiting from interests) and 257/a (Refusal for the declaration, non-declaration, hiding or false declaration of assets by elected persons and public officials).

prosecutor or other justice officials) and 319 / d (passive bribery of a judge, prosecutor or other justice officials).⁴⁶⁴

- c) The Supreme Court is responsible to try all criminal offences (including 22 corruption offences) when they are committed by the President of Republic, the Prime Minister, members of the Council of Ministers, members of parliament, judges of the Supreme Court, and judges of the Constitutional Court.⁴⁶⁵
- d) Transfer of power to adjudicate some corruption offenses to the Court for Serious Crimes is considered as a step toward partial specialization of the judiciary in dealing with corruption issues. There is a great expectation that this move will increase effectiveness of the criminal justice system in fight against corruption, for the following reasons:
 - e) Firstly, because of the low workload, the prosecutor's office and courts for serious crimes are expected to dedicate more time and resources to investigation and adjudication of these issues;
 - f) Secondly, as the number of prosecutors and judges to deal with investigation and adjudication of these issues will be limited, it is expected to have a unification of judicial practice about some vital aspects of criminal policy against corruption such as admissibility of evidence, probative force of specific types of evidence, policy on criminal penalties etc.; as the admissibility of evidence, probative strength of specific types of evidence, criminal penalties policy etc.;
 - g) Thirdly, the focus of investigation and adjudication of these sensitive issues at a prosecutor's office and a court is expected to facilitate monitoring by the public and improve statistics on the number of corruption cases which include senior officials, local elected representatives, judges and prosecutors;
 - h) Finally, due to amendments of article 3 of anti-mafia law, the prosecutor's office and serious crimes court are able to apply the preventive seizure and

confiscation over suspicious properties of senior officials, local elected representatives and prosecutors.⁴⁶⁶

3.2 Penal anti-corruption policy

Although the Consolidated Statistical System on Corruption considers 22 (twenty two) criminal offences as linked with corruption, only 6 (six) of them are indeed corruption offences consisted of giving and receiving unlawful profits. These offences of typical corruption are as follows: i) active corruption of persons exercising state functions (article 244); ii) (active corruption of senior officials and local elected representatives (article 245); iii) passive corruption of persons exercising state functions (article 259); iv) passive corruption of senior officials and local elected representatives; v) active corruption of judges, prosecutors and other justice officials (article 319); and vi) passive corruption of judges, prosecutors and other justice officials (article 319 ç).

⁴⁶⁴ Article 75/a of the Criminal Procedure Code.

⁴⁶⁵ Article 141 of the Constitution and article 75/b of the Criminal Procedure Code.

⁴⁶⁶ Preventive seizure and confiscation can apply without pending the final court guilty verdict on the defendant. Thereafter the defendant will bear the burden of proof to prove the lawfulness of suspicious property.

From the quantitative point of view, during 2009 – 2014 the Albanian courts have provided the following number of judgments in relation to the above cited articles (offences):

Corruption-related criminal offences	2009				2010				2011			
	First instance and second instance courts				First instance and second instance courts				First instance and second instance courts			
	First Instance		Second Instance		First Instance		Second Instance		First Instance		Second Instance	
	Tried	Convicted	Tried	Convicted	Tried	Convicted	Tried	Convicted	Tried	Convicted	Tried	Convicted
Total	29	22	45	19	43	27	7	2	41	30	20	5
Corruption in Public Sector	27	20	42	16	38	25	7	2	32	23	18	5
Article 244	7	5	21	6	2	2	0	0	3	2	7	0
Article 259	20	15	21	10	36	23	7	2	29	21	11	5
High Level Corruption	2	2	3	3	4	1	0	0	4	2	2	0
Article 245	2	2	0	0	1	0	0	0	2	1	0	0
Article 260	0	0	3	3	3	1	0	0	2	1	2	0
Corruption in Justice System	0	0	0	0	1	1	0	0	5	5	0	0
Article 319	0	0	0	0	1	1	0	0	5	5	0	0
Article 319/ç	0	0	0	0	0	0	0	0	0	0	0	0

Corruption-related criminal offences	2012				2013				2014			
	First instance and second instance courts				First instance and second instance courts				First instance and second instance courts			
	First Instance		Second Instance		First Instance		Second Instance		First Instance		Second Instance	
	Tried	Convicted	Tried	Convicted	Tried	Convicted	Tried	Convicted	Tried	Convicted	Tried	Convicted
Total												
Corruption in Public Sector												
Article 244												
Article 259												
High Level Corruption												
Article 245												
Article 260												
Corruption in Justice System	0	0	1	0	2	0	0	0	11	4	0	0
Article 319	0	0	0	0	1	1	0	0	5	5	0	0
Article 319/ç	0	0	0	0	0	0	0	0	0	0	0	0

3.3 Admissible evidence in corruption cases

The process for evaluation of evidence is provided for in Article 152 of the Criminal Procedure Code. In this process the court determines whether the evidence is obtained lawfully, whether the evidence is correct /authentic and relevant, therefore if the evidence is able to directly or indirectly prove the offense under examination. In this process the court assesses the probative force of each of the admissible evidence. Exceptionally, the court may accept evidence that has not been taken lawfully but is relevant and does not violate the freedom or the will of persons (Article 151/3). This is the so-called "atypical evidence". In the context of investigation and adjudication of corruption offences, the most known form of atypical evidence is the video / audio recording made by private persons with their means and without a prior authorization issued by the prosecutor's office or police.

To ensure that in a criminal process the defendant is convicted, the commission of the offense must be proven beyond a reasonable doubt. In the context of a trial for an offense of corruption it means that two elements must be proven beyond any doubt: i) giving / receiving or promise for an illegal benefit and ii) the intention of the parties in a corrupt transaction that through illegal profit a public official shall be motivated to perform or not his duty. Under the Criminal Code this probative standard can be achieved using both direct and indirect evidence. Types of evidences provided for in the Criminal Procedure Code that can be used in investigation and adjudication of corruption include as follows:

- a) Scope of testimony (article 153)
- b) Outcomes from testing/experiment
- c) Object of expert examination (article 178)
- d) Meaning of exhibits (article 187)
- e) Documents, including computer-based records (article 191 and 191/a)

A 2014 study by the Framework Assessment Project against Corruption in Albania shows that types or evidence used / accepted more frequently by courts in corruption cases are: i) exhibits; ii) testimony; and iii) documents, where the exhibits are considered to have the highest relevance and probative force. The exhibits and the testimony are considered by courts as direct evidence whereas the other evidence as indirect evidence.

To prove the issuance / reception or the promise for illegal benefit, the courts value more strongly taking of direct exhibits such as banknotes given to the corrupt in a simulated operation etc. The group of direct exhibits includes the results from surveillance or monitoring. Testimony is considered as evidence (direct exhibit) although it has lower probative force. Probative force of each of these pieces of evidence depends on the action on how they (pieces of evidence) have been received. Accordingly, the probative force of a registration taken in accordance with the criminal procedure rules is higher than the probative force of a recording made privately.

To prove the intention of the parties involved in a corrupt transaction, the courts prefer the following evidence: i) electronic conversations or communications registered or intercepted, where it is shown clear discussion on the corruptive agreement (provided that they are authentic, listened clearly and made in the manner provided by law).⁴⁶⁷; and ii) the testimony of one of the parties who withdraws from the corruptive transaction and collaborates with justice. The same as for giving / receiving of illegal benefits, such evidence is considered to have more probative force when taken in accordance with the procedure provided by law.

3.4 Length of trials of corruption cases

As for any other criminal cases, the time required for the court to settle a corruption case is a key indicator of the effectiveness of criminal justice system in the fight against corruption. A study of the Albanian Committee of Helsinki titled “Study Report of the Legislation and Judgments of Tirana District Court on Criminal Offences of Corruption and Abuse of Office” provides statistical data on the length of trials with over 21 (twenty one) criminal offences of corruption tried by the court in question within the period 2007 – 2012. The analysis includes 337 decisions involving 620 defendants. The following table summarizes the findings.

Trial length	Number of defendants
1 – 90 days	125 defendants
91 – 180 days	160 defendants
181 days – 1 year	164 defendants
1 – 2 years	141 defendants
2 – 3 years	13 defendants
3 – 5 years	17 defendants
Total	620 defendants

⁴⁶⁷See the above section for the status of private registrations or atypical evidence.

As noted, in 72.5% of cases the trial of corruption offences has lasted less than one year (namely, below the average identified by CEPEJ for the length of criminal trials in Albania-which is one year). In 30 out of 620 cases reviewed by Helsinki Committee, the judicial process was extended beyond the time limit of 2 years, which was considered by the European Court for Human Rights as the limit beyond which the duration would be regarded excessively long.⁴⁶⁸

3.5 Judicial rulings in corruption cases

According to article 47 of the Criminal Code, the judge imposes the sentence term by taking into account "...the risk of criminal offence, risk of perpetrator, guilt degree, as well as aggravating and mitigating circumstances". The mitigating and aggravating circumstances are generically provided for in articles 48 and 50 of the Criminal Code. Further, the Criminal Code provides for specific aggravating circumstances for different criminal offences. For instance, in the case of fraud offence (article 143), the envisaged sanction ranges from fine up to 5 (five) years of imprisonment. The same offence, if committed in complicity and bringing about consequences against two or more persons, shall be punishable by 3 to 10 years of imprisonment. This enables the judge to standardize the sentence term for each specific case. However, the Criminal Code does not provide for specific aggravating circumstances for corruption-related criminal offences.

The above cited study of Helsinki Committee reportedly establishes that courts are prone to impose average sanctions in corruption-related cases. Further, the survey of the Project for Assessment of Anti-Corruption Framework in Albania (ACFA) reports a tendency of judges to apply conditional sentences (pursuant to article 59 of the Criminal Code), in corruption cases, a result of which is that convicts do not serve a single day of imprisonment. The same ACFA study deems excessive the application of abbreviated trial in corruption cases.

⁴⁶⁸ CEPEJ Study No. 19: "Length of Court Proceedings in the Members States of the Council of Europe based on the Case Law of the European Court of Human Rights".

IV Findings and Concerns

4.1 Findings on the accountability and integrity

4.1.1 Findings on incompatibility and legal barriers

Although the limitations during service are rigorous, the judges are not subject to limitations after the service regarding employment as private attorneys or legal counsellors for business companies, which can benefit from the influence of ex-judges over the judiciary.

Incompatibilities and other legal barriers regarding the function of the prosecutor are not foreseen at the same level as for the judges. The Constitution does not contain a separate provision related to the incompatibilities with the function of the prosecutor.

In the case of judges and prosecutors, the implementation of the law no.9367, dated 7.4.2005 "*For the prevention of conflict of interests in the exercise of public functions*" is made more difficult because of the ambiguity of the expression "*every official, when he participates in a decision-making for...acts of the judiciary bodies and... prosecution bodies...*" at article 4/1/a/ii. In fact it is not clear whether only the procedural activity, or a broader one, is considered as "acts of judiciary and prosecution bodies".

4.1.2 Findings on ethical obligations

The advisory opinions of the Committee of Ethics of the National Judiciary Conference are not made public. The Committee does not have the right to demand disciplinary proceedings against judges based on its own observations. In such conditions it seems that Ethics Committee does not perform any advisory, supervisory or enforcement role of ethics rules or evidence of such violations by judges. Judicial Ethics Code is not available in any of the official sites on the Internet. The Code and Rules of Ethical Conduct generally encounter a big implementation problem because of the lack of awareness and information of the judges. In this context, the initial training programme of the

first year on ethics does not seem to be effective to ensure that judges are aware of the code and its requirements.

With regard to the prosecution, the rules are approved only on 19th June 2014, which means that they are in their first implementation phase, and consequently are not part of the training courses in order to have the prosecutors properly understand and implement them.

4.1.3 Findings on rules of conduct during a trial

There are no official data available on the frequency of self-recusal of judges or exclusion of judges on grounds of conflict of interests. While self-recusal for judges is administered in court files (for prosecutors to investigative files), the declaration of conflict of interests on case by case outside court practice is reflected in the register of conflicts of interest, which are administered by the HCJ, the role of authority responsible for courts of first instance and appeal. The same is valid for prosecution office, where the responsible authority is the Human Resources Department at the Prosecutor General's Office. According to the 2013 Annual Report of SJC, in 496 cases judges are appointed to try cases in other courts. The Report argues that this figure is high because of frequent exclusion of judges.⁴⁶⁹ Nevertheless, the situation in this area remains rather unclear and there are no exact data on the number of requests from parties involved for the exclusion of a judge, number of self-exclusion and number of re-assignments because of conflict of interests.

With regard to prosecutors, although the Code of Criminal Procedure foresees that the same reasons are applied for exclusion from decision-making of prosecutors, similar to the judges, it is not explicitly written that the exclusion procedure for the judges is also implemented for prosecutors as well. On the other hand, there are no official data on how many prosecutors have resigned

⁴⁶⁹ Conflict of interests is not the only cause for the assignment of a judge in this manner; another reason can be the work load in the other courts.

from cases or have been replaced on grounds of the exclusion reasons provided for in the law.

4.1.4 Findings on the declaration of assets and financial interests

Apart from SIADCCI, the law on the Supreme Council of Justice (article 16.1) recognises the attribute of SCJ “to verify and raise issues related to the assets declared by the judges.” These provisions have created confusion regarding the attributes of SIADCCI and SCJ to control the declaration of assets of the judges. Also, the statement is not done electronically which will increase transparency, allow relief in searching for information, and its automatic processing.

4.1.5 Findings on gifts

Rules in power about gifts (mainly contained in the law for the prevention of conflict of interests) show serious deficiencies in that they prohibit only gifts given “because of an official position” – a definition which leaves too much room for interpretation. It is noted that these rules are not sufficient as they pertain to all officials, while the category of judges and prosecutors does not contain provisions beyond Article 23 of the law " On prevention of conflict of interest... " such as specific arrangements provided for civil servants in the regulations to implement the law " on rules of ethics in public administration.⁴⁷⁰ .

4.1.6 Findings on the transparency of a trial/criminal proceedings

The major problem in the area of transparency of the judicial process is the fact that court decisions are not published systematically.

Another problem is the holding of numerous court sessions in the offices of the judges. Despite, obvious improvement in the infrastructure of courts, the

⁴⁷⁰ Law no 9131 dated 8.6.2003 On rules of ethics in the public administration

number of trial halls available remains insufficient. Although the last systematic assessment on the use of trial halls goes back to 2011.⁴⁷¹, still there is clear evidence that the situation persists to be the same. Moreover, even the current available trial halls are not fully utilised.

Besides, another problem related to the transparency is the delay in the transcription of court decisions.

4.1.7 Findings on the investigation of complaints

The system of delivery of complaints against the judges and their examination is characterised by the following problems:

- a) The competence of the Minister of Justice to investigate the complaints against individual judges is arguable in the context of independence of the judiciary.
- b) The fact that the process of complaint investigation is conducted by the administration of SCJ (Inspectorate of SCJ) and final decisions for disciplinary issues are taken by SCJ creates a problem in that it does not guaranty a good division of responsibilities for these 2 important processes.
- c) The exclusive right of the Minister of Justice to initiate disciplinary procedure against the judges (without being requested to give explanations for the cases he decides not to initiate the procedure) is a premise for arbitrariness in the disciplinary process against the judges.
- d) The lack of feedback by the prosecution office regarding the denouncements against judges made by SCJ shows that either the Inspectorate does not make properly grounded denouncements or the prosecution does not conduct investigations properly.

⁴⁷¹ Survey on the Utilisation of Trial Halls, USAID Albania Project for Strengthening of Justice Sector.

With regard to the Prosecution Office, the problems rests on the fact that the Law on “*Organisation and functioning of General Prosecution Office in the Republic of Albania*” does not foresee the opportunity that citizens can present complaints about the performance of prosecutors.

4.1.8 Findings on the evaluation of performance

The principal problem regarding the system of evaluation of judges’ performance is the effectiveness and efficiency of this system due to the passing of a considerable time for making known the evaluation results. Another problem is the difficulty of the evaluation process which seems very long and detailed. The criteria used in the evaluation process are complicated and sometimes do not manage to take into consideration the concrete situation of the evaluated judge (ex.: criteria of speediness does not take into account the difficulty of the case). The Inspectorate of SCJ does not have appropriate resources to conduct the process effectively.

Lastly, it is worth pointing out the fact that the current evaluation system deals primarily with the professional performance of judges, paying little attention to their ethical performance.

4.1.9 Findings on the inspection

The function of court inspection is characterised by some misunderstandings, as follows:

- a) The competence of MoJ to conduct theme-oriented inspections is not clearly defined in the law. In other words, it is not clear whether the target of these inspections is the way of organisation and functioning of courts or the work of judges.
- b) The competence of MoJ to investigate the complaints against the judges does not make much sense considering the agreement between the SCJ and MoJ according to which the SCJ should deal with the complaints against the judges and MoJ deals with the complaints against the courts.

4.1.10 Findings on discipline

The system of disciplinary procedures for the judges is generally appropriate. Reasons for disciplinary measures, procedures and procedural guarantees are clear and appropriate.⁴⁷² The remaining problem is the division of roles between MoJ and SCJ in the disciplinary process. The fact that only the Minister of Justice has the competence to initiate disciplinary proceedings against the judges is potentially problematic in that it acknowledges to the Minister the possibility to block the proceedings at his/her discretion. Moreover, this exclusiveness to initiate disciplinary proceedings does not make much sense in that in every case the Minister relies on the chairmen of courts or on SCJ to collect the necessary facts to initiate the proceedings.

4.2 Findings on corruption investigation

4.2.1 Findings on the jurisdiction and investigation structures

Clear jurisdictional boundaries among the various law enforcement agencies involved in the investigation of corruption- be it among services (police and

⁴⁷² It is interesting the attitude of the European Court of Human Rights which refuses the application of Article 1.6 in relation to the disciplinary proceedings in the judicial system. The court said that "the only dispute excluded from the scope of application of Article 1.6 of the ECHR are those which are submitted by public employees whose duties set specific public service activities as long as the latter operate as holder of a public authority responsible for protecting the interests of the state or other public authorities ". From this perspective, as judges and prosecutors (in Member States) exercise powers to protect the interests of public things, in an area where the state exercises sovereign powers, to apply not guarantees provided by Article 1.6 for a fair during the disciplinary court.

prosecution) and be it within one service (ex.: different levels of prosecution) are of a fundamental importance.

Generally, the actual structure for corruption investigation at police level does not have specialised staff (no specialised unit or particular officers for investigation of corruption in the regions outside Tirana). In addition, the structure is governed by legal instruments which are not known and which are subject to frequent changes. The establishment of NBI is a testimony of a serious intention to improve the fight against corruption at high levels. Nevertheless, the jurisdictional flexibility can lead to lack of clarity and/or omission of action if there are clear rules and criteria which allow that other offences can be solved or transferred to NBI, especially for cases involving high officials.

At prosecution level, there are still important jurisdiction and organisation issues which must be resolved as follows.

Issues of leadership of the system - The prosecution system is over-centralised: for example, the GP proposes to the President appointments, promotions, transfer and discharges, he appoints and discharges the heads and deputy heads of prosecution offices, orders prosecutors to acting positions, initiates the disciplinary proceedings and decides for disciplinary measures. An issue of particular importance identified is the lack of status and competences of Prosecution Council which plays a consultative role for a range of issues (including appointments, transfers and other in the prosecution) but does not have any official competence. Considered together, these issues create the great risk that prosecutors are not ready to criminally prosecute cases involving politicians or persons of political influence, or general issues where it is expected that the suspects may undertake serious attempts to influence over the proceedings.

Issues of competence for the investigation of high officials - Regardless of the transfer of competences to SCC to investigate and criminally prosecute corruption involving "high officials", the corruption cases involving the highest state officials (President, Prime Minister, Ministers, Parliamentarians and judges of Supreme Court and Constitutional Court) are not investigated by SCC

because according to the Constitution (article 141) it is the Supreme Court that has the jurisdiction to investigate criminal offences involving such high officials. This provision is problematic for two reasons. Firstly, it excludes the highest officials from the execution of preventative seizure according to anti-mafia law. Secondly, this means that the judges of the Supreme Court decide about issues involving the politicians who proposed them as candidates and appointed them.

Likewise, the transfer of competences for the investigation of some criminal offences of corruption to the Serious Crimes' Court creates the danger of conflict of jurisdiction between the common courts and the Serious Crimes' Court because of the lack of definition in the Albanian legislation of the concept "high state official". Before, the lack of such a definition was not problematic in that all corruption cases were dealt with by the district courts except the clearly defined list which falls under the jurisdiction of the Supreme Court. Transfer of criminal offences means a division of jurisdiction between the SCC and district courts which can be clear only once there is a definition of "high state official".

Issues of coordination and supervision by the General Prosecutor's Office - Although in formal terms GPO plays an important role in the supervision of cases investigated by JIT, the experts voice their doubts whether the mechanism of case reporting functions in practice and whether the Department of Investigation of Economic Crime, Corruption and Organised Crime monitors actively the decisions of prosecution cases in the sense foreseen by MoU which created the JITS. The sensitiveness and complexity of corruption cases renders this function extremely important.

