

## INCEPTION REPORT

covering 01 September 2014 – 30 November 2014

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## **Abbreviations**

AC	Administrative Court
ARK-IT	Abbreviation for the old statistic program (ie. Case management system)
ASP	Albanian State Police
CC	Constitutional Court
CCJE	Consultative Council of European Judges
CEPEJ	European Commission for the Efficiency of Justice (CoE)
CoE	Council of Europe
CoM	Council of the Ministers
COP	Centre for Official Publications
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ENCJ	European Network of Councils for Judiciary
ECPA	European Commission Police Assistance to Albania
EU	European Union

EURALIUS	This project (EURALIUS IV); EURALIUS I, II or III = previous projects
GPO	General Prosecutor's Office
GRECO	Council of Europe's Group of States against corruption
HC	High Court
HCJ	High Council of Justice
ICITAP	International Criminal Investigative Training Assistance Program (US Embassy)
INT	International long term expert (number = team)
IRZ	Deutsche Stiftung für internationale rechtliche Zusammenarbeit
IT	Information Technology
JUST	Albanian Justice Sector Strengthening Project (US Embassy)
LTE	Albanian long term expert (number = team)
MEI	Ministry for European Integration
MoJ	Ministry of Justice
MTE	Mid-term expert
NCA	National Chamber of Advocacy
NCL	National Chamber of Lawyers
NGO	Non- Governmental Organisation
NJC	National Judicial Conference
no.	Number
OAJB	Office for the Administration of the Judiciary Budget
OPDAT	Overseas Prosecutorial Development, Assistance and Training Program (United States of America)
OSCE	Organisation for Security and Cooperation in Europe
PAMECA	EU project "Police Assistance Mission of the European Community to Albania,Pameca IV
SCLA	State Commission of Legal Aid

SoM	School of Magistrates
STE	Short term expert/s
TL	Team leader (acting as INT 1 at the same time)
TOR	Terms of Reference
UAJ	Union of Albanian Judges
USKOK	Uredu za suzbijanje korupcije i organiziranog kriminaliteta (Croatian department to fight corruption and organized crimes)

### **Referred Laws:**

AC Law	Law no. 49/2012, from 3 May 2012, on Organization and Functioning of Administrative Courts and the Adjudication of Administrative Disputes
AP Law	Law no. 9109, dated 17 July 2003 On the Profession of the Advocacy in the Republic of Albania, as amended
GPO Law	Law no.8737; dated 12.2.2001 “On the Organization and Functioning of the Prosecutor’s Office in the Republic of Albania” as amended
HC Law	Law no. 8811, from 17 May 2001, as amended by Law No. 101/2014, on the Organization and Functioning of HCJ of the Republic of Albania
HCJ Law	Law no. 8588, from 15 March 2000, as amended by Law No. 151/2013, on the Organization and Functioning of the HC of the Republic of Albania
JP Law	Law no. 9877 from 18 February 2008 on the Organization of the Judicial Power in the Republic of Albania
NJC Law	Law no. 77/2012 on the Organization and Functioning of the NJC
SoM Law	Law no. 8136, dated 31 July 1996 “On the Magistrates’ School of the Republic of Albania”, last amendment by Law No. 97/2014

**Referred Reports:**

- Greco Report Fourth Evaluation Round, Corruption prevention in respect of members of the Assembly, judges and prosecutors, Evaluation Report Albania, Adoption on 28 March 2014
- Progress Report 2014: European Commission Albania Progress Report, COM (2014)700 final, as of 8 October 2014



## **PART ONE: Introduction**

### **1. Read me first**

This project brings a fresh breeze into the justice reform and provides fresh methods to read inception reports quicker. If you wish to invest less than one minute, read the summary below and the leaflet in annex 1.

For a more detailed overview, consult the timetable in annex 8. The ongoing reform process, in which EURALIUS is involved since the beginning, is described in activity 1.1.1 (reform).

In the case you are interested to read about a specific institution or activities only please use the index. If you know the number of the activity it is easy to find it by flicking through the report. All activities start with a new page and have a highlighted keyword.

A large range of activities requires a large report. Reading the document in total and in detail takes about a working day. Please mail your comments to [info@euralius.eu](mailto:info@euralius.eu).

### **2. Summary**

EURALIUS started its mission on 1 September 2014. Due to the situation found the start-up phase took significantly more time than expected. One international expert starts after the end of the inception phase, another one even later.

The project started with activity 1.1.1. (justice reform), participated in the conference on 6 October 2014 and the round table on 31 October 2014. The drafting will not be exclusively done in the MoJ, but in the Law Committee in the Assembly. On 27 November the Assembly upon decision no. 95/2014 approved the setting up of the Ad-Hoc Committee on the Justice System Reform. The scope of activity of this Ad Hoc Committee is described further below under activity 1.1.1. EURALIUS will play a key role in supporting this Assembly Ad-Hoc Committee.

The project participated in the meetings of the HCJ. The opening event took place on 19 November 2014 ([www.euralius.eu](http://www.euralius.eu)). The first steering committee will take place on 17 December 2014, MoJ.

The budget for IT and office equipment was insufficient. Contingencies are partly requested. The budget for project cars will become insufficient during the duration of the project. More short term expertise is needed during the implementation.

### **3. Management**

#### **3.1. Staff**

The team is composed of 5 INTs:

TL and INT 1 is Dr. Rainer Deville (Germany, 40 months, team 1)

INT 2 is Dr. Agnes Bernhard (Austria, 40 months, team 2)

INT 3 is Mrs Koraljka Bumči (Croatia, due to ongoing commitments at court 37 months, team 3)

INT 4 is Dr. Erwin Rooze (Netherlands, 39 months, team 4)

INT 5 is in process of being recruited.

Every INT enjoys the assistance of an LTE. 47 applications were submitted in a timely manner for the positions of the LTEs. The TL and INT 2 assessed all submitted CVs in regard to the criteria set out in the call for applications and established a shortlist of 16 candidates. The interviews with the short listed candidates were held between 18 and 25 September 2014, partially also in the presence of the IRZ Project Manager. The following experts were finally recruited:

Aulona Hazbiu      13.10.2014 – 31.12.2017 38,5 months, team 1

Erton Karagjozi      1.10.2014 – 31.12.2017, 39 months, team 2

Evis Xhaxha      1.11.2014 – 31.12.2017, 38 months, team 3, (coming from Pameca with the consent of Pameca's TL)

Besar Thaçi      1.10.2014 – 32 months, team 4

Klajd Karameta      1.11.2014 - 30 months, team 5

66 applications were submitted within the required deadline for the position as Secretaries/Assistants. 13 interviews were conducted. For the position as translator/interpreter 18 applications were submitted within the application deadline.

Eight interviews were conducted. 25 applications were submitted for the two positions as project drivers, out of which seven were shortlisted and interviewed.

The complete composition of the five teams is shown in the annex 2 'Members of the Teams'. Project's counterparts on the working level are attached to teams and included in annex 2. Where this report refers to a team, it is the team of experts and counterparts identified in this annex.

Overall, the project team has a balanced composition from a gender perspective. However, no equality could be reached within the categories of drivers and secretaries/assistants: there were no applications from females for the position of a driver and no male incumbent qualified for the position of secretary/assistant.

Replacing Dr. Arnd Wöhler, Nadine Spenke and Özlem Olbrich, Nathalie Herbeck and Anastasia Schmieder took over the backstopping responsibility within IRZ on 4 November 2014.

### **3.2. Organization of the mission**

EURALIUS III had finalized its mission in June 2013. Thus there was an interval of more than one year between EURALIUS III and IV. The offices used by EURALIUS III at the MoJ were closed. Therefore, in the first month of the project's implementation, the two experts had to dedicate most of the resources to setting up the infrastructure at the premises in MoJ besides the recruitment of all the team and staff positions.

The project has now five offices in the MoJ and respectively one office in the HJC and one in the GPO. The NCA requested payment for office space which has not been available in the budget. Another office may be offered by the Assembly in order to provide infrastructure in case of assist in law drafting activities.

So far only one international and one national telephone line is available at the MoJ, however several telephones allow internal communication within the MoJ. An internet address (prename.name@drejtesia.gov.al), granted by the Minister of Justice, is not yet working. Midst of October the project purchased mobile phones for the all team members and set up Email addresses over the 'euralius.eu-domain' (last name@euralius.eu and info@euralius.eu).

### 3.3. Contacts to stakeholders

During the inception phase contacts have been established to all relevant justice institutions. The following persons are suggested to participate in the Steering Committee:

#### Members of the Steering Committee:

EU Delegation	HE Mrs Romana Vlahutin , Head of EU Delegation  Counterpart on the working level for EURALIUS: Mrs Lora Ujkaj, Program Manager Justice, Security and Home Affairs
Ministry of Justice Assembly	Mr Nasip Naço, Minister Mr Fatmir Xhafaj Chairman of the Law Committee
High Court	Prof Dr Xhezair Zaganjori, President
High Council of Justice	Mr Ilir Mustafaj, Member
General Prosecutor's Office	Mr Adriatik Llalla, General Prosecutor
School of Magistrates	Mr Sokol Sadushi, Director
National Chamber of Advocates	Mr Maksim Haxhia, Chairman
Office for the Administration of the Budget	Mrs Luljeta Laze, Director
National Chamber of Notaries	Mr Fatmir Laçe, Deputy President
EURALIUS	Dr Rainer Deville, Team Leader

#### Observers:

Constitutional Court	Mr Bashkim Dedja, President
People's Advocate	Mr Igli Totozani, People's Advocate
Ministry of Interior	Mr Saimir Tahiri, Minister
Ministry of European Integration	Mr Klajda Gjoshaj, Minister
Ministry of State for Local Government	Mr Bledi Çuçi, Minister
Ministry of Finance	Mr Shkëlqim Cani, Minister
PAMECA	Mr Giorgio Butini, Team Leader
Anti-Corruption Framework Assessment	Mr Quentin Reed, Team Leader
Council of Europe	Mr Marco Leidekker, Head of Office
German Embassy	HE Mr Hellmut Hoffmann, Ambassador
Austrian Embassy	HE Mr Thomas Schnöll, Ambassador

The first Steering Committee meeting shall take place on 17 December 2014 at the premises of the MoJ.

In addition to the monthly reports reporting will be done every six months, being followed by a steering committee:

	Reporting period	Steering committee
Inception report	1.9. - 30.11.2014	17.12.2014
First Progress report	1.12.2014 - 31.5.2015	3.6.2015?
Second Progress report	1.6. - 30.11.2015	3.12.2015?
Third Progress report	1.12.2015 -31.5.2016	June 2016
Forth Progress report	1.6.2016 -30.11.2016	December 2016
Fifth Progress report	1.12.2016 - 31.5.2017	June 2017
Final Report and closing event	1.9.2014-31.12.2017	December 2017

### **3.4. Opening event and visibility**

On 21 October 2014 EURALIUS presented itself to the staff of the MoJ at the Ministries premises.

The project is participating in conferences related to activities which fall under the scope of EURALIUS, such as the EU high level dialogue meeting, evens of the EU/CoE project Support to Efficiency of Justice', meetings of the National Conference of Prosecutors, the National Conference of Judges, OSCE meetings or a conference on "Judicial cooperation in the region: criminal law and civil law", which was attended by selected alumni from the seven Matra Patrol countries. The project also participated in the round table, organized by SOROS Foundation on "Constitutional reform according to the perception of judges and prosecutors" on 14

November 2014, in donor's meetings and reports (e.g. in the newsletter Connections, an Albanian Justice Sector Donor Quarterly Newsletter).

The EURALIUS opening conference took place on 19 November 2014 at Hotel Tirana International; it was well attended and received broad media coverage. Logos on the project's cars, a banner, the leaflet, the website and other activities ensure further visibility.

### **3.5. Related projects and partners**

#### **3.5.1. Council of Europe**

The CoE set up its permanent office in 2003. In the justice sector a joint project between the EU and the CoE is currently ongoing, the EU/CoE project 'Support to Efficiency of Justice' which spans over a period of 24 months, starting from 6 January 2014 to 5 January 2016. Main project activities include: in-depth assessment of the Albanian judicial system; extending the CEPEJ Court Coaching Programme on the SATURN Guidelines on judicial time management to all Albanian courts, improving the collection and analysis of judicial statistics for policy-making purposes, strengthening the capacity of the HCJ and Judicial Inspectorate, analysis of court organisation and court administrators' capacity, review of the training modules for judges and court staff, capacity-building of the SoM, study visits of the Constitutional Court staff to the ECtHR, court user satisfaction surveys in selected 10 Albanian courts, and court plans developed accordingly, improving the access by the public to court decisions, improving the relationship between the courts and the media.

#### **3.5.2. Community Policing Program**

This is a SIDA-sponsored program and implemented under the auspices of the Geneva Centre for Democratic Control of Armed Forces by an Albanian and foreign staffed project management team. The activity of the programs focuses on three main pillars: performance management, partnerships, specifically between youth and police, tackling domestic violence.

### 3.5.3. ENCJ

Albania's HCJ aims at becoming a member of the European Network of the Councils for Judiciary. The upcoming president, Mr Geoffrey Vos, during his visit to Tirana at the beginning of October 2014 met EURALIUS and expressed the commitment of the ENCJ to support the HCJ (see activity 1.5.4).

### 3.5.4. EU Member States' Embassies

Several Embassies of EU Member States have been supporting the justice sector and/or are willing to provide (additional) support in the sector reform.

The Kingdom of the Netherlands closely follows the development in the Rule of Law Reform in Albania as a key element to the future integration of the country in the EU. In this context, the Netherlands has started a regional implementation of the Rule of Law project (including Albania, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Kosovo and Bosnia-Herzegovina). The main scope of the project is to monitor closely and assist the Albanian government to strengthen their effort to improve the efficiency of the judiciary as effort as enhance transparency and fight corruption.

Since May 2014 the Embassy of the Kingdom of the Netherlands supports through the Willem Pompe Institute of Criminal Law and Criminology, Utrecht University, a new initiative of "Drafting a law on whistle blowing and whistle blowers protection in Albania". This initiative aims to strengthen fight against corruption by improving legal mechanisms, policy measures, by addressing internal law enforcement and promoting whistle blowing as an efficient instrument in preventing and fighting corruption in Albania.

The German Gesellschaft für Internationale Zusammenarbeit offers an open regional fund for South East Europe for legal reform. This a regional approach to exchange best practices and experiences in regard to ongoing activities in topics concerning Chapter 23 and 24 in the region. The Albanian MoJ did not use this offer so far. The Gesellschaft für Internationale Zusammenarbeit provided also assistance to the Law Faculty, cross-border enforcement issues, mediation, international arbitration and organized a Regional Conference for Administrative Courts.

### 3.5.5. OSCE Presence in Albania

OSCE is present in Albania since 1997 and has contributed widely to the development of the justice sector. Currently OSCE is active in the following areas/projects: Trial monitoring (together with JuST), which resulted in the elaboration of a Note on Civil Procedure Code, including a comparative analysis, policy options, concrete proposals for draft law amendments, guidelines for effective court procedures, which have been elaborated and implemented in Krujë and Korçë aiming at increasing the efficiency of court proceedings from a practical side. The '*justice\_without\_delay*'-Website is a forum of discussion, where lawyers, judges, prosecutors, etc may place good practice experiences, questions and challenges. They issued a manual for advocates with instructions, forms and templates for lawyers on how to proceed and act as lawyers in civil law proceedings. In October a briefing session was held for inspectors of HJC and MoJ. Furthermore, OSCE is active in providing diversity training for police officers, activities in regard to probation service, revising the CPC, supporting ACs and training for judges, in particular in the area of procurement, tax and custom law.

### 3.5.6. PAMECA

PAMECA is the EU funded project providing assistance to ASP and GPO.

The main objectives are to assist the ASP to improve organisational and administrative capacities to plan and manage human, financial and technical resources more effectively and efficiently. PAMECA works to enhance the investigative capacities and cooperation between ASP and GPO, including other relevant agencies, in the fight against organised and serious crimes and corruption, to strengthen simultaneously Human Rights protection and Community Policing and to support the efforts of the ASP to improve the General Patrol Services and Traffic Policing as well as Integrated Border Management.

### 3.5.7. Sigma

Sigma is a joint initiative of the OECE and the EU, principally funded by the EU. The initiative supported in the recent years the elaboration of a draft Administrative



Procedure Code. It is available to accompany the adoption process for the draft, which is currently pending in the Albanian Assembly.

#### 3.5.8. Slynn Foundation

The London based Slynn Foundation is an educational charity working with senior judges and justice institutions around the world to improve justice systems and the rule of law. In Albania the Foundation had recently carried out projects for the HC, NCA and SoM and showed interest in particular in a co-operation of follow up activities.

Slynn Foundation conducted a two-day human rights symposium for members of the HC in 2013 and 2014: a further event is planned for early 2015. The Court has expressed the wish for further opportunities to discuss human rights law, and more recently it has expressed a wish to be assisted in the writing of judgments, on which the Foundation circulated written advice three years ago (see activity 2.1.1).

Given the current climate for judicial reform Slynn Foundation is willing to assist in revisiting the caseload management issues that were at the centre of the 2012 reforms, and to conduct a training needs analysis for the judges of the HC. Furthermore, assistance is envisaged in considering the career structure of court administrators, to ensure that senior administrators are given the requisite independence and autonomy to improve the quality of the support they give the judges and to take their own initiative in areas where they ought to have more accumulated experience and expertise than most judges possess.

#### 3.5.9. SOROS Foundation

The foundation has been functioning for a relatively long period assuming largely a grant-awarding role. The foundation has been transformed into an institution assuming a direct role in topics of specific interest for our country, thus becoming an important stakeholder in the country. Over the time, the priorities of the foundation were: encouraging good governance and EU integration reforms; encouraging the social involvement opportunities; encouraging the human rights and rule of law.

To the effect of attaining these priorities, the Foundation aims at: strengthening the accountability of officials to the public, assistance in improving the public service and enhancing the participation of citizens; providing assistance to the progress of Albania towards EU accession; providing assistance in the process of decentralization and strengthening the civil society; enhancing involvement through improved access to education and qualitative health care; enhancing opportunities for Roma; while providing assistance in improving the role of women in a society to combat discrimination.

Some of the running projects of Soros Foundation are: Program of Education, Rule of Law and Human Rights, Good Governance, Roma, Care, Gender Equality, Civil Society and Media. Recently it was involved in legislative processes, like the elaboration and adoption of the Law on Freedom of Information and Law on Public Participation. In May 2014 it launched a project aiming at a comprehensive analysis of the Constitution, under which it was carrying out surveys among judges, prosecutors, lawyers with a view of involving beyond political class also actors in the justice sector in the constitutional review discussion. The results of this survey were presented at a Conference on 14 October 2014.

One concern is the eviction of people out of their houses without appropriate protection.

#### 3.5.10. US Embassy/Department of Justice programs

The Programs sponsored by the American Department of Justice aim at improving Albania's criminal justice and law enforcement sectors and are namely OPDAT and ICITAP.

OPDAT's central mission is to assist the Albanian Government to develop criminal justice and law enforcement structures, with particular emphasis on public corruption, organized crime and human trafficking. OPDAT is involved in reviewing criminal-justice legislation; training judges, police and prosecutors; providing law-enforcement equipment; and providing technical assistance aimed at establishing more effective law enforcement structures. Recently OPDAT provided comments to Law on Foreign Fighters, Law on SoM, Law on HCJ, assisted in the Prevention of Money Laundering

and Financial Supervisory Authority in order to enhance capacity in fight against terrorism, in the area of human trafficking and witness protection.

ICITAP offers support to the Ministry of Interior and the Albanian State Police. This assistance comprises projects in border management and anti-trafficking; combating organized crime; police accountability and human resource management; academy and training development; and information management systems, including a “Total Integration Management System”.

#### 3.5.11. USAID

The USAID’s Justice Sector Strengthening Project (JuST) is supporting the judicial system’s digitalization process. It consists of the development of platforms that enable the generation of verbatim judicial sessions’ minutes through the digital audio recording system and it supports a number of pilot courts in introducing and expanding the use of mediation services for the settlement of family and commercial disputes. JuST is also active in the support to the profession of mediation and in co-operation with OSCE is committed in the court monitoring project “For justice without delays”.

#### 3.5.12. Venice Commission

The Venice Commission being CoE's advisory body on constitutional matters has continuously maintained relations with Albania spanning over 20 years. The form of assistance has almost exclusively been through legal opinions on constitutional law and constitutional law related matters. The first opinion provided was in 1995 on the law on judicial organisation, while so far a total of 25 country-specific legal opinions have been provided, with a far higher number documents approved affecting Albania.

The Venice Commission is dedicated to assist the Albanian government with concrete advice on legislative proposals (details see below activity 1.1.1.).

### 3.5.13. Upcoming Twinning Projects

Calls for applications have been launched inter alia for an EU twinning to support the prison and probation system in Albania and others dealing with the fight of corruption and mediation. For details see Annex 3 and activity 3.2.2. (anti mafia law).

## 4. Political situation

Officially recognised by the EU as a "potential candidate country" in 2000, Albania started negotiations on a Stabilisation and Association Agreement in 2003. This was successfully agreed and signed on 12 June 2006, thus completing the first major step toward Albania's full membership in the EU. Albania applied for European Union membership on 28 April 2009. The Republic of Albania is an official candidate for accession to the European Union since June 2014.

The Enlargement Strategy paper 2013-2014, which has been in use prior the the decision about the candidate status, indicates five key priorities, which remain prerequisites to the launch of accession negotiations:

- continue to implement public administration reform with a view to enhancing professionalism and depoliticisation of public administration;
- take further action to reinforce the independence, efficiency and accountability of judicial institutions;
- make further determined efforts in the fight against corruption, including towards establishing a solid track record of proactive investigations, prosecutions and convictions;
- make further determined efforts in the fight against organized crime, including towards establishing a solid track record of proactive investigations, prosecutions and convictions;
- take effective measures to reinforce the protection of human rights, including of Roma, and anti-discrimination policies, as well as implement property rights.

In May 2014 the Albanian authorities approved the road map on five key priorities (dated April 2014). In view of these priorities and the High Level Dialogue for the Key

Priorities between Albania and the European Commission, the Government decided to develop a Road Map in the framework of implementation of the reforms for the five key priorities.

All key priorities relate more or less to issues that are covered by EURALIUS. The main objectives and measure foreseen by the Albanian institutions include:

In regard to the judicial reform, in order to consolidate the rule of law, the government is fully committed to implement these reforms based also on suggestions and support of international partners and in cooperation with other state institutions involved. In this regard Albania states to have liaised with the Venice Commission and agreed on a set of reforms aimed at enhancing the independence, accountability and professionalism of the judicial system. One of the objectives of this reform (activity 1.1.1.) will be the improvement of the system for appointment, evaluation, promotion and transfer of judges and prosecutors, which encompasses a number of legal amendments. Efforts will be made to reduce backlog of cases through legal changes as well as improvement in the infrastructure and resources. Reform the inspection system, giving more powers to inspectors, is another area in the focus. Making administrative courts fully functioning is priority, with a number of measures foreseen for this purpose, together with measures for enhancing the fight against corruption in the judiciary.

In the framework of anti-corruption policy reforms in Albania, a number of concrete measures were undertaken to ensure accountability to the Government's strong political will to address corruption phenomenon in the country. During this period the institution of the National Coordinator on Anti-corruption was set up, as an important body at the ministerial level that would coordinate the anti-corruption efforts and policies at national level. Alongside with the establishment of the National Coordinator on Anti-corruption, two important processes started to develop the drafting of the National Anti-corruption Strategy 2014 -2017 and the network of coordinators and anti-corruption focal points both in independent and executive level institutions (including local level).

As regards the fight against organized crime and corruption, it remains one of the main priorities of the Albanian Government. Results achieved in recent years demonstrate the progress made in police cooperation and fight against organized

crime and corruption. Capacity building of law enforcement agencies to ensure strict enforcement of the law is a priority. Inter institutional cooperation as well as international police cooperation continued to deliver good results in terms of operations, arrests and joint investigations, including investigation of criminal assets.

In the third meeting of the High Level Dialogue on the Key Priorities, held on 4 June 2014 in Tirana, it was decided to intensify the interaction between the government and the European Commission on the reforms related to the implementation of the five key priorities. This should be implemented through setting up joint working groups to cover each key priority. The constituent meeting of the working groups on the key priorities took place on Thursday, 18 September 2014. The TL and INT 2 participated.

On 8 October 2014 the European Commission published the second 2014 Progress Report on Albania covering the period September 2013-October 2014. According to the report, Albania made further progress in fulfilling the political criteria, with implementation and consolidation of reforms in the rule of law. However Albania should focus its efforts into implementing reforms into key priority areas, particularly on public administration and judicial reform, fight against organized crime and corruption and the strengthening of protection of fundamental rights.

## **5. Methodology**

In the following for each Objective and Activity listed in the Description of the Action the information gathered, identified areas of actions and the findings resulting from the inception phase are presented and the responsible EURALIUS team is identified. Furthermore, the planned activities, indicators and assumptions and risks are shortly outlined.

General conception underlying the planning in regard to activities which are subjects of the justice reform:

All areas listed under 1.1., 1.2., 1.3., 1.5, 1.6.1, 1.6.2, 2.4.1., 2.5.1, 2.6.1, 2.6.3, 3.1., 3.2, 3.3., 4.1.2., 4.1.5, 4.2. will most probably require law amendments, and thus are potentially part of the justice reform.

Following the Justice Sector Strategy, which will have to set up a clear prioritisation, sequencing, timing, and needs to take into account budgetary and human resource

constraints, each area of action of the activities under the justice sector reform will be implemented by the following sub-activities: status quo analysis, comparative and background analysis which will provide the information needed for prioritisations. The analysis will be carried out in parallel to the development of the Justice Sector Strategy, and will together with the results of the prioritisation contribute directly to the establishment respectively fine-tuning of such Strategy. Further sub activities will follow the directions of the Strategy. As this is a political process EURALIUS will have to take a flexible approach: the timelines can be just indicative and will have to be adapted to the results of the previous steps. Furthermore, several law amendment processes, if carried out sustainably, are time and resource consuming exercises. EURALIUS proposes to adapt an approach that gives – as a rule - priority to quality before speed. Following the priorities set in a Strategy some areas might not be finished within the project implementation period.

#### 5.1. Analysis of the current status

As a first step an analysis of the current status is intended to be carried out in order to identify the deficiencies and gaps in the current system and the reform needs.

#### 5.2. Comparative and background studies

Based on this analysis policy options will have to be identified. Such options might be assessed against best practices adopted in other EU Member States or European countries and international standards as outlined in opinions, guidelines and recommendations of bodies within the sphere of the CoE or others. Comparative and background studies will help to better outline such options and provide a basis for identifying the “Albanian” solution.

#### 5.3. Prioritisation and sequencing

Albanian institutions will have to prioritize actions to be taken and establish a proper sequencing, by taking into account budgetary and human resource constraints and time needed for the setting up of institutions and capacity. Particular attention should be paid to sequencing as some reform steps might have to be prepared and might have to be set up, only after having consolidated another institution or practice, for

example bringing the HC under the HCJ's umbrella will first have to ensure an enhanced functioning of the latter.

#### 5.4. Consultation

Policy papers of Albanian authorities and/or the above mentioned documents will have to be discussed and consulted, for example in Round Tables, working groups or other, with the relevant institutions, the public, NGOs, national and international experts. When using best practice examples or international standards in the national context, the user may need to revisit provisions of the national constitution or other laws, and assess existing rules, procedures and mechanisms of accountability. In doing so, it will, no doubt, take into consideration its capacity and resources, and its level of economic development; existing but different mechanisms that adequately address the same concerns; and the fundamental principles of its own legal system. This tailoring of 'Albanian' options that meet the spirit and requirements of EU standards can best be ensured in a transparent and inclusive consultation process.

#### 5.5. Law amendments

Upon conclusion of the previous phases, amendments to several laws will have to be drafted and accompanied throughout the process of adoption.

#### 5.6. Implementation

Upon amendments of the law existing sub-legal acts will have to be revised and brought in line with the legislation and other acts will have to be elaborated and adopted. Manuals, trainings and coaching might be needed in order to support the smooth implementation of new legislative framework.

#### 5.7. Alternative actions and support in implementation of current legal framework

It is clear, that the reform does not depend on the Project. The willingness to adapt the legal framework is in the hands of the competent Albanian institutions. In case where because of whatever reason (see risks) no consensus is reached on a justice reform or only (very) sectorial and partial changes are agreed and adopted, the planning will have to be adapted. Resources that are not used for the support in the elaboration of a roadmap or in the change of the legislative framework will be



directed to the implementation level and actions will have to be identified, on how improvements on the level of sub-legal acts and on the implementation practice might be achieved.

#### 5.8. Assumptions and Risks

The following assumptions and risks are applicable in all activities; particular aspects of risks are highlighted under each activity in the Overall Logical Framework.

An objective constraint might be constituted by budgetary restrictions and availability of human resources, both from the beneficiaries' as well as from the project's side. Furthermore the heavy workload of involved stakeholders or their institutional priorities and thus their availability to prepare and participate actively in the activities might constitute another type of constraint.

The project shall carefully monitor these factors, which is likely to influence both the carrying out of concrete activities and the dissemination of results.

The overall general underlying risk is the political willingness to carry out a comprehensive justice sector reform. Driven from the wish to show quick results the responsible institutions might seek rather fragmentary interim solutions than well-designed long term reforms.

In any stage of the process not achievable consensus to agree on a set of reforms might jeopardize the process as such.

Moreover, the risk to limit consultation and ensure an inclusive process with a view of long term sustainability is existing.

Even when there is a general willingness to proceed with a justice reform, missing or weak local ownership might hamper progress. This risk does have an effect on all levels of the Albanian institutions, from decision taking down to working level, where the risk may materialize e.g. in the lack of attendance and interest of the target groups in each of the planned activities.

Moreover, the willingness for cooperation, i.e. missing or weak cooperation of the Albanian Project partners with the project and among each other, missing or weak readiness to share information, missing or weak direct and transparent communication might jeopardize the achievement of the expected results.

Aside from this there is finally the risk that the Albanian counterparts are not or only partially willing to implement recommendations and to adjust existing practices and established systems to best practices' examples.

## **PART TWO: Activities and Results**

**Objective 1: To improve the independence, transparency, efficiency and effectiveness of the Albanian justice system pursuant to a clear and comprehensive reform strategy developed by the Albanian Ministry.**

**Result 1.1: Justice system strategy with a concrete action plan.**

**Activity 1.1.1: Support the relevant Albanian institutions in drafting a **justice reform strategy** accompanied with a concrete action plan for the period 2014 – 2017.**

### Findings

The new government is committed to adopt a strategy soon.

The Venice Commission delivered proposals as formulated in the Memorandum of 28 April 2014 and an Opinion on the draft amendments to the criminal and civil procedure code of 16 June 2014. The Memorandum contains five proposals as to modifications to the justice system. They are ranging from bringing the HC under the umbrella of the HCJ, including its judges no longer be elected by the Assembly and HC judges becoming subject to disciplinary liability, to depolitisation of the HCJ, by electing its members by a qualified majority in the Assembly and requiring higher qualifications from its members. The Venice Commission believes that the HC should become a real cassation court dealing with points of law. This point was taken up in the mentioned Opinion of 16 June 2014, which stated, inter alia, that the measures proposed by the government may not be sufficient to unclog the HC. The link to its opinion is:

<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL->

[AD\(2014\)016-e](#) . This request for opinion to the Venice Commission put forward by the Minister of Justice was the only request so far.

The MoJ prepared a draft concept note. According to this, the vision of the Albanian Government strongly relies on safeguarding the respect for the principle of checks and balances. This has been criticised by the opposition as the “capture” of the judiciary, having the only goal to replace as much people as possible who have been

nominated by the previous government. According to the concept note, the reform shall be focused on the following laws/institutions:

- Reform of HC and CC;
- Reform of the HCJ;
- Reform of GPO;
- Reform of the SoM in particular and the University legal education in general;
- Reform of the Judicial Organisation.

The methodology used to attain the major objective consists in particular in setting up of an Ad-hoc Committee on Legal Reform (including a group of high level experts) attached to the Assembly of the Republic of Albania and the evaluation of the opinion and expertise of the assisting missions of international partners (including EURALIUS and the Venice Commission). EURALIUS' activity 1.1.1. covers the entire legislation process. Some of the other activities cover the legislation as well:

- Reform of HC (activity 1.6.2);
- Reform of HCJ (activities 1.5.3, 1.5.4.);
- Reform of GPO (activity 3.3.4.);
- Reform of SoM (activity 2.1.);
- Reform of the Judicial Organisation (legislative activities in regard to increase the efficiency, an overall approach of EURALIUS).

A round table "Reforming the judicial system in Albania" took place on 6 October 2014. Speakers in the opening session had been Mr Bujar Nishani, President of the Republic, Mr Ilir Meta, speaker of the Assembly, Mr Edi Rama, Prime minister, Mr Lulzim Basha, chairmen of the opposition, Mr Nasip Naço, Minister of Justice, Mr Jean-Eric Paquet, director for Albania, European Commission and representatives from the international stakeholders.

The first panel examined the gaps of the functioning, integrity and accountability of the judiciary in Albania in the light of the European standards. Key speaker has been J. Hamilton, representing the Venice commission. The second panel focused on the principles of strengthening the independence, efficiency and professionalism of the judiciary, including the financing of the judicial system and efforts to restore public

confidence in the system. Keynote speaker has been Mr. Fatmir Xhafaj, Chairman of the Law Committee in the Assembly, who offered EURALIUS an office in the Assembly during the law drafting activities. Another keynote speaker has been Sir Geoffrey Vos, member of the Judges' Council of England and Wales and upcoming President of ENCJ ([www.encj.eu](http://www.encj.eu)).

