TOWARDS JUSTICE

Analysis of civil proceedings in the district courts

OSCE Organization for Security and Co-operation in Europe
Presence in Albania

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Table of contents

ANNEXES

Foreword by H. E. Ambassador Eugen Wollfarth

Head of the OSCE Presence in Albania

Dear reader,

I am delighted to be able to present the OSCE Presence in Albania's report *Towards Justice*. Analysis of civil proceedings in the district courts. Its aim is to assess the civil justice system for compliance with international fair trial standards and to recommend measures to further increase its efficiency, fairness, transparency and accessibility.

A well-functioning civil justice system is a key guarantor for the rule of law and respect of human rights. Legal rights are of value for an individual only when they can be asserted in a court of law and when this court renders correct justice, in due time and in a way that inspires public trust.

Justice sector reform sometimes focusses on criminal justice alone, while civil and administrative proceedings are then overlooked. This does not reflect the importance of solving civil disputes for the general prosperity and wellbeing of the people. This particularly applies in Albania, where numerous open property issues prevent important developments. Inheritance and child custody disputes are other examples that often have major importance for the persons involved. Settling such disputes, with finality and confidence, is important for all parties to move on with their lives.

A proper civil justice system is furthermore a necessary condition for a functioning market economy. There is a correlation between a country's economic situation and the quality of its civil trials. This publication is intended to contribute to improving the quality of such trials.

The findings in this report are primarily based on observations made in more than 140 court hearings in four district courts. This approach provides a unique insight into the daily practice of the courts - including the immanent challenges - which goes beyond of what would become visible from reviewing the procedural legislation alone.

The collection of information and the analysis contained in this report would not have been possible without the encouragement and active support of the Ministry of Justice, the High Council of Justice, the judges and court staff. I would like to thank all involved for their kind assistance. I hope that all actors in the civil justice sector, including the Assembly, the Ministry of Justice, the High Council of Justice, the judges and lawyers, will find this report useful.

H. E. Ambassador Eugen Wollfarth
Head of the OSCE Presence in Albania

SUMMARY

General remarks

The Albanian judiciary has seen vast improvements over the last two decades, both in terms of legislative and organisational changes. There is, however, still room for improving the efficiency, transparency and accountability of the judiciary so that it fully meets international standards.

Since 2003, the OSCE Presence in Albania (the Presence) has assisted the Albanian authorities in its justice reform efforts *inter alia* by assessing whether court proceedings are in compliance with international fair trial standards. Based on observation of court hearings, consultation of court files and interviews, the Presence has identified procedural and practical issues and has elaborated a number of recommendations to tackle these problems. In the past, the Presence assessed criminal trials in the first instance and appeals courts and the findings were presented in two reports, published in 2006 and 2007 respectively. In the report at hand, *Towards Justice,* the Presence focuses on civil trials in the first instance. Problems in three main areas, i.e. length of proceedings, transparency of proceedings and access to justice, have been identified and general recommendations for reform are suggested. *Towards Justice* will be followed by a second report, in which these general recommendations are turned into specific suggestions for legislative and practice amendments.

Length of proceedings

Delays in the processing of cases, however minor, impede the efficient use of administrative and financial resources that could otherwise be used to adjudicate more cases. When delays are significant, attributable to the State and avoidable, they may violate the parties' right to a fair trial, including the right to be tried within a reasonable time.

In each of the observed trials, there were on average 10.5 hearings. Of these hearings, an astonishing 47.7 % were completely non-productive, i.e. nothing substantial happened with regard to solving the dispute. In the non-productive hearings, no argument was put forward, no document or written pleading circulated, no evidence taken and no procedural request made.

A number of reasons for this remarkably high number of hearings were identified:

First, the courts frequently had problems with correctly summoning parties to the hearing due to incomplete address information and lack of access to State and local government address databases. The fact that most courts remain inactive if the first attempt at summoning failed also contributed to the high number of hearings and to the rate of non-productive hearings. Moreover, courts did not always use the fastest means of notification allowed by law.

A second reason was the inefficient pre-trial procedure. In fact, 24.8% of the hearings were postponed for evidence related issues (11.9% for obtaining additional evidence and 12.9% for procedural steps concerning experts), making this the most frequent reason for postponements. Written evidence was only circulated in hearings and the procedures for appointing and receiving the testimony of an expert required at least three hearings. Evidence was often not presented at the earliest opportunity, leaving room for late submissions. Room for improvement can also be found in the judges' planning and management of trials, e.g., by not always checking whether trial participants were available before scheduling a hearing and by not determining the scope and schedule of the trial in consultation with the parties.