In addition, the division of criminal offences of corruption and their division among SCP and district prosecution offices (JITS) raises important issues of coordination. Corruption crimes are linked with other crimes in the Criminal Code especially at the first phase of investigation, for example forgery of documents (article 186), abuse of powers (248), theft through abuse of powers (135), violation of equality of participants in public tenders or auctions (258), etc. Similar confusion is created when persons involved in the same criminal

offence are under the jurisdiction of different courts- for example when a minister and director or general secretary are investigated for passive corruption. Articles 70-82 of CPC clearly govern these situations: the more serious offence includes the less serious offence (in other words, the court which has jurisdiction over the more serious offence hears also the less serious offence when they are connected), the jurisdiction of Serious Crimes' Court is superior over the common courts and the jurisdiction of the Supreme Court is superior. Nevertheless, in situation when the prosecution offices are not aware of cases investigated/initiated elsewhere, or when there is tension between the SCP and district prosecution, GPO can play a very important role in informing SCP about cases initiated at district level (including JIT) and in coordinating the transfer of cases.

Stability of JITs - JITs are an organisational phenomenon/coordination mechanism rather than an institution or jurisdiction recently established. They are not supported neither by a new regulatory instrument nor by additional budget (expect a modest salary raise for members of JITs), but by the collection of resources and the stable mechanism of coordination. This structure gives them more flexibility and can serve as a basis for effective investigations. Still, they have problems with the staff and especially the lack of judicial police officers who were to be physically appointed to JITs.

4.2.2 Findings on resources and specialisation of investigation structures

Human resources allocated to corruption investigation in Police appear insufficient and are concentrated in Tirana. Another negative factor is the high mobility of personnel to various duties within the Police.

At the General Prosecution Office, **the Department for the Investigation of Economic Crime, Corruption and Organised Crime** is the unit assigned with the supervision and coordination of investigation of corruption cases. This Department consists of four prosecutors and one judicial police officer (a relatively small number). Moreover, no one of them is specifically tasked for the criminal offences of corruption.

At JITs level, the greatest problem is the limited capability of the heads of units to manage the human resources assigned to them by the other signatory agencies signatory of the memorandum for the establishment of JITs. In practice, there are huge delays in the nomination of ASP representatives. On the other hand, police officers, tax and customs officers are assigned their positions in the JIT by their superiors in the delegating agencies. The only role of the head of JIT in the process of nomination is limited in the examination (evaluation/check) of the candidates. In some cases, the heads of JITs have refused ASP candidates because they did not meet the criteria foreseen in the memorandum (experience, qualification, etc.). Nevertheless, the evaluation may be an effective standard only if there is a sufficient “offer” of candidates.

Another problem is the fact that the salary raise by 20% for members of JITs did not achieve its goal to create competition for the work positions in JITs.

Once appointed to JITs, the tax and customs officers are physically accommodated with offices in the premises of JIT (the relevant office at district prosecution) and are managed for all practical purposes by the Head of JIT. Whereas the judicial police officers appointed by ASP are not physically accommodated in the office premises of JITs and are daily managed by their superiors in ASP. This has a negative impact on the capability of JIT to act as a team.

With regard to specialised training, the number of specialised training session for the investigation, criminal prosecution and trial of corruption and corruption-related offences does not appear to be sufficient to duly train the police and prosecutors. Likewise, training on these issues is not appropriately integrated in the curricula of MS and PTC. Regarding the training resources, the resources provided by the technical assistance (training materials and methodology, trained trainers) have not been adequate to support continuous and sustainable training.

As for the equipment needed for the investigation of corruption, it seems that the units specialised against corruption are facing serious shortage of functional

equipment and other material resources. In summary, there is an obvious shortage of technical equipment, within the police and within the prosecution office, needed for the investigation of corruption and there are problems related to the quality of the existing equipment. These problems are caused not only due to insufficient financial resources but also by the insufficient knowledge on the need and ways of using them.

4.2.3 Findings on corruption investigation techniques

With regard to the investigation techniques, the following problems may be identified:

Conditions for authorizing the use of Special Investigative Techniques (SIT)

The criteria to be met in order that the Court authorises the use of SITs are problematic. Article 222 of CPC requires that the prosecutor must possess “sufficient evidence to prove the charges” in order to get the authorisation by the court for the use of SITs. Still, the purpose of interception or surveillance defined in the CPC is to enable the collection of sufficient evidence to prove the charges. Crimes related to corruption are frequently discovered thanks to interception and/or surveillance performed before the suspect commits the crime in question. In practice, the treatment by the court of interception and surveillance requests is inconsistent.

Secondly, the 7-year sentence limit (maximum sentence for the criminal offence committed) for the use of most interception and surveillance techniques is rather high. Out of 22 criminal offences of corruption reported in the consolidated statistics’ system, these techniques can be used for the investigation of 8 offences: abuse of powers and passive corruption (request and acceptance of a benefit) by persons exercising public functions, foreign employees, state officials and locally elected persons, judges, prosecutors, other justice employees, judges of international courts and international officials, foreign or local referees and foreign jury members. For example, SITs cannot be used to investigate active corruption.

Thirdly, as the time-limit for authorised interception is higher for surveillance in private venues rather than in public venues it is important to have a clear definition or understanding of “public venue”. The CPC does not provide any instruction and the differentiation is not clearly defined in the judicial practice.

Procedures to perform interceptions/surveillance

Procedures to perform communication interceptions are problematic. While CPC permits the authorisation of interception and surveillance/check by every prosecutor, a law of 2003 centralises interception at General Prosecutor’s Office. It is not clear whether all interceptions must be conducted at GPO (including, for example, reception signals by interception equipment) or whether this is valid only for the interception of telephone calls. In practice, while the interception of telephone calls is done at GP Offices, the interception of other communications is done at ASP offices; such a situation may be legally questionable.

Centralised interception, be it for telephone calls or all other forms, is not an effective solution because verbal coordination between the case prosecutor requesting the interception and the judicial police officer who conducts it at GPO premises is minimum. Hence, the poor quality of interceptions.

4.2.4 Findings on access to information by law enforcement agencies

Actually in Albania there is no authority to coordinate, analyse, check and collect the criminal information collected by ASP, GDPML, SIADCCI, Supreme State Audit, Internal Control Service, Military Police, Penitentiary Police, Forest Police, customs and tax investigation authorities, various financial control and surveillance institutions, etc. Certain pieces of criminal information may seem of no interest or irrelevant, but when put together they may create an alert or bring into evidence a criminal offence. Likewise, there is no information network shared among the relevant authorities.

4.3 Findings on Corruption Trials

4.3.1 Findings on jurisdiction of courts over corruption cases

Despite the transfer of some criminal offences of corruption (the serious ones) under the jurisdiction of Serious Crimes’ Court, the common and non-specialised courts are the competent ones to try most of other complex cases.

A second problem to be singled out is that the Supreme Court is responsible to try the criminal offences of corruption committed by senior officials who run as candidates and nominate the members of SC themselves.

The third problem is the eventuality of jurisdictional conflict between the common courts and the serious crimes’ court because of the lack of a legal definition of the concept “high official”.

4.3.2 Findings on the criminal policy in corruption cases

The judicial practice in corruption cases consists of simple cases, built almost exclusively on the cooperation of one of the parties in the corruptive transaction and investigated with special investigative techniques. The financial investigation remains almost unknown and unexplored. The public functionaries sentenced are of the low level. Criminal policy (sentences imposed by courts) presents the following problems:

- a) Sentences imposed for corruption cases are of an average level;
- b) In most cases, the courts execute conditional sentences, as a result of which the offenders do not serve any time in prison;
- c) Property related sentences such as seizure and confiscation of property imposed illegally and derived from committing the criminal offense of corruption is not associated in any case sentences with fine and / or imprisonment.
- d) There is an ambiguity regarding the evidencing power of various evidence especially of the recordings of private persons.

V. Conclusions

The chapter "Analysis of legal measures against corruption ", contains a summary of the results of observation and analysis of the level of corruption in the justice system.

The analysis of this chapter is divided into three (3) subheadings. The first subheading analyzes and assesses the quality of regulatory and other mechanisms that are designed to prevent corruption (and other forms of illegal behavior) among judges and prosecutors. The second subheading analyzes and assesses the quality of the legal and institutional framework for investigating corruption. The third subheading analyzes and assesses the legal and institutional framework for the trial and punishment of corruption.

In the first subheading, on the one hand, the analysis includes rules intended to guarantee the integrity and accountability of judges and prosecutors, such as : i) inconsistencies and legal obstacles, ii) ethical obligations, iii) the rules of conduct during the trial, iv) declaration of assets and financial interests and v) gifts. On the other side, it analyze and evaluates the quality of the legal and organizational arrangements that help to ensure accountability and integrity such as i) the transparency of the judicial process and criminal proceedings, ii) issuing and handling of complaints against judges and prosecutors, iii) inspection of courts and prosecutors, iv) assessing the performance of judges and prosecutors, and v) disciplinary proceeding of judges and prosecutors.

The analysis, in the second subheading, includes the definition of criminalization of corruption (i.e. penal provisions that criminalize various forms of corruption), the institutional framework of the investigation of corruption and division of duties among different chains of law enforcement agencies, human resources and available financial corruption investigation, the techniques used in the investigation of corruption and the quality of interaction between the prosecution and other institutions in the process of investigating corruption.

As to the third subheading, jurisdictional analysis includes issues or the division of responsibilities between different courts in the trial of offenses of corruption, quality and severity of the criminal policy against corruption, the types of evidence accepted by the courts in matters of corruption and power their probation (by the courts), and duration of cases of corruption

In overall, the analysis in this chapter identifies significant problems in all the above mentioned levels. In the group's findings on the quality of the mechanisms of corruption prevention, the analysis identifies the lack of restrictions after completing the task as a premise that can enable various forms of corruption in the ranks of judges and prosecutors. Increasingly under preventive mechanisms, the analysis points out that recognition and implementation of the ethics of judges and prosecutors is low. Regarding the system of declaration of assets at the formal, it is noticed that there is a clash of powers between ILDKPKI and HCJ. While in practice it is concluded that the system fails to "nail" corrupt judges and prosecutors. The transparency of the judicial process as a classic preventive mechanism, continues to lack adequate number of courtrooms and insufficient use of existing halls. The analysis points out the failure to publish the court decisions as another factor that undermines the transparency in the activity of the judiciary and prosecution.

Concerning the means meant to guarantee the standards of integrity and accountability, the analysis identifies the inability of judges evaluation system to give reliable results within a reasonable time. The analysis highlights the confusion arising from the uncertain legal regulation and unreasonable division of responsibilities between the Supreme Council of Justice and Minister of Justice in the field of inspection of courts and judges, as well as the uncertainty of the inspection role of the Minister of Justice in relation to prosecution. Similar problems are identified in connection with complaints against judges and prosecutors where the inadequacy of the role of the minister to review complaints against judges is noted in view of the independence of the judiciary. The analysis identifies as a problem the exclusivity of MoJ competence to initiate disciplinary proceedings against judges.

In the group 's findings on the quality of the legal and institutional framework for investigating corruption, the analysis identifies issues / problems in the management level of investigation system. The completely centralized management of the prosecution system and a choice of the Attorney General (only with the votes of the parliamentary majority) creates conditions for the politicization of the institution and, consequently, diminishing his ability to fight high -level corruption.

Another problem relates to the division of responsibilities between the different levels of the prosecution in the investigation of senior officials. There is a risk of a jurisdictional dispute about jurisdiction to investigate senior officials of the state due to the lack of a legal definition of the concept of " senior ". Further problems are identified in relation to sustainability and organizational weaknesses of the Joint Investigation Unit, as the main instances of investigation of corruption offenses. Also the coordination and supervision of the progress of the investigation of corruption criminal acts by the General Prosecutor's Office needs more resources.

In connection with the corruption investigation techniques, the analysis identifies some problems that weaken the effectiveness of the investigation, such as: uncertainty in the formulation of the provisions of the Code of Criminal Procedure, which provide the legal conditions justifying the use of surveillance; centralization of tapping service and poor interaction with other institutions (non-law enforcement institutions) in the investigative process; lack of a unified approach between the prosecution and the institutions that make charges about the level of evidence that contains charges of corruption.

In the group 's findings on the quality of the legal and institutional framework for the trial of offenses of corruption, the analysis identifies some issues / important problems such as the lack of aggravating circumstances for the crime of passive corruption; the risk of a jurisdictional conflict between courts in connection with corruption offenses committed by high officials as a result of the lack of a legal definition of the concept of " senior "

The analysis also highlights the fact that the courts are not sufficiently specialized and judges are not sufficiently trained in corruption issues. As a result of this lack of specialization / training there are serious uncertainties about the types of evidence that are admissible in the trial of a case of corruption and the power of each of their probation. Analysis report also shows uncertainty and judicial practices of inconsistencies in the evaluation and acceptance as evidence recordings made by private persons. Likewise, criminal penalties tend to be average and, moreover, imposed on parole.

In their entirety, the findings of the analysis of the chapter " Analysis of legal measures against corruption ", identify the problems of corruption in the justice system that require concrete measures to solve them.

CHAPTER IX. ANALYSIS OF JUSTICE SYSTEM FINANCING AND INFRASTRUCTURE

I. Introduction

The justice system is at the foundation of a democratic and modern state. To the effect of having an efficient system of justice, a reshaping of the way of financing the justice system is also needed. One of the factors that affects the delivery of justice, provision of services and performance of the whole system is the way of providing funds, their efficient use and adequacy of financial, material and human resources available to the justice system.

Financing the system and the use of funds according to its needs is an essential step in achieving the objectives required.

Opinion no. 9/2014 of European Prosecutors Advisory Council to the Council of Ministers of the Council of Europe in paragraph 6.3 "Resource Management", provides for:

"Provision of sufficient organizational, financial, material and human resources contributes to ensuring the independence. Especially in tough economic times, sufficient resources should be allocated to provide a qualitative service....."

In any case, whether the prosecution services have or do not have managerial autonomy, they should be enabled to assess their needs, to negotiate their budgets and decide how to use the funds allocated in a transparent manner, in order to achieve these justice objectives quickly and qualitatively".

In March 2014, the law on court administration was repealed in its entirety by the decision of the Constitutional Court no. 10, which among other things stated that a qualified majority rather than a simple majority, had been necessary during the adoption of the law in Parliament. In a kind of *obiter dictum* (expressed transitorily), CC said in connection with other allegations and explained that the court administration should be organized in such a way that the independence of judges and courts is not infringed. In particular, the

CC said that "the lack of legal provisions on the definition of direct responsibility of court presidents, which would enable the management and control of support services to the court is a matter of constitutional evaluation." Moreover CC noted that a clear and consolidated function of the secretary-in-chief is a guarantee of stability and should be followed by "clear legal requirements regarding the procedure of appointment and employment relations for this function". Finally CC, regarding the competence of the Minister of Justice in connection with the budget proposal and judicial administration, declared that the independence of the judiciary should be reflected in the organic law. The powers of chairmen should be linked with the oversight function of the HCJ. Consequently, changes to the law will need to consider the entire "system of justice system administration."

The justice system is equal in importance to the two other powers, but as such it is not fully addressed in all functions, especially in terms of funding that the system is apportioned, and how to deal with the salary and other benefits for judges or prosecutors and other employees being an integral part of the system.

II. Legal framework

Budgets of judicial systems include three main parts, which generally exist in all European judicial systems: the budget of the courts, legal aid and the state prosecution system.

The basic principles upon which budgeting (design and implementation of the budget) of the judiciary bodies builds, are based on the Constitution of the Republic of Albania, and law no. 9936, dated 26.6.2008, "On the management of the budgetary system in the Republic of Albania".

The Albanian total budget for the justice sector is divided into budget items related to the Ministry of Justice, General Prosecutor's Office, JBAO, the School of Magistrates, High Council of Justice and Constitutional Court.

The relevant laws are:

1. Law no. 8678, dated 14.05.2001, "On the organization and functioning of the Ministry of Justice", as amended, which defines the institutions under the MOJ;
2. Article 57 of Law no. 8737, dated 12.02.2001, "On the organization and functioning of the Prosecutor", as amended, which provides that the Prosecution has the right to plan and allocate budget independently in accordance with the law;
3. Law no. 8363/1998, "On the organization and functioning of the Office of Management and Budget Office";
4. Article 3 of Law no. 8136, dated 31.07.1996, "On the School of Magistrates", as amended, which provides that the school has its own apportion in the budget in the state budget;
5. Article 37 of Law no. 8811, dated 17.05.2001, "On the organization and functioning of the High Council of Justice", as amended, which provides that the Council's budget is part of the state budget;
6. Article 6 of Law no. 8577, dated 10.02.2000, "On the functioning of the Constitutional Court", stating that this court manages its own budget, as part of the state budget, as drawn up by the court and approved by the Assembly;
7. Law no. 10,039, dated 22.12.2008, "On legal aid"
8. Law no. 9936, dated 26.6.2008, "On the management of the budgetary system in the Republic of Albania".

According to all the laws referred to above, it is indicated that these laws recognize the principle of the independence of the relevant institutions of the justice system, which is expressed through independently planning their budgets. Budgets in all legal provisions recognize the principle, that the budgets of these institutions are part of the state budget.

➤ **General data**

On January 1, 2013, Albania had 2,815,749 inhabitants. GDP per capita was 3,363 Euro. Annual average gross salary was 4323 Euro. Making useful

comparisons with other member states of the Council of Europe is necessary to build similar groups of countries in terms of population (see Table 1 in the appendix to this chapter) and economic level (see Table 2). In this report, in order to compare the financial affairs or justice organization, we will compare Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova and Serbia. Apart from the countries involved in the group, we added Norway as the country with the justice system functioning well and with similar number of inhabitants; but the GDP of Norway is one of the highest in the member states of the Council of Europe; this makes the comparison with other states in terms of budgets not appropriate.⁴⁷³

Financing provided from the state budget for justice independent bodies is shown in Table 3 of the Appendix of this chapter.⁴⁷⁴

As evident from the data transmitted by JBAO, the approved budget for the courts in the past 5 years is not of the same tendency. For the period 2011-2013, there is a descending tendency for the budget, while for the period 2014-2015 – the tendency is ascending. In 2014 the budget was increased by about 20 % compared to 2013. This increase is primarily due to operational expenditures of the activity of the administrative courts. Qualitative growth is that of 2015, where the investment has increased 50 % versus 2014.

The forecast provided for budget in the next two years for justice independent bodies is provided in Table 4 of the Annex of this chapter.⁴⁷⁵

It is observed that the provisions for financing from the state budget for the three budgetary institutions: the Prosecutor General's Office, JBAO and Constitutional Court indicate a tendency to reduce them, which is not responsive to the needs of these institutions.

⁴⁷³ Taken from CEPEJ-SEJ-Albania report (2015)

⁴⁷⁴ www.mof.gov.al Table 1 (institutions with programs)

⁴⁷⁵ www.mof.gov.al Table 1.1 Forecast 2016- state budget by line ministries and budgetary institutions ; Table 1.2 Forecast 2017- state budget by line ministries and budgetary institutions

III. Presentation of the current situation

The overall Albanian budget for the justice sector is divided into budget items related to the Ministry of Justice, General Prosecutor's Office, JBAO the School of Magistrates, High Council of Justice and Constitutional Court. Budget appropriation is questionable.

In the CEPEJ report, there are analyzed also the budgets of the judicial systems of European countries, in which the report includes: the budget of the courts, legal aid and state prosecution system. In comparison with other countries within the selected group, according to the data of 2012, Albania spends most of the judicial budget for the state prosecution office (50.8 %). This value is the maximum European, while the European average is 24 %.

Since 2008 until 2012, the evolution of the three parts of the judicial budget was:

- Courts: + 5 %
- Legal aid: - 34 %
- Prosecution: + 47 %

CEPEJ's Report (The European Commission for the Efficiency of Justice), but also other reports of foreign experts who closely follow the progress made in the justice sector, attain more and more value to the need for budgetary support for courts, in order to guarantee working conditions and trial, in an fort to transform the courts and bring them to the parameters of transparency, efficiency and quality of service to the public in accordance with the standards of European Union countries.

*1. Comparison of budget to European countries.*⁴⁷⁶

Concerning the comparative data for the court budget of other European countries, we referred to data published by the European Commission for the

Efficiency of Justice (CEPEJ). This committee is a body of the Council of Europe (CoE) that focuses on improving the efficiency and functioning of justice in the member states. It also develops and designs practical instruments adopted by the European Council to achieve these goals. The Commission publishes periodic reports every two years. The last report was published in October 2014 and belongs to the 2012 data.

The average relationship of the budget of the courts to the GDP of European countries obtained from CEPEJ 's analysis is 0.21 %.

Albania has the lowest level of proportion of the courts budget to the state budget and GDP compared to countries in the region, as well as to the European average.

The data indicated that the countries surveyed in this analysis are divided into two groups, in relation to the European average, as regards the judicial budget proportion to the GDP of their country. In the first group, who have a much higher average than European countries includes South Eastern Europe, which have received continuous assistance from the EU and having objectives to change the situation in the judiciary, in order to meet standards for their integration in the EU (Macedonia, Poland, Bosnia, Serbia, Montenegro, etc.)

The second group includes the countries of Western Europe that have high levels of national wealth (Sweden, Netherlands, Norway, Denmark) and spend a small amount (GDP per capita) to finance the courts. This is because these countries have reached a high standard in terms of consolidation of the judicial system.

Albania, although it is among the first in terms of objectives and aspirations for EU integration, it has the lowest indicators of the court budget in relation to its GDP.

⁴⁷⁶ See table A

This analysis, as submitted, comes in full compliance with the budgetary requirements presented annually by the judiciary, which contain in themselves essentially high needs and necessary to intervene with the judicial infrastructure.