The team leader of EURALIUS participated in the third panel in which the institutional set up of the judicial reform was discussed. A second roundtable "Cross-cutting strategy 2014-2020", hosted by the MoJ took place on 31 October in the presence of Mr Yngve Engström and Mr Thomas Wastian (EU Delegation).

EURALIUS contributed to the Round Table.

Both activities focussed on the mentioned list of laws and institutions. According to the decision of the government, the reform in the judiciary will be implemented by an Ad-Hoc Committee, co-chaired by two Members of the Assembly, one representing the ruling majority and other the opposition, and composed of equal numbers of ruling majority and opposition MPs.

TL has been in contact with relevant stakeholders to enlarge the scope of the reform process. The aim was to launch a comprehensive, consistent and inclusive reform process in which all relevant stakeholders of the executive, legislative and judicial powers, as well as the opposition and civil society, would be involved. On 27 November the Assembly upon decision no.95/2014 approved the setting up of the Ad-Hoc Committee on the Justice System Reform. The scope of activity of this Ad-Hoc Committee shall be:

Analysing the current situation of organisation and functioning of the justice system, to the effect of identifying the problems and needs for improvement, in cooperation with the MoJ and in an all-inclusive consultation with the justice system institutions, local and international experts, other interested entities and the public opinion;

Drafting a Strategic Document on the objectives of the justice system reform, based on the analysis of the current situation of organisation and functioning of the justice system.

Proposing a comprehensive package of draft-laws for approval, being necessary for reforming the legislation, regulating the organisation and functioning of the justice system institutions, including the constitutional ones, drafted with the contribution and

the support of the justice system institutions, local and international experts, other interested entities and the public opinion.

The Ad-Hoc Committee shall consist of 11 members, whereof 6 are representatives of the parliamentary majority (5 SP and 1 LSI) and 5 representatives of the parliamentary minority (3 DP), 1 RP and 1 PDIU). The names of its members shall be determined upon a decision of the Assembly.

According to this decision, attached to the Ad-Hoc Committee shall be set up and functioning the local and international Group of Experts. The Ad-Hoc Committee shall invite to participate in the capacity of the international experts, representatives of the European Commission (EURALIUS), United States of America (USAID/OPDAT), CoE (Venice Commission), OSCE Presence and the assistance missions for justice issues of the diplomatic representatives to Tirana etc. The number and the composition of the Group of Experts shall be set out upon the decision of the Ad-Hoc Committee. The Commission may, in connection with other specific issues, invite other international experts being renowned in their respective fields.

Additionally, attached to the Ad-Hoc Committee and supporting the Group of Local and International Experts shall be set up and functioning the Technical Secretariat, consisting of advisors/specialists of the legal service of the Assembly, Ministry of Justice, lawyers of other state institutions as well as other experienced lawyers who are going to be invited to become part of this structure.

The Ad-Hoc Committee shall, in the course of its activity, conduct:

Consultation and hearing sessions as well as discussions with the MoJ and its dependant institutions, representative forums of constitutional independent institutions and other institutions of the justice system, experts of respective fields, representatives of the international organisations being responsible for justice issues, and representatives of civil society.

The Ad-Hoc Committee shall, for every element of its scope of activity and in cooperation with the MoJ, and under the auspices of the President of Republic, organise all-inclusive round tables with the institutions of the justice system, local and international experts, and other interested entities.

From the SP have been appointed Mr Fatmir Xhafaj (who shall be also the Chairman of the Ad-Hoc Committee), Mr Armand Subashi (who shall be the Secretary of the

Ad-Hoc Committee), Mr Pandeli Majko, Mrs Vasilika Hysi and Mr Ulsi Manja; From the SMI has been elected Mr Spartak Braho.

The reform process announced by the Assembly has a more comprehensive approach. It aims at identifying concrete problems in this field and most importantly, includes now measures for the prevention and punishment of corruption within the justice system as a key factor for the consolidation of independence, accountability and credibility of the justice system. Short-term, mid-term and long-term activities will be identified. The increase of the efficiency and budgetary questions will be included. This is a major step forward.

#### EURALIUS experts and counterparts

Team 1 will join into the Assembly and will receive input from other teams as far as their activities become part of the reform process (team 2 for the institutions, team 3 for criminal procedure code, team 4 on efficiency of the justice system). Additional beneficiary is the Law Committee of the Assembly, as EURALIUS participates in the Ad-Hoc Committee and in the legislation process.

Additional STE and translation capacities are needed in order to consult all upcoming legislation.

#### Activities and timing

Participation in the reform process. The Ad-Hoc Committee starts working in January 2015, but the precise timetable of MoJ and the Assembly for the activities is not known yet. Team 1 follows this timetable. Activity 1.1.1. has already started in September 2014 , takes about the upcoming six months and will last until the summer brake of the Assembly in June 2015 (months 4 to 10).

#### Indicators for output

- Decision of the Assembly to set-up an Ad-Hoc Committee for the reform (achieved 27.11.2014);
- Justice reform strategy draft/final version (document coming from Albanian institutions) or similar assessment paper (from EURALIUS);
- Time-table/ Agenda/ Action plan of the reform process.

**Activity 1.1.2: Support the **implementation** and monitoring of the new Cross-Cutting **Justice Reform Strategy** and its action plan, i.e. among other things by assisting the MoJ in drafting or amending necessary laws and by-laws that are called for by the strategy. Ensure that these measures take into consideration relevant measures of the anti-corruption strategy.**

#### Findings

The implementation of this strategy will last over a longer period. This activity will run through the entire period of the project and its implementation will most likely have an effect on other activities of the Action.

#### EURALIUS experts and counterparts

Team 1, other teams if relevant content is concerned.

Additional STE and translation capacities are needed in order to consult all upcoming legislation.

#### Activities and timing

Activities depend on the content of the strategy which is unknown so far. Implementation starts after the finalization of the strategy, probably in month 11 in the second half year and may last until the end of the project (depending on the political situation and the activity of the Assembly).

#### Indicators for output

Assessment papers, law drafts called for by the strategy, proposals for by-laws, assessment of strategy in regard to implementation.



**Activity 1.1.3 Assist the MoJ in assessing and planning relevant human resources and budgetary needs for funding the initiatives called for by the strategy.**

This Activity will support the implementation of the strategy because it aims at ensuring the necessary framework that will be required.

### Findings

Human resources depend on the content of the strategy and the output of other activities. In the case a higher efficiency and/or a reduced number of courts (possible result of activity 1.7.1) were available unused human resources might become available partly. However, additional human resources are to be expected and they become in reality a question of the budget first.

So far it is unknown what the needs will be.

Today several budgets exist. The Albanian overall budget for the justice sector is broken down into budgetary items related to the MoJ, the GPO, the OAJB, the SoM, the HCJ and the CC.

The splitting of the budgets items from the respective laws that regulated the field of activities of these institutions. This is the Law no.8678, dated 14.05.2001 "On organization and functioning of MoJ" which defines the institutions falling under the MoJ. Another legal source is Article 57 of Law no.8737, dated 12.02.2001 "On organization and functioning of the Prosecutors Office", as amended which states that the Prosecution office enjoys the right to independently plan and divide the budget in accordance with this Law. The Law no.8363/1998 "On organization and functioning of the Office for the Administration of the Judicial Budget" is relevant as well. Article 3 of Law no.8136, dated 31.07.1996 "On the magistrate school" provides that the school has its own budget item in the state budget. Law no.8811, dated 17.05.2001 "On high council of justice" provides in article 37 that the budget of the council is part of the state budget. Article 6 of Law no.8577, dated 10.02.2000 "On the functioning of the Constitutional Court" states that the said court manages its own budget, as part of the state budget, as drafted by the court and approved by the Assembly.

In 2014 the budget for the overall justice sector was higher (+7.2 %) than in 2013 and amounted to € 82.5 million, which represents 0.83 % of GDP and 2.48 % of the state budget. It covers MoJ (+1.5 %), GPO (+22 %), OAJB (+19 %), SoM (+6 %), HCJ (+17.8 %) and the CC (+12.4 %)."

The budget of MoJ, according to Law no.185/2013 "On the budget for 2014" includes not only the budget for the Ministry itself but also for the 10 institutions which are under its jurisdiction (see annex 5). The budget approved upon the said Law as amended upon Normative Act of the CoM dated 22.09.2014 for the year 2014 is in total 7,561,440 ALL (circa 5.400.000 EUR). 51% of the budget is allocated to the General Penitentiary Directorate, 30 % is foreseen for administration of the Ministry itself, as well as the State Advocate, Legal Aid, and the Agency for Bankruptcy Supervision.

One challenge will be that the budget is considered too low already without additional needs.

Additional budgetary needs derive from other activities of this project, mainly:

- 1.3.1. Implementation of the law on legal aid;
- 1.3.3. Fee structure (including the option to earn money);
- 1.7.5. Budget for access to international legal databases;
- 2.1.4. Budget for the SoM (and trainings requested by other activities);
- 2.6.3. Implementation of the immovable property registration scheme;
- 3.2.1. Technical skills for GPO.

EURALIUS will refer to the data's published by the report of CEPEJ.

#### EURALIUS experts and counterparts

- Team 1.
- One international MTE regarding financial feasibility and planning study (3 weeks).

### Activities and timing

In the case EURALIUS is involved successfully within activities 1.1.1. and 1.1.2, budgetary needs and additional human resources should be included immediately in the reform process and activity 1.1.3. will not have a separate timing. In the case budgetary needs and additional human resources are upcoming later, this activity should be introduced at least at the end of activity 1.1.1. or whenever upcoming, probably then starting in the second year.

### Indicators for output

- Strategy and/or action plan includes chapters about human resources and budgetary needs (first half year as a part of the reform process within activity 1.1.1.)
- Reasoning of law drafts contains a needs evaluation (during implementation of the strategy within activity 1.1.2.)
- Assessment paper of EURALIUS (assessment and evaluation of the budgetary needs), if not included in activity 1.1.2.

## 1.2. Result: Professionalism of the MoJ

**Activity 1.2.1.: Assist the MoJ in strengthening and adding a core team of experts in the Codification and International Judicial Cooperation Department.**

### Findings

The structure of the MoJ is shown in annexes 4 and 6. The Ministry has 6 General Directorates, among others the General Directorate of Codification and General Directorate of Implementation of Priorities, Foreign Jurisdictional Relations and Integration.

Some of the staff studied abroad and quite a few speak foreign languages. In the MoJ the departments do not have an international telephone line (but the minister has).

The codification directorate consists of two subordinated Directorates, the Directorate of Draft Laws and Legal Analysis (having two subordinated units) and the Directorate of Legal Review. Contrary to best practices in Europe the department is not structured according to topics (like criminal law, civil law) and no judges, prosecutors or advocates are seconded to it. A few comments from stakeholders outside the MoJ might be considered as a remark suggesting a weak performance causing workload and changes in the Assembly. A law drafting manual has been prepared by Euralius II and III.

Three tools provide expert advice: The consultation process, the Venice Commission and an advisory board.

The Assembly approved the law no.146/2014 “On public consultations and notifications” on 30 October 2014. The draft law renders obligatory the public consultation process between central and local government institutions and interested parties in the decision-making process and approval of legislation within the Assembly. The bases of public consultations are to be found in the Aarhus Convention. The Codification department uses consultation procedures and depends on the comments received.

The Minister identified six areas for reform for which he sought assistance from the Venice Commission (coherent with the first vision of the law reform, activity 1.1.1. above):

- Checks and balances between the judicial, executive and legislative powers and within the judiciary itself;
- Redefining the constitutional position of HC(also referred to as the High Court);
- Reforming the functioning of the High Council of Justice;
- Improving court administration;
- Improving the procedure of appointment of GPO and defining the role of the Council of Prosecutors;
- Improving the constitutional position of the Judges of the CC and defining the role of the NJC.

However, the Venice Commission has not been used much.

The Prime minister's office, pursuant to point 3 of Article 102 of the Constitution, and Article 12 of Law No. 9000, dated 30.1.2003 "On the organization and functioning of the Council of Ministers", and upon a proposal of the Minister of Justice, by order number 17, dated 22.1.2014, established an advisory group to the minister of justice. The advisory group may draft, and review policies, strategies and acts in the area of justice and justice reform in general. The activity of the advisory group includes to deepen and accelerate legal reform in the interest of European integration, to identify, draft, and review views and research studies and to draft and review legislation with the purpose of harmonizing and approximating the Albanian domestic legislation with the international structures and standards. Although the 14 members are people of considerable reputation in the Albanian legal and academic communities, the group has not been used very much.

The International Judicial Cooperation Directorate is subordinated along with the Directorate of Integration and Projects to the General Directorate of Implementation of Priorities, Foreign Jurisdictional Relations and Integration (i.e one of the six general directorates of the MoJ). 11 persons work in the International Judicial Cooperation Directorate. It is divided in two units: the Unit of Judicial Cooperation

and the Unit for Official Translation, It might be understaffed considering the work load which has increased significantly in the last years. The directorate is one of the most important structures in the chain when it comes to realization of international judiciary co-operation, and for performing assistance in international judiciary matters, by assessing the conditions, terms, and forms of documents send by Albanian authorities to international authorities and vice versa. The Directorate performs following activities: mutual legal assistance, extradition, transfer of sentenced persons and recognition and enforcement of criminal and civil decisions. It acts based on different provisions, partly on behalf of the Minister and the Ministry.

### EURALIUS experts and counterparts

Team 1. One international MTE, 4 weeks (update law drafting manual)

### Activities and timing

Observation and assessment of the capacities of the international and the codification department. Due to the attitude found (see assumptions and risks) the project will observe the activities for a while during the reform process prior to the assessment (months 4 – 12). This gives the opportunity to convince the project's team about the existing capacity and skills. An assessment will be done in the third half year. Possibly it is wise to check if the secondment of judges and prosecutors to the MoJ for a specific duration can provide the MoJ with relevant expertise from the practice. Such a secondment could be a part of a career system. The precise timing might depend on upcoming legislation (possibilities for secondment into the MoJ).

### Indicators for output

- Minutes of a meeting with the departments.
- Minutes of a meeting with the counterparts in order to decide how to continue with this activity (see assumptions and risks).

## **Activity 1.2.2.: Organize and deliver trainings on budget planning, budget allocation and resources management to OAJB**

### Findings

The different budgets have been described in activity 1.1.3.

The OAJB is organized in pursuance with the provisions of Law no.8363/1998, unamended since 1998. According to its article 3 the OAJB is in charge of planning and division of the budgetary fund, implementation and review of the funds in accordance with the concrete situation of each court; and the continuous effective control of the use of the judicial funds. It is acting through a board in which court presidents and one representative of the MoJ is included.

Funds are requested from the ministry of finance and then allocated by the the Assembly, or other funds allocated from different sources according to the law. The courts are allowed to use 10% of the obtained amount for their needs based on an agreement between the Ministry of Finance, and the Chairman of the Board of OAJB. the Albanian state obtained for 2013 the total amount of 531.600.000 ALL (circa 3.800.000 EUR) from all Albanian Courts from court fees. From this amount, 5.000.000 ALL (circa 357.000 EUR) were used by the courts itself for their needs. During the first six months of 2014, Albanian courts obtained 266.000.000 ALL (circa 1.900.000 EUR) transferred to the state budget.

The budget for the courts (OAJB) for 2014 is 2.071.200 ALL (circa 14.776.000 EUR). The increase is related to the amendments of Law no. 9877/2008 "On organization of the judiciary power" upon Law no.114/2013 by the Albanian the Assembly upon which it was decided to increase the salaries of the Albanian judges (of all instances). In addition, the Law no. 49/2012 "On administrative court proceedings" provided the establishment of new administrative courts in Albania; hence, the increase was related only to personnel expenses, and the amount for operative expenses and investments remained unchanged to the one of 2013.

The first part of the budget is spent for the salaries of the judges. This budget line is granted to 100 % as the salaries need to be paid. The net salary of a first instance judge amounts 586 EUR, for a court of appeal judge is 892 EUR (net). The Albanian

legal framework on judiciary is missing provisions related to packages of benefits for judges such as health and life insurance. In 2014 the salaries of the Albanian Judges were raised but this such increase in the salary was more symbolic rather than in real terms since their financial situation is not satisfactory in particular of in terms decreasing the corruption in the judiciary. In accordance with best practice in EU increase of judicial budget has been used as powerful tool to improve transparency or to keep it on high level.

The remaining budgeted line for the courts (OAJB) is used for the equipment in courts. This budget line saw cuttings in the past.

The remaining rest is available for investments such as court buildings. This budget line suffers the most severe cuttings. The representatives of the courts might request to build new Courts and to enlarge existing ones. In quite a substantial number of courts the number of court rooms is too small and hearings are held in the offices of the judges. The District Court of Tirana, which handles about 1/3 of all first instance cases in Albania, is in a need of more court rooms. The HC and the CC request larger buildings. However a possible reduction of courts (activity 1.7.1.) might have an impact on the building needs. Anyway they can be realized step by step in several years.

#### EURALIUS experts and counterparts

- Team 1, OAJB, counterpart in the Ministry of Finance.
- One international MTE regarding financial management (4 weeks, may be April/May 2016).

#### Activities and timing

The first cooperation is a training and assistance in the same time. The project will analyse together with the MoJ and the OAJB in May 2015 (month 9) the request for funding to the minister of finance and will discuss in September 2015 (half year 3) the negotiations for the budget 2016. The ministry of finance requests a more convincing justification of the requested budget, at best a calculation “costs per case” to be convinced to give priority to the demand coming from the judiciary (in regard to all



other demands from other sides). Following to this activity the project will elaborate until April 2016 a report showing the status quo and present needs and until April 2017 (for the budget 2018) a report with a rolling forecast of the needs in Court rooms.

#### Indicators for output

- Minutes of the joint meetings preparing budget requests in May and September.
- Budget requests 2015 (for 2016) contain more sophisticated justification (if not applicable: budget training agenda).
- Budget increase: An indicator for the capacity of the judiciary and for EU accession is the total amount for the OAJB and the increase of the investment budget (as savings are realized in this budget line). An outstanding result that cannot be guaranteed would be an increase of the budgets of all judiciary institutions until 2018 (3 % of the state budget for the judiciary, all budgets cumulated).

**Activity 1.2.3: Support the "zero tolerance" policy regarding corruption and /or misuse of funds inside the MoJ and implement internal control standards, assuring coordination with the Government's overall anti-corruption strategy.**

This activity assumes that an anti-corruption strategy is in place. The latest version is under process and not yet available.

### Findings

Fighting corruption has been activities of other projects like the EU funded project on the "Assessment of the anti-corruption framework in Albania", PAMECA and OPDAT. Although it is not foreseen that EURALIUS has a leading role in establishing legislation in order to fight corruption, the judicial reform (activity 1.1.1.) will include legislation to fight corruption. Depending on the scenario in MoJ and the Assembly EURALIUS might take over a role in assisting the drafting process.

Allegations of corruption within the justice system remain a serious concern, highlighted the progress report. HCJ dismissed one judge in July and suspended another judge pending a final ruling on corruption-related charges. The new amendments to the Code of Criminal Procedure introduce procedures regulating the lifting of immunity. The HCJ can authorise the deprivation of liberty of judges and personal or house searches at the request of the prosecution, while for the judges of the High and Constitutional Courts it is the GPO who must request that the HC authorise the lifting of immunity. Under the amendments to the Law on the HCJ, members of the Council have to convene within 24 hours to decide on the prosecution's request for arrest and search. Corruption cases for ordinary judges and prosecutors are to be handled by the Serious Crimes Court, while such cases for members of the High and Constitutional Courts remain under the jurisdiction of the HC. These procedures must ensure in practice the full accountability of judges and prosecutors under criminal law.

Article 27 of new Law on ASP no.104/2014 approved on 31<sup>st</sup> July 2014 provides the establishment of the National Bureau of Investigation. The National Bureau of Investigation is a special structure of the State Police. This structure shall perform tracking and investigative activity in compliance with criminal and criminal procedural legislation in the field of corruption and criminal activities related to it. It shall exercise

competences in the entire territory of the country. In September this year the General Director of ASP has ordered the establishment of the some working groups to draft the necessary sublegal acts. PAMECA is assisting ASP.

Joint Investigation Units are specialized structures in the fight against corruption, economic crime, money laundering and cybercrime. A new specialized unit has been established recently in the Prosecutor's Office of Serious Crime Court to investigate high level of corruption.

The efforts to fight corruption in general and corruption in public sector in particular are increased during 2014. There is an increase with 45% on the number of registered proceedings for corruption offences in public sector and an increase with 49% of the number of defendants. It is increased the number of cases sent to court with 47% and the number of defendants sent to court by 39%. Concerning passive corruption of the persons exercising public functions it is increased the number of registered proceedings with 35% this year and with 29% it is increased the number of defendants sent to court. Concerning corruption in judicial system during the first 9 month of 2014 are sent to trial some justice officials including two judges, one prosecutor, one court chancellor etc. For criminal offence of hiding of property 3 other judges are under investigation.

The Office of the Anti-Corruption National Coordination has finalised a National Anti-Corruption Strategy 2014-2017, in March 2014 and is currently preparing Anti-Corruption action plans which are expected to be adopted very soon. Based on this action plan for the justice sector, EURALIUS shall support MoJ and the other institutions in the implementation of this action plan. From the EU Delegation side comments urged the monitoring and reporting mechanism to be prepared and adopted together with the strategy, indicators to be revised and also measures in several fields to be strengthened. During the 6 October Conference ENCJ put forward suggestions, furthermore the EU funded project "Assessment of the anti-corruption framework in Albania" elaborated recommendations which still taken into consideration in the revision of the action plans.

### EURALIUS experts and counterparts

- Team 3 and staff of MoJ.
- One international MTE regarding controlling standards (4 weeks, second year)

### Activities and timing

Finalisation of the anti-corruption strategy and implementation of anti-corruption legislation (USKOK model if requested). This legislative process is not monitored by EURALIUS so far. However, EURALIUS might handle the fight against corruption of judges and prosecutors within activity 1.1.1. The finalisation of the strategy and a first assessment of the situation within the MoJ start on month nine and might last until the second half year of implementation.

Depending on the legislative framework an assessment will be done where corruption and /or misuse of funds inside the MoJ may occur. Possible areas are employment of staff, tender procedures, attached entities (state commissioner on legal aid) and may be even legislation (half year 3).

Follow up of recommendations of project “Assessment of the anti-corruption framework in Albania”, output 8 and 9. The following steps are proposals for anti-corruption measures (such as rotation of the staff handling procurement matters, four eyes principle) and the identification and implementation of internal or external control standards (half year 4 and 5).

### Indicators for output

- Assessment of possible areas of corruption in the MoJ
- Proposal for internal control standards
- Training needs assessment for staff in corruption sensitive entities and for controllers
- Manual “anti-corruption in the MoJ”.

**Activity 1.2.4: With the aim of establishing a clear track record of investigations, prosecutions and convictions, support the capacities of the MoJ to elaborate statistics and improve the reporting system in coordination with the GPO, Ministry of Interior, the ASP.**

#### Findings

The MoJ keeps all the harmonized statistical data coming from GPO and ASP on investigations and prosecutions. Both these two institutions report regularly the statistical data to the MoJ. An assessment on how the statistical data are kept and of the track record is necessary aiming at identifying problems and improving the situation.

However Albania needs to increase its efforts to build up a consistent track record of investigations, prosecutions and convictions in all areas and at all levels. A clear track record will serve to have a clear picture of the functioning of criminal justice institutions and their performance. The quality of statistical data on corruption needs to be improved.

EURALIUS will follow up with ACFA recommendations on improving the legal and institutional framework for the production, collection and processing of statistics on criminal proceedings.

#### EURALIUS experts and counterparts

Team 1, with contribution of Team 3

#### Activities and timing

- Recommendations to improve the statistical management (half years 3 and 4)
- Working Groups with the actors involved (half years 3 and 4)
- Other coordination measures among the actors involved (half year 5 and 6)

#### Indicators for output

- Status Report
- Working groups minutes
- Assessment report

**Activity 1.2.5: Improve the human resource management in the MoJ regarding appointment and the transfer of personnel based on close consultation, meritocracy and clear and pre-defined criteria, carefully following developments with and implementation of the new Law on the Civil Servant.**

### Findings

The MoJ employees currently about 112 persons (see annex 6). In previous times new governments may have fired the staff in the ministries and employed, may be not always based on job descriptions and assessments, inexperienced staff which was deemed to be politically in favour of the new government. The new minister of justice continued with the chef of cabinet and uses experienced staff in high ranking positions. According to Law no. 8678, dated 14.05.2001 "On organization and functioning of the MoJ", the Minister, the deputy Ministers, as well as the chief of staff, its councils and the cabinets secretaries are considered political staff. The project activities will not deal with politically appointed staff.

The legal situation of the staff is effected by the development of the legal situation of all civil servants, which became quite complicated.

Law no.152/2013 "On civil servants" which has abolished Law no.8549/1999 "On civil servants", provided initially that the new law shall enter into force on 1 October 2013. The CoM adopted the Normative Act no.5, dated 30.09.2013 that stated that the new law shall enter into force on the said date 1 October 2013, but shall produce effects 6 months after entering into force.

On 05.02.2014 the CC, based on the request of 36 members of the Assembly, upon decision no.5, decided to repeal the said Normative Act as being unconstitutional; The said decision, enters into force on the publication day, which is 25.02.2014.

To this end, recruitment of civil servants was frozen from March to July to ensure proper implementation of the new legislation.

The government adopted ten by-laws, covering significant issues such as recruitment, transfer, promotion, dismissal, the description and classification of job positions and the new senior management staff. From April to September, the Department for Public Administration produced five sets of guidelines on job

descriptions, disciplinary measures, the competencies of the Restructuring Committee, lateral transfers and executive positions through open competitions.

Today the employees of the Ministry are either civil servants or they work under a employment contract according to the Labour Code. It is assumed that all staff falls under the sphere of civil service according to Decision of the CoM no.142, dated 12.03.2014 "On description and classification of work positions in the public administration". This means that the staff which was employed until 25.02.2014 shall be part of the evaluation/certification (scan) process to be managed by Department of Public Administration. According to Chapter IV "Transitory provisions", of the Decision of the CoM no.116, dated 05.03.2014 "On status of the civil servants, and employees which benefit from Law no.152/2013", as amended upon Decision of the CoM no.532, dated 06.08.2014, the said scanning process was completed (for all institutions, including the MoJ, except for the Ministry of Defense structures) until 30.10.2014. In case the employees fail in the process of evaluation (i.e. because they have not been employed in compliance with the required qualification for the positions etc.), according to article 65 and 67 of Law no.152/2013, the employment relationship with the Ministry will be terminated by virtue of law.

According to chapter II.5 of the Decision of the CoM no.142, dated 12.03.2014 "On description and classification of work positions in the public administration" all employees of the Ministry which are appointed in the following positions:

- general secretary,
- the directors of the general directorate,
- directors of the subordinated directorates,
- head of sectors, and
- the officers/employees,

After completion of the assessment by the Department of Public Administration shall be considered civil servants; their rights and duties, as well as their performance evaluation for the future shall be carried out in pursuance with Law no.152/2013, and its sublegal acts.

The rest of the employees of the Ministry (i.e auxiliary staff, sanitary staff) whose position is not classified as one of those mentioned in chapter II.5 of the Decision of the CoM no.142, dated 12.03.2014, shall be employed based on an employment contract in accordance with the provisions of the Albanian Labour Code, Law no.7961/1995, as amended.

#### EURALIUS experts and counterparts

- Team 1, MoJ and its human resources department
- One international MTE regarding the development of a HR policy (3 weeks);

#### Activities and timing

In a first step the current status of the staff needs to be verified. It is assumed that the staff in place working in one of the directorates on the tasks of the MoJ is working under the civil service law and that the project is focusing on them (excluding other staff). This needs to be checked and confirmed in a meeting with the human resources department (month 7 or 8 in year 1).

In a second step the new legislation in place and first experiences need to be assessed. In the case the legislative framework is more or less complete and working in practice in general, the legal basis might be complete. This needs to be checked in half year 3.

Depending on the findings possible improvements or training needs will be identified. The future implementation (half year 4) depends on the quality of existing job descriptions, representation and career plans, the level of expertise and practical experience in the relevant department and may range from training to practical coaching in staff decisions and leadership. At best the staff in the MoJ feels secure and loyal, is qualified and trained, works happily and efficient and envisages a career.

#### Indicators for output

- Report “staff in the MoJ under the civil service law”
- Assessment “Human resources in the MoJ”.
- Report “Human resources recommendations in the MoJ”.



**Activity 1.2.6: Support the Budget and Finance Directorate of the MoJ in procurement proceedings and optimal allocation of resources.**

Findings

In the current structure of the MoJ no specific department or unit is foreseen for public procurement of goods/services (see Annex 4 and 6). Upon order of the Minister (generally issued once a year) a public procurement commission for the so called “small purchases” is appointed. Such commission is composed of three members, one being the chairman of the commission and two members, one from the financial department, one legal staff. The threshold provided in the Albanian law for the small purchases is 480 000 ALL (circa. 3.500 EUR).

As regards the so called “big purchases” i.e. above the amount of is 480 000 ALL (circa. 3.500 EUR), a special (ad hoc) commission (composed of minimum 3 persons) is appointed upon order by the Minister.

As a general rule, the institutions under the jurisdiction of the MoJ handle the public procurement process for small purchases independently, based on the allocated funds. As regards big investments (“big purchases”), the procurement procedure is handled by the MoJ. Considering that there is not a specific department handling the procurements, having a clear job description of officers, procedures, services and goods to be purchased, it is difficult to assess the modality how the procurement is done, to what extent the subordinated institutions perform procurement independently, and the cases where the Ministry performs the procedure on their behalf (especially with regard to the General Penitentiary Directorate which has made investments during this year).

As regards, the procedure for the procurement of the allocated funds, according to Law no.9643, dated 20.11.2006 “On public procurement” all institutions which purchase services or goods are obligated to comply with the provisions of this law and its sublegal acts. Based on the provisions of article 36 and 37 of the said law, and the sublegal acts implementing the law, all Albanian institutions are obligated to perform the purchase of goods/services electronically (e-procurement).

As no current problems have been reported this activity starts later.

### EURALIUS experts and counterparts

Team 1 and the directorates in the MoJ. One international MTE to assist in procurement standards (2 weeks).

### Activities and timing

- Evaluation of practical handling (half year 4), possible adjustments of the organizational structure, and control mechanisms.
- Assessment of training needs and desired support activities (half year 5)
- Coaching upon request (when procurement procedures are upcoming or half year 6)

### Indicators for output

Report on evaluation and assessment.

### **Result 1.3: Access to courts is open to anyone.**

**Activity 1.3.1: Provide support to the SCLA and the implementation of recent amendments to the Law on Legal Aid, providing for more support to vulnerable groups at the local level.**

This includes the provision of support regarding the necessary budget allocation to set up local offices in order to encourage development of efficient legal aid services at local level. This activity will also include close cooperation with the NCL and local branches because of their key role in encouraging lawyers to participate in legal aid schemes as well as their essential role in supplying defense attorneys for indigents in criminal cases.

#### Findings

In Albania a Law on Legal Aid was adopted in December 2008 and entered into force in April 2009. At the moment, however, access to justice is not equal for all citizens. The Progress Report 2014 urges in regard to access to justice, the functioning of the SCLA should be improved and recent provisions on Legal Aid providing for the establishment of regional legal aid offices should be implemented. Judicial fees deter many citizens and application procedures are too cumbersome.

Currently the court fees are paid at the courts either in cash or with proof of having paid the amount at the bank. The exception to pay court fees needs to be applied at the SCLA, but it seems that for such an application a proof is needed of having started the court proceedings and therefore they need to pay the court fee first. The project will have to analyse carefully whether this inconsistency is based on deficient legal provisions or just on an incorrect application of the law. Proposals for improvements might foresee for example more exemptions from judicial fees for certain categories of citizens, or provisions that registering in ICMIS or the use of a proper registration at [www.e-albania.al](http://www.e-albania.al) is sufficient for the application for legal aid and the establishment of a comprehensive network of legal aid offices (legal clinics).

Furthermore, adequate mechanisms for the objective assignment of lawyers to cases will have to be developed. Another option could be to introduce pro bono service of private lawyers, in collaboration with the legal aid offices or NGOs, in order to give free legal aid. The NCA could play a more active role in this regard.

Access to justice for vulnerable persons and victims of domestic violence seems still hampered by the lack of implementation of the law. Regarding the fight against trafficking in human beings, the Office of the National Anti-Trafficking Coordinator has revitalised the national referral mechanism, with an intensification of activities in the area of prevention and awareness-raising. In 2014 the Office of the National Anti-Trafficking Coordinator has been endowed with its own budget for the first time. Three mobile units were established in Tirana, Vlora and Elbasan, resulting in increased identifications of victims and potential victims. Since November 2013, they are able to obtain legal aid with a reduction of 30% in lawyers' fees.

The activity might include a constitutional aspect: Article 20 of the Constitution protects persons who belong to national minorities'. Only they have the 'right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic persuasion. They have the right to preserve and develop it, to study and to be taught in their mother tongue, as well as to assembly in organizations and societies for the protection of their interests and identity.' In its decision no.52, dated 01.12.2011, the CC by stating that the Constitution does not have a precise definition of the terms nationality or national minorities, even though these terms have been included in the constitutional provisions, it also regrets the lack of other legal acts or sublegal acts which define these terms.