Thirdly, the absence of trial participants contributed to the high number of hearings in each trial. The criteria for sanctioning absent trial participants are too vague. In addition, the Civil Procedure Code does not specify a procedure for the courts to determine why a trial participant is absent. This leads to the judges' reluctance to sanction absent trial participants. The available sanctions were also found to be too lenient and judges did not seem to use the sanctions to the fullest extent possible. The disciplinary system for lawyers did not seem to be fully operational. In addition, trial participants are not required by applicable law to inform the court before the hearing if they are unable to participate, causing the other trial participants to show up in vain.

In *Towards Justice*, the Presence puts forward several recommendations for reducing the number of hearings and the length of trials:

First, the system for summoning parties could be improved in several ways. Courts should request the parties and lawyers to provide their contact details at their first opportunity. A sample form to this effect is provided in Annex 3 to this Report. Courts should also use the fastest and most reliable means of notification available under current legislation, e.g., fax, email and sms. In the future, the procedural legislation should be amended so that the standard notification procedure is to send the notice by mail or any other means, and requiring the recipient to confirm receipt. The notification procedure would improve if the courts were provided with access to the National Register of Civil Status, the National Registry of Addresses and the existing municipal and central government maps. When the accuracy of the address system improves in the future, consideration should be given to changing the law so that notices delivered to the registered address shall be sufficient to have legally summoned a trial participant.

Secondly, several recommendations for improving the preparatory phase of the trials are suggested. The trial preparation, in particular circulation of written evidence, should, to a much larger degree, take place in writing rather than in hearings and the parties should be required to present evidence at their first opportunity. Judges should, to a much larger degree, actively manage

their trials, *inter alia* by holding a pre-trial planning meeting with the lawyers. The purpose of such meetings should be to condense the trial by clarifying which questions are disputed and to make a schedule for the conclusion of the trial.

Thirdly, measures to ensure the attendance of trial participants should be considered. The judge should always ascertain the availability of the trial participants before scheduling a hearing. If the parties are not able to attend, courts should immediately inform the trial participants that the hearing is cancelled. Further, procedures for investigating the reasons for absence should be included in the Civil Procedure Code and the legitimate reasons for absence should be clarified. Stricter sanctions for unlawfully absent trial participants should be implemented, e.g., by charging witnesses and experts with the costs of delays. The possibility for the plaintiff to withdraw from the case should also be limited and default judgements for unlawfully absent defendants should be considered in certain types of cases.

The official statistics of the Ministry of Justice were found to be a very good source of information on the judiciary. In some areas, *inter alia* in the statistics on length of trials and number of hearings, some room for improvement was identified. The statistics would also be more useful if adversarial and non-adversarial cases were separated.

Procedures for issuing a written reasoned judgement

The current rules for issuing a written reasoned decision were found to deny judges sufficient time to properly reason their judgement. The Presence therefore recommends that the Civil Procedure Code be amended so that the reasoned decision can be presented within a fixed deadline, e.g., a certain number of weeks after the last main hearing. The current practice of presenting the dispositive part of the decision before the written reasoned judgement should be abolished. The Civil Procedure Code should also be amended so that the time limits for appeals only start running when the parties receive (or are deemed to have received) the written reasoned decision. In addition, the length of the time limit for appeals should be reviewed to ensure that parties have sufficient time to prepare their appeals.

Transparency of court proceedings

A wide range of practical and logistical difficulties were found to reduce the public's ability to follow court proceedings: Insufficient possibilities to contact the court, difficult access to the trial schedule and lack of information about the venue of the hearing gave reason for concern. Conducting hearings in the judge's office rather than in a courtroom was also frequently observed. Occasionally, inaccurate trial records and disorganised court files made reviewing these documents more difficult. Insufficient systems for tracking and identifying case files increased the risk of misplacing or losing them.

In order to increase the transparency of trials, the Presence suggests that the public's possibility to contact the courts be improved, e.g., by making official phone numbers and email addresses of the court available to the public. The court's official phone must be staffed at all times during the working hours of the court. Courts are also urged to post updated and timely trial schedules in their premises and on their websites. Information about the trial venue should be included in the schedule so that this information is available to the public before the hearing takes place. Hearings should, to the extent possible, take place in court rooms and a secretary should be present in all court hearings. In order to keep accurate trial records, audio recording systems should be implemented in all courts. Whenever audio recording is not possible, judges and secretaries should ensure that handwritten minutes are accurate.

Certain suggestions are also made with regards to the case files: Each document received by the court should receive an ordinal number and be stored in the case file according to this number. The table of contents should specify each piece of written evidence in the case file, rather than just grouping a collection of documents under the same description. The table of contents should also be kept up to date on a continuous basis.