Even the Ministry of Finances has indicated the existence of the needs of justice system and the support of every reform that may come out by the Parliament of Albania as in this case. However, it is necessary to take into account that the determination of the maximum figures made by the Ministry of Finances is a completely professional, mechanical process because it is mainly based on economic indicators and of course after determining their starting budget exercise which addressed the issue of argumentation costs.”⁴⁷⁷

2. Budget of courts

2.1 Budget

2.1.1 Planning the budget

As part of the reforms conducted so far, it has been the law no. 8363, dated 01.07.1998 "On the establishment of the Judicial Budget Administration Office" in ensuring the independence of the judiciary. In drafting this law, efforts focused on using the model of self-government of the judiciary. This law has achieved budgetary independence of the judiciary, but not the independence of the judicial administration. The truth is that this model is borrowed in part, with the idea to be further developed in phases, but further legal developments have occurred since then. Based on the law, the Office designs the integrated budget for all courts in the country. Budgeting is based on the needs submitted by any court and medium-term development programs to improve the judicial infrastructure in general and construction in particular. The final document of the budget, after discussions in the Strategic

⁴⁷⁷ Comment by the representative of the Ministry of Finances in the Table organised On the Financing and Infrastructure of Justice System.

Management Group and its approval by the Office Steering Board, is forwarded to the Ministry of Finance, as defined in the laws regulating this process.

In accordance with the best practice in EU, the judicial budget increase is used as a powerful tool to improve transparency or to keep it at a high level.

On a more general level (see table below), comparing the budget allocated to the courts by Albania (with similar group of countries) shows that the 2012 budget for the courts to 100,000 inhabitants is around 450,000 Euro. The figures are similar (between 270,000 and 390,000 Euro) in Armenia, Azerbaijan, Georgia and Moldova, and Bosnia and Herzegovina spends more than 2.8 million Euro to 100,000 (see table 5).

The Judicial Budget Administration Office is an independent institution established by law no. 8363, dated 01.07.1998. This law stipulates in Article 2 of that: "The design and implementation of the courts' budget was subject to legal rules and procedures for the design and implementation of the state budget of the Republic of Albania. The Office administers budgetary funds appropriated to the courts to ensure the application in principle of its independence from other powers.”

The Office designs the integrated budget for all courts in the country. Budgeting is based on the needs raised by any court and medium-term development programs to improve the judicial infrastructure in general and construction in particular. The final document of the budget, after discussions in the Strategic Management Group and its approval by the Steering Board, forwarded to the Ministry of Finance, as defined in the laws that regulate this process.

An important point is the budget debate in the Parliamentary Committee for Legal Issues, Public Administration and Human Rights. In this Committee, representatives of the Board and Office, present budgetary requirements for all courts in the country. Members of the Board of JBAO are members of the Budget Committee of the NJC. Referring to the descending tendency of the judicial budget for the year 2011-2013, this committee while discussing the budget for 2014, addressed a letter to the Parliamentary Legislative Committee, to raise awareness on the need to increase the judicial budget.

Although there have been cases where the discussions in the Law Committee have increased the budget of the judiciary compared with draft-budget proposed by the government, it is understood that this increase can not be radical and the facts show that the investment budget approved is much more lower in comparison with the set requirements.

The involvement of the NJC Budget Committee in the discussions of the parliamentary committee on the budget, although it is not a legal obligation, came in response to the judiciary through its structures for support from parliament to increase the budget. Designing the integrated judicial budget by a special structure and the possibility of protection of this budget at the Parliamentary Legal Committee can be considered positive in terms of supporting the independent functioning of the judiciary.

On the other hand, the ceilings set by the Ministry of Finance each year, mainly in investment, are 3-4 times lower than budget requests submitted by the judicial power. Claims filed in draft-budget are a reflection of the development programs of the public sector according to objectives set for development. The allocation of budgets with such large differences as described above, affect directly the realization of objectives, in the case in question it has infringed the development of premises of the courts.

The budget for the courts (JBAO) for 2014 is 2,071,200 ALL (about 14.776 million Euro). The increase has to do with changes of the Law no. 9877/2008, "On the organization of the judiciary", with law no. 114/2013 by Parliament of Albania deciding to increase the salaries of Albanian judges (of all levels). In addition, Law no. 49/2012, "On judicial administrative proceedings" provided for the creation of new administrative courts in Albania; thus, the increase was related only to personnel costs, while the amount for expenditures and investments remained unchanged with that of 2013.

According to the CEPEJ report, the evolution of the budgets allocated to the courts appear under Table 6.

In Albania, the courts' budget has increased between 2006 and 2012 (see table). **It accounts for about 0.4 % of the total of annual state public expenditure**.⁴⁷⁸.

Details on the budget requested and approved for the period 2011 - 2015 (in million ALL) are shown in Table 7.

For some years the budget approved for the courts in Albania accounts for an average of 0.5 % of the total state budget and 0.13 % of GDP.

The average proportion of the budget of the courts to the GDP of European countries obtained from CEPEJ analysis is 0.21 %. A table of comparative data with regional countries on the report of the court budget to total public expenditure under the CEPEJ 's report will be found attached.

Albania has the lowest level of the courts' budget proportion to the state budget and GDP compared with countries in the region, as well as the European average.

The data indicated that the countries surveyed in this analysis are divided into two groups, in relation to the European average, as regards the share of judicial budget in relation to the GDP of their country. In the first group, having a much higher average than European countries are included South Eastern Europe which have received continuous assistance from the EU and set objectives to change the situation in the judiciary, in order to meet the standards for their integration in the EU. (Macedonia, Poland, Bosnia, Serbia, Montenegro, etc.)

The second group includes the countries of Western Europe that have high levels of national wealth (Sweden, Netherlands, Norway, Denmark) and spend a small amount (GDP per capita) to finance the courts. This is because these

⁴⁷⁸ See CEPEJ report on European judicial systems , efficiency and quality of justice , CEPEJ study no. 20 , Series 2014 (data from 2012) , Tables 2.8 and 2.9 f . 35 and 37 .

countries have reached a high standard in terms of consolidation of the judicial system.

Albania, although it is among the first in terms of objectives and aspirations for EU integration, has the lowest indicator of the court budget in relation to its GDP. The measure of the budget allocated to the judiciary is 3-4 times smaller than the budget requests submitted by the judicial power, which leads directly to the non-fulfilment of targets mainly those related to the judicial infrastructure.

2.1.2 Implementation of judicial budget

Upon the decision of the Board, the budget approved for the judiciary by law shall be detailed according to detailed expenditure items for each court. This budget is used by the court for carrying out its activity. The Office monitors the implementation of the budget and efficient management, and suggests to the Board review of appropriations and redistribution of funds among the courts, within each item of expenditure. This mode of operation allows flexibility in the use of funds and the possibility of their efficient use.

Also for the purposes of efficient management of the state budget, in the event of the legal revisions, the Ministry of Finance requires the prior approval of the Judicial Budget Office in the event of changes in the annual budget cuts.

Meanwhile, it can be the case during the implementation of the budget, the Ministry of Finance or the Council of Ministers shall, upon the MoF proposal, issue normative acts with effect within the budget year, which limit or hinder the use of budget funds for certain periods of time within the year.

Referring to the Office law guaranteeing the budgetary independence of the courts, we think the courts should be excluded from the scope of effect of these acts or minimally the opinion of the Office shall be consulted about the court involvement with these acts. This entitlement should be expressed in one of the existing legal acts through the respective provisions to be contained there.

2.1.3 Fees in the judicial system

Besides the funding they receive from the state budget, the courts collect revenues come from fees they apply.

The data on the collected and spent income out of court service fees for the period 2011-2015 (in thousand ALL):

Nr	Denomination	Year 2011	Year 2012	Year 2013	Year 2014	Forecast year 2015
1	Revenues out of judicial fees	525,087	605,235	538,905	533,090	490,000
2	Use of revenues out of judicial fees	2,399	2,003	38,953	48,477	44,000

As indicated, the revenue generated by the judicial budget are about 25% of the budget that it uses from the state budget.

Courts are allowed to use 10 % of the sum generated for their needs based on an agreement between the Ministry of Finance and Chairman of the Board of JBAO. Albanian state in 2013 collected the total amount of 531.6 million ALL (about 3.8 million Euro) in all the Albanian courts from court fees. Out of this amount, 5,000,000 ALL (about 357,000 Euro) were used by the courts for their needs. During the first six months of 2014, the Albanian courts collected 266 million ALL (about 1.9 million Euro) transferred to the State Budget.

2.1.4 Service fees at the Constitutional Court (CC)

Article 83 of the CC law provides that proceedings before CC are exempt from taxes. For the services performed and expenses incurred CC decides on its own.

Practically all procedures carried out before this Court are free of charge. This can be seen as facilitating the access before this Court, but on the other hand, were noted two problems: a) increased administrative costs due to the increased demand in recent years; b) increase of the number of unfounded and repeated requests (with the same party, scope and reasons) which has led to abuse of remedies because there is no stop / barrier to repeat the request within the legal deadline.

It's common practice of all courts that each process has its own cost, which is calculated by the court depending on the process. CC law does not contain specifications and respectively the measuring criteria to set out the fee for each type of procedure. Completion of the law in this regard will bring about not only the reduction of administrative costs for the Court, but also the reduction of unfounded or abusive applications before it.

An important element that directly affects the quality and efficiency of judicial decisions is the group of legal advisers to CC judges. The law has not provided any concrete arrangement in terms of their recruitment, legal status and labor relations. The criteria for the recruitment of legal counsels, their financial treatment or career progress within the justice system are some of the issues that need to find regulation in the organic law of CC due to the type of work that this constitutional body is doing. For approaching the CC, the law does not provide any service fee. However, recent years have noted that applications filed before the Court are increasing, the volume of its work is growing, especially at the stage of selection of applications. It has also increased its administrative costs. In addition, in many cases, there are also noted abuses by means of appeal by submitting repeatedly a request which does not meet the criteria. Setting reasonable fees without impeding access could reduce the number of such cases and to allow a better administrative service.

3. Judicial infrastructure

The infrastructure of courts, mainly of buildings, civil and criminal hearing halls, places of service delivery to the public, as well as places of entry for the public into these buildings and the defendants in general is problematic.

3.1 Infrastructure conditions of the building

The construction infrastructure in the Republic of Albania includes a total of 32 court buildings. In fact, today we have 38 courts, together with the newly created administrative ones, but a part of the latter perform their activity in the premises of the respective district court.

The court is an institution the activity of which differs from other institutions of state administration. Court activity is conducted in three main areas, which define three areas that need to have the courthouse in support of court operations performed within it and that are:

1. Area of the trial, where the courtrooms are;
2. Administrative area, where the offices of judges and administration are located;
3. Area of public relations, where the premises of the public service, as chief secretary, chancellor, archives, etc are located.

The organization of these three areas within the court building must comply with the principles of maintaining security, impartiality and avoiding pressures influence during the trial.

To accomplish these principles, and to have a building with functional zoning as shown above, efforts are focused in three main directions:

- I. Construction of new buildings;
- II. Complete reconstruction;
- III. Partial reconstructions.

Table 10 includes a complete list of the courts, whose buildings have been subject to investment according to the above three directions (See note)⁴⁷⁹

⁴⁷⁹ Notes to table data : The term " partial reconstruction " means improvements made to the building to its specific aspects . Tirana District Court is conducting a

As indicated, some court buildings are. These constructions, (total 6), were done after 2000. Mat District Court in 2001; Kavaja District Court in 2003; Serious Crimes Court in 2006, the courts of appeals in Korca and Vlora in 2008 and Korca District Court in 2010. Three of these buildings were constructed with state budget funds (in Mat, Korca and Kavaja), while three others have been realized with EU funds. It is currently under construction of the new building of the Court of Appeal Shkodra, which is an investment of state budget, starting in October 2014.

The New buildings provide courtrooms furnished and equipped in accordance with the norms of the solemnity of security and sufficient in relation to the number of judges. In these buildings judges and supportive administrative staff have sufficient working surface and are placed in such a way that facilitate communication of everyday work. Public service area is unique and provides all the prerequisites for quality, fast and transparent service. This placement, in turn, is in support of safety standards, avoiding unnecessary contact with other areas of the building, where trials are held, or where the offices of judges are located. Introducing the concept of the underground floor for the defendants to be accommodated in isolation rooms and further on to the criminal hearings is also in support of security elements. Overall it is noted that the new buildings have applied functional interior schemes, which have been improved from one construction to another, not only in fulfilling labor standards but also for security.

Investments made in existing buildings that have undergone complete reconstruction and they have managed to resolve many of the problems, which were at the courts where they are applied. In cases where these investments are realized through the expansion of the existing surface, or attached to them, their effectiveness has been higher. However, during the reconstruction of the existing buildings, the standards required for these institutions were not fully attained, because of the limits that the existing retaining structures establish. An

reconstruction of the building taken from former OST and will add 13 courtrooms , this for the civil cases room

important concern is that of the construction site as a basis to continue further the investments..⁴⁸⁰

With the exception of new buildings constructed after 2000, other judicial buildings are constructions before the 80s. This fact, in terms of our country the years are not simply translated into depreciation, but comes as an irrefutable fact of constructions made with materials of poor quality. The buildings constructed with massive bricks would not allow for structural changes and what is most important, most of them have not been designed for court buildings, but they had many different destinations. The last two factors are more restrictive during reconstructive interventions aimed at changing the functional interior scheme, or extending the work surface. In fact, both of these goals are linked interactively with each other. Changing the interior scheme is not carried out in the absence of the working surface and in turn, increasing the working surface is directly conditioned by the internal building constructive scheme. In simpler language this means that when a building has been designed for an administrative institution, it is impossible to create larger spaces than the existing ones, which would be needed for the creation of new hearing halls, of a larger archive or a meeting room. In many cases, existing court buildings are surrounded by other private or state-owned buildings, which make it virtually impossible to realize lateral extensions.

Due to the above limitations, the solution of the problem of the working surface in some courts as, for example, the Supreme Court, the Tirana District Court, Court of Appeals of Tirana, Berat District Court, Durrës District Court comes as option only through the construction of new buildings or reconstruction of any other existing building that offers enough surface for readjustment. Such cases have been successfully applied to the Court of Appeal Gjirokastra, Pogradec District Court, where the buildings have been adjusted to court buildings with satisfactory standards of work safety.

⁴⁸⁰ Comment by the representative of the judiciary in the Table On Financing and Infrastructure of Justice System.

For Tirana courts of all three levels for many years now studies and strategic plans have been designed for their final accommodation. The most recent of these was the construction of a Justice Palace, the fund for the realization of which is estimated to be 13-17 million Euro. The Palace of Justice complex was designed to accommodate all three courts of Tirana, but the project failed. Therefore, the solutions to accommodate the courts of Tirana are currently tremendous challenges for the judiciary, since they need support with investment funds but also require construction sites. Finding the construction sites constitutes today one of the most difficult problems for the solution of which a much more active cooperation with the local government is required.

Owing to partial reconstructive interventions carried out during the past 15 years, the courthouses have achieved significant improvements in terms of working conditions in the course of trial close to contemporary trends, and they are accompanied by improvements in their furniture. The implementation of these interventions is made on specific aspects, specifically particular attention was focused on the service to the public in specific environments. Despite the positive effects that have made these improvements in the daily work of the courts, they are unable to meet all the requirements of contemporary functionality required for a court.

One of the most sensitive issues that has to do with fast, solemn and transparent service is the lack of sufficient rooms for trial. In the absence of halls, courts are held in the offices of judges, and in these circumstances it is more than evident that one can speak of solemnity or the security for the parties. To be more specific about the condition of the halls, we clarify that our objectives were set out to achieve the standard: a courtroom for two judges. Actually we have buildings like that of the Court of Elbasan, where there are only two courtrooms for 14 judges; Durres District Court has four courtrooms for 17 judges; Shkodra District Court has four courtrooms for 14 judges; Tropoje District Court has only one courtroom for four judges, not to mention the courts of Tirana, which was sufficiently mentioned above and of which the record is broken by the district court, where 76 judges have only 14 courtrooms.

The elements mentioned such as: necessary working space required for judges and administrative staff, sufficient number of rooms to conduct all proceedings in them, special environment of the public service, facilities necessary to keep defendants safe before they appear in the court session, functional schemes sharing service flows participating in court security in their service are criteria whereon the investment builds in courthouses.

Since 2009, there have been projects ready for the construction of the district courts in Elbasan, Shkodra, as well as that of appeal in Shkodra, but under the circumstances of insufficient funds in the Shkodra Court of appeal, the construction began in October of 2014 and will end in 2016, while the renewal and Elbasan District Court will begin with its construction construction in 2015 and will be completed in 2016/2017, with the renewal depending on available funds.

The creation of administrative courts conditioned the priority of the construction of the Administrative Appeal Court, which performs its function in extremely difficult conditions, especially in terms of the shortage of space where it is located. This construction is scheduled to begin in 2015.

At a rough estimate, the realization of infrastructural interventions with the judiciary would need an allocation of funds of 300 million ALLs annually to achieve the interventions by 2020.

Also keeping in mind that budgetary needs for interventions with the courthouses that were included in the Palace of Justice have not been included since they will be financed out of EU funds.

List of 25 court analyzed for infrastructure includes also those courts, which buildings are not included in investment plans drawn recently by the Office. Meanwhile, the list includes only some of the courts, which are designed for medium-term budgetary plans.

Based on the above, in the following will be given in summary the problems that exist with court buildings, that are involved in our projects and investments that need to be financed.

Construction of the new building for Durrës District Court

This Court has 17 judges as part of its staff. All the judges of this court, are located in separate offices which they share with judicial secretaries. The Court has only four hearing halls available, of which three are for civil hearings and one for criminal hearings, lacking isolation rooms. For this reason a good part of the proceedings is being conducted in judges' offices. The court lacks public relations premises. Communication with the office of the secretary-in-chief occurs through a window.

The court has a main entrance through which enters the administration and the judges, as well as the public. Entry of the defendants occurs through the rear garden of the court.

On the whole, the courthouse presents two main problems:

1. Lack of working space
2. Lack of functional scheme.

The absence of these two key elements carries a lack or deficiency of security elements. The courthouse has undergone changes over the years, obtaining additional floors etc, in order to increase the working surface, but not completely solve its needs. Its positioning gives no opportunity for other extensions so building a new one will be able to meet the needs for rooms and other facilities, which this court needs. On the other hand, this new facility will enable the application of a functional scheme according to the required standards and enhance security elements.

Constructing a new building for Berati district court

Berati District Court is located in a two-story building built in 1980. This building was reconstructed in 1989 and then in 1997. The building has three

courtrooms, two of which are located on the second floor and the third on the first floor. A fourth room is adopted by merging two offices on its ground floor of the building. Although the building has undergone continuous improvements, internal composition of its facilities is outside the parameters needed to courthouses. So for instance:

- a) there is only one entrance for all flows into this building – administration, judges, the public and the defendant, which certainly causes the clash of these flows contrary to the norms of work and security for the courts.
- b) courtrooms are equipped with the defendant's box. Actually missing isolation rooms and all other components that distinguish a courtroom from a common meetings hall, listing here the defendant box but also defendants consultation rooms, separate entrances for the court, the public and the defendant.
- c) In the building, the premises are not according to the standards for public relations.
- d) The building is considered insufficient area for staff who work in it and the lack of security elements.

These deficiencies are essential and make the courthouse of Berat not to meet the conditions necessary for courthouses. The positioning of this court is unfavorable for any possible expansion, thus leaving the problem of increasing the area of work insoluble, which for this court is insufficient. Under these circumstances, the only option for solution, remains the construction of a new building. For 2016, it is planned to do the drafting of the technical project, the implementation of which is thought to be realized during the two years from 2017 to 2018.

Constructing a new building for Shkodër district court

Shkodra District Court has 14 judges as its staff and five courtrooms (2 criminal, 3 civil), of which 4 are used by Shkodra District Court and one by the Administrative Court of First Instance of Shkodra, which is located in the same building. The current building has plenty of deficiencies associated with

functional scheme, with safety elements, and does not provide the opportunity for a quality service and transparent to the public. Parts of investments were made during the period 2000-2004, having contributed to improving the state of the premises, but they are still obvious deficiencies that it presents in these directions. With accommodation in this building of the Administrative Court of First Instance Shkodra, the situation has deteriorated. During 2009 a technical project for the construction of the new building was designed. From this period, this Court is scheduled to be supported by budgetary funds, but so far it has not managed to provide them, neither from the state budget, nor from other IPA projects. ⁴⁸¹

Full reconstruction of the Judicial District Court Përmet

After a break of several years, in 2010 the court resumed its activity. The existing building displays deficiencies in terms of functional interior scheme, which the courts should have. Specifically, there is a need to create the environment for the public service; isolation rooms for defendants;

⁴⁸¹ Note 1: Among the courts that are assessed to need new buildings are Supreme Court , Court of Appeals of Tirana and the Tirana District Court . All three of these courts were designed to be executed with funds from the IPA 2012 European Commission , which was not carried out and , therefore , the investment needed for these courts is guaranteed by the state budget .

Note 2: It is in the process of construction of the new building of Shkodra Court of Appeals, which is scheduled for completion in October 2016. A part of the fund for starting works for the construction of the new building of Elbasan District Court has been allocated.

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restructuring of engineering networks like electrical, computer ones, etc. The Court has, in consultation with the Office drafted the technical design for the reconstruction project. Investment to improve the situation is set to be realized in the years 2016-2017.