Accordingly, the legislation and enforcement norms refer only to national minorities, and not to ethnic minorities in a broader sense. However, in Albania both national minorities (the Hellenics, the Macedonians and the Serbian-Montenegrins) and ethno-linguistic minorities (the Aromanians and the Roma; see Decision of the CoM No.633/2003 "On the strategy for the improvement of the conditions of the Roma") and ethnic communities with no status (like the Egyptians and the Bosnians) are living.

The project's steering committee should decide, in which sense the term national minority should be understood and on which groups the project should focus.

The result of this activity should help all minorities to have a better access to justice, including assistance and rights to translation and interpretation in the course of court proceedings for minorities.

## EURALIUS experts and counterparts

Team 5, input from Team 1

### Activities and timing

- An analysis on the status quo will be carried out and concrete measures identified to improve the support of vulnerable groups at local level (half year 3 of implementation).
- Following the findings assistance will be provided to implement the measures identified in half years 4 and 5 of the implementation.

### Indicators for output

- Report on the status quo;
- Report in the implementation of measures (depending on the findings).

**Activity 1.3.2: Support Albanian civil society institutions in their efforts to provide legal aid, in coordination with the SCLA and NCA.**

Findings

Free legal aid continues to be provided mainly by non-governmental organizations with donor funding. This situation is a result of the conditions of the legal aid system in place (activity 1.3.1) and the available budget (Activities 1.3.1. and indirectly 1.3.3.).

Tirana Legal Aid Society which started its activity in 1999 and was registered as an Albanian independent local not-for-profit organisation, is one of the NGOs that will be partner in this activity. It played a leading role in getting a legal aid law adopted in Albania. Furthermore, the Center for Civic Legal Initiative ([www.qaq-al.org](http://www.qaq-al.org)) offers gratis legal aid for victims of violence in the family. It enjoys the support of many international donors. The Albanian Foundation for Rights of Disabled People offers legal aid for disabled people ([www.adrf.org.al](http://www.adrf.org.al)). The Clinic of Law (Civil and Criminal Law) of the Law Faculty of Tirana, which is directed by law professor and students of the faculty has no status, but is an engaged in providing legal counseling to people in need. Without legal status, it is not in the position to present parties in court. The initiative is considering whether to establish itself also with a proper legal basis.

The immediate issue facing NGOs and state legal aid commissions is how to raise enough money to continue current operations. The risk is that primary donors are forced to cut back on support due to commitments in other regions. There is a serious risk that the legal aid NGOs will not survive and the state commissions will function at a bare minimum level. As of now, there is no medium or long term plan that will ensure that the major investment in legal aid will realize its potential, let alone survive. They need to diversify their ways of having financial support, an option might be to establish relationships with domestic donors, such Vodafone Albania Foundation. The changes in the legislation, making domestic donation fiscally for the companies attractive could provide an incentive. On the other hand, NGOs may make visible some “long term” aspects of their work, for the donators (such as the support of Roma with legal aid, in context of long term Roma inclusion) in order to secure long term support and sustainability in their financial support.

## EURALIUS experts and counterparts

### Team 5

#### Activities and timing

The first step will be an analysis of the status quo, includes a survey of the money spent by NGO's and the money to provide legal aid without external help. The analysis will put forward concrete proposals for the implementation of the legal aid law, including a mechanism for assigning cases to lawyers (half year 3 of implementation). In close co-operation with relevant Albanian institutions and NGOs a strategy for state and constantly decreasing donor funding in the area of legal aid will be elaborated (half year 4 and 5 of implementation).

#### Indicators for output

- Report on the status quo;
- Legal aid strategy developed.

**Activity 1.3.3: Review the existing **judicial fee structure with** a view to ensuring simplified and efficient access to justice for all parts of the Albanian society including underprivileged people.**

This activity aims at making the exemption to pay court fees simpler and quicker.

Findings

The judicial fee structure has changed last year. The fees have been reduced for improved access to justice. Prior to such amendment the amount of the court fees was substantially higher and created obstacles in terms of access to justice. The biggest concern was the tax fee for contractual cases with object of adjudication higher than 100.000 ALL. In this case the plaintiff was obliged to pay 3 % to initiate the lawsuit. Such amount was not reimbursable if the lawsuit would be rejected or ceased. For commercial cases with high pecuniary claims the court fee was the main obstacle.

The court fees are paid with the Secretary of the Court either in Cash or with proof of having paid the amount at the Bank.

The new court fees can be found in the joint Instruction of the Minister of Justice and the Minister of Finance No. 5668 dated 20.11.2013 “On the change of Instruction no.13, dated 12.02.2009 “On court administrative fees, state enforcement service, prosecution, notary, immovable property registration centre”. Below is a summary of the exact fees for each type of Lawsuit:

Lawsuits filed in the Court:	Court fee	OLD Court fee
For food pension	0 ALL	0 ALL
Lawsuit for reinstating to work	0 ALL	0 ALL
Fact determination	200 ALL	800 ALL
Lawsuit for dissolution of marriage	3.000ALL	9000 ALL
Lawsuit for invalidity of juridical actions	3.000 ALL	12.000 ALL
Lawsuit derived from contractual relationship, and liability on damages:		



I) For a value up to 100 000 ALL		
II) For a value over 100 000 ALL	3.000 ALL 1 %	12.000 ALL 3 %
Lawsuit for division of property	3.000 ALL	12.000 ALL

The said Instruction provides proportionate court fees starting from the first instance courts, then to the appeal court where the fees are lower than the ones of the first instance court, up to the Supreme Court, where the recurs on decisions of the court of appeal is free of charge. There is no fee hierarchy of payments related to court instances, and no fee differentiation between types of disputes (such as property disputes, trademark disputes etc.).

In this activity the aim is to make the exception to pay court fees simpler and quicker whereby taking into account that the fee structure is linked with the system of legal aid (activity 1.3.1) and the budget for the judiciary in total (Activities 1.1.3, 1.2.2). In the case an efficient legal aid system is in place court fees for other, more wealthy clients of the justice systems, mainly companies, do not need to be low. The project will look deeper into this mutual dependence.

#### EURALIUS experts and counterparts:

Team 4, study visit (judicial fee system, legal aid)

#### Activities and timing:

- Analysis of current status and background analysis (month 4 to 9);
- Consultation process, prioritisation and sequencing (month 10 to 12);
- Assistance in drafting amendments to Law on Legal Aid (if necessary) (half year 3);
- Assistance in implementation (half years 4 and 5);
- Study visit (half year 5).

Indicators for output:

- Report on status quo and alternatives to make the exception to pay court fees as simple and efficient as possible for both the Courts and the justice user.
- Technical assistance in the implementation of the preferred solution, report about improvements achieved (indicator: number of cases without court fees increased and amount of collected court fees increased).
- Law draft “amendments to legal aid”

## **Result 1.4: Transparency of judicial proceedings is enhanced:**

**Activity 1.4.1: Support the systematic publication of courts' decisions taking into account all necessary aspects relating to the protection of personal data.**

This activity aims at expanding the publication in line with data protection requirements. It also intends to support Albanian civil society institutions or educational institutions in becoming involved in programs for dissemination of information about court decisions.

### Findings

According to the Progress Report 2014 court rulings should be made available to all practitioners and the general public through a searchable database, with their reasoning and within a reasonable deadline. They should also comply with the recommendations of the Commissioner for Data Protection. The electronic database at the Judicial Documentation Centre needs to be updated.

The issue that needs to be resolved is to publish Court decisions systematically and in line with data protection requirements. The findings in the Inception Period are that courts publicize their decisions on their own websites and by the use of the ICMIS system. Only two Courts use the ARK-IT system (First Instance Court Tirana, and Serious Crimes Court, which uses both) and the First Instance Court of Tirana offers even more transparency and accountability than the other courts since they also publish minutes of hearings and interim decisions.

A proper safeguard of the protection of personal data and business data in published court (interim) decisions still is a problem in all of Albania. The parameters of publication for such decisions are not regulated by law as well leave space for data protection concerns. In this view, the Commissioner for Data Protection based on Recommendation No. 8 dated 05.06.2013 urges the courts to take appropriate measures to anonymise and protect the personal data of the parties involved in legal proceedings, before they are published. Moreover, the Commissioner has issued Instruction No. 15 dated 23.12.2011 where clear rules are defined on the way personal data should be processed in the judicial system. The extent to which this

instruction is being implemented remains unknown. Cases with juveniles involved are not published as a rule, and so no privacy concerns are present in these cases.

Assistance will be provided to the MoJ and the courts to help enhance the privacy in published decisions. Is it for instance possible to use better anonymisation software and is it might be considered to further limit the amount of jurisprudence published and increase the use of manual checks, in line with EU best practices. A working group will be established with participation of all levels in the judiciary and stakeholders such as lawyers to define the problems and do gap bridging. The non-governmental institution INFOÇIP, created 2004, with the aim to promote decision making transparency, good governance and rule of law, is dedicated to increase the access of the public to legislation and legal documentations (see: <http://www.infocip.org/al/>). Along with the Soros Foundation, they are working on the publication of the report “Delays in the arguing and delivery of the courts decisions”.

#### EURALIUS experts and counterparts:

- Team 4
- Counterparts: Courts, MoJ, COP, Commissioner of Personal Data Protection;

#### Activities and timing:

- Analysis of current requirements to data protection (month 4 to 7)
- Analysis of current publications (month 4 to 7)
- Assessment of the problem in meetings with MoJ and Courts (month 9 to 10)
- Assistance in drafting a strategy to overcome the problems (month 11 to 12)
- Strategy to secure systematic publication (half year 3 and 4)
- Assistance in making amendments to Laws (when necessary)
- Assistance in implementation (until end of project duration)

Indicators for output:

- Report on the status quo of publications of Court Decisions and compliance to the National Albanian and EU Data Protection Requirements;
- Elaboration of a strategy to the privacy problem with an implementation plan;
- Providing assistance in the implementation of solutions.
- Decisions are publicated to a higher extent (indicator: number of published decisions increased, time between decision and publication date respects the law to a greater extent or became shorter).
- Report of Commissioner of Personal Data Protection.

**Activity 1.4.2: Support and the **Judicial Documentation Centre** among other measures in updating the electronic database and promoting its use among relevant judicial staff; explore the status of other electronic data bases at the SoM, MoJ and elsewhere assisting in planning for expansion and coordination of them.**

### Findings

The judicial documentation centre is the office to save the files. It has nothing to do with the publication of laws and other information, which is done by the official publication centre (see below).

Judicial documentation is collected and stored/archived digitally as well as in hard copy format. Responsible for archiving the hard copy judicial documentation are the first instance courts. Consequently all the districts courts in Albania administer the case files, even those having been dealt with/ruled by higher instance courts. On the other hand, the MoJ runs the webpage ([www.gjykata.gov.al](http://www.gjykata.gov.al)) containing information on the judiciary – organisation, legislation etc., - and it is accessible also for the citizens. The latter may download the decisions they are interested in, provided they enter certain key words, such as names of parties, name of judge, etc. The time range within which such judicial decisions may be downloaded is not clearly ascertainable, since not all the courts have put their decisions online in a unified fashion.

Tirana district court poses a specific example, it being the biggest first instance court in the country. This court moved to set up a judicial documentation centre in an attempt to provide for safer storing premises for the judicial documents. In 2013 two employees were involved in archiving the judicial files falling within the time period 1960 – 1998. The files from 1988 until 1995 were even recorded digitally. The files archived in these premises are almost entirely civil case files with some random criminal files being found there accidentally. The background to this move was a flooding which occurred in 2001 at the judicial district court of Tirana, damaging a considerable number of judicial files. Another category of files is dating back before 1960. It is not clear where are stored or whether they are still existent in public offices.

According to rumours a considerable number of the judicial files got lost during the 1997 rioting which was sparked by the fall of pyramid schemes. Violent mobs ransacked the public buildings and the employees/responsible officials could only save the official documentation by hiding it/taking it home. This intention was generally good, but later lots of files were not brought back to the archives, being beyond any sort of control during the entire occurrence. Consequently, interested citizens state they have to pay nowadays considerable amounts of money in order to obtain copies of these documents, otherwise they can never get to them.

Another example, where official documentation might have been taken away illegally, is reported for 1994. The law on notaries was initially approved in that year and all the public notaries being in public offices switched to private practice. While doing so they are suspected to have taken with them the entire documentation belonging to the public office they were assuming at the time.

#### Additional findings

The documentation of legislation concerns the publication of laws.

The OPC is the public institution legally assigned to publish the Official Journal and the Bulletin of Official Notifications as well as to maintain Electronic Archives.

The Official Journal contains the publication of 'publishable acts'. These are laws, decrees of the President of the Republic, normative acts of the CoM, normative acts of ministers and heads of central institutions, decisions, resolutions and statements of the Assembly. Publishable acts are as well decisions of ECtHR pertaining to Albania, decisions of the CC, decisions of Joint Chambers of the HC streamlining the case law, all other acts, the publication of which is mandatory according to the pertinent laws and an annual index (chronological listing of all legal acts).

The *Bulletin of Official Notifications* publishes the entire institutional measures/notifications/procedures which need to be made public.

The *Electronic Archives* publish online all legal acts issued by the public institutions.

The COP is further tasked with archiving the originals of acts coming from institutions for publication and with making consolidated publications of legal acts, if amended,

as well as with making various occasional publications, such as codes, packages of laws for a certain field of activity.

There is also INFOÇIP, which deals with access of the public to legislation and legal documentations (see: activity 1.4.1).

### EURALIUS experts and counterparts

Team 1. This activity is linked with activities 1.6.3 (publication of HC decisions) and 1.7.5. (access to legal databases) handled by team 4. Depending on the findings team 1 or team 4 might take over all three activities.

### Activities and timing

In regard to the files the legal basis need to be clarified. It need to be distinguished the original file (limited access to parties, unlimited access to judiciary) and the published version of the judgement, respecting the data protection. In an assessment, the problems need to be sharpened. The storage of files is a legal problem (access, duration of storage, access to stolen documents against illegal payments, secure handling after the end of storage). It is a practical and financial problem as well (secure storage room and handling system like in libraries). This assessment is not urgent and is postponed in half year 4.

More important is the publication issue. So far no website is available where consolidated versions of the laws in force, showing previous amendments and English translations, can be searched and downloaded. The MoJ does not dispose of a database of consolidated last versions of laws. EURALIUS III had published several acts at its website, these published documents did not clearly indicate the version of the laws. It was and is a severe challenge to set up a collection of updated legal acts. The project team started to collect the relevant laws and other legal acts and to publish on their website (ongoing activity until the end of the project's duration).

In a coordination meeting, including SoM, a possible way for further advancement should be agreed (half year 3).



Currently the MoJ is negotiating with Austria in order to purchase the software of its law information system RIS on which such comprehensive central publication could be based on. This could ensure systematic country-wide publication, improve transparency and search. The project is looking forward for a result. It is suggested to combine the activities related to publication and research in one place (MoJ or SoM or courts?). Independent from the availability of a tool this approach should be taken in the fourth half year.

#### Indicators for output

- Web-site with laws (consolidated versions in Albanian and English)
- Link-list with search tools (legislation, judgments, international search tools)
- Assessment on storage problems for court files, including recommendations for action.

**Activity 1.4.3: Improve the public relations of courts with the general public, working among others with the NJC and its relevant commission, the NJC Executive Council and the UAJ.**

### Findings

Previous EURALIUS projects addressed media training already. According to Order no. 6777/5, dated 30.09.2010 “Regulation on court public relationships” approved by the Albanian Minister of Justice, each court in Albania shall have an Office for Public Relations, under the authority of the court’s chancellor. This office is in charge of being in constant communication with the media. It prepares information leaflets, advises the Chairman of the Court on public reaction, maintains and updates the website of the courts; drafts press releases for the court. In practice such position was often filled by the IT-court officer, who basically performed duties in regard to the maintenance and update of the court website and system, since he/she didn’t have the qualification for performing the duties related to public relations (according to OAJB data’s all Albanian courts employ an officer in charge of “IT and public and media relation”). Only in the Regional Court of Tirana and the Appeal Court of Tirana an officer handles public and media relations.

The Albanian HC has provided in its structure the position of Head of Public Relation and Media. In practice, the people working in this sector deal with people’s complaints on files pending to be adjudicated or other information requested by interested parties and media coverage of the court activities (i.e. meetings of the Chief Justice, information on prominent cases etc.). The Supreme Court has not a “Press Judge”.

The introduction of the Press Judge has been discussed several times in the past, (an idea proposed by international partners engaged in projects in the judiciary) but judges of the HC and of other lower instances have not embraced this idea. The main reason for this hesitation has to do with the conservative approach of the Albanian judges arguing that “the court speaks through its decisions only”. Albanian judges basically think that a “Press Judge” would not help in changing the perception of the Albanian people on the judiciary and its decisions.

In the past, in practice the media coverage of the NJC was covered by the Head of Public Relation and Media of the HC. The NJC has elected three permanent

Commissions, one for relationship with other institutions and media coverage. The latest according to article 12, point 2, letter (c) of Law no.77/2012 “On organization and functioning of National Judiciary Conference”, is in charge of keeping relations with the Albanian Assembly, the Codification Directorate of the MoJ, and ensures that the work done by the Albanian courts is properly broadcasted in the media. In practice the activity of this Commission has been nearly inexistent. All information’s on the NJC have been published in the website of the Albanian Supreme Court, and its public relation office has dealt with media coverage issues in the past. The NJC does not have a professional webpage; At present, on initiative of the Chief Justice of the Supreme Court, in collaboration with USAID Just Project, the NJC shall be equipped with its own website.

On the other hand, the UAJ, being an independent organization of professionals, deals with the media coverage through general press releases or interviews of the Chairman of the Union, basically on issues that are related to judges accusations. In addition the new “National Albanian judges association” showed up as a new player in the field.

#### EURALIUS experts and counterparts

- Team 1 together with team 5 (media training)
- One international MTE regarding training of trainers in media handling for two weeks, delivering trainings in several courts all over the country (2 weeks).

#### Activities and timing

The lack of professional media coverage in the Albanian courts goes to the disadvantage of the courts itself, since the Albanian people are not informed properly on the reasoning of the court. As all tools are known, an awareness campaign is needed in order to convince judges, that selected cases, that might attract public attention, should be handled professionally. In small courts this can be done by colleagues and it will be rare but important. The timing depends on the availability of the MTE. The identification of the expert, possible trainers of the trainers or interested participants (court presidents, Albanian judges, representatives of the Union of Judges, prosecution office) and available training materials start in month 8

(April 2015). The campaign might take place later (between half year 3 and 6, depending on the findings and the availability of trainers and trainees) and not in the summer break. The campaign should include the discussion with regard to the introduction of the “Press Judge” for each court, hence substituting the current legal framework which provides that the Office for Public Relation is under the authority of the Chancellor.

Indicators for output

- Agenda media training, list of interested participants (if any), training materials.
- If applicable: Law draft to change the competence of the Chancellor.

**Result 1.5: Decisions taken by the HCJ regarding the status of judges are taken on objective and transparent criteria in line with EU standards.**

The composition, role, competences, organisation and functioning of the HCJ is one of the central aspects of the justice reform. The constitutionally established institution is sometimes perceived in the public as not functioning properly.

Recent amendments to the HCJ Law therefore aimed at introducing more tools for the accountability of the members and the body. They foresee inter alia in its Article 7/1(a) that a member of the HCJ is discharged by the NJC or the Assembly in cases of violation of the Constitution and the law. The President of the Republic had vetoed these amendments deeming them unconstitutional but the Assembly overruled the veto by majority vote and passed the law. According to the Progress Report, these amendments to the HCJ Law provide for only a limited and fragmented reform of this judicial body.

Few days after the entry into force of the amendments to the HCJ Law the Assembly established a Parliamentary Inquiry Committee into the alleged violations of the law perpetrated by the two HCJ, following a request of 39 ruling majority MPs for their dismissal. The allegations inter alia refer to

- Not appointing magistrates, though there were vacancies
- Though not appointed, these magistrates were paid by the state budget
- Magistrates graduated in June 2014 are not yet appointed
- By the HCJ's decision No 299/1, dated 30.1.2012 the HCJ openly exceeded the limits of the law, limited contrary to the law the power of the SoM
- Against Art. 28/1 HCJ Law announced vacancies without proposal of the MoJ
- Failed to appoint the chairs of 28 courts
- Appointed court chairs in contradiction with the law
- Promotions of judges contrary to the law
- Improper organization of the judicial system
- Grave violation of the Law non-considering the requests of the former Chair of the HC and former General Prosecutor
- Appointment of an inspector as judge of court of appeal contrary to law

On 23 October 2014 the Assembly dismissed the two members and on 30 November 2014 two new members were elected.

EURALIUS is not in the position to ascertain all facts, however, according to a preliminary assessment the following may be stated:

The HCJ is the state authority responsible for all decisions in regard to the status of judges. A necessary corollary for such power is accountability. A clear and comprehensive accountability mechanism for the members of the Council and the Council as body is still missing in the legal framework, however is an essential requirement according to European standards. It is assumed that the introduction of Article 7/1 into the HCJ Law providing the Assembly and the NJC the power to dismiss members of the HCJ has this objective. However, it is doubted whether this is the right means:

- It is questionable whether Article 7/1 HCL Law is in compliance with Article 6 ECHR. Following the ECHR jurisdiction the dismissal from – non-political - functions is to be considered as ‘civil rights’ and anybody has the right to a fair trial before an independent tribunal. Thus, under this perspective the decision on whether the conditions for a dismissal are met would have to be assessed and decided by a tribunal in the sense of Article 6 ECHR. A subsequent review procedure would be sufficient.
- The Albanian Constitution establishes the principle of separation of power and the independence of the judiciary. It is questionable whether the power of the legislative to dismiss a member of a body of a justice system institution is compatible with these principles. The concrete procedure of dismissal refers to the two members of the HCJ, who were elected by the previous Assembly, not including the third member elected after the last elections, so by the current composition of the Assembly. At least the appearance is that this is an interference of political power into the justice system. The question of constitutionality is pending before the Constitutional Court, which rejected the requests for interim measures.
- Even in case a provision like Article 7/1 HJC Law would be assessed as in compliance with international standards and the Constitution, it needs interpretation. Not any breach of a law may constitute a reason for dismissal. A

grammar interpretation might lead to the assumption that only violations of the law in conjunction with a violation of the Constitution or at least a qualified violation of a law might be a basis for a dismissal. EURALIUS is not in the position to assess whether the alleged violations can be ascertained and thus such a qualified violation occurred de facto. If ascertained, taking into account the amount and nature of the violations it would be reasonable to assume a qualified violation of the law.

- Anyhow, it is not in compliance with basic principles of liability to make single members of a collegial body liable for acts of the collegium. A member of a collegial body may be held liable only if this is foreseen in the law and the law establishes clearly the terms and conditions of such liability.
- In case the allegations would be true, they show the need for proper accountability mechanisms: for example, the establishment of a disciplinary tribunal. Such a tribunal may have to assess the disciplinary liability not only of the single judges but also of the members of the HCJ. Such a mechanism would need further maturation and would have to be based on amendments to the law and eventually also to the Constitution.
- Aside from these recent occurrences there seems to be a consensus that a review of the legal framework for the HCJ is a core piece of the justice reform. Following the structure of the ToR areas are identified, which could be in the areas of reform.

**Activity 1.5.1: Assist the HCJ in the implementation of its internal rules** in order to reduce discretion and improve transparency of the decisions; assist the MoJ and the HCJ in evaluating amendments to the 2001 Law on the HCJ to further these principles as well as resolve other problems that have been shown to exist.

This activity aims at a higher transparency of the internal organisation and functioning of the HCJ.

### Findings

The Composition of the HCJ is set out in Article 147 of the Constitution: the HCJ ‘consists of the President of the Republic, the President of the HC, the Minister of Justice, three members elected by the Assembly, and nine judges of all levels elected by the NJC.’ The President of the Republic is the Chairman of the HCJ. The HCJ, on the proposal of the President, elects a vice-chairman from its ranks. The vice-chairman organizes the activity of the HCJ and chairs its meetings in the absence of the President of the Republic.

In the Conference ‘Reforming the judicial system in Albania’, held on 6 October 2014, several speakers pointed out the need to review the composition of the HCJ with a view of depoliticizing it. Also according to the Venice Commission’s February 2014 Memorandum ‘the Commission’s delegation supported the idea that the HCJ should be depoliticized. Its members should be elected by a qualified majority in the Assembly and higher qualifications should be required. Currently, the HCJ is chaired by the President of the Republic. Again, a constitutional amendment would be required to change this. Alternatively, the President’s powers could be limited by introducing procedural safeguard by law.’

Regarding the participation of the MoJ as a member of the HCJ, the Opinion of the Venice Commission on a 2005 Macedonian Law notes that: “In order to minimize the impact of the executive power, the membership of the Minister of Justice in the State Judicial Council may be replaced with the right of the Minister of Justice to attend the sessions of the Council or membership without a voting right. “

In Opinion No 10/2007 the CCJE recommends, that ‘prospective members of the Council for the Judiciary, whether judges or non-judges, should not be active



politicians, members of the Assembly, the executive or the administration. This means that neither the Head of the State, if he/she is the head of the government, nor any minister can be a member of the Council for the Judiciary.'

In Opinion No 677/2012 the Venice Commission (regarding the Law on the Judicial Council in Montenegro) welcomed the parity between judicial and lay members in the Judicial Council and the election of the President from among the Judicial Council members who do not perform judicial functions (with the exclusion of the Minister of Justice). The Venice Commission did not express any position on the mechanism of election/appointment of the lay members, but suggested that it should be preferable that the lawyers and law professors elected by the Assembly not be members of the Assembly itself. In the view of the Venice Commission, entrusting the Assembly with the power to elect all the four lay members of the Judicial Council with a qualified majority is in keeping with the fundamental function of the Judicial Council to avoid both the risk of politicization and the risk of corporatist and self-perpetuating government of the judiciary.

The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) conclude: "...Regarding the composition of judicial councils ... they should not be dominated by appellate court judges". It was recommended that where court chairs are appointed to the council, they must resign from their position as court chair. Neither the State President nor the Minister of Justice should preside over the council.

It could be taken into consideration:

- The President could be excluded from the HCJ composition;
- Consequently, 2 members appointed by the President should be included, and the chairman of the HCJ should be the President of HC;
- The Minister of Justice should be excluded from the HCJ composition;
- Consequently, 1 member appointed by the MoJ would be included;
- The number of representatives from the Assembly should be increased to 6 members, elected or appointed by a qualified parliamentary majority;
- The actual "ratio" of internal/external members (10/5) should be better balanced to obtain a more even "ratio";

- The external members should be selected among law professors, lawyers or other jurists of recognized merits;

Currently the parity between judicial and lay members at the HCJ is not established in Albania. Clearly the inclusion of lay members from the ranks of legal, academic and civil society is of merit in avoiding perceptions of self-interest and self-protection as well as giving the judiciary greater legitimacy.

Furthermore, in the public discussion questions were raised whether the name of the institution should not just refer to the judiciary as the HCJ has competences only regarding the judiciary and not regarding other sectors of the justice system. In the context of the revision of the role and competences of the Prosecutorial Council, it was also questioned whether these two sectors of the justice system should have completely separate councils or one Council of Justice.

Article 147 of the Constitution foresees two competences for the HCJ: it 'decides on the transfer of judges as well as their disciplinary responsibility'. Furthermore, this provision establishes that the HCJ may discharge a judge 'for commission of a crime, mental or physical incapacity, acts and behaviour that seriously discredit judicial integrity and reputation, or professional insufficiency.'

The HCJ Law lists further tasks regarding judges of the courts of the first level and the courts of appeal. According to Article 2 HCJ Law the HCJ proposes to the President of the Republic the appointment, it decides on the dismissal, transfer, evaluation and disciplinary liability, sees to the qualification, appoints and discharges the chairs and vice chairs of the courts of the first level and the courts of appeal, appoints and discharges the inspectors of the Inspectorate of the HCJ and performs other duties specified by law.

Opinion No.10 (2007) of the CCJE which states that beyond its management and administrative role vis-à-vis the judiciary, the Council for the Judiciary should also embody the autonomous government of the judicial power. A review of the competences of the HCJ might be considered in the light of this opinion. In this regard the HCJ already in 2012 established a Working Group which also proposed broadening the competences of the HCJ, in order to include also matters in regard to the:

- determination of the number of judges in various courts as well as in regard to the
- organizational structure of each court, including matters regarding the supporting staff, in regard to the
- OAJB, created by law in 1998.

Thus, the tasks of the HJC are to be considered as part of the subject of the justice reform. Based on constitutional and legislative changes the HCJ will have to adapt the sublegal acts and to re-organize the internal set-up and procedures.

EURALIUS will address the issue of the internal organisation in the course of its implementation and support the HCJ to further improve it.

#### EURALIUS experts and counterparts

Team 2, counterpart HCJ, MoJ, Assembly

#### Activities and timing

EURALIUS will assist HJC in regard to the composition, competences and organisation and functioning of the HCJ and will envisage beyond this to provide comparative studies on the internal functioning and organization of councils for justice, analyse previous amendments of the HCJ Law, elaborate and implement internal rules in order to improve the transparency of the decisions. In the sequencing particular attention will be paid to the fact that no reform increasing the HCJ competence should take place until the HJC's appointments, transfer, evaluation and promotion systems are overhauled, and credible disciplinary processes are put in place.

The issues regarding the composition, the competences and the organisation and functioning were already classified as part of the justice reform. Thus the tentative plan of activities is the following:

#### Composition of the HCJ (constitutional review):

- comparative analysis (month 4 to 9);
- consultation on composition of HCJ (month 9 to 12, if not done within activity 1.1.1.);
- accompanying prioritisation and sequencing (month 9 to 12);
- Assistance in drafting amendments to Constitution and laws (month 9 to 12, if not done within activity 1.1.1.).

#### Competences, organisation and functioning of the HCJ:

- Analysis of current status (month 4 to 9);
- Comparative and background analysis (month 4 to 9);
- Consultation process (month 9 to 12);
- accompanying prioritisation and sequencing (month 9 to 12);
- Assistance in drafting amendments to Constitution and laws (if not part of activity 1.1.1. half years 3 and 4);
- Establishing sub-legal acts (half years 4 to 6);
- Assistance in implementation (until end of project's duration).

#### Indicators for output

- Status, comparative and background analysis prepared;
- Workshops/Round tables agenda and reports;
- Draft laws/amendments;
- Training, revision of sublegal acts (agenda, recommendation papers).

**Activity 1.5.2: Assist the HCJ in implementing the new secondary legislation governing the promotion and transfer of judges according to objective criteria.**

This activity shall strengthen transparency by making the promotion and transfer of judges less vulnerable to undue interventions.

Findings

The Progress Report 2014 points out that further measure are required to ensure that the appointment, promotion and transfer of judges are clearly based on merit and other objective criteria.

Proposals for appointment of judges to courts of first instance and appeal courts are - according to Article 2(a) HCJ Law – to be established by the HCJ. Articles 28 to 30/1 HCJ Law contain provisions on the procedure to be followed by the HCJ. Further rules are contained in sub-legal acts adopted by the HCJ.

Article 11 JP Law establishes the criteria for being appointed as judge. In particular, all candidates have to have inter alia completed the Magistrates' School, however 10 % of the total number of judges may be appointed among persons, who had previously worked as judges, however did not attend the SoM.

Article 12(2) JP Law provides for additional criteria for being 'appointed' as judge of the serious crime court, which require inter alia having worked not less than 5 years in the court of first instance. Article 12(3) JP Law establishes the criteria for being appointed as judge of a court of appeal, inter alia requiring having worked for no less than 7 years in the court of first instance. The criteria for being appointed as judge of the administrative court are foreseen in Article 5(2) and (3) AC Law, in particular candidates have to have at least 5 years' experience as judge.

It should be noted that the law does not clearly distinguish between appointment, transfer and promotion. Generally appointment is the act to appoint a judge, who at the time of appointment is not acting as judge, while transfer and promotions are moves of acting judges within the system. This differentiation is considered essential as Article 137(3) of the Constitution requires only for appointment the involvement of the President of the Republic upon proposal of the HCJ. Additionally, for acting judges the regime of evaluation is applicable and a merit based system would base the decision on career development not only, but mainly on the results of evaluation.

Transfer of judges is one of the competences which Article 147(4) of the Constitution assigns clearly to the HCJ. Accordingly, pursuant to Article 1 HCJ Law the HCJ is 'the state authority responsible' inter alia 'for the transfer ... career and oversight of the activity of judges of the courts of the first level and the courts of appeal'. Article 147(5) of the Constitution and Article 21 JP Law furthermore precise that a transfer may not be done without the consent of the judges, except when the need for reorganization of the judicial system requires it.

Furthermore, Article 21(2) JP Law stipulates that 'when a court does not have the ability to examine one or more cases within reasonable time periods, HCJ may, on the reasoned request of the chairman of the respective court, delegate judges from other courts. The delegation of judges is done only for specific cases. The HCJ decides on the criteria and manner of delegation of the judges, taking account of geographical nearness, individual workload of the judges and the sections to which they belong.' It is assumed that 'delegation' is a temporary transfer of a judge. As Article 147(5) of the Constitution foresees only one exception from the requirement that judges have to consent on the transfer, i.e. the reorganization of the system, the case mentioned in Article 21(2) JP will need the consent of the judge. It is questionable whether this is a sufficiently efficient instrument for the HCJ to ensure the functioning of courts in case of non-permanent increase of workload or transitory absence of judges.