Full reconstruction of the Judicial District Court Kukës

The building of this Court dates back to 1960 and it was reconstructed in 1999. The court has to use the first and second floor of the building. In its other facilities are accommodated institutions like the District Prosecution Office, State Archives, etc. Deficiencies displayed by this building are different. The main problem has to do with the need for reorganization of the premises, in order to apply a new scheme in accordance with the modern security settings. Other needs are those for the whole or partial renewal of networks, new security installations etc. Reducing the number of judges under Presidential Decree no. 7818, dated 16.11.2012, has eased the problem of the working surface. Referring to the assessments made, it is believed that the reconstruction will, applying lateral extensions of the building, improve working conditions and it can ensure separation of a part of the building that has to be used by the court from other users of the same building. Achieving this goal will significantly improve the security elements, which are currently lacking.

Full reconstruction of the Judicial District Court Gjirokastrë

The building of this Court dates back to 1989. In this building there are located also the Prosecutor's Office, Enforcement, the State Advocate and the Administrative Court of First Instance of Gjirokastra. The Court has six judges and three courtrooms, two of which are used by the district Court of Gjirokastra and 1 courtroom by the Administrative Court. No courtroom has been designed to function as a criminal hearing, while the premises for the defendants and other ancillary facilities are missing. The court has a public relations room, which needs to be improved in accordance with modern standards of this service. Due to the above shortcomings, it is necessary make an investment for the complete reconstruction of the existing building. The technical project is ready, but with the accommodation of the Administrative Court therein, there

may be a need to review it. In this way, it will ensure the normal functioning even for the Administrative Court of Gjirokaster.

Full reconstruction of the Judicial District Court Tropojë

The existing building of the court is a two-floor building with total area of 313 square meters. In the same building with the court is also Tropoja District Prosecution and Enforcement Offices. The fact that the building has several users and a single entrance classifies the internal scheme as non-functional. The court has four judges and one courtroom. The lack of working surface and lack of functional scheme necessitates the reconstruction in order to improve the situation.⁴⁸²

3.2 Premises for hearings hols, offices for judges and offices for the judicial personnel

Regarding this issue and based on the data submitted, 12 out of 25 courts they either did not report any problems, or they stated that are equipped with the necessary infrastructure. Lack of hearing halls is evaluated by judges as a factor that prevents public access to the courts at 30%.⁴⁸³.. While 10 of the 25 have

⁴⁸² Note 3: Administrative Courts of First Instance, with the exception of Tirana, have been accommodated in the existing buildings of the respective district courts. Depending on the opportunities offered by the latter, the conditions of accommodation of these courts vary from one district to the other. More problematic in this regard appear Administrative Court of First Instance of Durres and Gjirokastra. The latter is thought to be resolved with the reconstruction that is planned for the building of the Court, as above is related. As to that of Durres, which is currently located in a building with the Bailiff Office and probation, it remains a more distant solution, depending on the progress of the project for the construction of the new building of the Durres District Court.

⁴⁸³ Centre for Transparency and Free Information “What are the judges saying: Reform in justice, access to courts, corruption with the courts. Survey II with the first instance judges”, Tirana 2014, p 4

shown the need for improvement or have emphasized that working conditions are inadequate. These data are presented in more detail for each court below.

In the **Court of Appeal Gjirokastra**, were informed that all offices and two courtrooms are equipped with the necessary infrastructure, as well as working tools (tables, shelves and cabinets). The latter are in very good condition. Also, in connection with information technology equipment, courtrooms, judges' offices and court administration employees have computers, printers, and where necessary Xerox, multifunction Xerox and fax (in the office of the President).

Court of Appeals of Tirana is equipped with the infrastructure and tools needed to carry out its functions. Thus, courtrooms are coated with wooden cover; they have air conditioning, good electric system, computers, printers, UPS and audio system, and three microphones. Each judge has his office computer, printer, and other necessary accessories. Tools necessary to work are available also to the secretaries which are accommodated in an anteroom of the offices of judges.

Saranda District Court. Criminal case hearing hall meets all the parameters, it has a isolated place for the defendant, witnesses podium, speakers, audio system and large monitor for the public. Also, the four rooms have the podium for the panel, instead of voice, mobile mobilization locations for parties, their attorneys and attendees, but are not equipped with a special places for witnesses and the press. Server together with the computer and printing system need to be replaced since they are outdated.

Administrative Court of First Instance of Durrës, computers and printers are enough for each office and employees and they were purchased in 2014 as new items.

Lushnjë District Court has all rooms equipped with computers, but printers are missing in the courtroom. Concerning the physical infrastructure, chairs in court rooms are not very good. The criminal case hearing Hall is a special place for the stay of detainees, in a square shape, surrounded on all sides with iron

which is not very convenient and modern compared to the other equipment in the room.

District and Administrative Court of First Instance in Korce has all judicial staff offices equipped with computers, printers and equipment necessary to fulfil the duties and functions.

The same is observed with **Fier District Court**, where work environment are reported to be equipped with the basic facilities to work.

Necessary physical infrastructure and technological equipment is also favorable in **Puka District Court**, the **Court of Appeal in Vloora** and **District Court in Kruje**.

Also neither the Administrative Court of First Instance in Tirana, the Administrative Court of First Instance of Gjirokastra, nor Kavaja District Court does report any problems concerning this issue. The situation at courtrooms, offices, etc, in Pogradec District Court, are all very good. There is no need for investment, while the technological equipment requirements are met, including material reserve in case of damage.

In Kukes District Court there is a need for new furniture, although in general the judges halls and offices are equipped with computers and printers. Also the **Administrative Court of First Instance in Vloora** needs additional computers, printers, office equipment, etc. There is also a need to provide new computers, printers to **District Court of Lezha**, while a sound amplification system exists there.

Inadequate infrastructure exists also in the offices of judges and judicial administration in the **Judicial District of Tropoje**. The latter does not have heating system and the IT tools are outdated. This last problem is encountered at the First Instance **Court of Serious Crimes Tirana**.

Premises at Berat District Court have the necessary functionality, but renovation of electronic equipment is needed, as well as the establishment of a monitor at the entrance to the court to transmit the necessary information. The **Court of Appeal Shkodra** has the necessary working equipment, but in

general the conditions are not very appropriate and there is no proper consultation room for judges. However, given that a completely new building is being built for the court, these needs will be met fully. Situation at the hearing halls and offices is generally problematic in **Durres District Court** from a technical standpoint, as well as in terms of their size (e.g. printers do not exist in courtrooms).

3.3 Number of the hearing halls, application of audio system

Almost all of the courts have audio recording system installed - 18 out of 25 courts. In 6 of them audio system is not functioning and this includes those courts in which installation of the necessary equipment is done, but the technology is expected to be made functioning. 13 of the 25 courts deem the number of courtrooms as insufficient to cope with the influx of cases. Below are summarized the findings on this point:

The Court of Appeal Gjirokastra operates with two courtrooms, one for criminal and one civil cases. In both of them the appropriate infrastructure has been installed for operation of the audio system.

The Court of Appeal of Tirana has six courtrooms, all equipped with audio system.

Saranda District Court has four courtrooms in which audio recording system has been installed. However, the number of rooms was not responsive to the needs dictated by the number of hearings.

Administrative Court of First Instance of Durres has only one courtroom and this is insufficient as four judges of this court conduct hearings on an average of 8-15 hearings a day. Installation of audio system is expected to occur following.

Përmet District Court is equipped with two courtrooms. Adjustment of premises for the audio system functioning was done at the beginning of 2014 with the help of USAID and the Ministry of Justice.

Lushnja District Court has four courtrooms, sufficient for the time being (1 criminal, 3 civil) and they have been equipped with audio system with the help of USAID.

The Administrative Court of First Instance of Korça has only one courtroom which is considered insufficient for the average flow of the sessions that take place every day. In this room, audio system has been implemented.

The District Court of Elbasan has only two courtrooms that are used only in criminal matters. They are equipped with audio recording system. However, there is lack of halls not only in criminal cases but also in civil cases and due to this the hearings take place in judges' offices.

Administrative Court of First Instance in Tirana has seven courtrooms. The audio recording system for court hearings has not yet been installed in the court. Given the huge workload that this Court is facing in relation to the 16 judges on its structure, the number of rooms is relatively low.

The Court of First Instance of Pogradec has four courtrooms with normal capacity that is sufficient given the influx of cases. The audio system has also been implemented.

Kukes District Court has a courtroom for criminal cases, which somewhat meets the criteria, but requires refurbishment. Also three civil case courtrooms are small and inappropriate for a trial, and as such require a complete reconstruction. Through USAID initiative it has been made possible to install the audio system, which is expected to function soon.

Administrative Court of First Instance of Vlora has only two courtrooms that are not sufficient to cope with the flow (needed two others).

Fier District Court has five courtrooms equipped with audio system, but due to the influx of cases, it would be good to add at least three other court rooms.

Puka District Court has three operational courtrooms in which the audio system is applied. These halls meet the needs that are dictated by the flow of hearings.

Gjirokastra District Court has a total of three courtrooms, but due to the large number of cases, their number is insufficient. Even in this court the audio system is being applied.

Vlora Appeal Court has four courtrooms that are covering the flow of trials and are fully equipped with the technological devices for audio and video recording.

Krujë District Court has three rooms (one for criminal and 2 for civil cases) and in the three of them the audio recording system is normally being used. Because of the flow, other hall for criminal cases is required.

District Court of Lezha has four courtrooms, one of which is used primarily for the conduct of criminal trials. These halls are not enough and this has led to the result that some trials are held in judges' offices. At the same time, this court is the first to have implemented audio system (02.04.2012) which is funded by USAID.

Tropoje District Court has only one courtroom for criminal cases which is reportedly inadequate. Regarding the application of the audio system, it has already been installed, but it is expected to be operational in March of 2015.

The First Instance Court of Serious Crimes Tirana has four courtrooms that cover the flow for the moment. In all these rooms, the audio system is installed under the project Just USAID.

Berat District Court has four courtrooms, which are insufficient. In June of 2013 the audio recording system was installed.

Administrative Court of First Instance of Gjirokastra has only one courtroom. Audio recording server is not installed yet, due to the lack of the

space for its placement, however, all the necessary equipment has been bought (including server) for the installation of this system.

Three courtrooms are functional in **Shkodra Court of Appeal**. Audio recording system is installed and it is expected to be operational soon.

Kavaja District Court has three courtrooms, which are considered adequate and the audio recording system appears to be installed.

Durres District Court has four courtrooms. They are considered to be insufficient in relation to the influx, which causes many of the hearings to be conducted in judges' offices. Registration system works in this court since September 2012.

3.4 Public access to the services provided by the judicial administration

9 out of 25 courts either provide good conditions for public access to judicial administration services provided, or they have not identified any problems with this issue. 13 others raise the inappropriateness of the conditions on this part or the need for improvement of infrastructure in order to increase the quality of services provided. Details about the item 4 are analyzed below for each court spelled out for this sub-issue.

The Court of Appeal Gjirokastra is equipped with a Public Relations Office, which has the necessary infrastructure. At the entrance of the office is a hosting space. Also, the **Court of Appeal in Tirana** has organized an information office, a reception hall, while the information about court cases is accessible on the web site www.gjykataepelittirane.al. In this court there is also infrastructure for the access of people with disabilities, which does not exist in **Saranda District Court** and **District Court in Gjirokastra**.

Meanwhile, **the Administrative Court of First Instance of Durres** as a result of insufficiency in space, finds it difficult to have the interested parties oriented, given that in the same building is accommodated the enforcement and probation service. **Lushnjë District Court** has adjusted a part of the Registry

office in order to create access for the public, but it would be necessary to create a new position as secretary-in-chief.

Even the Secretary-in-chief of the **Court of Appeal of Shkodra** works as Public Relations Office. While the day / time of the drawing of lots, scheduling the hearings, the regulation of the court, are, in the framework of the right to information, always published in the premises of the court.

Also the **Administrative Court of First Instance Korca**, has separate rooms where individuals can expect to receive services from the court. The same can not be said for the **Judicial District of Kruje**, which lacks a separate office where the service can be offered to those interested in obtaining certificates, a copy of the decision, submission of applications - lawsuits, etc.

The Office premises for the secretary-in-chief of the **Administrative Court of First Instance Tirana** are too small and inadequate to cope with the quality and speed the flow of operations. Even in the **District Court of Lezha** there are not enough facilities in order for the public to stay in optimal conditions to take judicial administration services provided. Problematic seems to be the situation with the **Kukes District Court** regarding the lack of suitability of separate facilities for the reception of the people as well as for lawyers.

The Court of First Instance Pogradec has adequate infrastructure to create the necessary access. The secretary-in-chief has ample environment for the public behind the counter, with 20 places to sit, with instructions for all service areas. **The Administrative Court of First Instance Vlora** has satisfactory facilities, but it lack space for the parties and lawyers to study of court files,, etc. Even **Fier District Court provides** full access to the services provided, with regard to the information provided by employees of the secretariat, the chancellor, etc. Efficient organization of infrastructure in terms of access demonstrate also **Puka, Berat and Kavaja district courts, and Vlora Appeal Court**, but the latter lacks a special environment for lawyers, representatives of the parties, experts, etc to study the files., and to the effect of access to court it is appropriate to establish an official website.

Also appropriate access infrastructure is provided by the **first instance Court of Serious Crimes Tirana**, but there is need for redesigning the official website. Administrative Court of First Instance of Gjirokastra has a very small and it does not necessarily guarantee normal conditions, consequently improvement of the environment should be considered. The same problems associate the narrow environments offered by the **District Court of Durres**, which offers also an inadequate quality of services provided.

3.5 Conditions providing for physical security for judges and judicial administration

The physical security of judges in our country has been affected in some cases by incidents with serious consequences on their health, made present to the public through the media. In September 2011, the explosion of the car of the first instance judge Vlora, Skerdilajd Konomi, resulting in his tragic death, shocked the public opinion. The Union of Judges considered this as very serious event, which aimed at striking and intimidating the entire justice system and law enforcement agencies.

One issue that has had the attention of the public, law enforcement structures in the country and a range of domestic and international concerns marathon of judicial hearings at Serious Crimes Court against the defendant Dritan Dajti. The media reported on the threat of the defendant to the Chairperson and members of the panel of the Court of Serious Crimes and the resignation and continuous failure lawyers to appear to represent defendants. Also, referring to data reported by media, judges have failed to file criminal charges with the police or the prosecutor, but they are placed under the protection of structures Information Service and State Police.

Also, media reported serious incidents and acts with health consequences for judges, with perpetrators being persons who have been tried or were in the process of trial by the attacked judges. Thus, we can mention the attack against the judge of first instance in Vlora, MM, who was attacked with acid in her face, the threat against the judge of first instance Tirana, VZ, by

a young girl, who had requested the issuance of the injunction, but it was rejected by this judge in the process.

7 out of 25 courts offer generally good conditions to guarantee the physical security of judges and court administration. 17 of them are stated to offer incomplete security and they need improvements. Typical problems mentioned to this point are malfunctioning of metal detectors, lack / need to increase the number of security staff, lack of presence of State Police during the official holidays, having a single entry for the judges, as well for the public, missing access cards, etc. Another issue is that of procurement procedures to guard the courts by private police. The budget for this item should be treated with the same standards as with the prosecution. In case that all the courthouses will be guard by the State Police for 24 hours, the courts' accorded fund on the procurement of private police, to allocate state and not granted to the courts..⁴⁸⁴

Gjirokastra Court of Appeal has optimal conditions of physical security. Each entry of the courtroom is equipped with metal detectors and in every environment there are security cameras. At the **Administrative Court of First Instance of Durres**, state police service is available during office hours which is found out also for other courts such as the **Court of Appeals of Tirana** (during office hours 16:00 - 24:00 it obtains the security service from a private security company). The Administrative Court stated that there is no need for special security measures and that so far there has been no case of violation of physical security.

In Saranda District Court, the main entrance has a gate with metal detector, but other entries still do not have one, which means that the security is not complete. Also referring to the isolation rooms, they are within the parameters

⁴⁸⁴ Comment by the representative of judiciary in the Table on Financing and Infrastructure of Justice System.

of safety, but in the area that connects these rooms to the courtroom, there is no office for the police officer.

In Lushnja District Court has a security staff who deal more effectively with the orientation of the parties through the halls. Outside the court the police officer is on duty during the office hours. In the second part of the day and night, court is guarded by private guards. Adding a security officers is seen necessary. Likewise in **Elbasan District Court** number persons in the administration 's organization should increase the, which will guarantee the physical safety, and their presence is needed in the courtroom.

At the **Administrative Court of First Instance Korça**, conditions that guarantee the physical security of judges and court administration in general are good, but they need improvement. There is a security guard as part of its staff to supervise the entry and exit of the public in the courtrooms.

At the **Administrative Court of First Instance in Tirana** operates ASP service with a police officer. The latter stands in a special environment at the outer entrance of the Court. The court also has a security guard, who stands at the entrance of the public. Likewise JBAO as give the possibility to the court to contract with an employment contract with a fixed term judicial officers who can perform some tasks in courtrooms (placing the parties in certain positions, etc.). Second, after working hours and on days off during the week, the Court is guarded by a contracted SHRSF based on public procurement rules. Given the indoor and outdoor large area of the court and the high number of people who appear in it, it is deemed necessary that the State Police make available another employee, who will stand in internal court premises.

Pogradec District Court recommends the presence of State Police employees every day in service until 16:00, not just during working days (on the weekends trials may be held for security measures). In previous years, the court has had two serious incidents that have put the lives of judges at risk. Even for **Kukës District Court** it is referred that the security conditions are not at the required level, since the same gate is entered by the personnel, the parties, the defendant. While in the institution's organigamme, there is a security guard.

Lack of State Police officers is observed at the **Administrative Court of First Instance of Vlora** in order to enable the search of citizens before entering the courtroom, as well as to ensure peace and order during the sessions. Inadequacy of conditions that guarantee physical safety is also evident at **Fier district courts and Tropoje**. Also at the premises of **Gjirokastra District Court**, the security system is not complete. At the main entrance, there is a gate metal detector and it is worth mentioning that the system lacks internal and external cameras.

Meanwhile, in the **district courts of Kavaja, Pukë and Administrative Court of First Instance Gjirokastra**, there are not reported any problems in this respect and to date there have been no cases of risking the physical integrity of judges and court administration. **Vlora Court of Appeal** also generally guarantees the physical security of the judicial body and administrative staff, however it is deemed necessary to increase the security personnel and activation of metal detector at the entrance of the building. Physical security conditions are good in the **District Court of Krujë**, but it needs further improvements such as making the metal detector functional and the entry into the building through access cards. The malfunction of the metal detector, and the lack of personnel for maintaining physical security is observed at the **District Court of Lezha** which affects the inadequate security conditions.

At the **Court of First Instance for Serious Crimes**, there are good safety conditions. Thus, there are operating cameras to monitor all courtrooms and corridors. Currently there are two DVR devices, one for common spaces and the other only in our court premises, including parking- downstairs / basement. These are infrared thus enabling images even in the dark. In hall 1 of the trial, except visual recording, there is audio recording simultaneously. An access - control device is located at the courthouse, which monitors the entry and exit of personnel, located in the premises of the technique. Access cards are divided into groups according to the respective institutions and every employee has access only to the premises of the institution.

In Berat District Court and the Court of Appeal Shkodra there is risk to the physical safety of judges and judicial officials as the building has only one

entrance. So, there is needed separate infrastructure with separate entrance, separated for parties, judges and administration. **Durrës District Court** highlights the immediate need for infrastructure changes to increase the safety of judges. Despite the existence of separate entrances for judges and the public, after the entry, all the persons are located in the same corridor and stairs are common to all.

3.6 Delegations

Because of the re-organisation of the courts, there are vacancies in many of them. There are some courts functioning with 3 judges, e.x the Court of Pogradec, where 10 -12 judges from the Court of Korça (90%), delegated to cope the work. There are cases when with a day 6-7 judges of the Court of Korça go to the Courts of Pogradec, and translated into expenses, the amount is considerable and should be taken into consideration..

The same situation also occurs even in the Court of Appeal. Besides the coast item should be considered the means of transport. the vehicles are totally amortized and do not guarantee the safety of movement of judges or leaders..⁴⁸⁵ A judge, when going to hold a trial to another court has a financial treatment of 600 lekë for the distance over 100 kilometre..⁴⁸⁶

It is proposed that due to the high number of secondments of judges there is a need for a study on their redistribution. This refers to the high financial costs.

⁴⁸⁵ Koment i bërë nga përfaqësuesit e gjyqësorit në Tryezën e organizuar Për Financimin dhe Infrastrukturën e Sistemit të Drejtësisë.

⁴⁸⁶ Koment i bërë nga përfaqësuesi i Unionit të Gjyqtarëve në Tryezën e organizuar Për Financimin dhe Infrastrukturën e Sistemit të Drejtësisë.

3.7 Procedural costs

As regards expenditures on expertise in many cases there were problems with the Police Department or the Institute of Legal Medicine on the court expenses incurred for procedural acts and in many cases has been achieved so far as the transmission of the act is rejected at the court because the fee was not paid becoming this way an obstacle to trial. In other cases the judges have made the charges against the directors or employees of obstruction of justice.

3.8 IT situation and organisation of judicial archives and technology used (manual or digital)

The use of information technology in the judicial process already constitutes an important step in terms of a fair trial in the country. Using ICMIS systems, audio recording and management software at courtrooms have brought significant improvement in the proceedings. Specifically these systems have had a positive impact in terms of good administration of judicial affairs; increasing solemnity of judgment, professionalism and ethics of communication between the parties involved in litigation; to increase public access to the services provided by courts, etc

These work automation processes and proceedings have begun as part of foreign projects in cooperation with the Albanian party, whose representative was the Ministry of Justice. Installation of the program for the case management system (ICMIS) was performed initially with World Bank funds, then with those of the European Union. Conduct of hearings with audio system and the calendar of courtrooms management was realized by JUST project of USAID.