It might be advisable for the HCJ to be able to have some judges in a regimen of mobility/ availability, compensated with an extra salary, in order to attend the pressing needs of a vacant post, usually resulting from pregnancy, illness or other prolonged absence. This calls for a specific legal provision, setting up an extra framework, at least of 15/20 judges, in a mobility regimen, as it happens in most of the EU countries.

Generally stated, it appears that positions in central areas, like Tirana or Durrës seem to be more appealing than positions in the periphery. No clear rules are foreseen which criteria are to be applied for the regular transfers upon request of judges.

Also in regard to the determination of the number of judges, their assignment to courts as well as the assessment of transfer needs the competences, are distributed to various actors: The current overall number of judges in Albania is 383. This

number is set by a 2012 Presidential Decree (No. 7818, dated 16.11.2012). Before approving the number of judges, the MoJ conducted a study on the needs of judges and financial resources. That proposal was discussed in a HCJ's plenary session. In regard to the competence of the HCJ to overlook the transfer, the HCJ needs the tools to monitor the workload, efficiency and needs of the courts. It can be suggested that the HCJ itself conducts further analysis to establish the optimal number of needed judges, according to its knowledge on backlogs and length of proceedings. In line with that, the HCJ has declared that the HCJ is available to work closely with the MoJ to conduct a deep analysis. By now no further steps were taken.

Thus it seems recommendable to revise the legal framework for transfer, the standard procedures and to clarify the competence in this regard between the MoJ and the HCJ.

Article 12(2) and (3) JP Law contains criteria for the appointment of judges to the courts for serious crimes and appeal courts and Article 16 JP Law sets out the criteria for being appointed as chair of a court. The same provisions apply to the procedure for promotion, i.e. Article 28 to 30 HCJ Law as for appointment, Article 30/1 HCJ Law establishes special rules for the appointment of chair persons of courts.

Article 14 JP Law stipulates that 'for the purposes of the professional career, the HCJ keeps a permanent list of the ordering of judges for ongoing work results, which is updated every six months'. From the context, as this provision is following the provision on 'evaluation', it may be argued that the basis for promotion is evaluation. This interpretation seems to be supported by Article 16 JP Law, which establishes the criteria for the appointment as a chair of the court and stipulates that such candidates – inter alia – have to have been evaluated 'very good' by the HCJ the last two times.

In the plenary session on 17 January 2014, the HCJ has established a working group to amend the whole scoring and promotion procedure for judges and to further improve it. By now, no final drafts were elaborated.

According to Article 147 of the Constitution the HCJ may dismiss a judge for commission of a crime, mental or physical incapacity, acts and behaviour that seriously discredit judicial integrity or professional insufficiency. The HCJ Law and the JP law contain more detailed rules on disciplinary relevant acts, so regarding the commission of a crime, acts and behaviour that seriously discredit judicial integrity or

professional insufficiency disciplinary procedure may be applicable; however provisions which determine the conditions and the procedure in case of mental or physical incapacity are missing in the law. In this regard also a Working Group established in 2012 by the HCJ proposed the 'introduction of a procedure which provides a clear legal basis for the dismissal of a judge from office by the HCJ in the cases foreseen in Article 147 of the Constitution (in cases of physical and mental disability)'.

### EURALIUS experts and counterparts

Team 2, counterpart: HCJ, courts, MoJ, Assembly

### Activities and timing

The following activities are planned:

- Analysis of current status (month 4 to 9)
- Comparative and background analysis (month 4 to 9)
- Consultation process (month 9 to 12)
- accompanying prioritisation and sequencing (month 9 to 12)
- Assistance in drafting amendments to Constitution and laws (half year 3 and 4 of implementation)
- Establishing sub-legal acts (half year 5 and 6 of implementation)
- Assistance in implementation (half year 5 and 6 of implementation).

### Indicators for output

- Status, comparative and background analysis prepared
- Workshops/Round tables
- Draft laws/amendments
- Training, revision of sublegal acts



**Activity 1.5.3: Assist the HCJ in the implementation and/or review of the evaluation system for judges. Assist the further development of the inspection system taking into account international best practice and EU standards and with a view to a long-term solution (beyond the current MoJ) for the overlapping inspectorates.**

This activity aims at increasing efficiency of how inspections are performed. It shall also help to make a clear distinction between legitimate criteria for evaluation and non-legitimate ones (assessment of decision taking in court case) and provide a clear delineation of competences between the MoJ and the HCJ.

### Findings

According to Article 1 HCJ Law the HCJ is the state authority responsible for the professional evaluation and career of judges of the courts of the first level and the courts of appeal. Article 2 HJC Law specifies that the HCJ ‘decides on the criteria for the evaluation of judges, it oversees and guarantees the process of evaluation and it examines complaints of judges about their evaluation’. The HCJ is supported by the Inspectorate in this regard. In fact, Article 16(1) (d) and (dh) HJC Law stipulate that it is the Inspectorate to collect and process the data necessary for the professional evaluation of judges, in conformity with the criteria set by law. Furthermore, it prepares data about the professional ability of the judge. The evaluated judge has the right to be informed on the documentation and to submit his opinion in writing together with the respective arguments.

Further rules are to be found in the JP Law: According to Article 13(2) JP Law at least once every three years, the HCJ performs an evaluation of the professional abilities of a judge, in conformity with the decision approved by it on the evaluation criteria. Article 13(2) JP Law foresees a four scale grading in the evaluation: very good, good, acceptable and incapable. In a case of an evaluation “acceptable” the HCJ re-evaluates the respective judge within one year. According to Article 13(3) JP Law the evaluation “incapable” constitutes a reason for beginning the procedure for discharge from the office of judge.

For purposes of the professional career, the HCJ according to Article 14(1) HCJ Law keeps a permanent list of the ordering of judges for ongoing work results, which is updated every six months

Since the entry into force of the JP Law in 2008 it is a condition for being promoted to a position as chair of a court to have been evaluated two times by the HCJ with 'very good'.

The HCJ adopted two decisions establishing evaluation schemes: No. 193/2, dated 11. Mai 2006 and No. 261/2 dated 14. April 2010 in regard to the professional evaluation of judges.

Based on the first evaluation scheme the Inspectorate of the HCJ started the implementation of the evaluation system in 2007. By January 2013, the Inspectorate had submitted to HCJ for review and approval only 31 evaluation acts. By January 2014 the HCJ for the first time in Albania the first round of professional evaluation of judges for the years 2005-2006, under which 279 judges were evaluated, was completed.

Based on the second evaluation scheme adopted by the HCJ, which provides for clearer time standards, in 2014 the second wave of evaluation was started for the period 2007-2009. Currently few judges were evaluated two times (see following table).

<b>Evaluation Process of the Judges 2007-2009</b>	
Acts approved by the HCJ	49
Acts notified to the judges, awaiting to be reviewed by the HCJ	37
Exempted from the evaluation on different grounds	8
Acts to be concluded by the Chief Inspector	13
In process of drafting the final report by the inspector	10
In process of casting the lot and observation of the files in the courts by the inspectors	19
The number of judges, for whom the documentation is submitted from the court and the respective inspector has been assigned	54
<b>Total</b>	<b>190</b>

These data show that the evaluation system of judges cannot be considered effective and efficient due to the significant time lapse between evaluation and the reference period. This cannot be justified with the assertion that such evaluation cannot be managed in real time as the average duration of trial before the three instances is up to three years. A well-conceived system of periodic evaluation allows not only for the monitoring of a judge's performance and its progression over time but also for the early detection of problems, such as the high caseload and backlog which many judges confront and which can and should be addressed at an earlier stage.

The Greco Evaluation Report 2014 further draws the attention to the law lacks of well-formulated criteria for periodic evaluation of a judge's ethical qualities (as a continuation of the integrity checks that are carried out before appointment). Therefore it recommends the periodic evaluation of professional and ethical performance of a judge is conducted in a timely manner and that consideration be given to ensuring that the criteria for evaluating a judge's ethical conduct are objective and transparent, with due regard to the principle of judicial independence.

The results of the first evaluation round were the basis for establishing a final ranking list of the judges as required by Article 14(1) JP Law. The last update of this list occurred on 1 March 2014, so – contrary to the requirement of Article 14(1) JP Law - more than six months ago. The HCJ did not yet decide on whether the second evaluation results should be reflected in real time or only at the end of the whole process. Moreover, the HCJ needs to decide on whether to include in the list even the inspectors of HCJ since all the judges seconded to other executive institutions are included while the inspectors are not.

In Opinion No 753/2013 the Venice Commission expressed itself on ranking lists for judges: 'There is, however, no need and no justification for establishing an on-going ranking of all judges. This could lead to an improper competition between judges, which could compromise the judges' decisions. It might be sufficient to rank those judges that have applied for a promotion.'

Article 14(6) HCJ Law foresees also a professional and ethical evaluation for the Chief Inspector and inspectors, no less than once every two years a professional and ethical evaluation, according to the criteria and procedures defined by the HCJ.

No such evaluation was carried out so far. In the meeting on 17 October 2014 the HCJ established a Working Group in order to elaborate evaluation criteria and procedure for the inspectors to be approved by the HCJ.

As the currently applicable laws foresee only few provisions on the evaluation, the MoJ has elaborated a draft law governing the evaluation process. This draft is currently in the consultation process. EURALIUS has elaborated general remarks in regard to this law by taking in particular into account the new CCJE Opinion No 14 on the evaluation of judges, a recent Venice Commission Opinion on the Armenian evaluation system and the Kyiv Recommendations. These general remarks were submitted them – after having heard OSCE and OPDAT – to the Minister of Justice. EURALIUS proposed to establish a working group in order to review the draft involve also the HCJ in this activity and ensure compliance with international standards.

Inspectors currently are not obligated to undergo continuous training and there is no comprehensive training program in place. It could be considered to foresee a respective obligation in the law and to establish comprehensive training programs (see also activity 2.1.1.)

#### EURALIUS experts and counterparts

Team 2, counterparts: HCJ, MoJ, Inspectorates of the HCJ and MoJ, Assembly.

#### Activities and timing

EURALIUS is already involved in the revision of the legislative framework, the analysis of the currently applied procedures and the establishment and implementation of more efficient, transparent and objective evaluation schemes. The issue of evaluation is considered of high priority by the Minister of Justice. EURALIUS put forward general remarks on the draft and the first working group will be held in the first week of December 2014. It is expected that this draft is part of the justice reform and will have the following sub activities:

- Establishment of a working group (achieved)
- Comparative and background analysis/concept paper (month 4 to 9)
- Consultation process (month 9 to 12 if not part of the reform in activity 1.1.1.)

- accompanying prioritisation and sequencing (month 9 to 12)
- Assistance in drafting (amendments to) laws (month 9 to 12 if not part of the reform in activity 1.1.1.).
- Establishing sub-legal acts (half years 3 and 4)
- Assistance in implementation (half years 3 and 4), including training of inspectors and eventually the elaboration of a Manual for inspectors.

#### Indicators for output

- Concept paper/comparative and background analysis prepared
- Workshops/Round tables
- Draft laws/amendments
- Training, revision of sublegal acts

**Activity 1.5.4: Assist the HCJ in reviewing and amending the rules on disciplinary procedures against judges according to EU standards.**

This activity aims at establishing a fair process regarding disciplinary proceedings against judges, including the preparation of the trial and defendant rights (fair hearing, appeal).

Findings

According to Article 147(4) of the Constitution and Article 2(ç) HCJ Law the HCJ decides on the taking of disciplinary measures against judges. Only the Minister of Justice has the right to initiate a disciplinary proceeding: according to Article 31(3) HCJ Law the Minister proposes a disciplinary proceeding to the HCJ upon ‘a conclusion of an inspection’.

An inspection may be carried out on the basis of a complaint or ex officio based on other sources of information (i.e. media) by the HCJ’s Inspectorate or the Department of Inspection and Judicial Organization of the MoJ, the inspection service at the MoJ.

If in the course of a verification of a complaint, the Inspectorate of the HCJ finds ‘violations’, it may proceed as follows:

- In case of minor violations, the facts are registered for the professional evaluation of this judge, or the HCJ is informed and asked for the authorization to proceed with a general inspection of the judge on these grounds.
- In cases where the violations are considered to justify starting a disciplinary proceeding, the file is officially sent to the Minister of Justice.

There are only few provisions in the law regarding the inspection procedure, so the inspectors follow mainly instructions and guidelines, which are set out in a Manual.

Following the Memorandum of Cooperation between the Minister of Justice and the Deputy Chairman of the HCJ on avoiding of overlapping of powers in the judicial inspection (Memorandum of Cooperation), the inspection service at the MoJ follows the same procedure as the HCJ.

There is not (yet) a proper track keeping mechanism established which shows a consolidated picture of the number of complaints and the processing of these complaints. Anyhow some statistics from the recent period show the following: From 01/2014 to 06/2014 478 complaints were filed only at the HCJ, out of which 96 complaints are about delays in judicial proceedings. The inspection service of the MoJ is in process of establishing consolidated data gathering. Anyhow, it provided the following information: only in May 2014 a total number of 187 complaints were submitted, out of which 141 were submitted directly to the MoJ, 46 were forwarded by other institutions (e.g. Council of Ministers, the Ministry of Interior, President of the Republic, People's Advocate, etc.).

From 01/2013 to 10/2014 the Inspectorate of the HCJ submitted 43 files regarding 23 judges to the MoJ, out of which 24 files related to delays. So far the Minister has submitted a request for initiating a disciplinary proceeding for 8 of these judges: one request was withdrawn by the Minister, while for six other judges the HCJ finished the disciplinary proceeding by imposing sanctions and one is still pending.

In 2013 a total of 105 warnings have been issued, 21 on the delay of the reasoning of the decision and 72 relating to an insufficient work organization, resulting in the delay of the trials.

There are only basic provisions on the inspection procedure provided by law and the rights and obligations of parties in the phase of verification and investigation. This issue is just regulated by a normative act of the HCJ, thus easily changeable, or by a Manual.

In practice the inspectorates of both institutions face difficulties in evidence collecting as some institutions (for example in a concrete case: telecommunication service providers) refuse disclosing data with regard to the fact that the law foresees a disclosure only towards the prosecution service. The High Inspectorate of Declaration and Audit of Assets is specialized in regard to property and investigation in regard to unexplainable increase of wealth. There are no clear rules of cooperation between the inspectorates and the High Inspectorate of Declaration and Audit of Assets and as a rule the High Inspectorate of Declaration and Audit of Assets does not disclose data to the inspection service.

The definition of disciplinary misconducts in Article 32 HCJ Law have shown in practice to be too rigid in regard to the categorization as 'very serious', 'serious' and

'minor'. The delimitation between several elements is not always clear. The range of disciplinary sanctions is rather low and appears not always to allow determining proportionate sanctions. There are only basic procedural safeguards. According to the ECHR case law, at least the disciplinary proceedings relating to more serious conducts are subject to the guarantees of Article 6 ECHR.

In addition, there is no coherent system of discipline for members of the HCJ in their capacity as members. However, accountability is a necessary corollary for such a position. Article 7/1 HJC Law seems to intend to fill in this gap by providing that a member of the HCJ is discharged, respectively, by the NJC or the Assembly in these cases of violations of the Constitution and law, for commission of a crime, for mental or physical incapacity, for acts and conduct that seriously discredit his position and figure or one of the incompatibilities provided by law is proven.

There are no clear rules on the accountability of the HCJ as collegial body. As a necessary consequence of independence judicial councils should be accountable for their activities by submitting periodic and public reports which transparently show the principles on which they perform their functions and the outcomes from activities. At least clearer objectives, obligations to establish and implement strategic plans in order to ensure the achievement of the objectives within timelines and reporting obligations are generally good practice for the accountability of independent institutions.

### EURALIUS experts and counterparts

Team 2, HCJ, MoJ, Inspectorates of the HCJ and MoJ, Assembly

#### Activities and timing

- The Slynn foundation and ENCJ are willing to join into this activity by supporting experts and a round table, both financed by Slynn foundation, about the disciplinary procedures, including the set up of independent instruments to initiate disciplinary measures against the members of the HCJ.



- Analysis of current status (month 4 to 9), agreement with a joint agenda and timing perspective with Albanian and international stakeholders, including Slynn and ENCJ
- Comparative and background analysis (month 4 to 9), workshops with Slynn Foundation and ENCJ
- Consultation process (half years 3 and 4)
- accompanying prioritisation and sequencing (half years 3 and 4)
- Assistance in drafting amendments to Constitution and laws (half years 3 and 4 if not part of the reform in activity 1.1.1.)
- Establishing sub-legal acts (half years 5 and 6 of implementation)
- Assistance in implementation (until end of project duration).

#### Indicators for output

- Status, comparative and background analysis prepared
- Workshops/Round tables
- Draft laws/amendments
- Training, revision of sublegal acts.

**Activity 1.5.5: Support the "zero tolerance" policy regarding corruption in the HCJ and work with the HCJ to extend similar policy to the courts, assisting in the development and implementation of internal control standards and assuring coordination with the Government's overall **anti-corruption strategy**.**

This activity aims at ensuring the independence and impartiality of the judiciary.

### Findings

The Progress Report points out that allegation of corruption in the justice system remains a serious concern. The HCJ dismissed one judge in July and suspended another judge pending a final ruling on corruption-related charges. The Inspectorate of the HCJ has finished an inspection report, which will be on the agenda of the next HCJ meeting and has recommended the initiation of disciplinary proceeding of this judge.

The HCJ provided comments to the draft of National Anti-Corruption Strategy for the years 2014-2017, which however is not yet adopted (see also activity 1.2.3)

No comprehensive policy was adopted so far by the HCJ for the judiciary. It needs to be ensured that such a policy is in compliance with the National Anti-Corruption Strategy.

### EURALIUS experts and counterparts

Team 2, input from Team 3, counterpart: HCJ, courts

### Activities and timing

The team will assess the existing policy regarding corruption within the judiciary (like activity 1.2.3).

### Indicators for output

- Status report
- Strategy elaborated
- Implementation monitoring report

## **Result 1.6: Efficiency of the High Court:**

**Activity 1.6.1: Provide assistance to the HC in improving its internal organizational structure, among other things as to reduce the backlog of cases in line with the latest amendments to the law, and also with special attention to the changes necessitated by the introduction of a new administrative chamber.**

### Findings

The HC is supplied with cases from First Instance Courts, Appeal Courts, Administrative Appeal Court, and the Serious Crimes Appeal Court. It faces an enormous caseload and backlog (8874 civil cases and 2417 criminal cases in 2013).

The conclusion is that a high variety of cases can be forwarded directly to the HC without prior filters. This is a key factor in the high workload of the HC. Reduction of the backlog can only be achieved if the output in decisions on cases of the HC is higher than the number of incoming cases. Since in the Inception Period the information is that the HC prepare remedies, by limiting the variety of incoming cases by change of the law, the expectation is that the number of incoming cases will be limited by law. (see also activity 1.6.2.).

However, the effort under this activity will primarily be to assist in increasing the capacity to produce final judgements in cases by enhancing the capacity to handle cases more efficiently with the same or even higher quality. Therefore the internal organisation is subject of investigation and improvement since the court management and internal division of work and its work processes is key to the improvement of the performance of the HC in all areas of Law. Ever since the new Law on Administrative Courts has come into force on the 4th of November 2013 there is a need to look closer to the development and functioning of the administrative panels since the amount of cases expected to come from the administrative courts is very high resulting in a potential high backlog of administrative cases, and this why this is a priority of this activity in the first half year.

## High Court as Court of Cassation

The HC is overloaded with cases with the effect of not ensured quality at the highest level and lack of guidance and unifying practices for other courts. In 2013, 5600 cases had been settled at the HC but 5400 new cases had arrived.

The amendments of 2013 to the HC Law reduced from five to three the size of the panel considering the admissibility of the appeal, and the jurisdiction of the Court was altered so as to exclude trivial cases from its scope.

In most European countries High Courts have restricted jurisdiction, for example only on questions of law of fundamental importance or which do not take any evidence and look into points of law only nor do they deal any first instance jurisdiction. This allows the supreme judicial body to focus on solving questions of law and on unifying the application of the law. The Progress Report 2014 claims that draft amendments to the Codes of Civil and Criminal Procedure that have been assessed by the Venice Commission are expected once adopted to reduce the workload of courts.

In fact, the Venice Commission in its Opinion No 754/ 2014 on the draft amendments to the Civil Procedure Code of Albania refers to the draft Article 432/1 of the Civil Procedure Code which maintains the general possibility to appeal to the HC but excludes the possibility to appeal to the HC in eleven cases, which concern mostly intermediary, procedural decisions and appeals against decisions of nullity. The Venice Commission considered this approach of exclusion of appeals to the HC as 'reasonable' and as able to 'contribute to a reduction of the number of appeals to the Court. It remains however doubtful whether these exclusions will be sufficient without an exclusion of other appeals to the Court on the merits. The concern of the Venice Commission in regard to the draft Article 432/1 of the Criminal Procedure Code is analogue. This draft Article 432/1 of the Criminal Procedure Code also excludes the appeals to the Supreme Court in specific types of cases. In the case of criminal proceedings, Article 2 of Protocol no. 7 to the ECHR, which provides for a right to appeal against criminal sentences, has to be respected. However, as the draft Article 432/1 Criminal Procedure Code excludes mostly appeals against decisions in favour of the accused or convicted or they relate to a second appeal which is not required by Article 2 Protocol 7 of the Convention, these exceptions seem acceptable.

These proposed amendments would have to be aligned with provisions of the Civil and Criminal Procedure which currently allow appeals against decisions of lower courts. Furthermore, since the establishment of the administrative court branch a limitation of appeals in the area of administrative court procedures to the HC could be considered.

The following provisions establish a competence of the HC and would need to be looked at:

***Civil Procedure Code:***

Article 59 paragraph (2), article 60 paragraph (1) and article 62 provide for the right of appeal directly to the HC against a decision that determines the jurisdiction of a court.

Article 64 paragraph (2) provides the right of a court to involve directly the HC in cases of conflict of competence.

Article 442/b provides the right to appeal in the HC the merit decision of the Appeal Court or when applicable the First Instance court decisions

Article 472 provides the decisions against which can be lodged an appeal in the HC.

Articles 497 and 498 provide the obligation of the HC to adjudicate requests for reviewing a final decision.

***Criminal Procedure Code:***

Article 22 paragraph (4) provides the right of appeal in the HC against the decision on the request to expel a judge.

Article 44 paragraph (2) provides the right of appeal in the HC against the decisions that suspends a proceeding due to the irresponsibility of the defendant.

Article 73 provides the right of the HC to deal with conflict of jurisdiction disputes.

Article 75/b paragraph (1) provides the right of the HC to examine the appeals for breach of law and requests to review the final decisions.

Article 80 paragraph (2) provides the right of the HC to examine cases where the competences of the latter are tied with those of the First Instance Court.

Article 91 paragraph (1) provides the right of the HC to rule on competence disputes.

Article 249 paragraph (8) provides the right to appeal the precautionary measure in the HC.

Article 264 paragraph (1) provides the right of appeal in the HC against the decision to extend the pre detention timeframe.

Article 420 paragraph (3) provides the right of appeal directly to the HC against the decision for refusing the complaint of the civil plaintiff involved in the penal case.

Article 431 provides the right of appeal directly to the HC for conflict of competence, jurisdiction and other special occasions provided by law.

Article 432 provides the final decisions which can be appealed in the HC.  
Articles 452 and 453 provide the right of the parties to submit to the HC the request for reviewing a final decision.

***Law on the Organization and Functioning of Administrative Courts and Adjudication of Administrative Disputes:***

Article 4 paragraph (4) provides that the competent court to examine administrative is *inter alias*....., the administrative college of the HC.

Article 9 paragraph (2) provides the right of appeal in the HC against the decision on jurisdiction disputes.

Article 13 paragraph (5) provides the right of appeal in the HC against the decision on competence disputes.

Article 58 defines the grounds on which an appeal can be filed in the HC.

EURALIUS experts and counterparts:

Team 4 (organisation, backlog, short term perspective); Team 1 (law reform), Team 2 (law drafting; LC Law, court of cassation); counterparts: HC and the Assembly (for potential legal amendments)

Activities and timing:

- Analysis of current status and background analysis (month 4 to 7)
- Consultation process, prioritisation and sequencing (month 8 to 9)
- Elaboration of an approved strategy (month 10 to 12)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in implementation (half years 3 and 4)

Indicators for output:

- Minutes of a Working Group on this subject in the HC
- Report about technical assistance in the implementation of the proposals
- Backlog in general and in administrative chambers reduced. (indicators: number of pending cases reduced, number of solved cases is at least as high as number of incoming cases).

**Activity 1.6.2: Assist the MoJ and other relevant institutions including the Assembly in considering changes to the appointment process of judges to the HC with a view to make the HC more independent and impartial, in particular assisting the MoJ in the drafting of appropriate legislative and/or constitutional changes.**

This activity aims at finding appointment procedures for judges to the HC that are more transparent and thus less controversial, avoiding vacancies at the HC. Institutional experience to date, the findings of international reports and the model of operation of the justice system based have shown that the process of appointment of the HC and CC judges needs to be reformed and more clearly regulated. The conditions that the candidates have to meet need to be more rigorous. Setting up an independent Council, outside the influence of politics, following the existing models of the EU member states for the selection of candidates appointed at constitutional institutions, may constitute a good practice to be adopted. Changing the current appointment procedures will involve constitutional changes which need a qualified majority.

### Findings

#### Appointment of judges of the High Court

According to Article 136 of the Constitution the members of the HC are appointed by the President of the Republic, with the consent of the Assembly. This procedure leads to a stalemate situation since a while.

Article 4/1 HC Law, contains rules of procedure for the appointment of judges of the HC. In particular Article 4/1 HC Laws stipulates that the President of the Republic, together with the chair of the parliamentary groups in the Assembly cooperates by holding consultation for determining the concrete criteria, based on the list of the applicants for determining the concrete compliance with the constitutional requirement of high qualification to ensure a qualitative and suitable composition of the HC. This provision was introduced by an amendment to the HC Law in 2013. Before the entry into force of this provision the CC had already established that Article 136 of the Constitution, which sets out that members of the HC are appointed by the President with the consent of the Assembly, has to be interpreted in a manner

that the Assembly does not just play the role of a notary to the President, but there is a consultation throughout the whole process of appointment with the chairs of the parliamentary groups. According to the Assembly the President does not follow this procedure foreseen by law, therefore the decrees of the Presidents since months did never achieve the needed consent of the Assembly.

The chair of the Law Committee announced in the session of 28 October 2013 that he would like to invite EURALIUS to assist in finding a way out of this situation together with the Law Commission and the President.

Article 3 of the HCJ Law of the Republic of Albania establishes criteria for being elected, inter alia having worked as judges for not less than 13 years, or alternatively having worked as jurist not less than 15 years. According to Article 3(3) HC Law, in any case, the number of judges elected from the rounds of jurists may not be higher than  $\frac{1}{4}$  of the general number of judges at the HC.

In July 2014, the CC repealed some of last year's amendments to the HC Law, so for example the requirement that judges not only have to have worked for not less than 13 years, but also that at least five years of professional experience as appeal court judge is necessary.

The Venice Commission's February 2014 Memorandum referring to the judges of the HC states: "According to the Constitution, they are elected by the Assembly with a simple majority. As a consequence, only few of the current judges are career judges but a recent amendment to the law on the HC provides that 75 per cent of the judges should come from the appeal courts. (...) Changing the way how HC judges are appointed, by removing the election of the judges of the HC by the Assembly by simple majority, would imply a constitutional amendment. (...)'

According to the Progress Report 2014 'the status of the HC and the process of appointing judges to this Court remain, (...) issues of concern in terms of possible politicization, as long as the relevant constitutional provisions are not amended. The independence and impartiality of the HC is still not fully guaranteed.'

Also the GRECO Evaluation Report 2014 states that 'on the path to full independence and impartiality, further breakthroughs are yet to be achieved.



### High Court as guarantor for unification of jurisprudence

Some measures have been taken regarding the HC's role in unifying jurisprudence, including two decisions clarifying the competences of civil and administrative courts.

In unifying judgments, the plenum of the HC decides on the interpretation of provisions of the law, which have been interpreted differently by various appeal courts or – preventively – when such diverging interpretations are likely to come up. These decisions have the force of binding precedent and should allow deciding similar cases more quickly. Given that unifying judgments are not abstract but are delivered in individual cases, the Venice Commission's delegation did not object to this practice.

Two major unifying judgments were delivered recently. Though acknowledging these first steps, according to the Progress Report 2014 full harmonization and unification of jurisprudence still need to be ensured.

A more in depth analysis would be needed in order to identify the reasons for the weak performance in regard to unifying practice and possible solutions.

### Accountability of judges of the High Court

The HC is not properly included in the judiciary. There is no legal framework for evaluation or inspections or disciplinary liability of the judges. The HC is not controlled by the HCJ, unlike the other judicial bodies. The Venice Commission pointed out in its February 2014 Memorandum: "Contrary to ordinary judges, High Court judges are not subject to evaluation or disciplinary procedures. They can be revoked by the Assembly but this cannot replace a disciplinary procedure. One of the proposals made was to bring the HC under the control of the HCJ. The Commission's delegation supported this proposal." In the absence of constitutional changes, even on the legislative level at least a disciplinary procedure could be introduced for the judges of the HC.'

In Opinion No 751/2013 (regarding the evaluation system in Armenia) the Venice Commission further 'recommends that the Court of Cassation be included in an evaluation system. In addition, this would send an encouraging and useful signal to the entire judiciary if the highest-ranking judges were also part of the evaluation process.'

Also the Progress Report 2014 urges 'regarding the independence and impartiality of the judiciary, no measures were taken towards integrating the HC into the judicial system'.

### EURALIUS experts and counterparts

Team 2, counterpart: HC, Assembly

#### Activities and timing

- Slynn Foundation showed interest in co-operating in regard to revisiting the caseload management issues of the HC in which it was involved in 2012 reforms, and to conduct a training needs analysis for the judges of the HC. Coordination is already achieved.
- Analysis of current status (month 4 to 9)
- Comparative and background analysis (month 4 to 9)
- Consultation process (half years 3 and 4 if not part of the reform in activity 1.1.1.)
- accompanying prioritisation and sequencing (half years 3 and 4 if not part of the reform in activity 1.1.1.))
- Assistance in drafting amendments to Constitution and laws (half years 5 and 6 if not part of the reform in activity 1.1.1.)
- Establishing sub-legal acts (half years 3 and 4 if not part of the reform in activity 1.1.1.))
- Assistance in implementation (until end of the project duration)

#### Indicators for output

- Status analysis and/or comparative and background analysis
- Workshops/round tables held
- Draft laws

**Activity 1.6.3: Provide assistance to the HC in preparing and implementing a comprehensive program for disseminating information about the unification of judicial practice and analyzing its legal precedents (case law) to date with a view to including them in the dissemination program.**

### Findings

At present many legal practitioners are not fully satisfied with the unifying role of the HC, for instance regarding the lack of proper publication of the decisions. The legal framework for unification practice is covered by activity 1.6.2. Decisions are sometimes hard to find for legal professionals and the general public. This issue is dealt within this activity. The HC is in the process of publishing a book in hard copy, with unifying decisions, in order to improve the access to the case law of the HC. Plans exist to make the content of the book also available on the website of the HC, and provide for an efficient search engine of unifying decisions. As it is in the current stage, the unifying decisions are published only with decisions number and date. There is no search engine to facilitate search based on the area of law or object of adjudication.

EURALIUS plans to assist the HC in preparing and implementing a comprehensive programme for disseminating information to the public about the unification of judicial practice. Plans of EURALIUS are to consolidate all sources of law including the unifying decisions of the HC in a national website or database that can be searched by legal professionals and the general public in an efficient and easy way (see also activity 1.4.1).

### EURALIUS experts and counterparts:

Team 4, input team 1, counterparts: HC, COP

Activities and timing:

- Analysis of current status and background (month 4-7)
- Working group on this subject (month 7 – 10)
- Preparation of a programme on information dissemination (month 11-12)
- Assistance in implementation (entire project duration)

Indicators for output:

- Minutes of a Working Group on this subject in the HC
- Report about technical assistance in the implementation of the proposals
- More unifying decisions are published (indicators: Number of decisions and number of scientific articles (in the legal and academic journals dealing with unified decisions) published per year in 2014 – 2017)
- Search tool is available (indicator: website, search engine, index or similar).

## **Result 1.7: Judicial cooperation among stakeholders of the Albanian justice system and international partners.**

**Activity 1.7.1: Provide assistance to the MoJ, in collaboration with the HCJ in implementing the courts' territorial reorganization, determining the number of judges and organizing the transfer and redistribution of judges; the territorial reorganization must be carried out in collaboration with the GPO, ASP and all other relevant justice system and law enforcement bodies.**

This activity aims at establishing a more equal distribution of the workload among the Albanian first instance courts to make the judicial system more efficient.

### Findings

The Law No.115/2014 “On administrative- territorial division of local units” was approved by the Assembly on 31 July 2014. This Law aims to increase the units’ efficiency, financial sustainability and capacity to provide services by reducing the number of local government units from 373 to 61, and abolishing also the communes and keeping the 12 existing regions, but does not cover the number and places of courts. In August, the President of the Republic sent it back to the Assembly, but his decree was voted against on 1 September 2014. On 10 October 2014, the Democratic Party, currently in opposition, filed a request with the CC seeking the repealing as unconstitutional of the law on the administrative-territorial division of the local government units. The request includes the suspension of its enforcement in the meantime as a security measure. According to the claim, the law enables the ruling majority’s pre-arranged victory in the next local government elections. The hearing at the CC on this claim shall be held on the 9 December 2014;

The new law implies essential changes in the territorial landscape of Albania, which raises the questions whether the current territorial allocation of courts, fit into the new administrative –territorial division.

Notwithstanding the fact whether the said law will pass the “constitutional test” of the CC, the current territorial allocation of courts has raised concerns regarding the *efficiency of the judiciary, since the 2012 territorial reorganization of courts has not yet been fully implemented. In particular, the process of adjusting the number of*

*judges assigned to each court remains to be completed. To cope with the growing workload in prosecution offices and the courts and to address disruptions caused by lack of judges in some courts, the resources available need to be reviewed and increased (Quote from the Progress Report October 2014, page 41);*

According to the data's provided by the HCJ currently there are 361 judges working in 37 courts in Albania (vacancies not included); there are 23 first instance courts, 6 first instance administrative courts, 7 courts of appeal and 1 administrative court of appeal. The territorial competence of the courts and their seat is determine upon Decree of the Albanian President, based on the proposal of the MoJ, after the HCJ has given its opinion on such issue (article 11 of Law no. 8436/1998 "On judiciary system in Albania").

There is no official court map for Albania. There is no official data regarding an analysis between the court workload to the number of judges.

#### EURALIUS experts and counterparts

Team 1, input from team 4 and team 2; counterpart: MoJ, HCJ, GPO and ASP.

#### Activities and timing

- In month 10 and 11 it is proposed to set up a court map based on the territorial division of the courts (as per the Decree's of the President); and to collect statistics on the workload of each court and judges of the courts, as well the population living in court territory.
- In half year 3 visits to different courts take place in order to have a better view of the court problems (human recourses, and infrastructure and other operational problems);
- In half year 4 a report is drafted on findings regarding the optimality of the distribution of the courts and judges in Albania;
- In half year 5 or 6 a roundtable with HCJ with regard to the input from Team 4 (efficiency of the courts); As soon as the judgement of the CC is available, the project will update the planning.

### Indicators for output

- Court map and territorial map
- Prepare a report with the aim of evaluating a reorganization of the courts in Albania (first instance and appeal court) in proportion with territorial geographic division in force, number of cases of the courts, workload of the judges.

**Activity 1.7.2: Support the implementation of the Memorandum of Understanding between the MoJ and the HCJ inspectorates through the conduct of joint inspections.**

This activity aims at a better coordination of the two inspectorates at the MoJ and the HCJ for the time being. However, for the long-term solution the delineation of the competences of these institutions should be regulated in a more sustainable manner, i.e. by law.

Findings

Both at the HCJ and at the MoJ inspection services have been established. A Memorandum of Cooperation smoothens the cooperation. The two inspection services inter alia share information on the program of inspections, complaints submitted and judicial statistics, standardised the process of registration and verification of complaints, hold regular meetings and conduct joint inspections or joint analysis (see also above activity 1.5.3.).

However, risks for overlapping continue to exist. Despite the effective work and cooperation in practice, in line with the Memorandum of Cooperation aims, EURALIUS will follow up the Venice Commission's proposal (February 2014 Memorandum) in this regard: '17.5 - The overlapping of the inspection by the Minister of Justice and the HCJ should be addressed. Ideally, a single system should exist, preferably under the authority of the HCJ.'

However, the organisation and functioning of the inspection service seems not to be the only issue of concern. In the context of a comprehensive justice reform it is advisable to reconsider the status and role of the inspection service, the tasks of inspectors and the status of inspectors.

In regard to the status and the role of the inspection service the following should be considered: The inspection service at the MoJ is simply a sub-unit of the Ministry itself. According to Article 14 HCJ Law an Inspectorate is attached to the HCJ, thus it is an administrative unit of the HCJ.

The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) suggest in order to prevent allegations of corporatism and guarantee a fair disciplinary procedure, judicial councils shall not be



competent both to receive complaints and conduct disciplinary investigations and at the same time hear a case and make a decision on disciplinary measures.

In its Opinion No 770/2014 the Venice Commission and OSCE/OHDIR referring to a draft amendments on disciplinary liability of judges in the Kyrgyz Republic ‘welcome the fact that the draft amendments to the Constitutional Law introduce ... a clear division of tasks between, the body in charge of investigating (the Disciplinary Commission) and the body in charge of deciding on the imposition of the disciplinary sanction, i.e. the Council of Judges. This is in line with international recommendations which suggest the establishment of an independent body to initiate disciplinary proceedings, which is separate from the independent body or court which will take the decision relating to the disciplinary liability of a judge’.

Before this background, it seems appropriate to analyse more closely the status of the inspection service, with particular attention to its independence, the composition, the power to appoint inspectors, the criteria for being appointed as inspector, the terms and the accountability of the inspectors.

Currently the inspection service has no active role during the disciplinary proceedings. Inspectors who carried out the investigation are most familiar with the case and might give an added value during the proceedings by presenting and explaining facts and findings and thus contribute to establish whether a disciplinary relevant action has occurred or not.

In regard to the tasks of the HCJ’s Inspectorate the following structure of the Inspectorate is applicable: currently the Inspectorate of the HCJ operates in two sections; the section of the Inspection and Verification of Complaints and the Professional and Ethical Assessment Section. So, the Inspectorate does not deal only with complaints, the verification of complaints and disciplinary issues, but is also responsible for drafting the reports on the professional evaluation of judges.

A good system of performance evaluation is likely to work best when it is used primarily as a developmental tool and when it has the co-operation of the evaluated person with the evaluator (see also Opinion no. 751/2013 of the Venice Commission).

Before this background, a more thorough analysis of the whole set regarding the inspection service might be beneficial in order to find the best set up for Albania.

Furthermore, the current legal framework is lacking clear and comprehensive provisions on the status of inspectors. According to Article 15(1) HCJ Law the inspectors are appointed to this duty for a five year period, with the right to be re-appointed. Pursuant to Article 15(2) of HCJ Law and Article 28(3) JP Law the period of exercise of the function of inspector is recognized as a period of seniority at work as a judge for purposes of the requirements of one's professional career. Judges who serve as inspectors in the Inspectorate of the HCJ are re-appointed judges at their request 'without a competition'. Article 28 (1) last sentence JP Law on the 'Preservation of the status of judges who serve in other institutions) stipulates that at the end of this period they return to their prior place of work.

These law provision are not clear: so for example the question arises whether the recognition as 'period of seniority' means that acting as inspector is to be considered like a promotion or whether the meaning is simply that this period is recognized as period as acting judge.

On the other hand, clear accountability mechanisms are not established by law. Article 14(6) HCJ Law, which was newly introduced with the 2014 amendments, requires for the Chief Inspector and inspectors, no less than once every two years a professional and ethical evaluation, according to the criteria and procedures defined by the HCJ. The HCJ is currently elaborating a sub legal act in order to establish an evaluation scheme for inspectors. However, evaluation is not a proper accountability mechanism. The disciplinary liability seems to be established by a decision of the HCJ, however it is doubted that such a sub legal act has a sufficient legal basis as no law provision provides clearly for it.

### EURALIUS experts and counterparts

LTE 2

#### Activities and timing

A revision of the legal framework for the inspection service seems to be needed. Thus the following is planned:

- Analysis of current status (month 4 to 9)
- Comparative and background analysis (month 4 to 9)

- Consultation process (month 10 to 12)
- accompanying prioritisation and sequencing (month 10 to 12)
- Assistance in drafting amendments to Constitution and laws (half years 3 and 4 if not subject to the reform within activity 1.1.1.)
- Establishing sub-legal acts (half year 5)
- Assistance in implementation (half year 5).

#### Indicators for output

- Status Report and comparative analysis
- Roundtables/workshops organized
- Draft laws/legal acts elaborated.

**Activity 1.7.3: Support to MoJ, HCJ and the HC in policy analysis and reporting through the establishment of a trial monitoring system of the most relevant judicial cases.**

Findings

Many countries have had huge advantages from adopting a case management approach with clear stages, time limits and policies. The issue is whether Albania could profit from this approach. This can be discovered by designing and testing a trial monitoring system, and by making use of judicial time management.

Trial monitoring can be used for a number of different goals, such as promoting efficiency, promoting transparency, fair trials and accountability of courts and judges. A report will deal with the question in what area of law a trial monitoring system will be developed first, such as criminal, civil or administrative law.

	Pre-trial stage	Trial stage		
		Preparatory hearing	Judicial investigation	Final conclusions /decision
Civil law	Guidelines, time limits	Guidelines, time limits	Guidelines, time limits	Guidelines, time limits
Criminal law	Guidelines, time limits	Guidelines, time limits	Guidelines, time limits	Guidelines, time limits
Administrative law	Guidelines, time limits	Guidelines, time limits	Guidelines, time limits	Guidelines, time limits

Working Groups in all areas of law will be created that will develop a trial monitoring system, based on a study after all timelines in case types. The working groups will evaluate findings and generate recommendations for improved practices.

EURALIUS experts and counterparts:

Team 4, input team 2. Counterparts: HC, other Courts, HCJ and the MoJ

Activities and timing:

- Analysis of current status and background analysis (month 4 to 6)
- Working groups established, prioritisation and sequencing (month 7 to 10)
- Elaboration of an approved strategy (month 11 to 12)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in implementation (half year 3 and 4)
- Assistance in improvement of policy analysis and policy making (during implementation).

Indicators for output:

- Study Report on how this topic is handled in other EU Member States
- Assisting a Working Group with inclusion of the HCJ inspection, and judges from all Court levels;
- Manuals on a trial monitoring system in different areas of law.
- Trial monitoring system in place.

**Activity 1.7.4: Assist the MoJ, the GPO and the courts in the implementation of international instruments for judicial cooperation, including the new cooperation agreement with EUROJUST, and the adoption of additional international instruments that may be necessary or desirable for such cooperation.**

This Activity is chosen to improve the understanding of the MoJ, the GPO and the courts of how international instruments shall be implemented in the Albanian practice.

### Findings

The task is to assist the MoJ, the GPO and the courts in the implementation of international instruments for judicial cooperation and the adoption of additional international instruments that may be necessary or desirable for such cooperation. The findings in the Inception Period are that a Department of the MoJ is dealing with judicial cooperation. The department is very active in all kinds of cases such as extraditions, recognition of decisions, cross border cooperation regarding criminal matters, and is in need of certain technologies that are crucial for the implementation, such as videoconferencing equipment, internal case management technologies and other practical tools (see activity 1.2.2). In this component EURALIUS will coordinate with the MoJ, the GPO and the courts on finding efficient and high quality ways of working with international instruments for judicial cooperation. The EUROJUST membership is a matter of accession to the EU. The intention is that a Cooperation Agreement will be established between EUROJUST and Albania, making it possible to have an Albanian observer at EUROJUST, but this will be dealt with in another project, International Cooperation in Criminal Justice: the prosecutor's network of the Western Balkans (see also objective 3). This is to be started soon, and EURALIUS will monitor this.

The legal aspects of international cooperation are covered under activities 3.1.3 and 4.2.3.

EURALIUS experts and counterparts:

Team 4, input of team 3 and team 5. Counterparts: Courts, MoJ, GPO. Department in the MoJ: Team 1

Activities and timing:

- Analysis of current status and background analysis (month 7 to 12)
- Ongoing assistance in implementation of needed technologies and additional international instruments (implementation period, half years 3 to 5)

Indicators for output:

- Report on status quo, international instruments and availability of practical tools
- Assistance in increasing efficiency in the use of judicial cooperation instruments (depending on situation found)
- Observe status of Albania to EUROJUST.

**Activity 1.7.5: Assist the provision of universal access to international legal data bases (e.g. Lawtel, Westlaw, etc) via internet to all judges, prosecutors, the SoM, the MoJ and law enforcement bodies or assist in the development of reasonable lower cost alternatives.**

This Activity is chosen to inform about and promote the linking of legal practitioners to international data bases. However, achieving this Activity is primarily a financial issue and the question which entity will bear the costs needs to be resolved during implementation.

### Findings

The fact finding indicates that the mentioned databases are not suitable for the needs of Albanian judges. In general, the conclusion is that search facilities in Albanian and relevant international jurisprudence should be improved, in such a way that the most relevant decisions can be found more easily by interested persons. Albanian judges have difficulty finding judgments of the ECtHR, with particular regard to property rights, judicial proceedings, the right to a fair trial and inadequate medical care in custody. Case law in Albania can not be searched nationally, nor on key words on the object of adjudication such as “bankruptcy”. Also, it is hard to find an accurate database of all legislation in force in Albania, and its English translations (see also Activity 1.4.1 and 1.4.2.).

Since there is no efficient access to a (inter)national and unified database of jurisprudence and law, search within relevant law and case law on topics with key words is very labor intensive and time consuming. The most commonly used website to find laws and sublegal acts is <http://ligjet.org/> which is a private company initiative. Although it is the most used search engine, the legislation contained therein is not regularly updated. Therefore the users of legislation have to try different sources to find it, such as by using Google search. The webpage hosting the electronic archive of laws is [www.qbz.gov.al](http://www.qbz.gov.al) and it is not updated with the consolidated versions of the legislation. Private companies also offer softwares for sale with the latest law amendments which is costly and not affordable by the public. This hampers the quality within the legal profession.



The findings of the Inception Period are that to solve the problem first of all a **national** database needs to be created from the perspective of a legal professional. This means that all laws and relevant case law / jurisprudence (with consolidated versions of the laws, CoM's decisions, Ministers' decisions, instructions and regulations, jurisprudence and other relevant public acts) needs to be made available in a national database, to provide a high level of service to all legal professionals and interested citizens in Albania. Also needed is an effective search engine. This requires more funds for Judicial Publications, while the budget line of the MoJ has decreased from 70,4 million ALL in 2010 to 49.1 million ALL in 2013.

EURALIUS will work together with all institutions that create law, and publish law and judicial decisions to find the best way to make available such a service. For instance, this is the case for the COP (see Law No 96/2012 dated 11.10.2012 "On the COP"), the Assembly, the HC, the CC and the Judicial Publication Center of the HCJ.

Albania is in process of signing an agreement with Austria which is ready to provide for free its software of the national legal database (see also Activity 1.4.1. and 1.4.2.).

Regarding access to **international** databases, Albanian judges would like to have access to ECtHR decisions and ECJ decisions, etc. For access to LAWtel and Westlaw there is a need to sign up and pay and budgetary restraints do not allow to provide all judges with this access. The question is whether an agreement could be found with these providers of Lawtel and Westlaw for cheaper access for Albania or which other possibilities exist, for example: Training of judges in HUDOC, which is the main and free database for ECtHR decisions and in the use of EURLEX. Eventually language training is needed as all these databases are not available in Albanian.

#### EURALIUS experts and counterparts:

Team 4, input team 1. Counterparts: SoM, MoJ, Courts, Prosecution Offices, Police

Activities and timing:

- Analysis of current status and background analysis (month 4 to 5)
- Consultation process, prioritisation and sequencing (month 6 to 7)
- Elaboration of a privacy on a national approach (month 8)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in implementation of lower cost alternative (from month 9 onwards)
- Assistance in implementation of universal access (half year 3, implementation period).

Indicators for output:

- Report on the status quo and needs
- Minutes of a working group on universal access to a database of laws and case law / jurisprudence
- Proposal from the Working Group for a facility at a central place, like the COP or the Judicial Documentation Center
- Assistance in the implementation of for instance a National Center for Legal Publications, for instance as a part of the COP
- Web page with several tools for national and international database is available

**Objective 2: To improve the organizational, administrative, technical and resource management capacities, as well as the case management capabilities of the judiciary in order to improve the efficiency of courts and their transparency.**

**Result 2.1: The SoM will continue to be the central institution to ensure high-quality education of judges and prosecutors on the basis of a solid financial basis and refined training curricula**

The SoM is the most important training institution in the field of the judiciary in Albania. The School started to be operational in October 1997 in Tirana. The School's activity is regulated by the SoM Law and by an 'Internal Regulation of the School of Magistrates' adopted in 1998, which regulates its functioning and its administrative structure. Leading organs are the Steering Board, the Director of the School, the Pedagogical Council and the Disciplinary Commission. The School offers training on the basis of Initial training for candidate magistrates and continuous training for all acting judges, prosecutors and some other legal professions.

The initial training for judges and prosecutors spans over a period of three years, with the first year being theoretical encompassing various law subjects, the second year being practice oriented under the auspices of a school teacher and an experienced judge or prosecutor, while the third year is full practice, dealing with less complicated cases – entitled even to write out decision-, however under the supervision of a judge or prosecutor. The continuous training, on the other hand, is provided to acting judges and prosecutors during the entire year. The attendance of a certain number of training seminars annually is mandatory to first and second instance judges and prosecutors.

The amendments introduced by Law No. 97/2014 define more closely the selection criteria for the appointment of the School's Director, the governing board and academic staff and curtails the powers of the HCJ in the appointment process. Under transitional provisions, the present incumbents lose their positions at the end of the current academic year if their respective profiles are not considered to be in compliance with the new criteria.

The Steering Board members had to be re-elected. Upon appointment of the new Board a new Director of the SoM, Mr Sokol Sadushi, a former judge of the Constitutional Court, was appointed on 18 November 2014 based on Article 7 SoM Law as amended, which foresees new criteria for the profile of the Director.

**Activity 2.1.1: Provide assistance to the SoM in developing and delivering training to judges in improving the reasoning and quality of decisions and management of trials.**

This Activity aims at improving the knowledge and skills of judges in writing well-reasoned decisions and efficient handling of court proceedings.

### Findings

The Progress Report 2013 states: 'The SoM continued to provide good quality curricula and the candidate admission process is reported to have been transparent and merit-based.' Under Article 23 SoM Law first instance and appeal court judges are to undergo mandatory professional training. This provision is reiterated by the Code of Judicial Ethics, which states that judges are to increase the level of their professional development.

The School's continuous training modules are designed by its Director in cooperation with the internal pedagogical staff, after obtaining the preliminary opinion of the President of the HC, the General Prosecutor, the MoJ, the HCJ and the School's Pedagogical Council. The continuous training program is approved by the School's Steering Council. An average professional training module spans over at least one year, under condition that it does not exceed 20 days per annum and 60 days over five years. At the end of the training, judges receive a certificate which is placed in their personnel files. Issues pertaining to judges' professional development are coordinated by the respective court presidents with the SoM, the HCJ and the MoJ, and their proposals for the judges' attendance are subject to the HCJ's approval.

Legal reasoning, the establishment of facts, presentation of evidences, weighing evidences and subsumption is already not covered sufficiently in the initial training. In fact, the curricula of the initial training, especially in the first year, foresee mainly theoretical aspects. Though some low level courses on legal reasoning are offered in the initial training and during the continuous training, the quality of reasoning leaves room for improvement. Judgments frequently miss the legal argumentation, they just describe the facts and evidence without subsumption. Also there is a low capacity in analysing jurisprudence of higher courts, like the ECtHR and the HC and to refer to established jurisprudence on certain interpretation issues.

Furthermore, backlogs and work overload at least partially is grounded in a weak capacity to manage trials efficiently leading to delay of reasoned decisions.

The 'quality of justification/reasoning' that is often a problem in new democracies and coherent reasoning should be promoted. These aspects and logical argumentation, clarity or the way in which the judge handles complex cases should be considered of importance also in the evaluation of judges. However, also inspectors of the Inspectorate at the HCJ do not receive any comprehensive training. They should be the 'ambassadors' of quality decisions and efficient trial management. In order to improve their skills and ensure their continuous training a specific attention should be paid to developing respective curricula for them, including a minimum training days which is specifically dedicated to evaluation techniques and to inspection techniques.

The EU/CoE project 'Support to Efficiency of Justice' includes activities of reviewing of the training modules for judges and court staff and capacity-building of the School of Magistrates.

#### EURALIUS experts and counterparts

Team 5, input from Team 4

#### Activities and timing

This activity will be implemented in close co-ordination with EU/CoE project and the Slynn Foundation. The team will collect and review the existing training materials and carry out a training needs assessment both for judges in general as well as for inspectors of the HCJ (month 5-10), in so far as the EU/CoE project will not cover this activity. After coordination with the EU/CoE project and if still necessary EURALIUS will revise the training curricula for judges and the HCJ's inspectors (month 11 and 12) and deliver training (half years 3 - 4).

#### Indicators for output

- Training needs analysis carried out, training materials collected
- Training programs and curricula revised.
- Trainings delivered (legal reasoning/management of trials).

**Activity 2.1.2: Provide assistance to the SoM to further develop the **continuous training** for judges and prosecutors, stressing introducing the recent adopted national legislation as well as international legislation and case law (including the European Court of Justice).**

### Findings

The SoM cooperated with a huge number of projects and bilateral donors and received training activities, in 2014 these included in particular human rights and administrative law. Under the umbrella of ICITAP international activities within the Training & Equipment Assistance Working Group are coordinated. Currently the CoE offers training tools to include CEPEJ topics into trainings and the Slynn foundation offers three trainings in human rights, ethics and EU law. In future assistance is required in particular for training about international cooperation in criminal matters.

A Dutch training program aims at stimulating, supporting and contributing to the efficient implementation of the EU *acquis* in the area of 'rule of law' and to strengthen relations between the Netherlands and the target countries by sharing the necessary knowledge and skills with policy advisors, members of the judiciary and other civil servants.

First contacts to the European Law Academy in Trier and to the European Judicial Training network are established, but not elaborated.

Since 2011 the Slynn Foundation has helped the School by providing courses each year in each of three topics – EU Law, ECHR law and judicial conduct and ethics. One course in each topic will be delivered between January and March 2015.

Currently major revisions of codes are in process of revision and adoption, like the Administrative Procedure Code, the Criminal Procedure Code and others. Such major law amendments need to be accompanied by a concerted training program which prepare the judges and prosecutors and provide a forum for discussion on legal questions arising from these new laws.

There is a need for further training for all the judges in international cooperation in civil matters. For instance the application of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters requires the filling of a form, which is sometimes not followed

accordingly by the judges. Therefore, the MoJ is strongly supporting the assessment of the needs for the judges and the MoJ staff to further train them in regard to the application of international acts in practice.

One training need has already been identified concerning the detention of suspects prior to the trial (criminal procedure law). The practice does not seem to be harmonized. On one side arrests might be used quickly, even in small cases, without respecting the individual aspects of the case enabling, such creating a concern of human rights. On the other side prominent suspects might not necessarily be arrested even for serious crimes. A training unit in the form of a coaching from colleagues to colleagues (detention judge) should verify the practice in place, get rid of any human rights concerns and deepen the professional handling.

#### EURALIUS experts and counterparts

- Team 5
- One international MTE (4 weeks for training programs on international legislation);
- Additional MTE or STE are needed to provide trainings of the trainers and to assist in trainings on specific subjects.

#### Activities and timing

This activity will be implemented in close co-ordination with EU/CoE project. The team will carry out a training needs assessment (month 6 - 10), in so far as the EU/CoE project will not cover this activity. After coordination with the EU/CoE project and if still necessary EURALIUS will revise the training curricula (month 11 - 12) and deliver training (half years 3 to 6).

#### Indicators for output

- Training needs analysis carried out.
- Training programs and curricula revised.
- Training delivered.



**Activity 2.1.3: Monitor the procedures followed by the SoM in selecting the curricula, professors and organizing transparent and clear selection procedures.**

### Findings

The Steering Council is the highest supervisory forum of the school. It follows inter alia the implementation of the criteria for the acceptance of the candidates who will follow the program of initial formation, announces their final list, takes measures to ensure the implementation of rules on selection of the teaching staff, and appoints or releases them from duty, upon proposal of a majority of Steering Council members or of the School Director.

The Director of the SoM assumes the overall school management.

The Pedagogical Council is composed of the full time teachers and the primary teachers of the main subjects, as well as a judge and a prosecutor. Tasks and rules for the functioning of the Pedagogical Council are in particular the co-operation in the preparation of the initial training and continuous training program.

Admissions to the School are made based on the results of an entry exam open to every person who finished law studies, which qualifies them to attend the school. Pursuant to Article 16 SoM Law the actual number of admissions is based on an estimate of the HCJ and the General Prosecutor on the eventual of vacancies within upcoming three years' time. The amendments to the SoM Law in 2014 foresee in Article 17 SoM Law a two phase admission procedure: The candidates that qualify in the first phase are subject to a test on mental and psychological health, conducted by a commission established by the SoM's Steering Council in cooperation with the Ministry of Health. Once they pass the test, the candidates enter the second phase of the competition, which is delivered in writing, before a commission consisting of 5 to 7 persons, designated by the Steering Council, of whom 2 to 3 internal pedagogues and 3 to 4 external pedagogues, with over 5 years of teaching experience at the SoM. The list with the best candidates is approved by the Steering Council. The admitted candidates have the obligation to attend the program regularly.

Today nine students are in year three and eleven in year two. The students' admission process has been suspended until the 2015-16 academic year. The new

students for the first year will be selected in 2015. The number of participants depends on the budget of the State and is expected to be about 20.

The SoM offers the training modules through university staff and judges or state prosecutors. The amendments to the SoM Law in 2014 (Article 15 and 15/1 SoM Law) have introduced new criteria for the qualification and new procedures for the selection of the teaching staff. Internal and external pedagogues are appointed by the Steering Council, upon proposal of the Director or of any member of the Steering Council. Internal pedagogues are selected from among the most outstanding jurists, with an experience of over 15 years working as jurists, judges, prosecutors, lawyers and an experience of over 10 years in teaching at a University or at the SoM. External pedagogues, who meet the criteria for internal pedagogues, can be engaged to teach main subjects. In case the candidates for external pedagogues are part of the incumbent judges or prosecutors that have completed the SoM, they should meet the criteria of having worked for 10 years as a judge or prosecutor and with an experience of over 5 years in University teaching or at the SoM. As for specific subjects, specialists of those areas have to be engaged.

The admission and appointment of judges or prosecutors as internal pedagogues is done through competition, with the consent respectively of the HCJ or the General Prosecutor, according to the request and proposal of the SoM's Steering Council. The judge or prosecutor holds the post of internal pedagogue for a period of time of 4 years, with the exception of cases when s/he submits the resignation, or is dismissed by the relevant body.

Under transitional provisions of the 2014 law amendments, the present staff loses their positions at the end of the current academic year if their respective profiles are not considered to be in compliance with the new criteria. Thus, in compliance with the amendments 2014 all professors will need to be re-checked for eligibility by the Steering Council under criteria set out in the law.

The French Embassy is supporting the SoM's activities in regard to enhancing its organization and functioning.

The Slynn Foundation conducted an in-depth study in 2011 of the entry processes to the School. Following a detailed report the Foundation the School introduced a Sifting Exam, marked by a computer and based on multiple-choice questions, in order to ensure that the numbers taking the professional entry exam could be

reduced to a manageable size by an objectively fair process whereby unsuitable candidates were eliminated at the sift.

In regard to the curricula selection a turn to a “training the trainers” approach might be beneficial in order to embed this work more firmly in the future strategies of the School.

### EURALIUS experts and counterparts

Team 5, input of Team 3. In these activities the team will liaise with the French Embassy in order to ensure donor coordination.

### Activities and timing

- As currently a reassessment of all teaching staff is ongoing, the Project team will first assist and monitor the process of selection of professors (month 7 to 12).
- Contemporaneously the team will assist and monitor the preparation of the new procedures for the admission to the SoM in compliance with the law amendments (probably half year 3) with particular attention to the preparation and expertise for the mental and psychological test.
- The revision of the curricula will occur in co-ordination with the EU/CoE project as soon as the new staff is on board and in charge of respective competences and tasks (probably half year 3).

### Indicators for output

- New teaching staff is on board, standard operational procedures are established;
- Evaluation report on composition and the selection of the new teaching staff team;
- Standard operational procedures for the admission exam in the two new phases are in place and tested in practice;
- Evaluation report on the new admission procedure;
- Report on procedures for selecting and revision of curricula.

**Activity 2.1.4: Assist in ensuring the necessary financial means for the SoM to facilitate contemporary training methods and attract highly qualified trainers.**

### Findings

The general budget is described above (activity 1.1.3). The SoM continues to face problems due to limited budgetary resources, despite a 6 % increase in its annual budget compared to 2013.

The SoM was established as a public institution with financial autonomy. According to Article 3 SoM Law the Magistrates' School has its own budget, with a separate line in the state budget. For the exercise of activities and in the service of its mission, the SoM has the right to obtain and use other income, realized from financing or donations obtained according to law from foreign or local natural or legal persons or institutions, the sale of its publications and published works, payment from third parties for formation activities organized by it or other professional services offered by it, movable and immovable property that it has under administration and other lawful sources.

The establishment of the School was strongly supported/sponsored by the CoE and the EU Commission, while over the following years it received a lot of attention and considerable financial support from numerous international organisations.

However budgetary restraints continue to challenge the functioning of the SoM.

### EURALIUS experts and counterparts

Team 5, input from team 1

### Activities and timing

- The SoM will be assisted to ensure necessary financial means to facilitate continuous training in line with EU standards. The budgetary performance of the SoM, the donor coordination activities and donor activities will be evaluated (half year 3 and 4 of implementation).

- The SoM will be assisted in elaborating a comprehensive donor coordination strategy and supported in ensuring sufficient budget (half year 3 and 4 of implementation).

Indicators for output

- Report on financial and budgetary issues and donor coordination
- Donor coordination strategy developed
- Own budget increases, donor contribution decreases (sustainable approach)

**Activity 2.1.5: Support the "zero tolerance" policy of the SoM regarding corruption inside the SoM and implement internal control standards.**

### Findings

The SoM has already introduced quite good standards in the admission exams in order to avoid improper influence. The amendments to the SoM Law 2014 aim at increasing objective criteria and transparent procedural requirements both for admission exams and for the selection of trainers at the SoM.

However, no comprehensive policy was developed so far regarding the prevention of corruption inside the SoM.

### EURALIUS experts and counterparts

Team 5, input team 3

### Activities and timing

The team will assess the existing policy regarding corruption inside the SoM (like activity 1.2.3).

### Indicators for output

- Status report
- Strategy elaborated
- Implementation monitoring report

**Result 2.2: Court proceedings are held in a more efficient and transparent manner facilitating a reduction of trial durations and thereby the backlog of court cases**

In one of its recent reports titled “Towards Justice”, the OSCE Presence in Albania indicated that on average, trials took more than 280 days or 10.5 hearings to conclude. It followed that 47.7% of the observed hearings, were completely non-productive.

Numbers provided by Ministry of Justice show that there is an increasing Caseload:

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total number of pending cases before all Courts at January 1th of the year.	3983	9816	11416	14164	19524	20960	24415	27623	29361
Total incoming cases	12774	67395	57258	69849	74967	72984	83013	67499	81929
<b>Total Caseload per year</b>	<b>16757</b>	<b>77211</b>	<b>68674</b>	<b>84013</b>	<b>94491</b>	<b>93944</b>	<b>107428</b>	<b>95122</b>	<b>111290</b>

The total caseload in the two instances, in absolute numbers, is as follows:

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Caseload 1st Instance	8404	7871	67561	57649	71319	79519	77401	89200	74956	69039
Caseload Appeal	9476	8886	9650	11025	12694	14972	16543	18228	20166	12980

Caseload	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total of pending cases	3692	3983	9816	11416	14164	19524	20960	24415	27623	29361
Incoming cases	14188	12774	67395	57258	69849	74967	72984	83013	67499	81929
<b>Total Caseload</b>	<b>17880</b>	<b>16757</b>	<b>77211</b>	<b>68674</b>	<b>84013</b>	<b>94491</b>	<b>93944</b>	<b>107428</b>	<b>95122</b>	<b>111290</b>

### Evidence of rising backlog

The backlog (cases pending from the previous year) is increasing:

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total number of pending cases before all Courts at Jan 1 of the year.	<b>3983</b>	<b>9816</b>	<b>11416</b>	<b>14164</b>	<b>19524</b>	<b>20960</b>	<b>24415</b>	<b>27623</b>	<b>29361</b>
Backlog Increase rate:		<b>146%</b>	<b>16%</b>	<b>24%</b>	<b>38%</b>	<b>7%</b>	<b>16%</b>	<b>13%</b>	<b>6%</b>
<b>Of whom</b>									
criminal 1st	1908	1810	1810	2066	2082	2283	2899	2442	1989
civil 1st	n/a	4746	5174	6359	9276	9301	10839	13166	17719
administrative 1st	n/a	579	964	1136	1898	1948	2700	3306	0
civil appeal	1534	1965	2668	3455	4368	5537	5770	6193	7346
criminal appeal	541	716	800	1148	1900	1891	2207	2516	2307

Note: The figures have been provided by EURALIUS STE Dott. Dario Quintavalle who participated in the round table on 6 October (above activity 1.1.1.).

CoE organized a technical working meeting in connection with the implementation of the users' satisfaction surveys in initial courts, which were the HC, the Court of Appeal of Vlora, the District Court of Tirana, the District Court of Elbasan, the



Administrative Court of Tirana and the First Instance Serious Crimes Court. CoE suggested establishing a national coordination committee with a view to its being the piloting authority in charge of coordinating the process at the national level.