Albania has invested in Information Technology Systems (computerization) in the court at the same level as other member countries of the CoE in the same group, but it seems that the judicial authorities do not use this system to its maximum. During visits to the work program with the courts (coaching), it was observed that in some of them the case management tool called ICMIS was not introduced / used (eg in the Tirana District Court). In those courts where it is

introduced, there is a parallel manual registration of cases. Courts do not seem willing to rely completely on digital devices.⁴⁸⁷

The Office of Judicial Budget has had its role in supporting and functioning of systems and software installed in the courts, through investments in hardware (computer, server, etc.). Each year, it invested a budget of about 20-25 million ALL for the replacement of existing equipment, as well as meeting the needs of new electronic equipment courts.

Namely, to guarantee the full and uninterrupted operation of these systems, the Office has created a data base for electronic infrastructure that is constantly supplemented with new information from the courts and on which it is judged on the need for investment or priorities that should be followed during one budget year. This data base contains comprehensive information on all electronic devices, their physical condition, the year of purchase, depreciation, needs, etc.

Given that computers are the main equipment for the operation of these systems, as well as based on the respective data base, it emerges that 55 % of computers in use today at courts operate for a period of 7 years, this means that in terms of accounting they have reached their full amortization, but still they are being kept in working condition.

Efforts in this direction are focused on making investments for their partial replacement every year. On average a total of about 120 computers a year are procured by the courts, which go for the replacement of those written off, and the necessary additional numbers as needed. For 2015, it has been planned to replace 167 computers in all courts.

Another aspect of the necessary investment in computer equipment is related to the fact that the use of old equipment on the other hand affects the emergence of

⁴⁸⁷ Report CEPEJ on European judicial systems, effectiveness and quality of justice, Study CEPEJ No. 20, Series 2014 (evidences of 2012).

other problems, such as the use of different operating systems at the same time. This is because the old equipment uses the Windows XP system, which since 2014 is no longer supported by Microsoft, while new devices use Windows Vista, 7 or 8. This leads to increased physical problems leading to delays in carrying out the work of judicial administration. A fund of about 70 million ALL would be needed for the immediate replacement of computers.

Simultaneously, attention is paid to the replacement of other electronic devices like printers, ups, photocopying machines, etc. being functional part of the daily activity of the courts. On average investments are made every year for the replacement of 12 photocopies, 110 printers and 120 ups. We refer again to the fact that 45 % of the above devices have been used for over a 7 year period (procured in 2005-2009). An average fund of 40 million ALL would be needed to for the immediate replacement. During 2015 126 printers, 123 UPS and 9 photocopies will be replaced.

Focused on maintaining the achieved standards in terms of computerization of working processes in court and support projects implemented, the investment for providing the courts with server devices is followed by priority. For proper functioning of the systems, the servers with the necessary technical parameters suitable to work with systems installed are also essential and important. Because courts have depreciated servers, mainly dating back to the period 2006-2007, a mini-project was designed to replace them. Specifically, during the years 2012-2014 this replacement was done for 28 courts, including the completion of administrative courts which had no server. For 2015, the investment in the remaining 10 courts will complete the project for the replacement of servers.

Also, appropriate attention was paid to the project initiated by JUST project of USAID, on the provision of courtrooms, halls and public service environment with monitors. There are currently provided with monitors 90 courtrooms, 19 public service facilities and 20 halls. For 2015 22 other areas will be provided with these devices. With the intervention in the construction infrastructure which have been scheduled; the creation of other facilities will bring the need for investment to at least 60 monitors to all courtrooms, public facilities and halls. This requires an investment of budget of about 7 million ALL.

Concerning the above, the court would need a fund of 117 million ALL for the replacement of the electronic equipment procured during 2006-2009, i.e., with over 7 years of use. Nevertheless, the courts will need additional investments in information technology, as well as equipment procured during 2010-2014 will get depreciated, which amounts to 40 % -45 % of existing equipment. The budget fund that will optimally meet the needs of electronic equipment in a year would be about 60 million ALL, while the detailed fund of these costs in the past 4 years is 25-30 million ALLs

From the available data, almost all courts have the archive organized manually. These include the **Courts of Appeal Gjirokastra, Tirana, Vlora, Shkodra; Judicial District Courts Lushnjë, Elbasan, Pogradec, Kukës, Fier, Krupjë, Pukë, Tropojë, Berat; Administrative Courts of First Instance of Korça, Vlora, Tirana. The Serious Crimes Court in Tirana functions with the electronic archive since 2014, but a software program for its maintenance is needed.**

4. Salaries of judges

4.4 Overall analysis

Salaries for the function of judges of three levels are defined based on law no. 9877, dated 18.02.2008, "On organisation of Judicial Power in the Republic of Albania", amended by law no.114/2013, law no.8588, dated 15.03.2000, "On organisation of the High Court of the Republic of Albania", law no. 9584 dated 17.07.2006, "On salaries, compensation and structures of independent constitutional structures and other independent institutions established by law". Based on these acts, the salaries of judges of the High Court equal the salary of the minister and it is 68% of the salary of the President of the Republic. Currently, the gross salary of the member of the High Court is **174.760 ALL**.

The salaries of judges of the First Instance and Appeal courts are defined in percentage of the salary of members of the High Court. As of 1st of January 2014 the salaries of judges increased by 20% for the First Instance courts judges and 7% for the Appeal court judges.

Currently, the salary per function of the judge of the First Instance court is equal to 60% of the salary of the High Court judge and per function of the judge of the Court of Appeal it is 75% of the salary of the High Court judge.

In addition to the salary per function, judges of the First Instance courts and Appeal courts, get a bonus for seniority in office, as defined in article 26 and 27 of the law "On organisation of the judicial power in the Republic of Albania". Table no. 12 shows the salaries per function and the average net salary per judges.

"Basic Principles on the Independence of the Judiciary" of the UN General Assembly in paragraph 11 foresee that the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law. Even the European Charter on the statute for judges includes career in the guarantees entitled by the judge along with other guarantees including: salary, pension, eligibility, recruitment and appointment from an independent entity.

According to the case law of the Constitutional Court, article 138 of the Constitution determines the component elements of the statute of the judge, without which independent exercise of their function may not be ensured. The guarantees of this norm of the Constitution recognize to the judges not only a specific treatment in salary but also other elements which derive from exercise of their function. Salary and other benefits are placed at constitutional level so that the rights/privileges deriving from exercise of the function of the judge not to be modified negatively. The phrase "other benefits" is of a general nature and it does not determine the circle of the benefits of judges, exhaustively. The constitutionalists have left open deliberately the meaning to be assigned to the benefits, because they have intended the inclusion in these benefits of the rights of judges who are entitled to them in their professional capacity (*see decision no. 31, dated 02.12.2009 of the Constitutional Court*).⁴⁸⁸

⁴⁸⁸ Decision of the Constitutional Court 40/2014

Based on this analysis, the Constitutional Court considers that career is one of the advantages to which judges are entitled because of their professional capacity and as such it is included in the sphere of guarantees which derive from article 138 of the Constitution. Such guarantees are closely interlinked⁴⁸⁹.

The issue of salaries is directly linked to the independence of the judiciary. As long as the salaries of the judiciary, regardless of their amount are controlled by the executive, the judges tend to be more open to influence and vulnerable to pressure.

Salaries of judges of first instance, appeal and serious crimes courts are mainly foreseen in article 26-27 of law no. 9877 dated 18.2.2008 “On organisation of the judicial power in the Republic of Albania”. *The basic salary of the first instance court judge and the first instance serious crimes court judge (including the chair) shall be equal to 50 per cent of the salary of the High Court judge. The basic salary of appeal court judge and appeal serious crimes court judge (including the chair) shall be equal to 70 percent of the salary of the High Court judge. Depending on the seniority years, the position as a judge or court chair and special conditions of work linked to the position of the judge in the Judicial District court or Serious Crimes court, the law foresees a defined salary increase for each year.*

As regards rights and advantages of the judge, they are foreseen in article 27 of law no. 9877 dated 18.2.2008 “On organisation of the judicial power in the Republic of Albania”. According to this article, the judge, his family and property are entitled to special protection. This is a general provision and currently it provides almost no concrete advantage to the judges, because there is no subsidy or compensation for judges or their family members in case the judges work far from their family residence place.

Judges are entitled to an annual leave of 30 calendar days which they may take only in August. Exemption from this rule is the case of judges who have

emergency tasks to be performed in August and who may take the leave at a second moment, plus 5 extra days. Work during official holidays or vacations are compensated with salary bonus of 50% of the daily pay. Currently, the leave is half of the annual leave of judges of the High Court, and it is disproportionate to the similar ratio in salary of the ordinary judge/High Court judge. Consequently, it must be considered the adjustment of this shortcoming, by restoring the duration of the leave to 42 days and during July and August (law no. 8436 dated 28.12.1998). Such proposal is made because the practice shows that after 20 July most of the trials are postponed because of the holidays taken by the lawyers.

4.2 Comparison with the European countries

Referring to recent CEPEJ report, compensation of judges is a sensitive issue. The objective is for the judge to receive a compensation which corresponds to the social status and role, considering difficulties linked to the practice of this function and also protection from any pressure which may conflict independence and impartiality of judges.

In order to have a comparative view among the European countries, CEPEJ analysed two different indicators. The first concerned salaries of First Instance judges in the start of the career and the second the salaries of High Court judges. Moreover, it is analysed the ratio of the salary of the judge with the national average salary.

Table 13 and 14 indicate data on the annual salary of First Instance judges, High Court judges and annual average salary in 2012 in some European countries.

Albania is ranked 17th with a gross salary 1.7 times higher in proportion to the annual average salary for the First Instance court judges, while the average of 47 CEPEJ countries is 2.3 (ratio of the average gross salary with the annual average salary for 47 European countries for the First Instance judges).

Following the increase of salaries of first instance and appeal court judges on 1 January 2014, the ratio of the gross salary with the average salary at national

⁴⁸⁹ *Idem* parag 21-22

level is increased from 1.7 to 2, but still it remains lower than the European average (2.3).

Concerning the salary of judges at the end of their career, Albania is ranked 13th with a gross salary 3.5 higher, in proportion to the annual average salary for the High Court judges, while the average of 47 CEPEJ countries is 4.2 (ratio of the average gross salary with the annual average salary).

According to CEPEJ report, in general, in several countries of Eastern Europe the trend of salaries of judges as of 2004 has been increasing. Its aim is maintaining independence and impartiality of judges, and also avoiding corruption. What must be underlined is the fact that with the increase of salaries of first instance and appeal court judges in Albania, their proportion to the average salary at national level remains lower than the European average.

4.3 Additional privileges over the salary

Based on CEPEJ report, in 28 European countries out of 47, judges may receive additional privileges to the main bonus. Such privileges are grouped mainly under four categories: tax reduction, special pension, security of the residence place (when they work in other courts temporarily) and other privileges.

According to CEPEJ, judges in all the European countries subject to the analysis, are no longer privileged for tax reduction.

- a) The second category, special pension is granted to judges in the following countries: Albania, Moldova, Poland, Romania and Slovakia.
- b) The third category - judges in the following countries are ensured residence plane: Czech Republic, Romania and Macedonia.
- c) The fourth category - other privileges are granted to judges in Albania, Czech Republic, Hungary, Montenegro, Romania and Slovakia.
- d) The fourth category - other: CEPEJ has detailed other privileges - specified and clearance rate bonuses, based on the attainment of quantitative objectives linked to the adjudicated cases (for instance number of rendered judgements during a defined time period).

Other specified privileges consist in: salary bonuses (Albania, Italy for the judges who are willing to work in courts short of staff, Montenegro); compensation or payments for special responsibilities (Albania for each extra payment per function, Croatia, Montenegro), or depending on the workload and conditions of work (Croatia for the judges transferred to another court); compensation to cover operative expenses or representation (Croatia, Czech Republic, Montenegro, Slovakia); specific life insurance and/or health insurance, property insurance (Albania for the judges of the serious crimes courts, Croatia, Hungary, Latvia, Montenegro, Romania); residence buildings (Czech Republic, Hungary, Montenegro); travel expenses (Croatia, Romania); etc Moreover, Hungary provides support to judges who move to another residence and also social and educational support along with an aid to the family. In Croatia and Hungary the judges take advantage of professional and specialised training, while in the Czech Republic the judges are compensated for legal research and publications.

Judicial representatives consider that the payroll system, other social benefits and bonuses are not efficient for the judges. They claim that it is the time that except the raising of the wages and the meeting of a demanding standard it is necessary to consider the part of preferential treatment of judges in order to make the work more attractive. In other countries there are models of how judges are treated by covering a part of the costs or the wage increase, fuel or living which make the work more attractive even on other judicial districts. The treatment with special pension is considered as an issue that should be taken into account. Currently, there is no early retirement for judges and at the same time there are no judges working part-time. In this way it is necessary to conduct a study which aims to identify the judges who spend more time with a medical report which makes the effectiveness of the court to be law..⁴⁹⁰.

Another important issue is the provision of housing for judges who work outside the territory where they are registered as residents. There are many

⁴⁹⁰ Comment by the representative of the judiciary in the Table On Financing and Infrastructure of Judicial System.

judges today, who spent the substantial part of their salaries on housing. The legal provisions, which refer to health and property insurance of the judges are vague and declarative. There are no laws which regulate and ensure a free medical care as well as life insurance and property of the judges and their families as they are exposed to dangers and damages. There are many cases when the judges have been hurt, lost their life or their property is damaged...⁴⁹¹

5. Budget of the General Prosecutor's Office

5.1 Planning and implementation of the budget of the Prosecutor's office

Report according to the legal provisions in force.

The budget of the prosecutor's office is prepared based based on the law no. 9936 dated 26.06.2008 "On management of the budget system in the Republic of Albania" article 24, Prime Minister's Order no. 78 dated 08.05.2006 "On establishment of ministerial working groups for strategy, budget and integration, GSBI" and also regular instructions for the drafting of the annual budget.

The following table presents the budget funding for the system of the prosecutor's office in 2001-2015.

FONDE BUXHETORE (2001-2015)										Ne 000/leke
VITET	600 Paga	601 Sig.Shoqerore	602 Shp.operative	230 Shp.kap. te patrup.	231 Sh.kap.te trupe.	231 Finan.l Huaj	604 Trans.brendeshm	605 Trans.korr.te huaja	606 ans.buxh.famil,ind	Total i Fondeve
2001	369,665	69,260	163,000	-	102,285	-	17,000	-	-	721,210
2002	415,860	93,563	156,060	-	150,000	-	6,940	-	-	822,423
2003	586,000	110,000	147,000	-	142,500	-	13,000	-	-	998,500
2004	580,676	132,000	171,285	-	258,840	-	1,073	-	-	1,143,876
2005	682,855	122,000	191,373	550	160,450	-	771	-	-	1,157,999
2006	631,114	123,811	148,654	-	59,000	-	1,384	-	-	963,963
2007	666,801	122,030	158,323	-	30,000	-	-	50	1,034	978,238
2008	673,326	110,392	205,132	-	22,781	-	126	50	540	1,012,347
2009	802,622	106,900	258,045	-	48,000	-	378	55	-	1,216,000
2010	806,030	104,960	209,610	4,873	108,982	-	415	55	11,340	1,246,265
2011	867,820	113,000	276,590	2,340	91,660	400,000	180	-	11,410	1,763,000
2012	829,729	116,893	259,185	75,000	65,000	450,000	-	55	11,760	1,807,622
2013	840,000	115,000	287,185	-	105,000	-	-	55	11,760	1,359,000
2014	970,000	150,000	308,190	-	135,000	100,000	-	57	-	1,663,247
2015	1,005,000	140,000	308,300	-	175,000	60,000	-	75	-	1,688,375

From the analysis of figures it is observed that the budget of the prosecutor's office from 2001 - 2005 under the heading- operative expenses- has increased to 89% while the number of criminal cases is increased to 270%. If we consider the increase of price of goods and services, and also expenses to provide security of buildings by private police, the budget increase for operative expenses which directly affect the process of investigation for procedural expenses is insignificant.

Moreover, it has to be underlined that concerning procedural expenses, **the prosecutor's office has accumulated a debt of 90 million ALL towards the Forensic Medicine, MNZ (Fire Protection Service), and experts of all the areas for lack of funds; Forensic Medicine and MNZ are budget institutions.** In order to afford increasing expenses, budget addition is necessary as well as elimination of payments between budget institutions concerning procedural expenses through the drafting of legal and sub-legal acts.

The preparatory ceiling of the MTBF for the period 2015-2017, expressed in million ALL, is as follows:

Year 2015	Year 2016	Year 2017
Total	Total	Total
1.688	1.564	1.564

⁴⁹¹ Comment by the representative of the Union of Judges.

The budget of the prosecutor's office in % in proportion to the state budget in 2013-2015 is as follows:

	In 000 ALL		
Budget during the years	2013	2014	2015
State budget	409,594,000	456,404,000	472,697,000
Of this:			
Budget of the prosecution service	1,359,000	1,563,247	1,628,375
In % in proportion with the state budget	0.33	0.34	0.34

The table above does not include foreign funding.

Secondary income generated in the prosecutor's office during 2011-2014 is as follows:

- Year 2011 3.1 thousand ALL
- Year 2012 2.6 thousand ALL
- Year 2013 3.4 thousand ALL
- Year 2014 2.4 thousand ALL

From such generated income, no % is used because Ministry of Finance has not signed a joint instruction with the prosecutor's office concerning the use of such income.

The annual public budget allocated to the prosecution system has been increasing during 2008-2012. In 2012 it was 50.8%. The budget is higher than in other countries of the group: in Azerbaijan, Georgia and Moldova, the

percentage varies between 30-45%, whereas the value in Bosnia Herzegovina corresponds to the European average of 19% (see table 9 below).⁴⁹²

The Albanian prosecution service during the meeting with CEPEJ experts in November 2014 informed that the number of cases from 2002-2013 tripled to reach the figure of 27000 cases. During the same period the budget is increase by more than 40%.⁴⁹³ (see table 15)

6. INFRASTRUCTURE

6.1 *Infrastructure of the buildings*

The prosecutor performs its constitutional functions in 31 buildings in the entire territory of the Republic of Albania. Investment is made throughout the years to improve the conditions of work from the state budget and the EC funds. Despite the frequent interventions, the current situation shows shortcomings in the conditions of work and security of buildings.

A difficult situation in the conditions of work is experienced in the Prosecutor's **Office of Tirana**, where three prosecutors work in the same office with the Judicial Police officers. Furthermore, the situation is worsening because of the increase of number of employees in these prosecutor's offices, affected by the increase of the workload. Intervention with investment in this prosecutor's office is impossible, because it is not possible to build new premises through investment, due to the urban planning conditions and distance with the surrounding buildings.

Moreover, a difficult situation is experienced even in the **Prosecutor's offices attached to the First Instance court of Gjirokastër, Përmet, Vlorë, Elbasan**, where the General Prosecutor's Office has planned requests for

⁴⁹² CEPEJ Report- A joint project by European Union and Council of Europe, Strasbourg, 4 March 2015 - CEPEJ - SEJ - Albania (2015)

⁴⁹³ CEPEJ Report- A joint project by European Union and Council of Europe, Strasbourg, 4 March 2015 - CEPEJ - SEJ - Albania (2015)

investment in the MTBF. In the buildings which are administered jointly with the courts, investment shall be made jointly.

Serious shortcoming is the lack of rooms to appear for recognition and rooms for storage of material evidence in all the prosecutor's offices.

Frequent concern in the prosecutor's offices in general is the situation related to security conditions, because since 4 years now all the buildings of the prosecution service are secured by private guard, while they are buildings of special importance and this is the reason why the government is asked to ensure the security of the buildings by the State Police, as it used to be in the past.

6.2 Condition of the motor vehicles

General Prosecutor's Office together with the dependent institutions is in possession of 75 vehicles and 66 employed drivers.

From the inventory of the vehicles it results that:

- a) 34% of the vehicles have been used 6- 10 years (donated by PAMECA or given by the Material Reserves of the State, free of charge),
- b) 31 % of the vehicles have been used for 10-15 years and 37% of them have been used for 15-27 years.
- c) 38.6% of vehicles are not purchased with the state budget funds; instead they are acquired through capital transfer, free of charge, from the Material Reserves of the State or donated by PAMECA, and only in a few cases the funds made available by the state budget are used for the customs clearance.

Following this it may be observed that the situation related to the transport service is alarming and it does not provide any security conditions for the life of prosecutors and Judicial Police officers, who travel for work purposes with the vehicles of the prosecutor's office.

In order to increase security of the buildings of the prosecutor's offices it is necessary to provide them with CCTV. Most of the prosecutor's offices do not have CCTV system and some of them are amortized as they are too old.

6.3 Information technology (IT)

The Albanian prosecution service has a computer infrastructure established in the prosecutor's offices of all the level, thanks to the financial support of the European Commission under IPA 2010 and also investment by the budget of the prosecution service.

The prosecutor's offices of all the levels have an internal LAN build partly through OPDAT investment and partly through the funds of the Prosecutor's office. Moreover, it must be stressed that all the prosecutor's offices are connected in the Server Room in the General Prosecutor's Office in Intranet and it functions as a single computer structure. All computer services are provided in a centralised way to all the prosecutor's offices by the General Prosecutor's Offices.

In January 2015, General Prosecutor's Office implemented a case management programme which digitalises the work process of the prosecutor and judicial police officer of the Prosecutor's office, by increasing the speed of information exchange in the prosecutor's office, and also generating statistical reports in real time.