**Activity 2.2.1: Based on the existing procedural framework assist judges in working out methods for a more **efficient management of court trials** in civil, criminal and administrative matters.**

Findings

The courts are at present confronted with a fluctuating caseload, with 2013 at the level of 2011 again, and 2014 maybe at the level of 2012 again. The year 2013 showed a very good clearance rate at the courts of first instance, but a clearance rate at the courts of appeal beneath 100%. Information from the courts that hosted the project “Justice without delay” (Kruja and Korça), shows that a lot of cases have a very high number of hearings. Information on the website of the District Court of Tirana ([http://www.gjykatatirana.gov.al/-Evidencat\\_statistikore](http://www.gjykatatirana.gov.al/-Evidencat_statistikore)), shows that the majority of the cases have a duration of 6 months or longer. Many cases suffer from the high percentage of unproductive hearings. The issue is how to reduce the amount of hearings and only have productive hearings. The issue is to adjudicate cases in as short a time period as is possible by law or is reasonable given the value of the case. A long duration of a case not only leads to “justice denied” but also contributes to the build-up of backlog in the judicial system.

To be able to have more swift reaction of the courts to new incoming cases, the question also is how to address the backlog issue. The statistics show that the backload is growing, defined by the MoJ as the number of cases that are pending at the end of the year. A part of this backlog is the normal amount of cases that flows in each month and is not a problem. The problematic backload in the judiciary is yet unknown, but is defined by CoE/CEPEJ as the cases with an age over 2 years. The backlog also causes the present caseload of courts and judges to grow, even when the amount of incoming cases in 2012 dropped.

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total number of pending cases before all Courts at Jan 1 of the year.	3983	9816	11416	14164	19524	20960	24415	27623	29361
Backlog Increase rate:		146%	16%	24%	38%	7%	16%	13%	6%

Therefore, it seems clear that this trend needs to be stopped. The question is what is the best approach to deal with the backlog in civil, criminal and administrative law

cases (on the district to HC level) and what is the best approach to expedite the handling of new cases. In these two strategies the following elements need to be addressed in harmony: (a) Increase in human resources, such as judges, clerks and court administrators; (b) legal remedies; (c) better work division; (d) smarter use of IT and procedural possibilities to increase the capacity to deal with the caseload; (e) introduction of specific legal framework for small cases; (f) cultural aspects of reducing unproductive hearings.

Regarding the latter, EURALIUS will build on the findings of the JuST/OSCE project and will find concrete solutions to the problems of unproductive hearings before the courts in civil, criminal and administrative cases. Causes for delays and unproductive hearings are at least in three key areas: (1) absence; (2) communication failures; (3) reluctance to use disciplinary measures, and they are mostly present in civil cases which usually take longer than penal cases. A high percentage of delays in hearings is due to absence of judges, lawyers, witnesses, experts and prosecutors will be analyzed and assistance will be provided in creating solutions.

The procedural codes are broad in defining when the court can accept a request for recess of the trial. The discretion of the judge is not defined well, leaving space for several postponements. For instance article 175 paragraph (2) of the Civil Procedure Code provides that if one of the parties is absent in trial as a result of a health condition or any other legal cause the court decides to postpone the adjudication for another date. The wording legal cause is too broad and could be interpreted in several ways

Regarding the communication failures, the practice is not unified yet. If the address of one of the parties is not found, or summoning is not delivered, different judges take different decisions on how to proceed. Some judges proceed with announcement of the notification other judges do not. A unified practice is required in this case to ensure legal security. Display matters are covered by activity 2.2.2.

### EURALIUS experts and counterparts:

Team 4 (existing procedural framework, proposals in regard to efficiency), all other teams: law drafting, changes in the procedure law. Counterparts: Courts, MoJ and NCA, Assembly

One Albanian MTE 4 weeks has been transferred to activity 2.4.3.

### Activities and timing:

- Analysis of current status and background analysis (month 4 to 6)
- Working groups, prioritized based on inventarisation (month 6 to 10)
- Elaboration of strategies in fighting backlog and improved case management in civil, criminal and administrative (month 11 to 12)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in implementation of methods for a more efficient case management in trials (half years 3 to 6).

### Indicators for output:

- Report on status quo in backlog, findings by CoE / CEPEJ, OSCE and other projects and facts on delays and possible solutions to fight backlog and expedite cases.
- Minutes of small working groups;
- Reports with opinions and advice on how to expedite cases in criminal, administrative and civil law;
- Elaboration of a backlog strategy with an implementation plan;
- Elaboration of a case management strategy with an implementation plan;
- Input to the elaboration of a small case procedure strategy with an implementation plan;
- Providing assistance in the implementation of solutions and the law;

- Assistance in the implementation of advice in procedural laws and training at the SoM and School for Lawyers.
- Backlog is decreasing (best option). Indicators see activity 1.6.1.

**Activity 2.2.2: Assist in empowering judges to effectively use their procedural rights to improve proceedings, among other things by taking disciplinary actions against lawyers and witnesses for unjustified absence in proceedings (including coordination with the NCA on this issue).**

### Findings

Regarding the disciplinary measures, the Civil Procedure Code provides an entire chapter that deals with fines. For instance, Article 165 Civil Procedure Code provides for a fine of up to 30 000 ALL when the witness or the expert does not appear in court without a reasonable excuse. Article 166 Civil Procedure Code provides also a fine of up to 30 000 for refusal to testify. Article 167 of the Code provides a fine for refusal to submit evidence. Article 168 Civil Procedure Code provides a fine of up to 30 000 ALL for ignoring the order of the judge etc. However, the courts for various reasons seem reluctant to enforce these provisions, except for the First Instance Court of Kruja who has shown encouraging results.

In order to increase efficiency amendments to the procedure codes might be an option (see also activity 3.1.1, 4.1.5 and 4.2.2.).

The experience from the judges with the active case management project of JuST/OSCE in Kruja (and Korça), shows that a significant number of unproductive hearings can be avoided by being strict in the communication with lawyers and experts, and increased use of rights to penalize behaviour. The issue is how to change the culture at the national level and make all judges make effective use of their rights to discipline lawyers and experts and limit the number of hearings needed and thereby the case duration.

The Venice Commission supported the proposal to introduce new amendments in the Civil and Criminal Procedure Code with regard to empowering judges to impose fines over deviant lawyers and prosecutors.

The Law on the profession of Lawyers in Albania provides the rules for disciplinary sanctions against lawyers imposed by the Disciplinary Committee of the NCA (see activity 2.5.1.)

Changes may be needed in:

- Law No. 9109, date 17.7.2003 “On the Profession of Lawyer in Albania” as amended, adding Article 41/1 which aims to reduce the number of unproductive hearings by enabling the Chamber of Advocacy to punish lawyers who cause trial delays on purpose. An addenda is needed to guarantee a new and clear procedure to deal with delays caused deliberately by lawyers, on a fast track
- Law No. 8116, dated 29.3.1996 “On the Civil Procedure Code”, as amended (see activity 2.2.1.)
- Law No. 7905, dated 21.03.1995 On the “Criminal Procedure Code” as amended, and introducing a new article that will enable the imposition of fines on lawyers and prosecutors, who cause undue delays either through their absence or by other means. Fines can only be imposed if delay is “without reasonable cause” or obligation of the attorneys to pay the judicial expenses for the hearings they postpone without due reason.

In addition, more training at the SoM shall be designed and undertaken within other activities within the EURALIUS program with input from this activity.

In regard to disciplinary measures, see also activity 2.5.1.

EURALIUS experts and counterparts:

- Team 4 (existing procedural framework, proposals in regard to efficiency), all other teams: law drafting, changes in the procedure law.
- Counterparts: Courts, MoJ, NCA and SoM.
- One Albanian MTE 2 weeks.

#### Activities and timing:

- Analysis of current status and background analysis (month 6)
- Working groups in civil, criminal and administrative law, prioritized based on inventarisation (month 6 to 10)
- Elaboration of strategies in more effective use of procedural rights fighting (months 11 to 12)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in implementation strategies and methods, for instance in courses in the SoM (half years 3 to 5).

#### Indicators for output:

- Working group findings and/or guidelines on how to reduce unproductive hearings by disciplining the behaviour of lawyers and experts in amendments to the law or by using the existing provisions in the law;
- Elaboration of a strategy with an implementation plan;
- Assistance in a cultural change program with regard to improving behaviour;
- Unproductive hearings became rare. Indicator: Percentage of unproductive hearings in six different selected courts is decreasing (2013 – 2016). Alternatively: Procedural fines to lawyers increased. Indicator: Amount of money paid to the state for fines by advocates.



**Activity 2.2.3: Assist in establishing a functional and efficient framework for court experts.**

Findings

Only with a proper court experts system in place judges will be able to get quick and efficient access to necessary technical expertise on facts which are relevant to the cases they adjudicate. Fact finding in the Inception Period shows that the expert system in Albania functions reasonably good, making this activity less a priority. However, from an efficiency perspective there is a need for a regional and national database of licensed experts in which the experts themselves maintain all their personal and professional data, including their availability. This solution will also reduce the effort needed by Courts, and will result in improved transparency of the availability of experts and more efficient communication with experts.

EURALIUS experts and counterparts:

- Team 4
- Counterparts: Courts, Experts, MoJ (IT)
- One international MTE 4 weeks

Activities and timing:

- Analysis of current status and background analysis (month 4 to 5);
- Consultation process, prioritisation and sequencing (month 6 to 7);
- Elaboration of a strategy on a national approach with use of IT (month 8);
- Assistance in drafting amendments to Laws (when necessary);
- Assistance in implementation of a framework (from month 9 onwards until half year 4).

Indicators for output:

- Report on status quo and present problems in every district;
- Elaboration of a strategy with an implementation plan;
- Relevant decision making body (for instance Minister / Chief Justice / National Judicial Conference) will decide on the preferred solution;
- Technical assistance report on creating a National database of Court Experts.
- Database of court experts in place.

## **Result 2.3: A country-wide implementation of the Integrated Case Management Information System**

**Activity 2.3.1: Assist the MoJ and the OAJB on the unification of the case management system in all the courts in Albania, in particular by incorporating the courts in Tirana into the ICMIS.**

### Findings

A well-functioning electronic case management is absolutely vital for an efficient and well organized Justice system. The ICMIS is not yet used by the Tirana district court, the Serious Crimes Court, and the newly established Administrative courts. The praised functionality of ICMIS on a random lottery distribution of cases to Judges should be made available to all Courts. The lottery system of the ARK-IT system in use in the first mentioned courts is not fully random, making it a liability in the fight against corruption. The use of the ARK-IT system should be phased out for other reasons as well, since it will too costly to sustain both on the long run, and it is too costly to introduce new functionality like a connection with the Case Management System of the Prosecution in both systems: it will only be made available within ICMIS. Nonetheless, the ARK-IT has a number of clear benefits which should be made available in ICMIS, so the intention is that unification of IT will make available the best of both systems to all Courts and court users in Albania.

Unfortunately there is yet no legal basis to make the use of either system binding by law, making the use of statistics from the systems a liability. The ICMIS system is supported by the MoJ pursuant to Minister Order No. 6160 dated 02.07.2010, whereas the ARK-IT system is supported by a private company. Given that the case management system is not established by law, the publication of decisions generated by the system is not compulsory either. The MoJ has developed a draft CoM' Decision, which aims to set the rules on the creation, registration, functioning, interaction and security of the case management system in civil and penal cases (ICMIS). The draft at stake which belongs to the previous government is expected to be adopted within this year without substantial changes.

#### EURALIUS experts and counterparts:

- Team 4. Counterparts: Courts of Tirana, MoJ, OAJB.
- One international MTE 4 weeks. More MTE are possibly needed in order to provide sufficient IT expertise.

#### Activities and timing:

- Analysis of current status and background analysis in IT (month 4);
- Working group on the use of ICMIS in Tirana Courts (month 4 to 5);
- Decision on use of ICMIS in the First Instance Court of Tirana (month 5 to 6);
- Analysis of current case management practices in all courts (month 7 to 10);
- Working groups to unify case management practices in courts (month 13- 16);
- Assistance in drafting new Law / amendments to Laws on the use of ICMIS (when necessary);
- Assistance in implementation of unified case management system (half years 3 to 6).

#### Indicators for output:

- Report on status quo of the use of ICMIS in all Courts in Albania, focusing first on the Courts of Tirana, and recommendations on its further unification;
- Assessment about finding a solution to phase out the ARK-IT system, without compromising the performance of the First instance courts in Tirana;
- Report on status quo of case management practices in all Courts in Albania, meaning the working practices in all stages of the case handling (from registration to archiving) with recommendations on its further unification;
- Report about assistance to the MoJ in making sure that allocation of cases in all courts is done randomly and by unification of both systems into the ICMIS and Legal Publication solution (other activities of EURALIUS). ICMIS working in all courts. Indicator: List of courts using and not using ICMIS in practice.

**Activity 2.3.2: Support the MoJ in the full application of a **computerised management system** and random allocation of cases in all courts.**

Findings

In order to have a full application of the ICMIS according to best EU standards, it needs upgrading to a new generation, which could be made available when the present contract ends in 2016. EURALIUS intends to assist in discovering new functional requirements in Courts, assist in transforming changes in the case management and trial management found within other Activities of EURALIUS into new design features of ICMIS, and to contribute to a design with integration of new features that promote the efficiency in Courts, such as making a small claims procedure available, making available digital connections to all kinds of databases (vehicle database, civil status registry, electronic register of immovable property and such) and making the use of e-filing of documents possible.

EURALIUS experts and counterparts:

- Team 4
- Counterparts: MoJ, Courts, GPO
- One or two international MTEs, 8 weeks

Activities and timing:

- Analysis of current status and background analysis (month 4 to 7)
- Consultation process with Courts and MoJ on prioritisation of desired new functionality in ICMIS and strategic planning 2015-2017 (month 8 to 9)
- Strategy on development of ICMIS 2015-2017 (month 10)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in budgetting and implementation of new generations of ICMIS (half years 3 to 6).

Indicators for output:

- Report on the status quo, with the roll-out to Administrative Courts and advantages of the ARK-IT system that need to be retained;
- Report on needed functionality of Courts in new versions of the ICMIS system;
- Assistance in elaboration of a strategy towards the next generation of ICMIS with an architectural design.
- Computerised management system and random allocation of cases in all courts available (indicator: list of courts showing systems in place).

**Activity 2.3.3: Assist the MoJ in the further extension of the use of electronic applications and tools in the judiciary such as audio recording with a view to making court proceedings more efficient, effective and transparent.**

### Findings

An increased integration of electronic tools in court proceedings can make court proceedings more transparent. However, at present it is unclear what advantages this system and new developments such as video recording bring and what the risks are to privacy concerns. Well-developed policies are needed to introduce and use new technologies to the best of its abilities and avoid its risks, such as a risk on compliance with privacy laws.

At present a system of audio recordings has been made available by the JuST project, and the system is available in many court rooms. The system has an effect on manners and culture, and makes hearings more transparent. Many believe this system should be extended to all hearings in Court. However, given the small number of court rooms, many of the hearings are held at the Judge's office, therefore these cases are not recorded. Minutes are kept in hand writing by the secretary of the judge. Since they are not always felt to be objective, parties may delay the case by attempting to change the minutes. The project will strive to make new technologies contribute to more efficiency, less hearings and quality indicators such as an increase in transparency, accountability and public trust in the Judiciary and wider Justice System, taking into account the question, if audio recording violate the independence of the Judge

Careful thought will also be invested in improving the civil registry and integration in the ICMIS system. There is a great need for a more accurate (e-mail) address registry for summoning and other court communication. At present it is a responsibility for the plaintiff to provide the correct living addresses. There is no formal way to check if the supplied data is correct, since there still is no accurate address registry guaranteeing that parties and witnesses are duly informed of court proceedings. This is one of the reasons why such a large number of hearings are postponed unproductively. This point is raised in the latest EU Progress Report, making it a priority. A number of initiatives are underway to increase alternative communication by electronic means: e-mail, telephone text messages and fax, see

for instance in Order no. 642, dated 11 July 2013 of the Minister of Justice "For electronic notification of the judicial acts in the administrative court". Needed is a registry in which name, civil service number, address and telephone numbers are combined. The relevant question is who will build and maintain this registry: the courts, a ministry or the municipalities. An ongoing project in this area seems to have stopped just short of accomplishing this result. A renewed effort is needed to make summoning and court communication to parties in cases more efficient and effective.

#### EURALIUS experts and counterparts:

- Team 4
- Counterparts: MoJ, Courts, GPO, Ministry of Interior, municipalities
- One international MTE 4 weeks

#### Activities and timing:

- Analysis of current status and background analysis (month 4 to 5)
- Consultation process, prioritisation and sequencing (month 6 to 7)
- Elaboration of a strategy on the civil registry and use within ICMIS (month 8)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in making policies on new technologies (entire project's duration)

#### Indicators for output

- Report on status quo (assessment of the use of electronic means and IT applications at the courts)
- Assessment about making available an improved civil registry and its effective use to summon parties in the most efficient and effective way;
- Ad hoc reports on the possible benefits and risks of new IT-systems and newly available IT developments on efficiency, privacy and transparency



- Minutes of a working group in MoJ on the increased connection to registries, like a civil registry and the 23 registries that are planned to be integrated into the system of the Prosecution
- Reports on possible extension of use of advanced electronic or IT systems, analyses of independence of judges in regard to audio recording
- Policies and concrete plans on the use of new electronic applications and tools in the Judiciary, which are also planned to be informative for Activity 2.3.2

## **Result 2.4: The performance of the administrative court staff has improved.**

**Activity 2.4.1: Assist the MoJ in the review of the Law on the Judicial Administration with a view to establish a "Judicial Civil Service" in line with EU standards and promote a broad consultation process for the revisions to the law needed in light of the CC decision repealing the law of April 2013.**

### Findings

The Law on Judicial Administration, No° 109/2013, was adopted on April 4th, 2013. It establishes a Judicial Civil Service for all court employees, with the same status of the National Civil Service. In March 2014, the Law on Judicial Administration was repealed in its entirety by a decision of the CC no. 10, which found, inter alia, that a qualified majority, as opposed to a simple majority, would have been required for the Assembly to approve the law. In a kind of obiter dictum the CC expressed itself also on other claims and clarified that the judicial administration has to be organized in a way so that the independence of judges and courts is not violated. In particular, the CC held that ‘the lack of legal provisions in the definition of direct responsibilities of the chair of courts, which would make possible the management and control of support services in the court, is an issue of constitutional assessment’. Moreover the CC pointed out that a clear and consolidated function as registrar is a guarantee of sustainability and must be followed by ‘clear legal criteria about the procedure of appointment and employment relations for this function’. Finally the CC in regard to the competence of the Minister of Justice in relation to the proposal and administration of the judicial budget stated that the financial independence of the judicial power has to be reflected in the organic law. The competences of the chair persons should correlate with the supervisory function of the HCJ. Law amendments will have therefore take into account the whole ‘system of administration of the justice system’.

A shift of responsibilities from the chief judge to the chancellor would require a constitutional change. It is doubtful whether the Albanian institutions will support this.

The Progress Report 2014 urges that ‘provisions to regulate the work of the courts and their staff are needed. Under current legislation, chief court clerks have only

limited managerial responsibilities while court presidents carry out a significant number of administrative tasks. This undermines the efficiency of the court system.

#### EURALIUS experts and counterparts

Team 2, input from team 4, no STE but implementation in cooperation with the Slynn Foundation and from Sir Vos, ENCJ.

ENCJ and the Slynn Foundation are willing to assist reconsidering the career structure of court administrators. In order to ensure that senior administrators are given the requisite independence and autonomy to improve the quality of the support they give the judges and to take their own initiative in areas where they ought to have more accumulated experience and expertise than most judges possess.

#### Activities and timing:

- Analysis of current status (month 5 – December 2014, by Slynn Foundation)
- Comparative and background analysis (month 5 to 9)
- Consultation process (month 10 to 12)
- Accompanying prioritisation and sequencing (month 10 to 12)
- Assistance in drafting amendments to Constitution and laws (half years 3 and 4, if not done within the reform, activity 1.1.1.)
- Establishing sub-legal acts (half years 5 and 6)
- Assistance in implementation (half years 5 and 6)

#### Indicators for output

- Analysis report together with involved partners
- Proposal for amendments (constitution/law on judicial administration /law on courts or other legislation according to political decision of the beneficiary) or law draft (by project or MoJ or the Assembly).

**Activity 2.4.2: Assist the SoM in developing and delivering training to chancellors, court officers and other judicial administrators following up on the Council of Europe project implemented several years ago.**

### Findings

In the framework of the Joint Project V between EC and CoE “Support to the Training of the Court Administrators”, implemented in 2005-2005 several trainings for court administrators and administrative staff of courts were organized, like training on Data Protection. This seminar was focused on international standards in the field of data protection and the legal provisions in Albania. Furthermore, trainings were delivered for chancellors and chief budget officers from all courts of Albania with the main topics covering improvement of the budgeting procedures and strengthening of the cooperation between chancellors and budget officers.

The SoM offers some training in regard to court management; however, a comprehensive training program for chancellors, court officers and other judicial administrators is still not in place and will need to be developed.

The currently ongoing EU/CoE project ‘Support to Efficiency of Justice’ foresees in its components inter alia also the review extending the CEPEJ Court Coaching Programme on judicial time management to all Albanian courts; Improving the collection and analysis of judicial statistics for policy-making purposes, analysis of court organisation and court administrators’ capacity and the review of the training modules for court staff.

### EURALIUS experts and counterparts

Team 5, input from team 4

### Activities and timing

- This activity will be implemented in close co-ordination with CoE project. The team will carry out a training needs assessment (month 5 to 7), in so far as the CoE project will not cover this activity.

- After coordination with the CoE project and if still necessary EURALIUS will revise the training curricula (month 7 to 12) and deliver training (half years 3 to 5).

#### Indicators for output

- Training needs analysis carried out.
- Training programs and curricula revised.
- Training delivered. Indicators: List of participants, agenda, assessment.

**Activity 2.4.3: Assist the MoJ in other measures (e.g. in drafting internal rules and manuals) to strengthen the managerial capacities of administrative court staff; encourage broad consultation with the HCJ, the courts, the UAJ and other stakeholders in supporting and implementing the measures.**

### Findings

It is not only for the administrative court chief judges and court staff deemed essential to strengthen the managerial capacities, but for all courts in the Republic of Albania. The managerial and organizational capacities of chief judges, court chancellors and other court staff (to be called judicial administration staff) will be enhanced in order to achieve a better functioning court management. An improved awareness of the value of court management and what makes excellency is needed and achieving excellence should be awarded. The CoE / CEPEJ project is also very active on this topic, and coordination and cooperation will be established.

A quality framework for court management will be introduced, based on the in Europe widely used European Foundation for Quality Management model (<http://www.efqm.org/>), which is not only used by high performing businesses but also by government bodies and judiciaries. The Netherlands Council for the Judiciary is such a body, and can have an active role in this activity.

The European Foundation for Quality Management model is compliant with the CEPEJ system of input, throughput and output indicators, but complements this with instruments to cope with improvement. Improved statistics for determining the age of pending caseload is also a goal.

The quality framework, based on the European Foundation for Quality Management model, will be discussed and operationalized for the Albanian context in a workgroup with the participation of the HCJ, the MoJ and representatives of the courts. EURALIUS will assist in the introduction, implementation and improvement of the quality framework for court Management.

#### EURALIUS experts and counterparts:

- Team 4. Counterparts: HCJ, MoJ, the Courts, the UAJ
- One Albanian MTE 4 weeks has been transferred from activity 2.1.1. More MTE or STE might be desirable.

#### Activities and timing:

- Analysis of current status and background analysis (month 4 to 5)
- Working Group on court management and the EFQM model (month 6 to 7)
- Elaboration of a strategy, with indicators for excellence and planning for implementation (month 8)
- Assistance in drafting amendments to Laws (when necessary)
- Assistance in implementation of improved court management and strengthening of managerial capacities (half years 3 to 5)
- Providing a yearly “Award on Court Excellence” to the Best Court - Chief Judge / Managerial Court Staff (yearly within implementation period)

#### Indicators for output:

- Report on status quo in Court Management
- Report on Excellence in Court Management according to the EFQM model
- Assessment on indicators on excellent court management
- Providing a yearly “Award on Court Excellence” to the Best Court / Chief Judge
- Internal rules or manuals or similar documentation or self learning material available for judicial administration staff, adopted to their level of knowledge and to the Albanian situation.

## **Result 2.5: Professionalism of Albanian lawyers has improved**

Albania has re-established the profession of the advocate in 1990, after a general ban of the profession in 1967 during the communist regime. The profession has been developed on the basis of the Law Nr. 7382 from 1990. Since then, the law has been replaced by the law no. 9109, dated 17 July 2003 and amended several times, the amendments of Law no. 9112 of 27.09.2012 require a school to be established and the conclusion of professional liability insurance contracts.

Advocacy in Albania is organized as a legal profession, which is regulated in two structures: the Local Chambers and the NCA. A lawyer is member of the Local Chamber, in whose district s/he has the office, and, in the same time, s/he is a member of the NCA, which includes all Local Chambers of Albania.

The main legal acts that regulate the activity of the NCA are:

- AP Law
- Statute of the NCA
- Code of Ethics
- Regulation on Organization and Declaration of the Results of the Exam for the title of advocate in the Republic of Albania.



**Activity 2.5.1: Support the MoJ and the NCA in the implementation of the Law on the profession of lawyers, the new disciplinary procedures for lawyers and the new requirements for professional liability insurance.**

### Findings

The amendments of the AP Law 2012 introduced a new disciplinary proceeding for the lawyers. A complaint against a lawyer can be filed from a client, the leading organs of the chambers, a judge or prosecutor, the Minister of Justice, as well as from every other administrative organ stipulated by law. The law introduced the position of the “Commissioner of the Complaints”, who can be addressed in case of infringements of the law committed by a lawyer. After his decision on the case, the complaint may be presented before the Disciplinary Committee composed of 6 lawyers, 1 representative of MoJ, 1 representative of civil society or academic world, 1 representative appointed by a decision of HCJ, which decides on the specific case. Against the decision of the Disciplinary Committee, a suit can be filed at the administrative court.

The problem of delays in judicial proceedings due to the absence of lawyers in hearings causes sometimes extremely lengthy trials. Article 175 of the Civil Procedure Code and Article 350/1-3 of the Criminal Procedure Code allow the judges to postpone a hearing, in case that the lawyer can provide a justification for the absence. In practice these provisions are used sometimes by lawyers as procedural resource, being thus a common tool to delay the proceeding, instead of constituting an exception.

In March 2014 the MoJ has requested an opinion of the Venice Commission, regarding two amendments of the Code of Civil Procedure and Code of Criminal Procedure. The draft amendments provide the possibility for the judges to impose fines of up to 50.000 ALL (ca. 357 Euro) to lawyers (and prosecutors), who cause undue delays in court proceedings, either through their absence or by other means. The Venice Commission delivered the opinion in June 2014 stating that: “in principle, fining lawyers for causing deliberate delay of court proceeding is acceptable as long as standards of fair trial are respected. No automatic sanction can be foreseen and the circumstances in each case need to be examined individually.’

Another efficient tool in civil cases is default judgments, which are in principle foreseen in Article 179 Code of Civil Procedure, however not frequently used. An analysis why this instrument, which is well elaborated in EU Member States' legislation, is not used sufficiently in Albania could be beneficial. Its better use could speed up the proceedings and guarantees fair judgments as well.

Since 2012 lawyers are obligated to have a mandatory professional liability insurance starting from 1 January 2014. The NCA has contacted several local insurance companies, which could not provide until now any insurance for lawyers, hence there is still no contract of insurance offered by the insurance companies on the Albanian market. The NCA established contacts also with international companies, like Lloyds London. TL got in contact with Allianz Global insurance company. The results of this first fact finding contacts were that as long as the rule of law and the corruption free judiciary are not established, insurance companies are not willing to engage in Albania, as the risk cannot be calculated. So, by now lawyers – contrary to the law requirements – have no professional liability insurance.

#### EURALIUS experts and counterparts

Team 5

#### Activities and timing

- In the first six months a more detailed analysis is needed. A comparative analysis might show the options that ensure higher and better performance of lawyers, which include disciplinary measures, but also other tools like default judgment or fines for lawyers (month 5).
- The NCA's activities in regard to disciplinary proceeding against a lawyer in case of violations of the law will be evaluated and assistance will be provided in order to improve the use of this tool. Timing depends on the availability of the INT 5 and the counterpart (suggested month 8 or 9).
- The team will analyze also options for professional liability insurance. The advocates (eventually with mandatory membership) or the chamber (establishing a cooperative fund for compensation) might be the mid-term

solution to create a first set-up of an insurance system (half year 3 and 4, activity in 2016). As the case may be, options will have to be discussed in regard to contributions, limitations of liability for standard cases, additional contributions for additional risks in workshops (half year 6, activity in 2017). The advantage of a cooperative model outside NCA might be that this model would allow such an established body an easier entry on the free market.

#### Indicators for output

- Status analysis on disciplinary proceedings and other options to increase the professional performance of lawyers
- Comparative analysis in regard to disciplinary proceedings, fines and default judgments
- Draft of law amendments
- Report on options and feasibility study regarding professional liability insurance
- Draft legal basis for professional liability insurance

**Activity 2.5.2: Support the NCA in further improving the School for Lawyers and in developing and implementing a training program for lawyers and lawyer candidates (initial and continuous training). Assist the NCA in others issues related to the setting up and putting into operation the new School of Lawyers.**

### Findings

The amendments of the AP Law of 2012 introduced for the first time the mandatory training, which has to be organized by the NCA. The 2012 law established the National School of Lawyers, which offers a one-year compulsory education following university level law studies, was set up in September 2013 by the NCA. The education is offered as theoretical course accompanying the practice as assistant lawyer in a lawyer's office. In 2013/14 257 participants followed the one year course, in 2014/15, in the second year of its existence, about 600 participants are inscribed. It is the National School of Lawyers' task to support the preparation of the candidate lawyers for their exam. The exam is a pre condition for being recognized as lawyers. This National School of Lawyers is an achievement, a step forward to ensure a better preparation for the exercise of the profession.

The exam is currently in writing and includes theoretical questions and practical exercises. A clearer focus on practical exercises in the final exam could be considered, taking into account that the candidates have to be prepared for their practice. According to the NCA the materials to be studied for the preparation of the exam is sufficient in order to prepare for the practice. An analysis of the curricula and the subjects of the exam could be beneficial.

The organization and the management structure of the NSL is still weak. A more comprehensive analysis on the management structure and the composition and profile of the teaching staff of the National School of Lawyers will be beneficial.

The Albanian government provided the NCA with a terrain where the new school should be built. A brand new building in Tirana is under construction and might be available for first training activities in 2015, but some five to seven years are expected to be needed until everything will be fully completed.

With the amendments introduced by the 2012 Law all lawyers have to undergo continuous training. In 2011 the NCA has carried out the first continuous legal

training in collaboration with USAID / JuST in the districts of Vlora and Durrës, with a duration of 18 days per year (12 credits per 90 min.). Assistance to the NCA in the identification of training needs and in determining curricula would be beneficial. The establishment or reinforcement of an appropriate structure which is well staffed and which could serve as the body responsible for managing and organizing the continuous training in the whole country could enhance a structured and comprehensive organization of the training. Currently continuous training is offered only in few districts of Albania, such as Fier, Vlorë, Durrës and partially Tirana.

The NCA has been supported by different international agencies in different aspects: Slynn Foundation has given assistance in the implementation of the law of 2012 (Disciplinary Committee, School of Advocate's curricula, study visits for the Director of the School). JuST assistance of USAID made possible the piloting of the first modules of the continuous training in some districts of Albania. The American Bar Association is willing to continue the collaboration with NCA in the field of continuous training.

#### EURALIUS experts and counterparts

Team 5, input team 1. Additional STE might be needed. Study visit (training curricula for advocates)

#### Activities and timing

- A comprehensive analysis on the management structure and the composition and profile of the teaching staff of the NSL will be carried out (months 6)
- Training Need Assessments will be organized (month 7).
- Curricula for the initial training will be developed (month 10 to 12).
- Assistance in the preparation of training material and in the elaboration of the exams (ongoing activity according to the training plan)
- Curricula for continuous training will be elaborated, which NCA could offer for all lawyers in all districts of Albania (entire project duration).
- Study visit (half year 4).

### Indicators for output

- Report on the management structure and the composition, recruitment and profile of the teaching staff
- Training Needs Assessment Report
- Curricula for initial and continuous training revised
- Training delivered

### **Activity 2.5.3: Support the NCA in the implementation of the **Lawyer's Code of Ethics.****

#### Findings

The Code of Ethics for the Profession of Advocates (Code) has been established by decision of the General Council of the NCA no. 31, dated 12 November 2005. Generally stated, the Code seems to provide a good account of what behavior is considered 'ethical' or 'correct' in the circumstances of professional conduct of an lawyer. The NCA has adhered to the Council of Bars and Law Societies of Europe in the status of observer and has adopted its Code of Conduct

However, some issues are of concern of lawyers who consider certain provisions too restrictive: So for instance the Code stipulates that the lawyer should represent his/her client with qualitative and professional expertise (Article 7 of the Code). Its professional capabilities should be in compliance with the nature of the case, which s/he represents. In many cases the lawyers represent their clients in civil as well as in criminal cases. The specialization of lawyers in one of these domains is not compulsory; nonetheless the quality of work of a lawyer working mainly with civil cases is not the same as that of one who works mainly in the criminal area.