In order for this system to become fully operational with all its modules, computers must be provided to each prosecutor's office and the old ones which do not support this system must be replaced. Case Management System provides for the attachment of physically scanned documents. Currently, this is not done in the system because of lack of devices "Scanner", which make this process impossible.

In order to have effectiveness and speed in information exchange for the completion of the digital file, the system will be connected to other state systems including Case Management of the State Police and also registries of state institutions with which the work of the prosecutor's office is related, including: Civil Registry, ICMIS of Ministry of Justice, registry of ALUIZNI office etc.

7. SALARY SYSTEM IN THE PROSECUTION SERVICE

Salaries, rewards and treatment of prosecutors is governed by the provisions of law 8737/2001 "On organisation and functioning of the Prosecutor's Office in the Republic of Albania" amended and other legal and sub-legal acts in force. Report on European standards as regards the independence of the judicial system, Part II "Prosecution service" (Strasbourg, 3 January 2011), adopted by the Venice Commission at its 85th plenary session, letter "H", paragraph 69 provides for:

"H. 69. Like for judges, remuneration in line with the importance of the tasks performed is essential for an efficient and just criminal justice system. A sufficient remuneration is also necessary to reduce the danger of corruption of prosecutors."

7.1 Salary of prosecutors

Salary of Prosecutor General is equal to the salary of the High Court chair.

Salary of prosecutors of the General Prosecutor's Office is equal to the salary of the High Court member.

Salary of the heads of the links who are prosecutors in the structure of the General Prosecutor's Office is 5% higher than the salary of the prosecutors of this prosecutor's office.

The base pay of a prosecutor or the director of a prosecutor's office of first instance and of appeal, as well as the supplement for their seniority or difficulty in service, is equal to the pay and supplement for seniority and difficulty of a judge and of the chairman of the court where the prosecutor's office to which he has been appointed functions.

On weekends or official holidays, the prosecutor on duty who performs urgent duties earns a pay supplement in the amount of 50 percent of his daily pay.

7.2 Bonuses

A prosecutor may earn compensation for professional merits in the amount set on the proposal of the director and with the approval of the General Prosecutor. From some years now the compensation fund of 5% over the salary fund is administered by the Ministry of Finance and use by the Prosecutor General, according to the legal provisions, is limited only for cases of legal aid and misfortune making possible motivation for good work and positive results of all the categories of employees of the system of the prosecutor's office.

On the proposal of his superior and with the approval of the Prosecutor General, a prosecutor may earn up to a 20 percent pay supplement for work difficulty.

Prosecutors and their directors have the same treatment and protocol status as the judges and directors of the courts at which the prosecutor's office exercises its functions, except when the law provides otherwise. For additional details on the net and gross salary of prosecutors see Table 16.

7.3 Salary of Judicial Police officers

The provisions of the law 8737/2001, amended foresee that the salary of the Judicial Police officer- jurist, of the sections of district prosecutor's offices and appellate prosecutor's offices shall be equal to 70 per cent of the salary of the district prosecutor. The salary of the Judicial Police officer-jurist of section of the Prosecutor's Office for Serious Crimes and the Appellate Prosecutor's Office for Serious Crimes and the General Prosecutor's Office shall be 20 per cent higher than foreseen for the judicial police officer- jurist in the sections of the district prosecutor's offices. For additional details on the net and gross salary of officers of Judicial Police sections see Table 17.

7.4 Bonuses

Based on law no. 8677 dated 02.11.2000 "On organisation and functioning of the Judicial Police" amended, Judicial Police officers appointed by the

Prosecutor General may benefit bonuses on grounds of professional merits, upon the proposal of the director and with the consent of the Prosecutor General. The criteria for the remuneration for special merits of the Judicial Police officers appointed by the Prosecutor General shall be established by an instruction of the Prosecutor General no. 1/2011.

7.5 Prosecution service administration

Law no.8737/2001, amended, provides that the general secretary is the highest civil servant in the General Prosecutor's Office. The other technical-administrative services in the General Prosecutor's Office and the auxiliary services in the prosecutor's offices of other levels at the judicial system are performed by other employees and civil servants. The general secretary directs the administrative activity of the General Prosecutor's Office and the prosecutors' offices of other levels, under the authority of the General Prosecutor. The employees of the administration of the General Prosecutor's Office are subject to the rules of the civil service. Civil servants shall be paid based on decision of the Council of Ministers **no. 545/2011**.

Function	Basic gross salary
Secretary General	129.000 ALL +14.000 ALL for the degree
Legal assistant	74.400 ALL +14.000 ALL for the degree
Director of Directorate	91.700 ALL +14.000 ALL for the degree
Head of Sector	74.400 ALL +14.000 ALL for the degree
Specialist	57.000 ALL +14.000 ALL for the degree

The labour relations of the administrative-technical personnel are regulated according to the provisions of the Labour Code. Support staff shall be paid based on decision of the Council of Ministers **no. 717/2009**.

Function	Basic gross salary
Secretary	33.600 ALL
Service employee	33.600 ALL
Driver	26.800 ALL
Cleaning lady	25.000 ALL

The financial treatment of the administration of the prosecutor's offices of other levels at the judicial system is equivalent to that of the employees of the administration of the judicial system where the prosecutor's office functions.

Function	Basic gross salary
Chief secretary	57.000 ALL +14.000 ALL for the degree
Secretary of the prosecutor + specialist	44.300 ALL +14.000 ALL for the degree
Driver	26.800 ALL
Cleaning lady	25.000 ALL

The General Prosecutor may appoint chancellors to follow problems of an administrative and financial nature. Their pay is the same as that of the chancellors at the courts.

- a) Basic gross salary **of chancellors is 104.856 ALL**
- b) Total number of employees in the prosecutor's office system, approved by law no. 160/2014, "On the budget of 2015" is **848**.
- c) Number of prosecutors approved by decree of the President of the Republic is **336**,
- d) Number of Judicial Police officers is **153**
- e) Legal assistants **10**
- f) Civil service employees **45**
- g) Chancellors **9**
- h) Finance officers **10**
- i) Chief secretaries **30**
- j) Secretaries **116**
- k) District IT specialists **10**

- l) Support staff (drivers + cleaning ladies + ushers + technicians + service staff) **129**

From the analysis of the number of employees it may be observed that each prosecutor is assisted by only 0.3 secretaries, an average too low considering that each prosecutor must have a procedural secretary.

8. LEGAL AID BUDGET

Legal aid is provided by lawyers assigned by MoJ and NCHA in the form of primary and secondary legal aid.⁴⁹⁴ The legal act governing the granting of such aid and creating the institution responsible for its provision is law no. 10 049, dated 22.12.2008, “On legal aid” and a regulation of the Minister of Justice approved by **order** no.7301/3, dated 19.1.2012

Primary legal aid means provision of information on the legal system in the Republic of Albania, normative acts in force; rights and obligations of the law subjects; manner of exercising of rights of the individuals in judicial and extra-

⁴⁹⁴ Representatives of civil society (in this case TLAS), stated that although the State Commission on Legal Aid is a collegial body under the Ministry of Justice, in determine the lawyers who provide judicial assistance this commission is autonomous. The composition of its representative by the law no. 10 049, dated 22.12.2008, “On legal aid “ has sought to avoid exactly this concern, i.e “the appointment of lawyers of judicial assistance from the MJ”. It is created an unclear situation in practice regarding the competence of the prosecution and courts to appoint lawyers in criminal cases and on the other side the functioning of the legal aid scheme through the functions of State Commission on Legal Aid. This conclusion is a result of a complete non-implementation of the scheme suggested by the law no. 10 049, dated 22.12.2008, “On legal aid ”.

judicial proceedings and also provision of assistance in the drafting of legal documents or in other forms.

Secondary legal aid is the provision of legal consulting, representation or defence in criminal proceedings, civil and administrative proceedings as well as the representation before the state administrative bodies.

Provision of legal aid is ensured by the State Commission for Legal Aid which mission is to provide primary or secondary legal aid to persons who have the right to benefit legal aid.

The persons entitled to legal aid are those who:

- a. request to be defended by a lawyer in the criminal process, in all its phases, and, who because of lack of financial means, could not choose a lawyer or who have do not have a lawyer;
- b. need legal aid in civil or administrative cases, but do not have the sufficient financial means to pay for such legal aid, or cases are extremely complex from the procedural or substantial aspect. The persons who benefit the legal aid are included in the social protection programs or satisfy the requirements to be included in such programs;
- c. Legal aid is provided to minor during their criminal proceedings.

The cases in relation to which legal aid is provided are followed by the State Commission for Legal Aid, which is the institution following implementation of the budget for the granting of legal aid. Primary and secondary legal aid is afforded by the state budget funds, under a separate item in the budget of the State Commission for Legal Aid. State Commission for Legal Aid has the right to receive other lawful funding apart from the funds foreseen in the state budget.

CEPEJ report on legal aid reads:

"Legal aid, for the purpose of this evaluation, is defined as aid given by the State to persons who do not have sufficient financial means to defend themselves before a court or to initiate court proceedings (access to court).⁴⁹⁵ Albania provides legal aid in criminal and civil proceedings for representation in trial and legal consultation. Criminal processes include even the possibility of provision of free of charge legal aid by a lawyer.⁴⁹⁶ Evolution of the budget of legal aid throughout 2008 and 2010 is reproduced in Table 18. The table contains considerable variations. It would be of interest and importance to find the reasons of such variations and later on analyse the situation of the legal aid budget.

Legal aid in criminal process (ex officio lawyers) is still handled by the court because of the immediate need to assign an ex officio lawyer.

During 2014, 39 million ALL are paid to the ex officio lawyer, of which 6 million have been dues accumulated from 2013. Moreover, 2 million ALL are accumulated from 2013 and this amount is included in the strategy of the government for the settlement of arrears. In 2015, MoF allocated 500 thousand ALL for this items of expenses.

One of the reasons of failure to pay the ex officio lawyers on time, in addition to the problems of budget insufficiency, has been the failure to submit on time the documentation necessary to make such payment. Given such problems, the Governing Board of OAJB has adopted Instruction no. 1 dated 11.07.2014 "On unification of the practice of payment of the ex officio lawyers assigned by the court". The instruction provides for time limits for submission of documentation. Through such instruction it is avoided the previously observed

⁴⁹⁵ CEPEJ report on the European judicial systems, justice effectiveness and quality, CEPEJ Study no. 20, Series 2014 (data from 2012) pg 69.

⁴⁹⁶ CEPEJ report on the European judicial systems, justice effectiveness and quality, CEPEJ Study no. 20, Series 2014 (data from 2012) table 3.1, pg 70.

negligence in the submission of proper tax invoices, which are necessary to make the payment.

The State Commission for Legal Aid is functioning within the Ministry of Justice. The task of this Commission is to select lawyers and NPO-s to grant free of charge legal aid to the categories in need.

Currently, the situation of funding by the state budget to the State Commission for Legal Aid is as follows:

The budget of the State Commission for Legal Aid in 2015 is 13,700,000 ALL.

600 (salaries of employees)	5.000.000 ALL
601 (health insurance)	1.000.000 ALL
602 (various expenses)	7.500.000 ALL of these only for Legal aid, the fund is 4.180.000 ALL
231 (Investment)	200.000 ALL

From the data obtained by the Commission it results that the funding from the state budget for such legal aid amounts to a figure of 4,180,000 ALL. No additional information may be provided as there is lack of information about the way such financial means are used and how did this Commission work throughout these years.

What is observed in the CEPEJ report is the fact that the amount of the funding is negative, **i.e minus 34%**.

On the other side, regarding the budget situation on legal aid, the representative of the Ministry of Finances, in the round table "On financing the judicial system" stated that in respect of the aid does not exist a case where the legal aid is negated by the Ministry of Finances. The process is complicated that there are some stakeholders but there is no case of negating the legal aid for specific cases when they have fulfilled the legal requests foreseen by the legislation in force.

Representatives of judiciary maximally assess the establishment by law of the report the judicially budget should have with GDP because this ensures the budgetary independence of judiciary as well as the the non-interference of the Ministry of Finances through guidelines or laws which limit or reduce this budget.

It is important the observation that the judicial budget not to be touched along a year, in cases that the Council of Ministers, Ministry of Finances limit or reduce it through instructions or laws.

Judiciary representatives requested not to violate the budget during the reallocation of funds as far as the judiciary is governed by a board. As the budget is an estimate, the courts should have the opportunity to reallocate and adopt into the board of the budget as the legislative body of the judiciary.”⁴⁹⁷

IV. FINDINGS AND PROBLEMS:

On the funding of the judicial system:

- 1) Incomplete independence in preparing the state budget. Influence of the executive in preparing the budget. Drafting of the judicial budget integrated not by a special structure and possibility of the defence of the budget in the Parliament. Direct competences of the minister of Justice concerning the proposal and administration of the judicial budget for certain budget items threaten financial independence, as one of the elements which elaborates the meaning of independence of the judicial budget.
- 2) Insufficiency of the budgetary funds. Funding of judicial budgets because Albania has the lowest level of the ratio of the budget of courts with the state budget and GDP, compared to the countries of the region, and also the European average. The highest judicial budget in conformity with CEPEJ

⁴⁹⁷ Comment by the representative of judiciary in the Table On Financing and Infrastructure of Justice System”.

standards and search for foreign donors including the World Bank, Albanian - Swiss programme for reduction of economic and social loss in the framework of EU monitored by the Swiss Embassy in Albania, etc.

- 3) Subordination from the executive in implementing the state budget, especially as regards the modifications in the state budget during the year, as well as through re-allocation of funds. Maintaining independence of the judicial power even as regards the application and use of its budget. Direct subordination in executing the budget of the judiciary from the competences and orders of the Ministry of Finance.⁴⁹⁸
- 4) Unclear legal situation in defining judicial fees. Lack of hierarchy of judicial fees linked to the instances of the judiciary and fee difference in various types of disputes (such as property disputes, mark disputes etc). The fee to approach the court of appeal and high court which is currently low (200 ALL) may be adapted and modified by including another % for each instance, for commercial cases.
- 5) Total lack of application of fees in the Constitutional Court. Recently it has been observed an increase of claims deposited with this court, thus increasing its volume especially in the phase of screening of the claims. Such situation has increased its administrative expenses. In addition, in many cases abuse with the appeal is found as there have been submitted requests/claims who repeatedly fail to meet the criteria.

⁴⁹⁸ During implementation of the budget, Ministry of Finance or Council of Ministers on the proposal of the MoF may issue normative acts in force within the budget years, which limit or, for certain time periods within the year, hinder the use of budgetary funds, including the budget of the courts. Referring to the law on the office which guarantee budgetary independence of courts, we think that the courts must be exempted from the scope of application of these acts or at least it must be taken the opinion of the Office to include the courts in these acts. Such right must be expressed in one of the existing legal acts by completing such act.

- 6) Non-functioning of the system because of the poor infrastructure and improper work conditions; it is observed that the court built after 2000 are courts which meet the necessary conditions for the holding of sessions and performing the tasks, but there are as well other institutions, important ones, including High Court, Court of Appeal of Tirana, Judicial District Court of Tirana, Judicial District Court of Durres, Judicial District Court of Berat, which are in urgent need of new buildings. ⁴⁹⁹
- 7) Lack of judicial infrastructure as regards the courtrooms, public access to the court. Further investments to the buildings of courts, High Court, judicial district court of Durres, Berat, Tirane. Attainment of objectives for the judiciary infrastructure is compromised by the level of budgetary allocations and technical problems which mainly concern the finding of construction sites, delays in budget provisions and implementation of projects.
- 8) Provision with functional courtrooms and bigger courtrooms especially for the Constitutional court.
- 9) Incomplete investment as regards courts digitalisation, thus failing to make possible provision of information through online presentation of judicial activity and other activities of public nature. In courts (coaching), it is observed that the case management system ICMIS it not functional (as in the District Court of Tirana). In other courts where such system is being used, the manual recording of cases is done as well. It seems that the courts are not willing to fully rely on digital means. ⁵⁰⁰
- 10) ICMIS system must be improved, and human resources must be trained in order to avoid manual entry of information in the system.
- 11) Lack of conditions for provision of courts with modern infrastructure, facilitated access to persons with disabilities, provision of buildings with power generators, observation camera CCTV and fire protection systems according to international standards.
- 12) Inefficient salary system, other social privileges and bonuses to judges.
- 13) Need to redesign the ZABGJ, as an institution that should take realistically that function by determine its position into judicial system. The name "office" has not a particular importance but the concept where this institution should be based is very important. Currently, the office has a staff and no analyses is done on the real opportunities this office has to manage the judicial budget or if it should be established near HCJ or other institutions.
- 14) Administrative Office of Judicial Budget lacks the necessary staff to perform all the obligations. The competences are very important, except of drafting the budget and forecasting the needs, how to distribute the budget it is necessary to consider the other issues, such as courts structures, the system of electronic management of the issues.
- 15) The representatives of the judiciary consider as a shortcoming the non-inclusion of the structures and organics of judges, as competences of ZABGJ. Currently there are employees that do not have accurate job descriptions. It is not clearly known what the chancellor has to do, and probably the need to review whether there will be a chancellor, as in other European countries, that will have managerial competences or there will be a chancellor having an unclear position. ⁵⁰¹

⁴⁹⁹ OAJB reports that in order to make infrastructural interventions in the judiciary a fund of 300 million ALL on annual basis must be allocated in order to make such interventions until 2020.

⁵⁰⁰ CEPEJ Report- A joint project by European Union and Council of Europe, Strasbourg, 4 March 2015 - CEPEJ - SEJ - Albania (2015), pg 10.

⁵⁰¹ Point 12-14 are the comments by the representatives of the judiciary in the round table.

ON THE FUNDING OF THE PROSECUTOR'S OFFICE:

- 1) Incomplete independence in preparing the state budget. Influence of the executive in preparing the budget. Drafting of the judicial budget integrated not by a special structure and possibility of the defence of the budget in the Parliament. Direct competences of the minister of Justice concerning the proposal and administration of the judicial budget for certain budget items threaten financial independence, as one of the elements which elaborates the meaning of independence of the judicial budget.
- 2) Insufficiency of the budgetary funds. Funding of the budget of the prosecution service because Albania has the lowest level in the ratio of the budget of the prosecutor's office with the state budget and GDP;
- 3) Subordination from the executive in implementing the state budget, especially as regards the modifications in the state budget during the year, as well as through re-allocation of funds. Maintaining independence of the prosecution service even as regards the application and use of its budget. Direct subordination in executive the budget of the prosecutor's office, as well as the judiciary, from the competences and orders of the Ministry of Finance.⁵⁰²;

⁵⁰² During implementation of the budget, Ministry of Finance or Council of Ministers on the proposal of the MoF may issue normative acts in force within the budget years, which limit or, for certain time periods within the year, hinder the use of budgetary funds, including the budget of the courts. Referring to the law on the office which guarantee budgetary independence of courts, we think that the courts must be exempted from the scope of application of these acts or at least it must be taken the opinion of the Office to include the courts in these acts. Such right must be expressed in one of the existing legal acts by completing such act.

- 4) Lack of fund for procedural expenses, especially concerning the payment for the MNZ, forensics lab and conduction of other expertise;
- 5) Non-disbursement of income from criminal punishments by fine, because the system is inefficient.
- 6) Construction infrastructure which is not suitable for the activity of prosecutors especially in the prosecutor's office of Tirana, prosecutor's offices attached to first instance courts of Gjirokastër, Përmet, Vlorë, Elbasan.
- 7) Information technology is invested satisfactorily and the system is operational. In order for this system to become fully operational with all its modules, computers must be provided to each prosecutor's office and the old ones which do not support this system must be replaced. Case Management System provides for the attachment of physically scanned documents. Currently, this is not done in the system because of lack of devices "Scanner", which make this process impossible.
- 8) Lack of conditions for provision of prosecutor's offices with modern infrastructure, facilitated access to persons with disabilities, provision of buildings with power generators, observation camera CCTV and fire protection systems according to international standards.
- 9) Inefficient salary system, other social privileges and bonuses to the prosecutors and judicial police officers.

ON THE FUNDING OF THE LEGAL AID:

1. Insufficient budget to afford the costs of legal aid, because according to the data lawyers are not paid for their service.
2. Unclear legislation as regards the granting of free of charge legal aid by the State Commission for Legal Aid.

3. Unclear situation as regards the search for funds and their planning by the State Commission for Legal Aid.
4. Lack of publicity as regards provision of legal aid by the State Commission for Legal Aid.
5. Unclear criteria for the payment to the lawyers assigned ex officio by the prosecutor's office and the courts.

Under the circumstances where the right of State Commission on Legal Aid (SCLA) to manage the lawyers of “legal aid in criminal sector”, is not associated with changes in the allocation of the state budget (the fund of legal aid for the criminal sector is accorded the Prosecution and courts through the Office of Judicial Budget), the SCLA has no opportunity to implement the obligations of the law no. 10049/2008 to hire criminal lawyers because of the lack of the appropriate fund.

It is evident that SCLA has no transparent public information on the funds and their usage. This lack of transparency is problematic because it represents one of the most elements of the functioning of “legal aid” and a problem that prevents the consolidation and development of this system.

Another problem of the everyday activity of Tirana Free Legal Service (TFLS) is “court costs” for the people who could not afford them. This difficulty is mainly expressed in familiar cases because the ad-hoc law (Family Code) rightly included the participation of the “psychologist”. Under the circumstances when this service, as a rule, is bought in the market, for the category of people in economic difficulties this cost is already impossible to afford thus preventing not less “the access to justice” for this category.

The same problem is related with other costs, e.x, “expertise” which could be costly for a category of people with low family incomes. A typical case is “DNA expert”, an act often required in trials for the registration of children.

Another important problem is related with the responsibility of courts to administrate their resources including the financial ones with the concept of “independent institution” that is self-administrated.

Conclusions:

1. There is a confusion in the application of “legal aid in criminal sector” in respect of the responsibilities of SCLA and Prosecution and courts in financing this scheme
2. For the individuals in need it is not foreseen the free “expertise”, expertise, translations through the coordination and inter-institutional cooperation with the structures that have the capacity or the relevant laboratories.
3. Lack of transparency of the SCLA regarding the financing of legal aid cases.
4. Lack of legislation in term of avoiding the obstruction of the access in courts (in justice) of the people who are in economic difficulty and could not afford the court costs in particular “ expenses for expert” or “ phycologist ” (in familiar issues).
5. Lack of effective action of the court to self-administrate the funds under the responsibility of “the independent institution”⁵⁰³.

IV. Conclusions

This chapter analyses the current situation of funding and infrastructure of the justice system to identify the problems which affect the functioning of this system.

⁵⁰³ Articles 6 -10 and the recommendations are made by civil society, (TLAS representatives)

The finding and problems identified in this chapter are as follows:

- **COURTS**

The budget of the judicial systems consist of three main parts: budget of the courts, budget of legal aid and budget of the prosecutor's office. The main principles on which the budget (preparation and implementation) of the judicial system bodies is based are found in the Constitution of the Republic of Albania and law no. 9936 dated 26.6.2008 "On management of the budget system in the Republic of Albania". The general budget for the justice sector is divided into budget items linked to Ministry of Justice, General Prosecutor's Office, OAJB, School of Magistrates, HCJ and Constitutional Court.

Today, in the budget it is foreseen a financing on the performance of the court. This item is considered as very important because it indicates that the judges are not only employees or administrators of court files but through their performance they have a direct impact on the public.⁵⁰⁴

From the data presented by OAJB it results that the budget approved for the courts during the last 5 years has different trend. During the period 2011-2013 a budget decreasing trend is observed, whereas during 2014-2015 such trend is increasing. In 2014 the budget increased by 20% compared to 2013. Such increase was due to the start of activity of administrative courts. The most qualitative increase is that of 2015 as the investment item is increased 50% compared to 2014. However, the budget for the institution of the General Prosecutor's Office, OAJB and Constitutional Court has experienced a significant decrease failing to respond to the requests of their functioning. From CEPEJ report, it results that Albania has the lowest level of the ratio of the budget of courts with the state budget and GDP, compared to the countries of the region, and also the European average.

⁵⁰⁴ Comment by the representatives of the judiciary in the Table on Financing the Judicial System”.

Part of the reform made so far has been even law no. 8363 dated 01.07.1998 "On the establishment of the Office for Administration of Judicial Budget" as regards independence of the judiciary. This law has achieved budget autonomy of the judiciary, but not judicial budget independence. Based on the law, the office prepares the integrated budget for all the courts of the country. Preparation of the budget is based on the needs presented by each court and the medium-term development programme for improvement of the judicial infrastructure in general and construction infrastructure in particular. The final budget document, after discussion by the Group on Strategic Management and its approval by the Governing Board of the Office, is submitted to the Ministry of Finance, as defined in the acts governing this process.

The cap defined by the Ministry of Finance on annual basis, mainly in investment, is 3-4 times lower than the budget requests submitted by the judicial power. Allocation of budgets with such considerable differences affects directly the attainment of objectives, especially the development of the construction infrastructure of courts, in the concrete case. During implementation of the budget, Ministry of Finance or Council of Ministers on the proposal of the MoF issue normative acts in force within the budget year, which limit or, for certain time periods within the year, hinder the use of budgetary funds.

In addition to the funding from the state budget, the courts generate their own income from the fees which they charge. The courts are allowed to use 10% of the generated income for their needs based on a joint instruction of Ministry of Finance and chair of the OAJB Board. It must be underlined that such amount is allowed to be used only for operative expenses and investment and it may not be used for remuneration (as it used to in the past).

The law on the Constitutional Court does not foresee the service fees and moreover it does not define the measurement criteria to set the fee for each procedure. It has affected negatively in the reduction of administrative expenses for the court and increase of ungrounded or abusive requests before the court.

Construction infrastructure of courts in the Republic of Albania consists of a total number of 32 buildings. The courts must have three main structures: the trial premises where courtrooms are located; the administrative premises where offices are located and the public relations premises. One of the most sensitive problems which concerns quick, solemn and transparent service is the lack of adequate courtrooms. In this situation of lack of courtrooms, trials are held in offices of judges and under such circumstances it is obvious that there is no mention of solemnity and security of parties in proceedings. Based on a rough estimate, in order to make infrastructural interventions in the judiciary a fund of 300 million ALL on annual basis must be allocated in order to make such interventions until 2020.⁵⁰⁵

As regards security of judges, they still lack the adequate conditions of work and security. 7 out of 25 courts guarantee proper conditions for the physical security of judges and judicial administration. 17 of them lack full security and require improvement. Typical problems linked to this issue are: non-functioning of metal detectors; lack/need for increase in the number of security staff; lack of police presence during official holidays; a shared entry for the judges and the public; lack of provision of access cards etc.

Use of systems including ICMIS, audio recording and software of the calendar of courtroom management have improved considerably the court proceedings. In concrete terms such systems have had a positive impact on the proper management of court cases.⁵⁰⁶; increase of solemnity of trial, professionalism

⁵⁰⁵ Moreover it must be considered that this figure does not include the budget needs for interventions to the court buildings which were included in the Palace of Justice to be funded by EU. The buildings of the following courts must be built or reconstructed: Durrës, Berat, Shkodër, Përmet, Kukës, Gjirokastër and Tropojë.

⁵⁰⁶ From the available data it seems that all the courts have the judicial archive organised manually. It may be mentioned in this regard the Court of Appeal of Gjirokastër, Tiranë, Vlorë, Shkodër; Judicial District Court of Lushnjë, Elbasan, Pogradec, Kukës, Fier, Pukë, Tropojë, Berat, Krujë; First Instance Administrative Courts of Korçë, Vlorë, Tiranë. **First Instance Court of Serious Crimes as of 2014 is**

and ethics of communication between the parties in judicial proceedings; increase of public access to services provided by the courts etc. Each year a budget of 20-25 million ALL is invested to replace the existing equipment and also meeting the new needs of the courts for electronic devices.

Simultaneously, special attention is paid to the replace of other electronic devices including printers, UPS, copy machines etc, which are functional equipment of the daily activity of the courts. It is to be mentioned the fact that 45% of the above mentioned devices have been used for over 7 years now (procured during 2005-2009). A fund of 40 million ALL would be needed to replace them immediately.

Salary of judges of the High Court is based on the salary of the minister. As of 1st of January 2014 the salaries of judges increased by 20% for the First Instance courts judges and 7% for the Appeal court judges. Currently, the salary per function of the judge of the First Instance court is equal to 60% of the salary of the High Court judge and per function of the judge of the Court of Appeal it is 75% of the salary of the High Court judge. In addition to the salary per function, judges of the first instance and appeal court benefit a bonus for years of service, over the salary per function.⁵⁰⁷

using an electronic archive, but a software programme is required for its maintenance.

⁵⁰⁷ Article 26-27.2008 “On organisation of the judicial power in the Republic of Albania”. The following table presents salaries per function and the average net salary per judges. As regards rights and advantages of the judge, they are foreseen in article 27 of law no. 9877 dated 18.2.2008 “On organisation of the judicial power in the Republic of Albania”. According to this article, the judge, his family and property are entitled to special protection. This is a general provision and currently it provides almost no concrete advantage to the judges, because there is no subsidy or compensation for judges or their family members in case the judges work far from their family residence place.

Judges are entitled to an annual leave of 30 calendar days which they may take only in August. Exemption from this rule is the case of judges who have emergency tasks to be performed in August and who may take the leave at a second moment, plus 5 extra days. Work during official holidays or vacations is compensated with salary bonus of 50% of the daily pay. Currently, the leave is half of the annual leave of judges of the High Court, and it is disproportionate to the similar ratio in salary of the ordinary judge/High Court judge.

There are shortcomings as regards the granting of bonuses of clearance rate, based on the fulfilment of quantitative objectives linked to the adjudicated cases (for example number of judgements rendered for a certain time period); residence building of judges and prosecutors who work far from their place of residence; specific life insurance for judges and prosecutors of all instances.

PROSECUTOR'S OFFICE

The budget of the prosecutor's office is prepared based on the law no. 9936 dated 26.06.2008 "On management of the budget system in the Republic of Albania" article 24, Prime Minister's Order no. 78 dated 08.05.2006 "On establishment of ministerial working groups for strategy, budget and integration, GSBI" and also regular instructions for the drafting of the annual budget. From the analysis of figures it is observed that the budget of the prosecutor's office from 2001 - 2005 under the heading- operative expenses- has increased to 89% while the number of criminal cases is increased to 270%. If we consider the increase of price of goods and services, and also expenses to provide security of buildings by private police, the budget increase for operative expenses which directly affect the process of investigation for procedural expenses is insignificant⁵⁰⁸.

⁵⁰⁸ Moreover, it has to be underlined that concerning procedural expenses, the prosecutor's office has accumulated a debt of 90 million ALL towards the Forensic Medicine, MNZ (Fire Protection Service), and experts of all the areas for lack of funds; Forensic Medicine and MNZ are budget institutions. In order to afford increasing expenses, budget addition is necessary as well as elimination of payments between

The prosecutor performs its functions in 31 buildings in the entire territory of the Republic of Albania. Despite the frequent interventions, the current situation shows shortcomings in the conditions of work and security of buildings. A difficult situation is experienced even in the Prosecutor's offices attached to the First Instance court of Tirana, Gjirokastër, Përmet, Vlorë, Elbasan, where the General Prosecutor's Office has planned requests for investment in the MTBF. Moreover, serious problem is the lack of rooms to appear for recognition and rooms for storage of material evidence in all the prosecutor's offices. Frequent concern in the prosecutor's offices in general is the situation related to security conditions, because since 4 years now all the buildings of the prosecution service are secured by private guard, while they are buildings of special importance and this is the reason why the government is asked to ensure the security of the buildings by the State Police, as it used to be in the past.

General Prosecutor's Office together with the dependent institutions is in possession of 75 vehicles and 66 employed drivers. The situation related to the transport service is alarming and it does not provide any security conditions for the life of prosecutors and Judicial Police officers, who travel for work purposes with the vehicles of the prosecutor's office. Most of the prosecutor's offices do not have CCTV system and some of them are amortized as they are too old.

The prosecutor's offices of all the levels have an internal LAN build partly through OPDAT investment and partly through the funds of the Prosecutor's office. Moreover, it must be stressed that all the prosecutor's offices are connected in the Server Room in the General Prosecutor's Office in Intranet and it functions as a single computer structure. All computer services are provided in a centralised way to all the prosecutor's offices by the General Prosecutor's Offices. In January 2015, General Prosecutor's Office implemented a case management programme which digitalises the work process of the prosecutor

budget institutions concerning procedural expenses through the drafting of legal and sub-legal acts.

and judicial police officer of the Prosecutor's office, by increasing the speed of information exchange in the prosecutor's office, and also generating statistical reports in real time. There is lack of necessary computer devices which are extremely old and fail to support this system. Case Management System provides for the attachment of physically scanned documents. Currently, this is not done in the system because of lack of devices "Scanner", which make this process impossible.

Salary of Prosecutor General is equal to the salary of the High Court chair.

Salary of prosecutors of the General Prosecutor's Office is equal to the salary of the High Court member. Salary of the heads of the links who are prosecutors in the structure of the General Prosecutor's Office is 5% higher than the salary of the prosecutors of this prosecutor's office. The base pay of a prosecutor or the director of a prosecutor's office of first instance and of appeal, as well as the supplement for their seniority or difficult in service, is equal to the pay and supplement for seniority and difficulty of a judge and of the chairman of the court where the prosecutor's office to which he has been appointed functions. On weekends or official holidays, the prosecutor on duty who performs urgent duties earns a pay supplement in the amount of 50 percent of his daily pay.

A prosecutor may earn compensation for professional merits in the amount set on the proposal of the director and with the approval of the General Prosecutor. From some years now the compensation fund of 5% over the salary fund is administered by the Ministry of Finance and use by the Prosecutor General, according to the legal provisions, is limited only for cases of legal aid and misfortune making possible motivation for good work and positive results of all the categories of employees of the system of the prosecutor's office.

On the proposal of his superior and with the approval of the Prosecutor General, a prosecutor may earn up to a 20 percent pay supplement for work difficulty similarly as the prosecutors of the Task Force who receive a supplement of up to 20%. However, a prosecutor who has over 25 years of service and who is a member of the Task Force is not allocated two separate salary increases, thus there is no incentive for the work of the prosecutors.

The provisions of the law no. 8737/2001, amended foresee that the salary of the Judicial Police officer- jurist, of the sections of district prosecutor's offices and appellate prosecutor's offices shall be equal to 70 per cent of the salary of the district prosecutor. The salary of the Judicial Police officer-jurist of section of the Prosecutor's Office for Serious Crimes and the Appellate Prosecutor's Office for Serious Crimes and the General Prosecutor's Office shall be 20 per cent higher than foreseen for the judicial police officer- jurist in the sections of the district prosecutor's offices. Judicial Police officers, appointed by the prosecutor general, may earn compensation for professional merits in the amount set on the proposal of the director and with the approval of the Prosecutor General. The criteria for the remuneration for special merits of the Judicial Police officers appointed by the Prosecutor General shall be established by an instruction of the Prosecutor General no. 1/2011.

In the budget of the prosecutor's office it is observed:

1. Inadequate budget funds (Albania has the lowest level in the ratio of the budget of the prosecutor's office with the state budget and GDP);
2. Subordination from the executive in implementing the state budget, especially as regards the modifications in the state budget during the year, as well as through re-allocation of funds. Direct subordination in executive the budget of the prosecutor's office, as well as the judiciary, from the orders of the Ministry of Finance.⁵⁰⁹;

⁵⁰⁹ During implementation of the budget, Ministry of Finance or Council of Ministers on the proposal of the MoF may issue normative acts in force within the budget years, which limit or, for certain time periods within the year, hinder the use of budgetary funds, including the budget of the courts. Referring to the law on the office which guarantee budgetary independence of courts, we think that the courts must be exempted from the scope of application of these acts or at least it must be taken the opinion of the Office to include the courts in these acts. Such right must be expressed in one of the existing legal acts by completing such act.

3. Lack of procedural expenses in the fund, especially concerning the payment for the MNZ, forensics lab and conduction of other expertise;
4. Non-disbursement of income from criminal punishment by fine;
5. Inefficient salary system, other social privileges and bonuses to the prosecutors and judicial police officers.

LEGAL AID

Albania provides legal aid in criminal and civil proceedings for representation in trial and legal consultation. Criminal processes include even the possibility of provision of free of charge legal aid by a lawyer. During 2014, 39 million ALL are paid to the ex officio lawyer, of which 6 million have been dues accumulated from 2013. Moreover, 2 million ALL are accumulated from 2013 and this amount is included in the strategy of the government for the settlement of arrears. In 2015, Ministry of Finance allocated 500 thousand ALL for this items of expenses.

There are shortcomings in the functioning of the legal aid system and the legal provisions which foresee the establishment of regional offices for legal aid are not implemented. Judicial fees and procedures for their application hinder access to the judicial system of citizens who have no financial means to pay accordingly. The legislation is unclear as regards the provision of free of charge legal aid by the State Commission for Legal aid; the manner of application for funds and their planning by the Commission; and also lack of information on the provision of legal aid.

Overall, the findings of the analysis of the chapter "Analysis of funding and infrastructure of the justice system" identify problems which require the taking of concrete measures to settle them.

APPENDIX

CHAPTER IX: ANALYSIS OF FUNDING AND INFRASTRUCTURE OF THE JUSTICE SYSTEM

Table A

Comparative data with the countries of the region concerning the proportion of the budget of the courts in the total of public expenditure (Referring to the CEPEJ report published in October 2014)

No.	Countries	Ratio of budget of courts with public expenditure	Ratio of budget of courts with GDP
1	MACEDONIA	2.2%	0.40%
2	POLAND	1.8%	0.35%
3	BOSNIA	1.4%	0.60%
4	SERBIA	1.2%	0.60%
5	MONTENEGRO	1.2%	0.55%
6	SLOVAKIA	1.0%	0.21%
7	ROMANIA	1.0%	0.25%
8	SLOVENIA	0.9%	0.47%
9	BULGARIA	0.9%	0.32%
10	CROATIA	0.9%	0.36%
11	HUNGARY	0.6%	0.34%
12	ITALY	0.6%	0.19%
13	CZECH REPUBLIC	0.5%	0.24%
14	ALBANIA	0.5%	0.13%
15	MOLDOVA	0.4%	0.17%
16	DENMARK	0.3%	0.10%
17	NETHERLANDS	0.3%	0.16%
18	SWEDEN	0.3%	0.15%
19	NORWAY	0.2%	0.06%
20	IRELAND	0.2%	0.07%

Average ratio of budget of courts with GDP of European countries analysed by CEPEJ is 0.21%.

Albania has the lowest level of the ration of the budget of courts with the state budget and GDP, compared to the countries of the region, and also the European average.

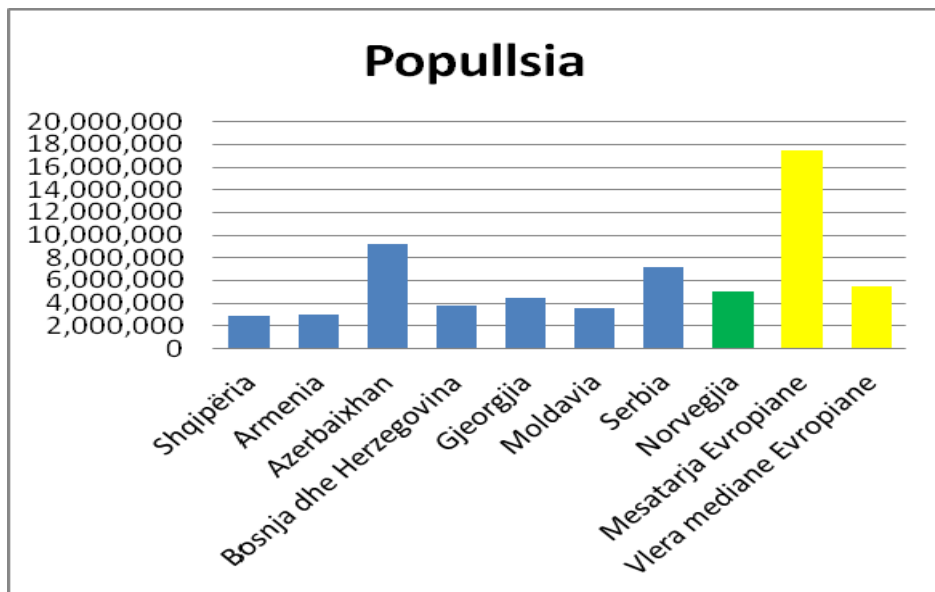


Table 1: Population

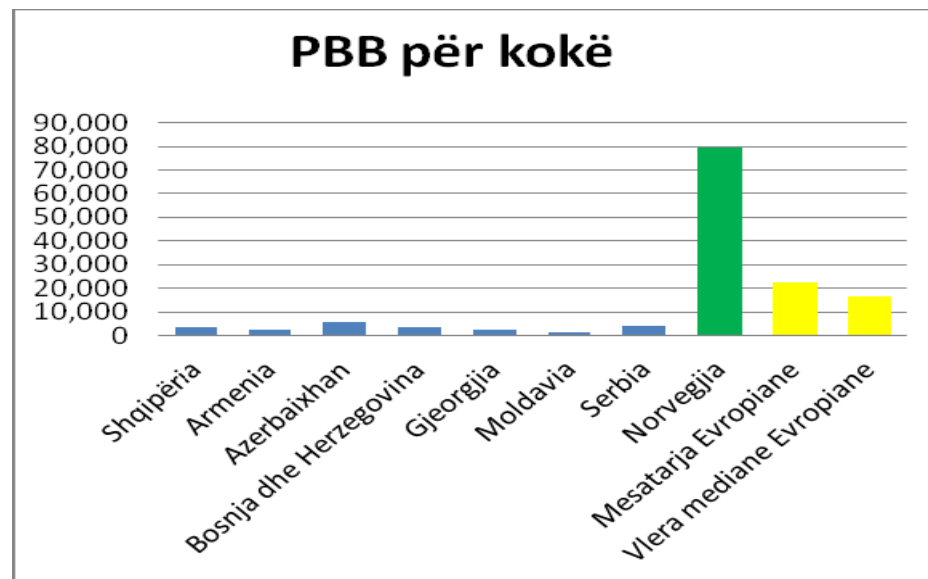


Table 2: Gross Domestic Product (GDP)

Name of Institution/ Programme	Year 2015				
	Total of Current Expenses	Capital expenses			Total of Budgetary Expenses
		Internal funding	Foreign Funding	Total of Capital Expenses	
General Prosecutor's Office	1 453 375	175 000	60 000	235 000	1 688 375
Planning, Management and Administration	1 453 375	175 000	60 000	235 000	1 688 375
Office for Administration of Judicial Budget	1 956 500	210 000	0	210 000	2 166 500
Planning, Management and Administration	26 000	400	0	400	26 400
Judicial Budget	1 930 500	209 600	0	209 600	2 140 100
Constitutional Court	108 100	12 000	0	12 000	120 100
Constitutional Judicial Activity	108 100	12 000	0	12 000	120 100