On the other hand, the NCA might engage even more in the implementation of the Code of Ethics for Lawyers, which will enhance their performance in many aspects, but mostly in regard to the dragging of the judicial proceedings from lawyers, who do not act in the spirit of this Code. So for example, a lawyer – additionally to the license issued by the NCA - has to register his economic activity at the National Center of Registration, which issues the fiscal code. In practice, lawyers are not always registered in the National Centre of Registration, which constitutes a violation of the provisions of the Code (Article 2). The NCA does not have any power to monitor this issue and is keen on finding a proper solution. The Code sanctions the activity of the lawyers, who act in conflict of interest (Article 20). In practice it happens that advocates represent for example party A against party B before the court of first instance and then, in appeal, the party B against party A.

### EURALIUS experts and counterparts

- Team 5
- One Albanian MTE 2 weeks

### Activities and timing

- An assessment of the Code of Ethics will be carried out. Guidelines for the practical implementation of the theoretical ethical aspects will be elaborated and practical cases could be identified to illustrate the meaning. The findings should be incorporated in the initial and continuous training program for lawyers (4<sup>th</sup> half year of implementation)
- Seminars will be organized and manuals prepared to propagate the principles of Code of Ethics for the lawyers (5<sup>th</sup> half of the year of implementation).
- The NCA has asked for support from the Council of Bars and Law Societies of Europe for the revision of ethical aspects of the curricula. This will be coordinated.

### Indicators for output

- Analysis of the Code of Ethics, including recommendations elaborated.
- Review of the curricula, incorporating ethical aspects in the training modules for the lawyers, eventually together with the Council of Bars and Law Societies of Europe
- A commentary to the Code of Ethics is available.



## **Result 2.6: Professionalism of Albanian notaries has improved.**

**Activity 2.6.1: Provide support to the NCN regarding its internal organization and functioning, especially also with regard to the disciplinary procedures for notaries.**

### Findings

The system of notary in Albania is organized in accordance to the principles of the system of the Latin notary. The office of the notary has public character, so a notary is working as a private professional under the control of the public authority. A notary serves as a facilitator of the court by, inter alia drafting legal documents and verifying the authenticity of the documents.

Currently, there are 443 notaries in Albania, organized in local chambers and in one NCN. The number of the notaries is a question of concern for NCN: from 2010 to 2012 the number of the notaries rose by 38,44%, being thus one of the countries with the highest growth in Europe (CEPEJ Report on European judicial systems – Edition 2014). The number of the notaries and the methodology used for determining it is in the competence of the MoJ. According to Article 16 of the Law on Notaries it is based on two criteria, the number of population and the number of transactions. The census of 2001 resulted in 3.069.275 inhabitants (number of notaries 294). The last census of 2011 resulted in 2.831.742 inhabitants (number of notaries 443). These figures show that it is worth analysing and as the case may be revising the methodology used and the territorial allocation of notaries.

The disciplinary proceedings against notaries are carried out by the MoJ in collaboration with the NCN. The MoJ inspects the notaries, through its inspectors (Article 8 of the Law on Notaries) and may – upon consultation with the NCN – impose sanctions according to Article 7 of the Law on Notaries. The sanctions provided by law range from written warnings to revocation of the license. The Minister of Justice can revoke the license temporarily or permanently. Articles 6 (a) to (gj) of the Law on Notaries foresee 11 cases where the license of the notary can be revoked by order of Minister of Justice.

According to Article 25 of the Law on Notaries the notaries are obligated to have a mandatory insurance against third parties covering their everyday work. Contrary to the lawyers there are insurance companies that offer professional liability insurance contracts, however the fees are considered too high by the notaries.

#### EURALIUS experts and counterparts

Team 5, more STE might be needed, Study visit (notaries).

#### Activities and timing

- In cooperation with the NCN an assessment of the legal provisions regarding disciplinary proceedings against notaries will be carried out (month 7 to 12).
- The legal framework, its practical implementation and recommendations for its improvement need to be discussed with stakeholders and as the case may be recommendations will be put forward. EURALIUS expects that some of the cases of revocation stipulated in the law might not be sufficiently clear. Other cases might have to be introduced. It could be considered to introduce an 'independent' "Disciplinary Commission" as first instance deciding body in the disciplinary proceedings against notaries. Advantages of such an approach might be a fairer, better accepted, depoliticized procedure and the coherence within the system, the disadvantage might be a longer and more complicated procedure (half year 4).
- The methodology used for determining the number of notaries will be analyzed and proposals for a further development put forward. (half year 4 to 5).
- An analysis of the current status regarding the obligatory insurance for notaries will be carried out and the NCN will be assisted in finding appropriate solutions (half year 4 to 5).
- Unless this activity is prioritized within the judiciary reform (Activity 1.1.1.) this assessment can start later in half year 4, as the priority in the first half 2015 will be to assist Activity 1.1.1.

- A study visit is planned in half-year 5 (topic “best practices”, timing in the first two weeks in December 2016, for example to the Notary Institute in Würzburg, Germany).

#### Indicators for output

- Assessment report about practical challenges and possible improvements on functioning
- Analysis on the methodology for determining the number of notaries carried out
- Analysis of the options regarding an obligatory insurance for notaries is carried out.
- Report and analysis on disciplinary liability system
- If applicable, draft law
- Study tour carried out.

## **Activity 2.6.2: Support the MoJ and the NCN in the implementation of a training program for notaries and notary' candidates.**

### Findings

There is no structure or any program which provides comprehensive preparation for the profession of a notary. The practice of notary candidates within notary offices is considered as initial training for notaries. According to Article 3/c of the Law on Notaries a notary candidate, who had acted and worked at the office of a notary for more than 2 years, has the right to participate in the exams for the vacant positions of notaries, announced by the MoJ.

Within the NCN the Council of the Chamber is responsible for the organization of the continuous training for the notaries. The organization of the continuous training is to be done by taking into consideration the difference between notaries and their assistants. Currently only fragmentary continuous training is offered both in terms of content as well as in terms of time and place.

The NCN would need support in the establishment of a comprehensive training program and structure, both in regard to initial training and continuous training. An option, that is currently discussed, is the establishment of a school for notaries, in order to ensure a coherent training structure.

### EURALIUS experts and counterparts

Team 5. More STE might be needed.

### Activities and timing

- An analysis on the current status regarding the organization and the content of the training for notaries and notary candidates will be carried out (month 8 to 9).
- A Training Needs Assessment should be implemented (month 12). The NCN and the MoJ will be assisted in determining curricula for initial and continuous training.

- The NCN in collaboration with MoJ will be assisted in offering initial and continuous training modules for the notaries as well as for candidate notaries (starting half year 5 until the end of the project, depending on the assessment).

#### Indicators for output

- Report on the status of training offered for notaries and notary candidates
- Training needs assessment
- Curricula for initial training elaborated and training implemented
- Curricula for continuous training elaborated and training implemented.

**Activity 2.6.3: Support the MoJ and the NCN in the further implementation of the immovable property registration scheme** initiated several years ago that simplifies the registration through the notaries' office and electronic registration.

### Findings

The legal basis for the registration of the immovable properties and rights on properties are Article 193 (f) of Civil Code and the Law No. 33/2012 "On registration of immovable properties", as well as the Instruction No. 248, dated 7 July 2012 "On procedures and conditions of use of system of One Stop Shop" of the Minister of Justice.

In order to buy immovable properties, a contract of sale has to be established by a notary. The notary has the task to verify whether the property of the seller is free from legal burdens. This information is contained in the Electronic Register of the Office for Registration of Immovable Properties. Notaries have access to the register through the electronic system "One Stop Shop". After the verification of the status of the property through the system of OSS the contract of sale is drafted by the notary.

Upon complete pay of the amount stipulated in the property contract by the purchaser, the process of registration in Office for Registration of Immovable Properties can start. Every act which leads to changes, for example any acquisition of property rights, has to be registered therein. A request of registration (for instance of a contract of sale) has to be sent to the register within 30 days upon the date of drafting of the act. The request can be done by the parties or the notary. The registration is carried out by an officer of the Office for Registration of Immovable Properties.

There are cases reported from notaries, that the registration can last several months. This phenomenon leads to legal uncertainties and is susceptible to corruption, due to the fact, that the parties are eager to have the registration and the new certificate of property in the name of the new owner as soon as possible. A possible solution may be to foresee for example an "express registration procedure" based on a higher fee.

### EURALIUS experts and counterparts

- Team 5.
- One international MTE 2 weeks; one Albanian MTE 4 weeks

### Activities and timing

- An analysis of the problem for the delays in the registration procedure will be carried out (months 9 and 10). Changes of the tariffs might be implementable by common “Instruction of the MoJ and Ministry of Finance” (Article 13 law No. 33/2012). The Office for Registration of Immovable Properties could introduce a specialized “desk for the Notaries”, which serves exclusively the notaries for the procedure of registration. Other options depend on the reasons for the delays. In case legal amendments are necessary, respective options will be discussed and a draft elaborated ((starting half year 5 until the end of the project, depending on the assessment)
- The Director of the Agency for Property Restitution and Compensation, Ms Qato, expressed the interest to discuss and be assisted by EURALIUS on the forthcoming process of creating a digital map of property lands in Albania. However, it is clarified that EURALIUS will focus only on the role of notaries. This is looking far more in the future and is key for foreign and local investments and economic development.
- The Chamber is also implementing the project on immovable property registration scheme, which should simplify the registration of every notary’s office and electronic register. They are also collaborating with the Central Buro of Land Registration, to enable the online control of immovable transactions between subjects or entities in Albania.

### Indicators for output

- Analysis of the implementation of the electronic registration of property with a view of identification of problems for the long duration and of options for solutions
- Draft legal acts, in order to address the problems

### **Objective 3: To align the Albanian criminal justice system to EU standards**

Specific Objective 3 of EURALIUS provides for technical assistance to align the Albanian Criminal Justice system to EU standards. The GPO and prosecution service as a whole are included as one of the beneficiaries of EURALIUS.

PAMECA supports and assist the Albanian law enforcement agencies in particular the ASP and GPO in order to bring their performance closer to EU standards. PAMECA provides technical assistance to enhance the investigative capacities and cooperation between ASP and GPO, including other relevant agencies, in the fight against organized and serious crimes, corruption illicit trafficking, money laundering and confiscation of proceeds of crime, improving the cooperation among all relevant agencies. To this view PAMECA offers assistance through the preparation of comprehensive legal assessments, providing strategic and advisory support combined with trainings programs, seminars, workshops, conferences on organized crime, corruption, environmental crime, cybercrime, trafficking of human beings, money laundering and financial investigations etc.

OPDAT from the Department of Justice is assisting GPO and other law enforcement sectors with particular emphasis in fighting corruption, organized crime and human trafficking by providing training for judges, police and prosecutors.

The project '*International Cooperation in Criminal Justice: Prosecutors' Network in the Western Balkans*' started in December 2014 and it is a follow up of the previous project. This is a regional project and will cover the Western Balkans (Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo\*, Montenegro and Serbia. The overall objective of this project is to prevent and combat serious and trans-border organized crime and linked corruption cases with cross-border implications, as well as to dismantle criminal organisations involved in illicit trafficking destined to the EU, in particular trafficking in firearms, drugs and human beings.

EURALIUS established closed contacts with both projects. The team leaders of Pameca and EURALIUS participate in both steering committees.



**Result 3.1: The legislative framework in criminal matters including international cooperation has been aligned to EU and Council of Europe standards**

**Activity 3.1.1: Assist the MoJ (in particular the Codification Department) in reviewing the Criminal Code and Criminal Procedure Code, in particular finalising the work of the “Task Force” and working group on the Criminal Procedure Code over the last two years, in accordance with EU and CoE standards and in particular with regard to the implementation of the 2012 constitutional reform limiting the immunity of judges and deputies.**

Findings Criminal Code

In July 2014, amendments to the Criminal Code were introduced which allow the imprisonment of every Albanian citizen involved in armed conflicts outside of the Albanian territory. These amendments also refer to thefts of electric power and telephone impulses, uncontrolled sales of SIM cards, drunk driving, under the effects of drugs or without driving license. EURALIUS will offer to MoJ assistance in providing relevant opinions and comments on other future initiatives in order to modernize the criminal justice framework, including the Criminal Code.

Findings Criminal Procedure Code

The work for the reform of the Criminal Procedure Code was initiated in 2011 with the setting up of a Working Group on the Criminal Procedure Code followed by the creation of a Task Force in March 2012. The Task Force prepared a report containing the proposals for possible amendments to the Criminal Procedure Code. The work of Task Force was finalised in October 2012.

The MoJ prepared the first draft of Criminal Procedure Code of Albania in March 2014 followed by a Policy Paper and an Action Plan establishing measures and deadlines to conclude the process of the reform of the Code. Albanian and international stakeholders analysed and consulted the first draft prepared by the MoJ. The GPO submitted comments on the draft, requiring a reformulation of some parts.

In April 2014 in a meeting of Albanian and international experts it has been underlined that the draft should be re-elaborated in order to ensure consistency, clarity and completeness. The draft is still pending.

Also in March 2014, the Minister of Justice requested an opinion of the Venice Commission on the draft law on an addition and amendment to Law No. 7905 dated 23.3.1995, "Criminal Procedure of Albania", as amended regarding only two articles: Article 1 - adding an Article 431/1 to the Code of Criminal Procedure providing for fines for lawyers and Article 2 – adding an Article 432/1 to the Code of Criminal Procedure excluding access to the Supreme Court in certain cases.

In March 2014, some amendments to the Code of Criminal Procedure implementing the 2012 constitutional changes on restrictions to the immunities enjoyed by judges, Members of the Assembly and other senior officials were approved by Law No. 21/2014 "On some addenda and amendments to the Law No. 7905 dated 21.3.1995 "Criminal Procedure Code".

### EURALIUS experts and counterparts

#### Team 3

##### Activities and timing

- In regard to the Criminal Code EURALIUS will assist MoJ and/or the Assembly if requested in the process of revision or amendments. Team 3 is ready to join in with priority (ongoing activity for the entire project's duration, depending on the legislative activities of the MoJ and the Assembly).
- The revision of the Criminal Procedure Code is ongoing for years. A small working group, consisting of EURALIUS, MoJ, GPO, OSCE, PAMECA, OPDAT and courts is proposed to finalize the existing documents (set up in December 2014). The aim is to finish the work as soon as possible without further delay. At best the proposal of the MoJ contains a justification showing different options if more of them are compliant with EU standards. A result (report, law proposal, law draft, commentaries – depending on the cooperation of the MoJ or the handling in the Assembly) could be ready by May 2015

(ongoing activity for the entire project's duration, depending on the legislative activities of the MoJ and the Assembly).

- The consultations and discussions will be accompanied until its adoption, possibly from April 2015 to December 2015 (ongoing activity for the entire project's duration, depending on the legislative activities of the MoJ and the Assembly).

#### Indicators for output

- List of members of a small working group "Criminal Procedure Code", December 2014 (achieved 3.12.2014).
- Assessment/ consolidated version of proposals/ study on status quo
- Proposal or draft "Criminal Procedure Code 2015" or analysis paper showing possible options as a basis for the MoJ/legislator.
- Criminal Procedure Code amendments suggested or adopted
- Third Semi Annual Report of EURALIUS, probably June 2016.

**Activity 3.1.2: Support the further reform and modernisation of the Criminal Justice legal and Institutional Framework, among other things by reviewing the other criminal legislation (e.g. the civil forfeiture or “anti-mafia” law) in particular those elements of the legislation relating to anti-corruption measures.**

This activity aims at incorporating new methods and techniques in criminal investigation into the Albanian legal and institutional framework in line with EU best practices to have a sound basis for efficient investigations in particular regarding organized and financial crime.

### Findings

New methods and techniques in criminal investigation are covered by PAMECA. The anti-mafia-law is in place and had been consulted by a previous EURALIUS project. Its review is handled by PAMECA for the time being. Both topics are currently not priority of EURALIUS, unless law drafting comes up one day.

In November, the Minister of State for Local Government was appointed as the National Anti- Corruption Coordinator and a network of anti-corruption focal points was established in all line ministries. The administrative and budgetary capacity of the coordinator’s office needs to be increased, and the new structures have yet to show their effectiveness. The assessment of the overall set-up of the institutions involved in the prevention of and fight against corruption is yet to be finalised. The 2014-20 anti-corruption strategy remains to be adopted, together with related action plans, impact indicators, budget allocation and a coordination and oversight mechanism. Reporting, policy coordination and monitoring at central level need to be improved.

In March 2014 it was approved the Law no. 21/2014 “On some addenda and amendments to the Law no. 7905 dated 21.3.1995 “Criminal Procedure Code”. This Law amends the Article 75/a of this Code providing for the extension of the jurisdictional competence of Court of Serious Crimes. With the new amendments Prosecutor’s Office of Serious Crimes and Court of Serious Crimes will respectively

investigate, prosecute and try active and passive corruption offences committed by judges, prosecutors, justice officials, high-level state officials and locally elected representatives. Article 245 regulates “Active corruption of the high state officials and local elected representatives”, article 260 “Passive corruption by high state officials or local elected officials”, article 319 “Active corruption of judges, prosecutors and other officials of the justice bodies/system” and article 319/ç “Passive corruption of the judges, prosecutors and other officials of the justice bodies/system”. In March, the Criminal Procedure Code was also amended to clarify the procedure for lifting the immunity for high-level public officials and judges from searches of their house and person, and from arrest. The new amendments on Criminal Procedure Code entered into force on 22 April 2014.

The other common corruption offences are investigated by Joint Investigation Units and tried by Albanian district courts. Joint Investigative Units have been established by a Memorandum of Cooperation between the GPO, Minister of Interior, Minister of Finance and the Director of State Information Service signed in 22 May 2007. This first Memorandum established the Joint Investigative Unit in Tirana and was then amended on 6 May 2009 establishing further JIUs in six main prosecutor’s offices. The Joint Investigative Units are established in the Prosecutor’s Offices of Tirana, Durrës, Vlorë, Fier, Shkodër, Korçë, Gjirokastër. On 9 April 2014 the number of prosecutors in the Joint Investigation Units attached to Prosecutor’s Office of Tirana, Durrës and Vlora was increased and a new additional Joint Investigative Unit attached to Elbasan Prosecutor’s Office was set up. Concretely the number of the prosecutors exercising their functions attached to the Joint Investigative Units has been increased by the General Prosecutor as following: The Joint Investigative Units of Tirana Prosecutor’s Office is increased by two additional prosecutors reaching the number of 10 prosecutors. In JIU at Durrës Prosecutor’s Office are added two prosecutors reaching the number of 5. In the Joint Investigative Unit at Vlora Prosecutor’s Office is added one prosecutor reaching the number of 3 prosecutors. In the new Joint Investigative Unit Elbasan are assigned 3 prosecutors.

The new Law on the State Police was approved in September 2014. Article 27 of this Law provides for the creation of a National Bureau of Investigation (NBI), tasked with investigating corruption offences. PAMECA is currently handling questions regarding the National Bureau of Investigation and is giving assistance on the draft order on the

organisation of functioning of National Bureau of Investigation. PAMECA provided some comments in order to improve the draft and make it more clear from the technical-procedural and legal point of view. EURALIUS will monitor the developments regarding its implementation. EURALIUS will follow up the recommendations of ACFA in order to improve the capacity and effectiveness of courts in adjudicating corruption-related offences

Amendments to the laws on asset declaration and conflict of interest were adopted in May. The revised law extends the number and frequency of checks by the High Inspectorate of Declaration and Audit of Assets and requires public officials to deposit assets exceeding € 10 700 in a bank. The submission of false information was made a criminal offence, although sanctions have so far not been a deterrent. New legislation on protection for whistle-blowers is adopted.

A new Sector of Corruption Investigation and Assets attached to the Prosecutor's Office of Serious Crimes in September 2014. This Sector is vested with the competence to investigate corruption offences committed by high state officials, judges and prosecutors and to coordinate assets investigation in the light of Anti-mafia Law.

The number of investigations of cases of active and passive corruption, including corruption by public officials, has increased. The number of corruption cases referred to the prosecution by the State Police increased by 33 % in the period from October 2013 to June 2014, compared to the same period in the previous year. Convictions by District Courts decreased by 5 % in the same period, while convictions by appeal courts increased by 23 %. Six corruption investigations within the judicial system are ongoing. Regarding high state and locally elected officials, five cases involving 25 defendants are pending before the court and four cases are being investigated for abuse of office and other related allegations. However, investigations continue to be reactive, rather than proactive, and the number of final convictions remains low at all levels.

Currently at the Serious Crimes Court one corruption case committed by a judge is under adjudication.

## EURALIUS experts and counterparts

Team 3, study visit for prosecutors (USKOK and/or investigation methods)

### Activities and timing

An assessment of the anti-corruption strategy is the starting point. One option could be to strengthen the National Bureau of investigation, the specialized crime prosecution unit and the specialized crimes court (first instance and appeal) into a small, efficient anti-corruption unit. Although this sounds nice and the Croatian USKOK might be a model, a lot of details and questions need to be clarified. Possible questions concern the role of GPO, a control by the court of the prosecutorial decision not to prosecute, the control of anti-corruption unit, impressive salaries for its members, a rotation system to be discussed versus experience, a legislative framework guaranteeing the admissibility of evidence in court, technical equipment, sufficient financing and human resources. According to the progress report a number of legal obstacles to efficient investigations remain, such as provisions related to interceptions and surveillance, time limits for investigations, lack of registers for bank accounts and telephone subscribers, and issues of admissibility of evidence before a court. The current legal framework should include provisions that allow the State Police to obtain information for investigative purposes from public institutions and private bodies delivering public services, and allowing for deterrent sanctions in case of non-compliance.

Depending on the content of the judiciary reform (activity 1.1.1.) and the urgent finalization of the criminal procedure code (activity 3.1.1.) this assessment is done either together with activity 3.1.1. or from May 2015 onwards (ongoing activity for the entire duration of the project).

It includes a study visit to EU member state (USKOK, Gajeva 30a, HR-10 000 Zagreb, if Croatian model is followed in anticorruption), half year 3, September 2015. In the case this study visit becomes redundant for any reason the study visit should focus on new investigation methods (may be Eurojust or bilateral cooperation Netherlands/Germany in fighting drugs, then in summer 2017).

Judges, prosecutors and judicial police need to be further specialised and to raise professional capacities to deal with investigation, prosecution and trial of corruption.

An appropriate training for Serious Crimes Court judges and prosecutors needs to be provided, which need to be clarified with the SoM and PAMECA (clarification with SoM in February 2015, training date depending on capacity, may be in 2016 and 2017).

The development of new investigation methods and techniques is a future activity in 2017.

#### Indicators for output

- Training needs assessment serious crimes court.
- Training calendar of SoM offers training for Serious Crimes Court judges (for 2016)
- Assessment or proposal by EURALIUS or decision by Albanian authorities on a police/prosecutor/court structure (Croatian model?) fighting corruption (latest May 2015, depending on judiciary reform) or if developments require analysis paper/proposal how to fight corruption (including USKOK), if not taken over by new twinning project.
- Agenda for study visit (August 2015 to Croatia or 2017 to another place)
- Assessment new investigation methods and techniques (2016).



**Activity 3.1.3: Support the implementation of the existing legislation in international cooperation in criminal matters and develop, in coordination with the SoM, GPO or other stakeholders, training programs to increase familiarity with the procedures of such legislation.**

### Findings

As far as concerns to the International Judicial Cooperation in Criminal Matters quite a range of the legal framework and respective instruments are implemented. Several bilateral agreements and Memorandums are signed to extend and ensure the mutual collaboration with international partners. The agreement with Europol is working. Bilateral cooperation with Italy is operable. In the area of judicial cooperation in civil and criminal matters (chapter 24), the Fourth Additional Protocol to the European Convention on Extradition entered into force in June 2014. Albania has adopted three agreements with Kosovo on mutual legal assistance, extradition and transfer of convicted persons. The Draft of the agreement with Eurojust is underway. Eurojust has been assessing the level of data protection in Albania from a legal and administrative point of view.

GPO Albania is committed on designing and updating of:

The Joint Declaration between the General Prosecution Office of the Republic of Albania and the Ministry of Justice of the Republic of Turkey, which was signed in Tirana on 12 June 2014 with the subject on strengthening the cooperation on the fight against crime, corruption and money laundering, human trafficking, and especially on organized crime and cross-border.

The amending and supplementing of existing Protocol of Cooperation between the General Prosecution Office of the Republic of Albania and the Public Ministry of the Republic of Romania, in order to expand the bilateral cooperation on prevention and combating of terrorism, organized crime, corruption and economic and financial crime.

The Cooperation Programme between the General Prosecution Office of the Republic of Albania and the General Prosecution Office of the Republic of Azerbaijan, on the mutual cooperation field on criminal matters.

The agreement on cooperation between the General Prosecution Office of the Republic of Albania and the General Prosecution Office of the Republic of Greece, in order to strengthen and further enhancing bilateral cooperation on the fight against crime.

Bosnia & Herzegovina Memorandum, signed by these authorities, the object of which will be the organized crime, trafficking, money laundering, seizure of assets, etc.

Cooperation Memorandum between the General Prosecution Office and National Anti-Mafia Directorate of Italy, the object of which will be the strengthening of cooperation on the fight against organized crime, money laundering, corruption, etc., as well as the establishment of joint investigation teams.

Also, the General Prosecution Office has taken the initiative to amend and sign the Bilateral Treaties, respectively:

The Extradition Treaty between the Kingdom of Albania and the United States of America signed on 1 March 1933.

The Convention on Extradition of Offenders and the United Kingdom, signed on 22 July 1926.

The list concerning international judicial cooperation in criminal matters is broad. It includes Albanian legal basis, national instruments, bilateral instruments and multilateral ones. The main multi international instruments and some of the bilateral instruments are published at the Website of the GPO in Albanian and English.

### EURALIUS experts and counterparts

Team 3.

### Activities and timing

An assessment of the current situation on international judicial cooperation will be conducted. The assessment will identify monitoring and training needs. After such an assessment it can be decided, which instruments and bilateral agreements remain to be handled. This activity will not be carried out prior to the work on the Criminal Procedure Code (activity 3.1.1.) and the national legislation (activity 3.1.2.) and starts

in half year 4, unless ongoing legislative activities are included in the judiciary reform (activity 1.1.1.).

Indicators for output

Assessment on current situation and gap analysis (legislation, training, support), developments of guidelines and templates if needed, training needs assessment for prosecutors, training curriculum:

- List of legislation in place, text published;
- List of missing legislation, that need to be implemented.

**Result 3.2: Criminal investigations are handled in a more efficient and effective way.**

**Activity 3.2.1: Assist the GPO in upgrading technical skills** of the prosecution service regarding specialized areas such as white-collar crime (e.g. financial investigations) and cybercrime, also supporting the joint investigative units in Tirana and other districts on economic and financial crime.

### Findings

According to the progress report further work is needed on improving cooperation between the police and prosecutor's office during investigations. Internal procedures and methods relating to collecting evidence and telecommunications interceptions need to be improved. The harmonisation of statistics across institutions on the track record of investigations, prosecutions and convictions needs to be improved. Evidence collection, reporting, and the use of special investigative techniques need to be upgraded.

Within the sphere or particular forms of crime as Cybercrime, considering the wide development of technology a new structure Cybercrime sector is set up at GPO by order of General Prosecutor no.135 dated 10.6.2014. This sector will coordinate the investigation and prosecution of Cybercrime in eight prosecutor's offices in Albania including Serious Crimes Prosecution Office. Currently the number Cybercrime cases are not high.

### EURALIUS experts and counterparts

- Team 3. Priority handling by PAMECA.
- One international MTE (3 weeks), due to the ongoing PAMECA mission later in 2016/2017, depending on the capacities and activities of PAMECA and on the special needs of GPO.

### Activities and timing

- One matter of urgent activities is the clarification that telephone companies are obliged to give information on the owner of a certain telephone number. PAMECA is following the issue and prepared already a report. However, if applicable, a solution needs to be found to provide a clarification and introduce a time-line for the notification and sanctions to the telephone companies. This might become part of the judiciary reform (activity 1.1.1.).
- One activity might be the preparation of trainings for prosecutors and members of joint investigation units. Special knowledge is needed in all fields, in particular in order to detect and properly investigate cybercrime. Both assessment are done in months 7 to 12.

### Indicators for output

An update of Pameca's assessment concerning investigation problems of mobile telephone holders:

Training needs assessment for prosecutors

Training program

**Activity 3.2.2: Assist the GPO in the implementation of the existing legislation, in particular regarding measures for fighting organized crime (e.g. asset confiscation).**

Implementation of this activity shall be coordinated with similar activities in PAMECA and must address also police forces, judges and members of the Asset Confiscation Unit.

### Findings

In March 2014, the so-called Anti-mafia Law has been amended by Law No 24/2014 “On preventing and striking at organized crime, trafficking and corruption through preventive measures against property”. These amendments include also the seizure or confiscation of illicit assets deriving from corruption offences falling under the new competence of Serious Crimes Court.

The Progress Report 2014 states that organised crime remains a considerable challenge and Albania needs to increase its efforts to build up a consistent track record of investigations, prosecutions and convictions in all areas and at all levels. Albania still lacks a comprehensive overall strategic approach towards organised crime on its territory. The number of confiscations of criminal assets and convictions for money laundering need to be increased through the systematic use of financial investigations.

Measures have been taken to improve the quality of asset investigations through increased monitoring and special analysis conducted by the police and the Serious Crimes Prosecution Office.

As regards the fight against money laundering, the number of investigations has slightly increased. However, the number of convictions remains low. The fight against illegal gambling activities intensified. Further efforts are needed to ensure the correct legal interpretation and effective implementation of the legal framework, in particular on separating the money laundering offence from the predicate offence and the possibility of using circumstantial evidence. Proactive investigations into inexplicable wealth need to be stepped up. Inter-institutional cooperation and technical skills in the field of financial investigations need to be strengthened. A track record of high-level cases has yet to be developed.

### EURALIUS experts and counterparts

Team 3. One international MTE (3 weeks). Study visit (fighting organized crime).

### Activities and timing

Problems persist in implementing the Anti-Mafia Law, in particular as regards confiscation of seized assets. Amendments to the Anti-Mafia Law are being prepared. Currently PAMECA handles this activity and is quite advanced. EURALIUS gives the lead to PAMECA. EURALIUS joins in the framework of the judiciary reform and its implementation (activities 1.1.1. and 1.1.2). An upcoming twinning project “Support to Anti-Money Laundering and Financial Crimes Investigations Structures to Albania” will deal with inter-institutional cooperation and coordination of fight against money-laundering in GPO and ASP, the implementation and efficiency of the anti-mafia law and the capacities of judicial system and law enforcement agencies to deal with anti-money laundering. EURALIUS will coordinate in order not to duplicate the activities (half year 3 or 4, may be end 2015).

- Such activities might consist of the development of guidelines and templates, training needs assessments and trainings and workshops.
- The study visit to one Member State (activity 3.1.2) can focus on international cooperation, if fighting corruption should not be its main purpose. As PAMECA organized a study visit to Palermo, Italy, already, the study visit is proposed for half-year 6.

### Indicators for output

Report of EURALIUS and PAMECA about their coordination.

**Activity 3.2.3: Support the implementation of memoranda to strengthen cooperation between institutions involved in the fight against organized crime and financing of terrorism (joint activities with PAMECA as regards cooperation prosecution service and police).**

This activity aims at developing a more coherent approach of the involved organisations (prosecution, police and judiciary) on how to tackle these forms of transnational organized criminal activity.

Findings

The Progress Report 2014 states that the adoption in October 2013 of a new law on measures against terrorist financing and of guidelines on rules and procedures for allowable expenses from the funds and other assets seized from designated people allowed for further alignment with the international standards set by the Financial Action Task Force. However, certain strategic deficiencies remain, in particular relating to the terrorist asset freezing programme and the framework for international cooperation to counter terrorist financing.

In the field of police cooperation and the fight against organised crime there has been some progress. Cooperation between the Albanian police and the prosecutor's office with EU Member States continued, leading to good results. However, law enforcement institutions need to step up coordination and information exchange to maximise their capacity to investigate serious and organised crime. Continuous specialised joint training activities involving police officers, prosecutors and judges remain necessary. Albania needs to develop and introduce strategic threat assessments relating to organised crime in its territory, in close cooperation with Europol. There is a need to improve proactive and intelligence-led investigations. There is no systematic use of special investigative techniques and financial investigations.

Regarding inter-institutional cooperation, in May 2014, it was held a meeting chaired by the General Prosecutor and the Director General of the Albanian State Police, to improve proactive investigations and collaboration. Monthly meetings are held on this issue an assessment of the implementation of existing inter-institutional memoranda of understanding was completed.



Inter-institutional communication, cooperation and coordination need to be improved and further work is needed.

### EURALIUS experts and counterparts

#### Team 3

##### Activities and timing

- The cooperation between ASP and GPO is covered by PAMECA. This includes trainings and mechanisms of cooperation. As EURALIUS is busy with legislation in 2015, priority is given to PAMECA (Coordination meeting in month 6).
- Assessment of problems, update of memorandums of understandings and trainings.
- Roundtable of stakeholders (2016), Assessment “status of cooperation” (2016), Memoranda of understanding (2016), training programs (2017), assessment (2017). The detailed planning depends on the work program of PAMECA.

##### Indicators for output (if applicable)

- Workshops and round tables held
- Status report
- Memoranda of Understanding revised
- Training programs revised
- Training delivered.

**Activity 3.2.4: Follow closely the development of the new electronic case management system currently being developed at the GPO, assist in its implementation and training activities when it is completed; assist in general in improving IT matters at the GPO with a view to enhanced compatibility with the IT systems of the police and courts as well as the prosecution services in EU Member States.**

### Findings

The pilot phase of the GPO's case management system, launched in July 2014, is now concluded. 40 trainers have been trained on how to use the Case Management System. This first group will serve as trainers to train the other staff at the prosecutor's offices at central and regional level. It is expected that the Case Management System be fully operational in January 2015 in prosecutor's offices all over Albania.

This system aims to achieve more transparency and efficiency of the prosecution's case-handling. Efforts are on the way to link this system with the case management of courts (ICMIS) and with the Civil Status Register and later on to have this system linked to 24 more electronic registers for which the prosecutor's office has requested to have direct access to in the course of investigations.

In order to meet the necessities for further assistance to use the case management for prosecutors, additional 24/25 IT staff is requested by the General Prosecutor. The Case Management System is already tested in prosecutor's office of Tirana, Elbasan and Durrës aiming at reporting first problems.

The project of the prosecution offices has almost finished its work on the software and will start soon with a train the trainers program. The IT will be rolled out to the local prosecution offices in January 2015. It is expected that this will cause some problems in the penal cases in the first half of 2015, but after that many gains in efficiency might result in a higher number of penal cases brought before the courts.

### EURALIUS experts and counterparts

- Team 3, input from team 4 (ICMIS in courts).
- One international MTE (3 weeks) in 2017 (depending on the remaining problems).

### Activities and timing

- Coordination meeting EURALIUS expert team 4 with staff implementing the case management system at the GPO (month 4, December 2014) in order to identify differences between the systems.
- Assessment report of the needs after the test phase (half years 4 and 5, 2016, as it is too early in 2015), coordination of both systems
- Feasibility study on compatibility (half years 4 or 5, 2016), assistance by one international MTE.
- Assistance in ensuring the compatibility of the Case Management System to ICMIS (until the end of the implementation phase, 2017).

### Indicators for output

- Report team 4/GPO
- Assessment report
- Feasibility study
- Case management system compatible to ICMIS.

### **Result 3.3: Efficiency and accountability of the Albanian prosecution service has improved.**

An increased efficiency is an advantage to the prosecution service, which has to cope with increasing number of files without a substantial increase of capacity.

The fight against corruption in all levels of the Albanian society but especially in the justice system, requires an optimal operation of the prosecution service. The project examines the centralized organization of the prosecution service, in order to give more independence to the prosecutors in the decision making process in the context of law enforcement and fulfilment of their duties. The major objectives to be met in this field are:

- application of the same principles, guarantees and procedures for the professional training, selection, appointment, career advancement, responsibilities and procedures for the disciplinary punishment of prosecutors as for judges;
- strengthening the role of the Prosecution Council through transforming the existing one from an advisory to a decision-making body with respect to the appointment and disciplining of prosecutors;
- restructuring the prosecution service with the view of improving the hierarchical, substantive and territorial organization of the prosecution service, its independence and status of prosecutors etc.

**Activity 3.3.1: Assist the GPO and the Council of the Prosecutors in the implementation and/or review of the evaluation system for prosecutors; in connection with this assist the GPO in analyzing the role of the Council of the Prosecutors with a view to finding possible alternatives.**

### Findings

The Regulation of evaluation system of performance and of professional and moral abilities for prosecutors is approved by the Order No. 221 dated 19.11.2012 of the General Prosecutor and it is already in place. This system ensures stability in office and promotion of the prosecutors. The evaluation of performance and of professional and moral abilities for prosecutors for 2013 proceeded smoothly and it is concluded at the majority of prosecutor's offices. It still ongoing in some of the prosecutor's offices due to the daily workload but it is expected to be soon concluded. Some technical and procedural problems are already encountered regarding the implementation of evaluation system which could be subject of further proposals for improvement.

The Council of Prosecutor's Office is an advisory organ assisting the General Prosecutor. Its role and competences are stipulated in Article 10 GPO Law, which focus *inter alia* also on giving opinions with regard to the evaluation of the performance of the prosecutors.

### EURALIUS experts and counterparts

Team 3.

#### Activities and timing

- Assessment of current evaluation system (future activities, starting in half year 4 in 2016)
- Recommendations for improvement (future activities, half year 5 until the end of the implementation period)

- Review of the institutional set-up regarding the evaluation system (role of the Council of Prosecutors, future activities, half year 5 until the end of the implementation period).

Indicators for output

Assessment report, recommendations.

**Activity 3.3.2: Assist the GPO and the Council of Prosecutors in establishing in and implementing a true system of advancement in career with clear criteria.**

### Findings

The Council of Prosecutor's Office is an advisory organ assisting the General Prosecutor. Its role and competences are stipulated in Article 10 GPO Law, and are mainly focused on giving opinions with regard to the evaluation of the performance, promotion and transfer of prosecutors, internal organisation of the institution, annual plan of inspections, disciplinary proceedings, draft-normative acts of the General Prosecutor etc, The Council of Prosecutor's Office is organised and performs the functions based on the Regulation no.79, dated 16.04.2010 "On the Organisation and Functioning of the Council of Prosecutor's Office". Concerning the Role of Council of Prosecutors, currently GPO has drafted the new amendments to the Regulation on Organization and Functioning of the Council of Prosecutors. The amendments consist in new rules and competences on appointment and promotion of prosecutors *inter alia* the setting up of a verification commission on fulfillment of legal criteria of candidates. In case of promotion of a prosecutor or appointment of a head of a prosecutor's office, besides the competition based on applications also hearing sessions will take place.

### EURALIUS experts and counterparts

Team 3 with the contribution of team 2 (evaluation of judges).

### Activities and timing

It is suggested to introduce an evaluation system for prosecutors, which reflects the general approach adopted for judges elaborated within objective 1. Details depend on the result of objective 1. The implementation period starts in half year 3 and lasts until the end of the project.

### Indicators for output

Analysis (Evaluation of judges and evaluation of prosecutors – room for improvements).

**Activity 3.3.3: Support the Association of Prosecutors and the GPO in the implementation of the **Codes of Ethics** for prosecutors.**

Findings

General Prosecutor of Albanian approved “The rules on ethics and behaviour of prosecutors”, so called the Code of Ethics for prosecutors by order No. 141, dated 19.06.2014. The rules were drafted with the assistance of OPDAT. The rules were distributed to all prosecutors’ offices in Albania for comments/suggestions and afterwards were also approved by the Council of Prosecutor’s. These rules aim at creating high standards concerning the ethics and behaviour of prosecutors of all levels in exercising their duty in line with the Albanian Constitution and other relevant laws.

EURALIUS experts and counterparts

- Team 3
- 1 Albanian MTE (3 weeks)

Activities and timing

Assessment of the current Code of Ethics and finding practical cases to illustrate its meaning (future activities, in 2016 half years 4 to 6)

Guidelines regarding practical implementation (future activities, half years 4 to 6)

Incorporating the results and practical cases into the training programme for prosecutors (half years 4 to 6)

Indicators for output

Assessment on the status of the Code of Ethics.



**Activity 3.3.4: Assessment of the current **institutional set up of the GPO** and other prosecutor's offices with the aim of evaluating the current independence and accountability (in particular, an analysis of the existing checks and balances) of prosecutors in line with EU standards.**

This Activity aims at defining clear procedures regarding the authority of superiors to give directives towards subordinate prosecutors.

### Findings

The Prosecutor's Office in Albania is regulated by Law no. 8737; dated 12.2.2001 "On the organisation and functioning of the Prosecutor's Office in the Republic of Albania" as amended. The constitutional competences of the prosecutors and the position of the General Prosecutor are laid down in the Articles 148 and 149 of the Albanian Constitution.

The Prosecutor's Office is organised according to the Article 3 GPO Law. The GPO is a centralised body, composed of the General Prosecutor's Office, the (advisory) Council of the Prosecutor's Office and the prosecutor's offices (districts and appeals including Prosecutor's Office of Serious Crimes). A centralized body is a clear hierarchy and command structure.

According to the Progress Report 2014, the General Prosecutor has issued warnings to 4 prosecutors and assigned another prosecutor to less import duties; disciplinary proceedings are ongoing against one prosecutor. 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 Prosecutors reinforced.

In March 2014 the MoJ has requested an opinion from the Venice Commission, regarding two amendments of the Code of Civil Procedure and Code of Criminal Procedure. The draft amendments provide the possibility for the judges to impose fines of up to 50.000 ALL (ca. 357 Euro) to lawyers and prosecutors, who cause undue delays in court proceedings, either through their absence or by other means. The Venice Commission delivered the opinion in June 2014 differentiated between lawyers and prosecutors and stated that: "Instead of fines disciplinary proceeding

against prosecutors might be sufficient [...] it should also be ensured that the fine is not covered by the State, which the prosecutor represents”.

### EURALIUS experts and counterparts

Team 3

#### Activities and timing

Current discussions concern the role of the Council (to become a deciding instead of a consultative body), the demand of the GPO for more independence in financial matters and the instruction lines in accordance with international standards.

Furthermore options for an increased accountability will have to be elaborated and discussed.

Upcoming challenges might be covered within the judiciary reform (activity 1.1.1., month 5 to 10). In the case the structure need to be discussed within this framework. An analysis will wait for the outcome of the ongoing reform and a new assessment about the remaining questions will be done in half year 3 and 4. At this time a fresh document might facilitate GPO better to advance further.

#### Indicators for output

Assessment report (situation of the GPO after the judiciary reform), including a survey of the institutional set-up and recommendations for improvement.

**Activity 3.3.5: Support the GPO in reviewing its own internal organisational structure, human resources and financial management and that of the district prosecutor's offices, for the purpose of overall improvement of functioning.**

This Activity shall support the GPO in defining precise rules for the allocation system of cases to prosecutors and a clear internal structure of the individual prosecution offices.

### Findings

A Presidential Decree establishes the total number of prosecutors. According to Article 8, paragraph 2, letter b GPO Law the General Prosecutor proposes to the President of Republic the total number of prosecutors. The total number of prosecutors in Albania is 330.

The prosecutor's offices of Albania are organised and function based on rules defined in their internal Regulation approved by the Order no.176 dated 09.10.2012 of the General Prosecutor "On the approval in principle of the standard regulation "On the Organisation and Functioning of the Prosecutor's Offices attached to Judicial District Court". Each prosecutor's office carries out the activity according to the organigrams and organisational structure approved by the General Prosecutor. The Regulation of each prosecutor's office stipulates the structure of the office, the functions and tasks of the head of the prosecutor's office, deputy head and of the prosecutors, distribution of cases/workload, appointment and organisation of the prosecutors into sections and daily basis management of prosecutor's office.

### EURALIUS experts and counterparts

Team 3.

### Activities and timing

Currently some prosecutor's offices are facing workload increase each year due to high number of cases. Measures within the judiciary reform (activity 1.1.1, months 4 to 10) have priority to reduce the workload. After the assessment of the workload it is time to check if internal organisational structures and incentives for human resources

and a better financial management are needed. Such an assessment makes sense in 2016.

Assessment and reports on current situation (half year 3, December 2014-May 2015)

Workshops to improve standards (half year 3 or 4, future activities, in 2016)

Elaboration of improved standard procedures (reporting, internal controlling)(future activities, half year 5)

Coaching of key executives (future activities until end of project implementation)

Training of prosecutors (future activities until end of project implementation)

#### Indicators for output

Assessment “effects of the judiciary reform – further support for the GPO”.

**Objective 4: To align the Albanian civil and administrative justice system to EU standards**

**Result 4.1: The administrative courts are functioning.**

The implementation of AC Law began in November 2013. Six administrative courts of first instance, the Administrative Court of Appeal and the Administrative Panel of the HC were set up. Nevertheless, with the exception of Tirana, these courts operate with only 50 % of their allocated staff numbers, and judges are seconded from other courts to meet panel requirements. A number of premises need to be allocated or improved and legal assistants have yet to be appointed in line with the procedures laid down in the July amendments to the law. Most of the courts' current workload is made up of cases on the dismissal of public servants and property disputes; the impact of establishing administrative courts on ensuring better and specialized legal protection in all cases involving state action and responsibility needs to be evaluated, suggests the Progress Report.

**Activity 4.1.1: Provide assistance to the HCJ and the MoJ in preparing the necessary sub-legal acts for the Law on Justice and the Administrative Courts.**

Findings

Article 71 AC Law foresees the following sublegal acts:

HCJ, within three months from the entry into force of this law, is required to enact the sublegal law to implement paragraph 4 of Article 5 of this Law;

The MoJ, within three months from the entry into force of this law, to exercise its powers, as provided in Article 4 of this law, for the organization and establishment of administrative courts.

Article 5(4) AC Law stipulates that the procedure of selection of candidates for judges in the administrative court of first instance and the court of appeal is conducted by the HCJ in two phases:

the list of the candidates who meet the above criteria for judges in the administrative court of the first instance and the court of appeal is sent to the SoM to undergo a written selection test organized by the school;

Candidates who successfully pass the selection test are selected by the HCJ, taking into account the results of the selection testing.

The HCJ has already adopted this sublegal act with Decision no. 299/1 of the HCJ, dated 30 November 2012 “On rules and procedures for the selection of the candidates for judges in the administrative court of the first instance and the court of appeals”.

Article 4(2)(3) AC Law foresees that the HCJ, by the proposal of the Minister of Justice, sets detailed rules for the exercise of the activity of the administrative court of first instance outside its headquarters. A respective draft was elaborated by the MoJ and submitted to the HCJ on 19. September 2014. It is expected to be put on the agenda of one of the next HCJ’s plenary meetings.

According to Article 4(4) AC Law ‘territorial competences, the head offices, as well as the number of the judges of the administrative courts of first instance and the AC of Appeals are established by a decree of the President of the Republic on the proposal

of the Minister of Justice. The Minister of Justice makes the proposals after having obtained the opinion of the HCJ.

The following presidential decrees were adopted in this regard:

Decree of the President of the Republic, no. 8349, dated 14 October 2013 "On initiation of the functioning of the administrative courts";

Decree of the President of the Republic, no. 7818, dated 16 November 2012 "For establishing the number of the judges for any court of the first instance, court of appeals and of the administrative courts, as well as the territorial competences and the headquarters of the administrative courts";

Moreover, Article 22(1) AC Law allows notifications of parties via telephone or Email. Article 22(2) AC Law provides that detailed rules for the manner of electronic notification according to paragraph 1 of this Article are set by order of the Minister of Justice within three months from the entry of this law into force. This order was adopted by Order No. 642, dated 11 July 2013 of the Minister of Justice "For electronic notification of the judicial acts in the administrative court".

Finally, based on Article 15(1)(c) AC Law, which establishes a basis for the requesting experts' opinions, Order No. 685, dated 20. November 2013 of the Minister of Justice "On the completion of the declaration form of the oath by the experts of the administrative court" was adopted.

Moreover, Article 6 AC Law refers to 'legal assistants' (sometimes referred to as 'legal advisors'). Article 6/1 AC Law provides that the legal assistant is appointed and discharged by order of the chair of the court, on the proposal of court chancellor. The court chancellor selects and proposes for appointment the legal assistant from the list of winning candidates announced by an 'ad hoc committee'.

More details on the procedure are found in Article 6/4 AC Law. The chair of the court communicates to the MoJ the vacant positions of legal assistants in the court. The responsible structure in the MoJ not later than 15 days from such notice, announces the date of competition at the website of MoJ. The Minister of Justice defines the criteria and procedure for the organization of the test. The interested candidates submit the request to be appointed at the ad hoc committee. The ad hoc committee after reviewing the requests verifies who fulfils the criteria and announces the list of candidates who will participate in the competition. The ad hoc committee organizes

the selection test, and publishes the results. The candidates, who score not less than 70% of the total points, are considered to have passed the test. The ad hoc committee after ranking the candidates according to their scores forwards the list to the respective court.

The criteria for being appointed as legal assistant are foreseen in Article 6/3 AC Law. Candidates who have finished the magistrate school, or who worked as judge but do not have a disciplinary measure or who have worked as advisors of judges at the HC and CC are proposed and appointed as legal assistants without undergoing the competition.

The legal advisors to the administrative courts are not yet recruited due to missing sublegal acts. However, recently the Minister of Justice has adopted the two missing orders: i.e.

Order no. 613, dated 11 November 2014 On the Criteria and Procedures of Organising the Test for the Position of Legal Assistants in the Administrative Courts

Order no. 614, dated 11 November 2014 On the Rules of Organisation and Functioning of the Ad Hoc Committee for following the Procedures of Recruitment of Legal Assistants in Administrative Courts

According to the counterparts in the MoJ and the HCJ, besides the sublegal act on the exercise of the activity of the administrative court of first instance outside its headquarters, which is going to be adopted in one of the next HCJ's meetings, no further acts are needed.

### EURALIUS experts and counterparts

Team 2, counterpart: MoJ, administrative courts.

### Activities and timing

EURALIUS will ascertain the findings and analysis of current status (month 4 to 9) and, if necessary, assist in establishing the sub-legal acts. The project will monitor the recruitment of legal advisors (month 4 to 9) and assist in implementing the sublegal throughout the project implementation, if requested. In the last four months of the project the situation shall be checked again.



Indicators for output

Reports on the status and on the implementation of the sublegal acts.

**Activity 4.1.2: Assist the HCJ in evaluating the implementation of the selection and appointment procedures that took place for the new administrative court judges and provide continuing assistance to the HCJ and the SoM in the future implementation of these procedures.**

### Findings

The creation of a distinct Administrative Court branch is rather new in Albania. The new Law on the establishment of Administrative Courts (AC Law) was passed in 2012. The AC Law was followed by a Presidential Decree no. 7818, dated 16.11.2012, "On the number of Judges for each Court of first Instance, Court of Appeal and the Administrative Courts, and on the territorial jurisdiction and headquarters of the Administrative Courts", which inter alia fixed the total number of Courts at 37, out of which 6 first instance administrative courts with a total of 36 judges and 1 appellate administrative court with 7 judges). Out of the 36 judges of the first instance administrative branch are foreseen 16 in Tirana, 4 in Durrës, 4 in Shkodra, 4 in Vlora, 4 in Korça, 4 in Gjirokastra.

Though the administrative courts started to function in November 2013 there are still 7 vacant positions for judges: 2 in Shkodra; 1 in Vlora; 2 in Gjirokastra; and 2 in Korçë.

The HCJ advertised the positions several times, however still not all positions could be filled due to the lack of applications. The open positions are outside the central areas of Tirana and Durrës, the preferred workplaces of judges in Albania. The workload is rather high and the administrative appeal court has short deadlines for adjudication of administrative cases, Law No. 49/2012 On the Organization and Functioning of the Administrative Courts and Adjudication of Administrative Disputes, in Article 48 (2) provides that, the Administrative Court of Appeal examines the case within 30 days from the date of arrival of the complaint from the court where such complaint was submitted. Furthermore, also the criteria are rather high, requiring that candidates have to have at least 5 years' experience as judge (Article 5 AC Law).

Regarding the appointment of administrative judges, HCJ adopted decision no. 329, dated 05.07.2013 "On determining the procedure for selection of candidates for judge in the Administrative Court of Appeal". According to this decision the judges for the

Administrative Court of Appeal have to be selected among candidates, who took at least 91 points out of 100 in the test scores; who have their professional evaluation "Very Good"; have no relevant information from the High Inspectorate of Declaration and Audit of Assets, if there were problems in the process of declaration of assets by candidates.

This combination of high qualification, high workload under time pressure, positions in remote areas and no financial incentives in comparison to other career judges do not sufficiently motivate judges to apply. It might be recommended to overcome the difficulties in fulfilling the administrative judges' vacancies, by providing incentives, considering the specific jurisdiction and training, the extra requirements (legal and HCJ's) and, in some cases, the need to move away from Tirana. For example, a salary increase, like for judges in Serious Crimes Court (having the same 5 years of experience requirement); preferential conditions for promotion to the Administrative Section of the Appeal Courts; or some extra benefits to live outside Tirana (salary increase and/or lodging allowance).

Additionally, the AC Law does not only provide provisions on the organisation and functioning of the administrative courts, but sets also administrative procedure rules, which according to a very rough analysis set very tight, eventually also unrealistic timeframes. It might be beneficial to analyse more deeply the reasons for the low attractiveness of positions at the administrative courts also from this viewpoint and eventually assess whether the applicability of a new Administrative Procedure Code, which is in process of adoption by the Assembly, might ease the work of the judges at administrative courts.

It seems that there is an instruction existing that requires all decisions of an administrative court where the public entity is not 'winning' the case to be appealed at the appellate level. If this is true, the appropriateness of such an instruction would need to be assessed and if applicable, might have to be changed.

Another aspect that affects negatively the process before the administrative courts seems to be the fact that the administrative authorities, who are parties in the proceeding, do not submit the whole file of the administrative proceeding and tend to delay proceedings by submitting pieces of the files selectively. There seems to be a tendency that administrative authorities submit further pieces of the files only in appeal procedure and by doing so presenting new facts, which results then in

successful appeals. It might be necessary to revise the law and ensure full submission of the whole administrative file to administrative courts and appeals based only on certain grounds.

The Progress Report 2014 urges an 'incentive orientated recruitment process to counter the lack of participation to date in the admission procedure. Most of the court's current workload is made up of cases on dismissal of public servants and property disputes. The impact of establishing administrative courts on ensuring better and specialized legal protection in all cases involving state action and responsibility needs to be evaluated.

#### EURALIUS experts and counterparts

Team 2, counterpart: HCJ, administrative courts, MoJ.

#### Activities and timing

EURALIUS will carry out a more in-depth analysis and assess which tools could best ensure to make positions at the administrative courts more attractive in view of identification of options for solutions (months 4 to 12). In case, legislative amendments are required, this should be included in the justice reform strategy and respective amendments of the laws would have to be implemented according to the priority of the strategy (half year 3 and 4).

#### Indicators for output

- Assessment Report
- Workshops with judges of administrative courts and the units of administrative authorities representing the public administration before administrative courts
- Drafts of legislative amendments

**Activity 4.1.3: Provide assistance to the SoM in preparing a training need assessment and to develop and deliver a general training program for the administrative court judges that will be sustainable and will bring their performance up to EU standards.**

### Findings

Administrative court judges expressed their need for further training during several visits to the courts, in particular they showed interest in comparative presentation on how legal questions of administrative procedure law are approached in other EU countries in order to exchange best practice. The judges of the first instance administrative court of Tirana underlined their desire by stating their intention to establish a list of topics on which trainings should focus on.

It might be beneficial to include in the target group also representatives of administrative authorities who are in charge of defending cases before the administrative courts.

The EU/CoE project 'Support to Efficiency of Justice' foresees in its components inter alia also the review of the training modules for judges. Thus this activity of carrying out the training needs analysis and the development and delivering of a general training program will be done in close co-operation with the CoE partners.

### EURALIUS experts and counterparts

Team 5, input from Team 2

### Activities and timing

This activity will be implemented in close co-ordination with CoE project. The team will carry out a training needs assessment both within judges of administrative courts and eventually also within civil servants in charge of defending cases before the administrative courts (months 7 to 12), in so far as the CoE project will not cover this activity. After coordination with the CoE project and if still necessary EURALIUS will revise the training curricula (half years 3 and 4) and deliver training (half year 6).

Indicators for output

- Training needs analysis carried out.
- Training programs and curricula revised.
- Training delivered.

**Activity 4.1.4: Provide assistance to the SoM in preparing an advanced training program for the administrative court judges focusing on the case law of the European Court of Justice, the Court of First Instance (General Court) and other EU Member State high courts on the handling of administrative law issues.**

### Findings

The administrative law is more than other law areas predetermined by EU law. In particular areas of administrative law, like environmental law, energy law, procurement law, and others, more than 90% of the law have direct or indirect sources in the *acquis*. Though Albania is not yet member of the EU, Albanian law – as far as feasible – follows the requirements set out by EU law. Judges need to get acquainted as soon as possible with EU law principles, the interaction between national and EU law and interpretation of national law in the light of the *acquis* and of the case law of the European courts.

During the visits to the administrative courts the judges expressed their interest and keenness on advanced training in EU law matters.

The CoE project 'Support to Efficiency of Justice' foresees in its components inter alia also the review of the training modules for judges. A close cooperation with CoE will therefore be crucial.

### EURALIUS experts and counterparts

- Team 5, input team 2.
- One international MTE (2 weeks)

### Activities and timing

This activity will be implemented in close co-ordination with CoE project. The team will carry out a training needs assessment both within judges of administrative courts and eventually also within civil servants in charge of defending cases before the administrative courts (months 11 and 12), in so far as the CoE project will not cover

this activity. After coordination with the CoE project and if still necessary EURALIUS will revise the training curricula (half year 3) and deliver training (half years 4 to 6).

Indicators for output

- Training needs analysis carried out.
- Training programs and curricula revised.
- Training delivered.



**Activity 4.1.5: Provide assistance concerning final improvements to and adoption of the new **Administrative Procedures Code**.**

Findings

The process of elaboration of a new Administrative Procedure Code is ongoing since 2008, mainly supported by an expert of Sigma. At the beginning of 2014 the expert had delivered a very positive opinion on the draft law as of the version of January 2014. Following a consultation process the MoJ had included other 40 Articles in the draft and submitted this final draft to the Assembly before the summer break. Currently, the expert and the MoJ together elaborate a list of 'open questions', which indicates to which extent these additional provisions are agreed among the MoJ and the expert and which not. The draft law is pending in the Commission for Legislative Issues. In a hearing in October the chair of that Commission asked for a complete documentation in order to facilitate the work of the Commission.

The Sigma expert expressed his availability to continue the assistance for the parliamentary process. As far as needed and requested, EURALIUS will support the finalisation of this process.

EURALIUS experts and counterparts

Team 2.

Activities and timing

As far as needed and requested EURALIUS will support to the finalisation of the adoption process of the Administrative Procedure Code (months 4 to 12).

Indicators for output

Administrative Procedure Code is adopted by the Assembly.

**Result 4.2: The civil law reform continues taking into consideration latest EU developments.**

**Activity 4.2.1: Provide assistance to the MoJ (Codification Directorate) in a review of issues under the Civil Code with a view to updating the Code especially in view of alignment with the EU *acquis*.**

### Findings

A revision of the Civil Code is currently not at the agenda of the MoJ, at least not with priority in the upcoming year(s), though awareness exists that there is room for improvement.

Anyhow, an analysis on reform needs, particularly in view of aligning the Albanian law with the EU *acquis*, will bring more light in the necessity to review this Code.

### EURALIUS experts and counterparts

Team 5. One or two international MTE or STE (in total 4 weeks, focussing on EU *acquis*).

### Activities and timing

Under this activity a status report will assess the needs for legislative changes (half year 3 after end of activity 1.1.1.) and continuous support to reform the legislative framework in civil matters shall be provided. If needed and foreseen in the justice reform strategy support will be provided to elaborate a concept note, ensure consultation and revise the Code (half years 4 until end of the project duration).

### Indicators for output

- Report in status quo and assessment report
- Proposal or draft “Civil Code” or analysis paper showing possible options as a basis for the MoJ/legislator, if applicable.
- Civil Code adopted, if applicable.

**Activity 4.2.2: Provide assistance to the Codification Directorate to review outstanding issues remaining in connection with the ongoing reform of the **Civil Procedure Code**, especially in view of alignment with the EU *acquis*.**

### Findings

Currently the MoJ has elaborated a revision of only two provisions of the Civil Procedure Code. This includes draft provisions allowing judges to impose fines on lawyers who are repeatedly absent in civil and criminal judicial hearings (see Activity 2.5.2), and limiting the types of cases that can be appealed to the HC. By letter of 17 March 2014, the Minister of Justice of Albania requested an opinion of the Venice Commission on this draft law on an addition and amendment to Law no. 8116 dated 29.3.1996, “Code of Civil Procedure of Albania”, as amended, which aimed at increasing the efficiency of court proceedings. The Venice Commission in principle did not object the draft (see Activity 2.5.2). So far, these draft provisions were not adopted by the Assembly.

The MoJ’s Directorate of Foreign Jurisdictional Relations has identified a need for amendments to the Civil Procedure Code in order to implement all ratified Conventions in the area of international cooperation in civil matters. An in-depth analysis will be needed in order to assess needed changes, which ensure consistency and applicability of these international treaties.

Under the aspect of efficiency it might be considered to introduce a fast track procedure for small cases. An option could be to introduce an order for payment procedure, which allows creditors to recover their uncontested claims in civil, and commercial matters using a uniform procedure based on the use of standard forms (see also Activity 2.1.1.).

In the frame of the court monitoring activities, OSCE has elaborated a paper, including a comparative analysis on several aspects of civil procedure and a wide range of recommendations for amendments to the Civil Procedure Code. This paper was submitted to the MoJ.

The MoJ intends to include a revision of the Civil Procedure Code in the plan for legislative activities in the year 2015.

## EURALIUS experts and counterparts

Team 5

### Activities and timing

The adoption of the two provisions of the Civil Procedure Code, on which an opinion of the Venice Commission is existing, are part of the justice reform (months 4 – 10). EURALIUS will accompany the process of adoption of these provisions.

A small working group will be set up in order to proceed also with the more comprehensive revision of the Civil Procedure Code, focussing on the *acquis* (half year 3).

The consultations and discussions will be accompanied until its adoption (remaining project duration).

### Indicators for output

- Report on status quo
- Assessment report and consolidated version of proposals/
- Proposal or draft “Amendments to Civil Procedure Code” or analysis paper showing possible options as a basis for the MoJ/legislator.

### **Activity 4.2.3: Support the MoJ in continuing adoption of legislation regarding international cooperation in civil matters.**

#### Findings

International cooperation in civil matters is based on multilateral agreements, conventions, bilateral agreements and on Articles 134-140, 215-222 and 393-399 Civil Procedure Code. The actors involved are the judicial authorities (courts, ministries of justice) and sometimes depending on the level of cooperation even the Ministries for Foreign Affairs are involved. The MoJ has a crucial role in the procedures for the execution of mutual legal assistance in civil matters and is responsible to receive foreign requests in civil matters and to forward the requests of Albanian judicial authorities to institutions abroad, by determining whether the requirements are met in compliance to international acts and the Civil Procedure Code. The Albanian judiciary is the body to execute the foreign requests and, depending on the needs of the trials, responsible to compile the request to the judiciaries abroad.

Since 2000 Albania has adhered to the following conventions deriving from the Hague Conference on Private International Law:

Statute of the Hague Conference on Private International Law,

Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents,

Convention of 25 October 1980 on the Civil Aspects of International Child Abduction,

Convention of 25 October 1980 on International Access to Justice,

Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption,

Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children,

Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters,

Convention of 1 March 1954 on civil procedure,

Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters,

Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

In 2014 the number of requests of the judicial authorities abroad is double the figure of the year 2013. The requests merely dealt with the service of documents. Recently also the number of requests of the Albanian judiciary to take evidences abroad increased and EU Member States, such as France, Belgium and Slovenia, have intensified the requests to take evidences in Albania.

At the MoJ it is the Directorate of Foreign Jurisdictional Relations which is handling requests for legal assistance in civil matters. Generally stated, these procedures already follow a well-established practice. However, in some areas the judicial authorities have encountered problems such as:

Not all international acts have been transposed into the national legislation, such as the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in relation to the return of the child and the recognition and enforcement of the decisions. There is a loophole in the legislation as regards the question who will be responsible to follow the procedures, the precise procedures for the return of the child and the execution of the alimony abroad. So far the Convention has been directly applied, but there is a urgent need to amend the Civil Procedure Code in order to establish the required rules and procedures on civil aspect of international child abduction based on the *acquis* (Lugano Convention and Brussels Regulation), thus anticipating the accession process and approximation.

Additionally Albania signed a wide range of bilateral agreements in the area of international cooperation in civil matters, which are directly applicable. A revision of all these agreements would be needed in order to align them with the *acquis* and with the amendments to the Civil Procedure Code.

Concerning the enforcement of decisions in civil matters a concern has arisen on who is responsible for the execution of the writ of execution. It is not clearly regulated in the Civil Procedure Code who is competent in cases where the writ of execution has to be executed abroad. So far in practice the courts sent the request to the MoJ which forwards it the MoJ of the respective foreign country.

## EURALIUS experts and counterparts

Team 5

### Activities and Timing

An assessment of the current situation on international judicial cooperation in civil matters will be conducted. The assessment will analyze the degree of implementation and the application of the agreements in practice, the need for further law amendments and monitoring and training needs. After such an assessment it can be decided, which instruments and bilateral agreements remain to be handled. This activity will be carried prior to the revision of the Civil Procedure Code (activity 4.2.2) and starts in month 10.

The activities will be carried out in working groups which include staff of the MoJ (Directorate of Foreign Jurisdictional Relations).

### Indicators for output

- Report on the status quo
- Draft amendments to the Civil Procedure Code
- Report on the revision of bilateral agreements in the area of cooperation in civil matters

### **PART THREE: Financing**

The IT department helped to install the computers, printers and internet, to check it and to provide a description of the current standard. All computers from previous EURALIUS missions are equipped with out-dated software. An upgrade is technically impossible. Due to security reasons, the extremely slow speed and difficulties in handling documents coming from outside the complete IT infrastructure needs to be replaced with new equipment. So far only one international and one national telephone line became operable, but there are more telephones for internal communication within the ministry.

An internet address (prename.name@drejtesia.gov.al) has been granted by the minister of justice immediately, but is not yet working. The infrastructure set up is therefore not completed.

The budget for “vehicle costs” will not be sufficient due to unforeseen additional costs. The project might seek budgetary compensation for unforeseen cost at a later stage of project implementation via the contingency budget.

It is also planned - conditioned formal approval by the EU Delegation - to adjust the budget for the national LTE 5 to the duration of the INT 5. Furthermore it is planned that the remaining budget will be used to create more MTE and STE resources.

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