Name of Institution/ Programme	Year 2016				
	Total of Current Expenses	Capital expenses			Total of Budgetary Expenses
		Internal funding	Foreign Funding	Total of Capital Expenses	
General Prosecutor's Office	1 453 700	135 000	0	135 000	1 588 700
Planning, Management and Administration	1 453 700	135 000	0	135 000	1 588 700
Office for Administration of Judicial Budget	1 956 600	140 000	0	140 000	2 096 600
Planning, Management and Administration	26 000	500	0	500	26 500
Judicial Budget	1 930 600	139 500		139 500	2 070 100
Constitutional Court	108 200	4 000	0	4 000	112 200
Constitutional Judicial Activity	108 200	4 000	0	4 000	112 200

Table 3: Funding by the state budget for the independent justice authorities

Name of Institution/ Programme	Year 2017				
	Total of Current Expenses	Capital expenses			Total of Budgetary Expenses
		Internal funding	Foreign Funding	Total of Capital Expenses	
General Prosecutor's Office	1 454 000	135 000	0	135 000	1 589 000
Planning, Management and Administration	1 454 000	135 000	0	135 000	1 589 000
Office for Administration of Judicial Budget	1 956 700	140 000	0	140 000	2 096 700
Planning, Management and Administration	26 000	500	0	500	26 500
Judicial Budget	1 930 700	139 500		139 500	2 070 200
Constitutional Court	108 300	4 000	0	4 000	112 300
Constitutional Judicial Activity	108 300	4 000	0	4 000	112 300

Table 4: Forecast for the budget of the next two years for the independent justice authorities

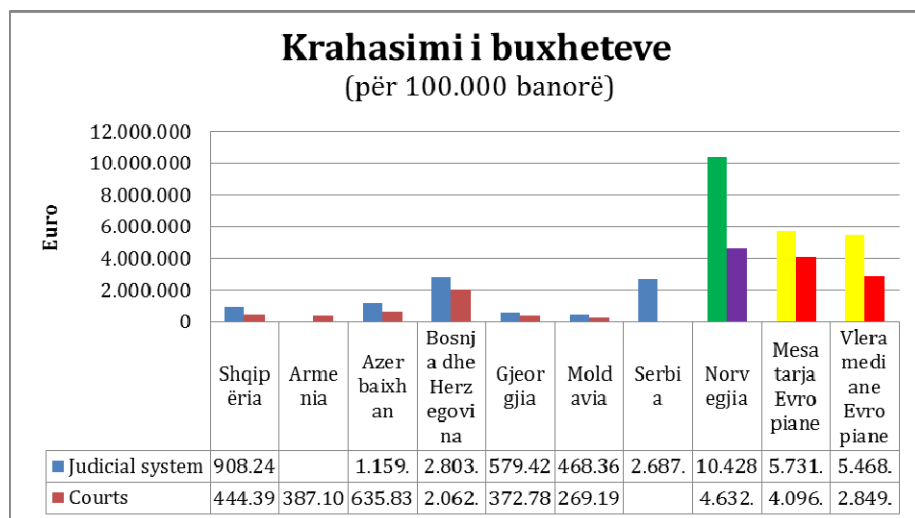


Table 5: Comparison of budget of courts and judicial system 2012⁵¹⁰

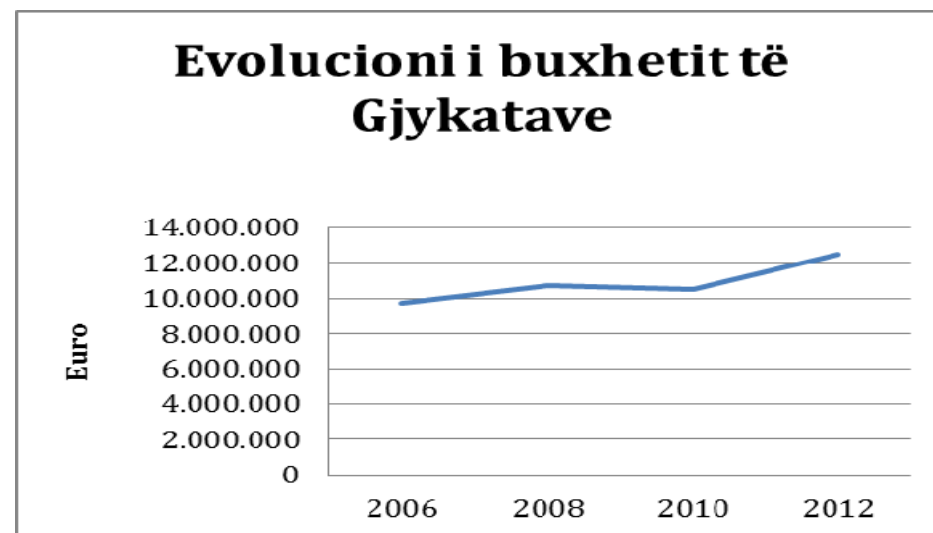


Table 6: Evolution of the budget of courts

Emertimi	Viti 2011			Viti 2012			Viti 2013			Viti 2014			Viti 2015		
	Buxheti i kerkuar	Buxheti i miratuar	Raporti buxhet/kerkese	Buxheti i kerkuar	Buxheti i miratuar	Raporti buxhet/kerkese	Buxheti i kerkuar	Buxheti i miratuar	Raporti buxhet/kerkese	Buxheti i kerkuar	Buxheti i miratuar	Raporti buxhet/kerkese	Buxheti i kerkuar	Buxheti i miratuar	Raporti buxhet/kerkese
Shpenzime personeli	1,366	1,361	-0.3%	1,431	1,327	-7%	1,360	1,338	-2%	1,589	1,594	0%	1,614	1,614	
Shpenzime operative	397	300	-24%	329	282	-14%	363	290	-20%	388	338	-13%	380	343	-10%
Investime	272	165	-39%	362	180	-50%	402	110	-73%	419	140	-67%	354	210	-41%
Buxheti total i gjykatave	2,034	1,826	-10%	2,123	1,789	-16%	2,125	1,738	-18%	2,396	2,071	-14%	2,347	2,167	-8%

Table 7: Data on the budget requested and approved during the period 2011-2015

⁵¹⁰ See CEPEJ report on the European judicial systems, justice effectiveness and quality, CEPEJ Study no. 20, Series 2014 (data from 2012)

Title	Year 2011	Year 2012	Year 2013	Year 2014	Year 2015
Staff expenses (in thousand ALL)	1.361.000	1.326.611	1.338.000	1.593.500	1.613.500
Operative expenses (in thousand ALL)	300000	281,97 2	290000	337700	343000
Investments (in thousand ALL)	165000	180000	110000	140000	210000
Total budget of courts (in thousand ALL)	1.826.000	1.788.583	1.738.000	2.071.200	2.166.500
Total number of employees approved by law	1192	1207	1215	1309	1339
Ratio in % of the budget of the courts with the state budget	0.5%	0.5%	0.4%	0.5%	0.5%
Ratio in % of the budget of the courts with the GDP	0.14%	0.13%	0.12%	0.14%	0.15%

Table 8: Data on the budget of the courts during 2011-2015

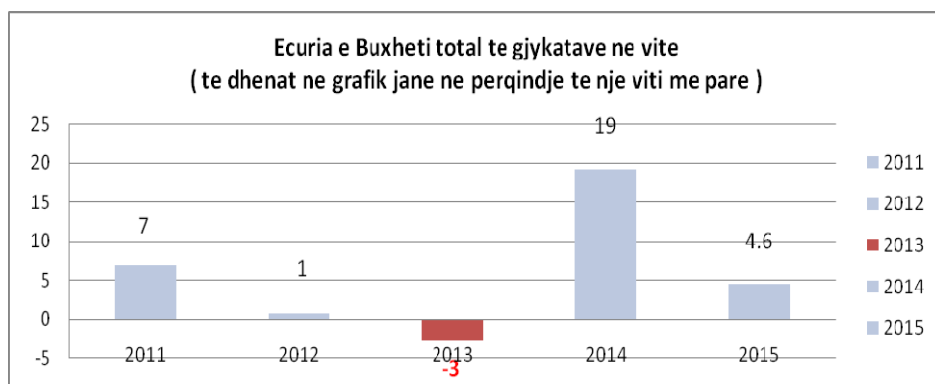


Table 9: Progress of the budget of courts throughout the years

N o.	Title	Main interventions			The courts which need:							
		New building	Full reconstruction	Partial reconstruction	New building	New courtr ooms	Judges' offices	Public reception premises	Archive	Improvement of the functional scheme	Full reconstruction	
1	High Court											
2	Court of Appeal Durrës											
3	Court of Appeal Gjirokastër											
4	Court of Appeal Korçë											
5	Court of Appeal Shkodër											
6	Court of Appeal Tiranë											
7	Court of Appeal Vlorë											
8	Court of Appeal of Crimes											
9	Judicial District Court Berat											
10	Judicial District Court Dibër											
11	Judicial District Court Durrës											
12	Judicial District Court Elbasan											
13	Judicial District Court Fier											

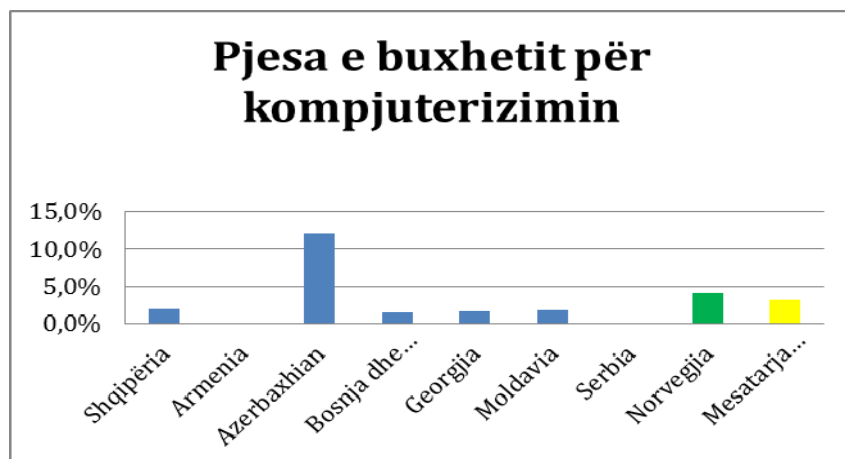


Table 11: Part of the budget of the courts for ICT (data from 2012)

Pagat mujore bruto dhe neto per gjyqtaret sipas shkalleve, prej dates 1 Janar 2014				
	Te dhena ne leke		Te dhena ne euro	
	Paga mujore bruto ne leke	Paga mujore Neto ne leke	Paga mujore bruto ne euro	Paga mujore neto ne euro
EMERTIMI				
Kryetar i Gjykatës së Lartë	209,712	170,207	1498	1216
Anëtar i Gjykatës së Lartë	174,760	145,286	1248	1038
Kryetar i Gjykatës e Apelit Tiranë (përfshi 20% shtesë funksioni)	157,284	134,398	1123	960
Kryetar i Gjykatës Apelit për Krimet e Rënda (përfshi 20% shtesë funksioni)	157,284	134,398	1123	960
Kryetar i Gjykatës Apelit (përfshi 10% shtesë funksioni)	144,177	124,922	1030	892
Gjyqtar i Gjykatës Apelit për Krimet e Rënda (përfshi 10% shtesë funksioni)	144,177	124,922	1030	892
Gjyqtar i Gjykatës Apelit	131,070	115,446	936	825
Kryetar i Gjykatës Shkallës së Parë Tiranë (përfshi 20% shtesë funksioni)	125,827	98,238	899	702
Kryetar i Gjykatës Shkallës së Parë për Krimet e Rënda (përfshi 20% shtesë funksioni)	125,827	98,238	899	702
Kryetar i Gjykatës së Shkallës së Parë (përfshi 10% shtesë funksioni)	115,342	89,609	824	640
Gjyqtar i Gjykatës e Shkallës së Parë për Krimet e Rënda (përfshi 10% shtesë funksioni)	115,342	89,609	824	640
Gjyqtar i Gjykatës së Shkallës së Parë	104,856	82,027	749	586

Table 12

No.	Countries	First instance judges		In EUR	
		Annual gross salary	Annual net salary	Annual average salary at national level	Ratio of the annual gross salary/annual average salary
1	ROMANIA	24688	17316	€ 5,556	44
2	IRELAND	122512	N/A	€ 33,358	37
3	BULGARIA	14345	12911	€ 4,486	32
4	SLOVENIA	29710	N/A	€ 9,660	31
5	BOSNIA	23674	15081	€ 7,915	3
6	MACEDONIA	17252	11480	€ 5,984	29
7	SERBIA	16904	10050	€ 6,096	28
8	CROATIA	29184	16992	€ 12,571	23
9	MONTENEGRO	20170	13514	€ 8,652	23
10	CZECH REPUBLIC	26492	N/A	€ 12,463	21
11	POLAND	21942	17489	€ 10,338	21
12	DENMARK	104755	N/A	€ 51,774	2
13	NORWAY	130737	90163	€ 64,418	2
14	HUNGARY	17644	11152	€ 9,137	19
15	ITALY	54497	33911	€ 28,619	19
16	SLOVENIA	32633	20291	€ 18,300	18
17	ALBANIA	7482	5747	€ 4,323	17
18	NETHERLANDS	74000	43000	€ 52,800	14
19	MOLDOVA	3393	2710	€ 2,682	13
20	SWEDEN	54471	N/A	€ 41,733	13

Table 13: Data on the annual salary of judges of first instance courts (in the beginning of their careers) and annual average salary at national level in 2012 (Ranking is based on the ratio of the gross salary with the average salary at national level)

No	Countries	High Court judges		Annual average salary at national level	Ratio of the gross salary with the annual average salary
		Annual gross salary	Annual net salary		
1	ROMANIA	42049	29493	€ 5,556	76
2	ITALY	179747	97833	€ 28,619	63
3	BULGARIA	28019	25217	€ 4,486	62
4	IRELAND	197272	N/A	€ 33,358	59
5	POLAND	60998	43445	€ 10,338	59
6	BOSNIA	41098	25788	€ 7,915	52
7	CROATIA	63120	31320	€ 12,571	5
8	SERBIA	28174	16752	€ 6,096	46
9	CZECH REPUBLIC	54272	N/A	€ 12,463	44
10	SLOVAKIA	42916	N/A	€ 9,660	44
11	HUNGARY	35289	25476	€ 9,137	39
12	MACEDONIA	21454	14241	€ 5,984	36
13	ALBANIA	14965	12030	€ 4,323	35
14	SLOVENIA	63664	34212	€ 18,300	35
15	DENMARK	176769	N/A	€ 51,774	34
16	NORWAY	212295	159836	€ 64,418	33
17	MONTENEGRO	27934	18716	€ 8,652	32
18	NETHERLANDS	128900	67000	€ 52,800	24
19	SWEDEN	94500	N/A	€ 41,733	23
20	MOLDOVA	5012	3701	€ 2,682	19

Table 14: Data on the annual salary of judges of High Court and annual average salary at national level in 2012



Table 15: Evolution of the budget of prosecutor's office⁵¹¹

⁵¹¹ See CEPEJ report on the European judicial systems, justice effectiveness and quality, CEPEJ Study no. 20, Series 2014 (data from 2012)

Gross and net salaries of prosecutors		
General Prosecutor	155.110	209.712
Directors prosecutors attached to the General Prosecutor's Office		
Prosecutors attached to the General Prosecutor's Office	132.286	174.760
Head of the prosecutor's office attached to the Court of Appeal for Serious Crimes	157.284	119.826
Prosecutors attached to the Court of Appeal for Serious Crimes	144.177	110.480
Head of prosecutor's office attached to the Court of Appeal	144.177	110.480
Prosecutors attached to the Court of Appeal	131.070	101.135
Head of the prosecutor's office attached to the First Instance Court for Serious Crimes	146.799	112.349
Prosecutors attached to the First Instance Court for Serious Crimes	136.313	104.873
Head of the prosecutor's office attached to the First Instance Courts	115.342	88.455
Prosecutors attached to the First Instance Courts	104.856	79.930

Notes:

- *The above salaries do not consider seniority, because it is as different level for each prosecutor.*
- *The prosecutors, directors in the General Prosecutor's Office receive a salary bonus for their function ranging from 5-20 %.*
- *The prosecutors, heads of sectors in the General Prosecutor's Office receive a salary bonus for their function ranging from 3-10 %.*
- *Heads of the Prosecutor's Office of Appeal Tirana and heads of the Prosecutor's Office of Appeal for Serious Crimes receive a salary bonus of 10% for difficulties in performing the tasks.*
- *Heads of Prosecutor's Office for Serious Crimes and head of the Prosecutor's Office attached to the First Instance Court of Tirana receive a salary bonus of 40% more than the prosecutors of these offices for management and difficulties in performing the tasks.*
- *Some heads of prosecutor's offices attached to First Instance Court receive a salary bonus of 20% for difficulties in performing the tasks.*
- *Prosecutors of the Task Force receive a bonus of 10% over the salary for difficulties in performing the tasks.*

Table 16

Gross and Net Salaries of Judicial Police Officers		
Judicial Police Officers attached to the General Prosecutor's Office	80.612	105.694
Judicial Police Officers in the Courts of Appeal	56.600	73.399
Judicial Police Officers to the First Instance Court for Serious Crimes	73.451	96.887
Judicial Police Officers in the Courts of First Instance	56.600	73.399

Table 17

List of courts analysed for the infrastructure:

1. Court of Appeal Gjirokaštër
2. Court of Appeal Tiranë
3. Court of Appeal Shkodër
4. Court of Appeal Vlorë
5. Judicial District Court Sarandë
6. Judicial District Court Përmet
7. Judicial District Court Lushnjë
8. Judicial District Court Kavajë
9. Judicial District Court Elbasan
10. Judicial District Court Pogradec
11. Judicial District Court Kukës
12. Judicial District Court Fier
13. Judicial District Court Pukë
14. Judicial District Court Gjirokaštër
15. Judicial District Court Krujë
16. Judicial District Court Lezhë
17. Judicial District Court Tropojë
18. Judicial District Court Berat
19. Judicial District Court Durrës
20. First Instance Administrative Court Vlorë
21. First Instance Administrative Court Korçë
22. First Instance Administrative Court Tiranë
23. First Instance Administrative Court Durrës
24. First Instance Administrative Court Gjirokaštër
25. Serious Crimes Court

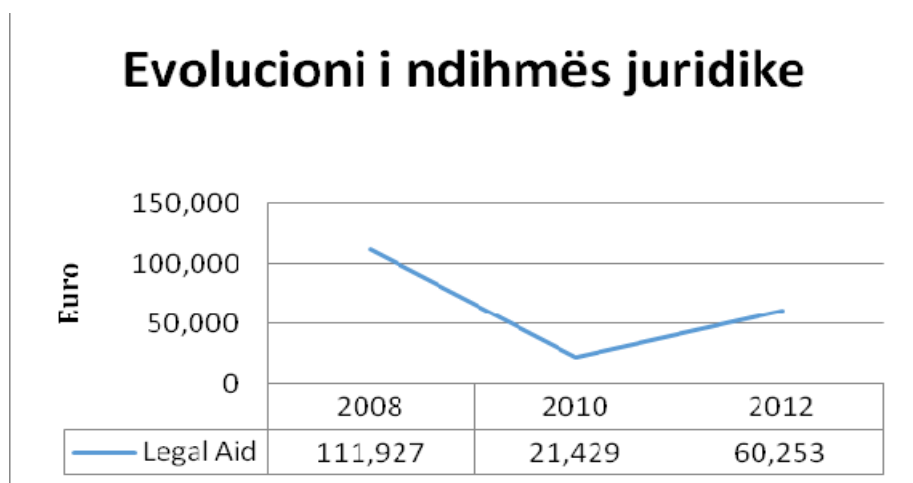


Table 18: Evolution of the budget of legal aid in euro

CHAPTER X CONCLUSION

From the very first day of work of the Parliamentary Commission for the Justice Reform there has been consensus on the nature and aim of the Analytical Document of the Justice System. This document is thought to summarize exhaustively the problems which affect our justice system in each related aspect including: constitutional architecture of the system, organisation and governance of the judicial and prosecutorial system, status of functionaries of justice, administration of the system, budget, enforcement of decisions, system of preparation of justice functionaries, manner of organisation and functioning of liberal services in the justice field, and the situation and application of policies and procedures for prevention of corruption among the ranks of the judiciary.

As such, the Analytical Document is a starting point for the other stages of the reform process which is the drafting of a strategic document that will consist of articulated proposals about the best way to address problems and an action plan with clearly defined time limits and responsibilities.

Proper diligence in drafting the Analytical Document is motivated by three main reasons: first the need to build a reform plan that is defined by the real problems and needs of the system; second, need to minimise the negative effect of factors including politisation and corporatism, which very often in the past have dictated the reform agenda; and third possibility to involve all the stakeholders and international partners of Albania in this historic process.

The experts group has insisted on this understanding and the accepted methodology which foundation is the screening of all the legal and political developments that has pointed out the problems of the system, relevant practice of the Constitutional Court and rich bibliography of analysis and studies made by local and foreign actors in these 16 years from the entry into force of the Constitution.

The result is a full and well-organised document that will serve as a basis for the formulation of proposals which shall aim at solving the identified problems.