Each case should be assigned a unique identification number, unlike the current practice where cases change identification number every year as well as during the appeal proceedings. The location of the case file should also be recorded in the case register.

Access to justice

Certain issues regarding the parties' access to justice were also identified: Court hearings were, to a large degree, held in the judge's office rather than in a court room. There was also room for improving the access to court buildings for people with disabilities. The legal criteria and practice of allowing the parties to examine the case file did not always meet international standards. Occasionally, the written submissions of one party were not provided to the other party, thereby reducing the other party's opportunity to comment on the submission.

One issue of particular concern was that in proceedings to remove the capacity to act, the person in question does not have party rights. This unduly limits the person's access to justice.

In order to improve the parties' access to justice, courts should take measures to hold hearings in the court rooms to the fullest extent possible, e.g., by introducing electronic calendars for the court rooms. Minor alterations could be made to court buildings and court staff should provide extra assistance to allow people with disabilities better access to the venue of the hearings. The rules regarding the parties' access to the case files should be clarified and brought in line with international standards. When receiving written

submissions, the judges should ensure that they are circulated to all parties. The procedure to remove a person's capacity to act should be changed so that the person in question becomes a party to the trial.

The road Towards Justice

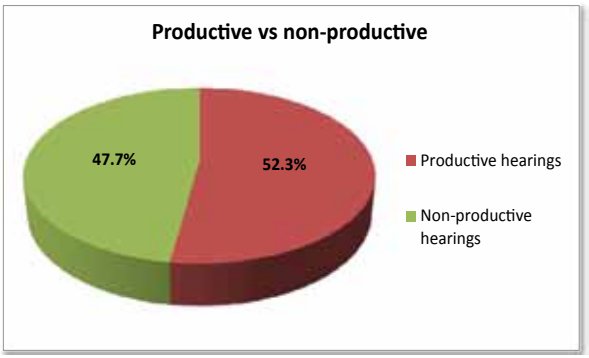
Towards Justice is not intended to be a full review of all aspects of civil procedure, but should rather be seen as a basis for further discussions on justice reform. The Presence will initiate a follow-up study to develop the general recommendations of *Towards Justice* into specific recommendations for legislative and practical amendments to civil proceedings.

SUMMARY OF STATISTICS

The statistics below present key data gathered in the course of the Presence's court observation activity.[1] Twenty-one civil cases with a total of 143 hearings were monitored in the district courts of Tirana, Kruja, Durrës and Shkodra.

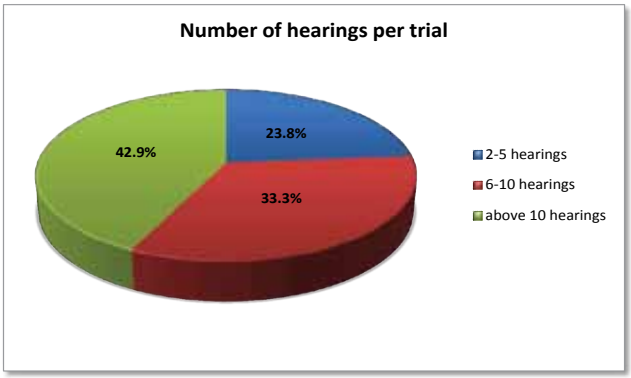
Non-productive hearings

Of the 143 observed hearings, 47.7 % were completely non-productive. These were hearings where nothing substantial happened with regard to the conclusion of the trial, i.e. no argument was made, no document or written pleading circulated, no evidence taken and no request made.



Number of hearings per trial

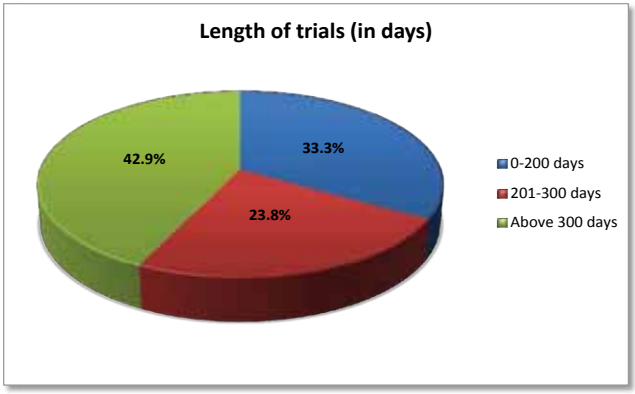
On average, there were 10.5 hearings in each observed trial, ranging from a minimum of two hearings to a maximum of 28 hearings. The vast majority of cases, 76.2 %, required six or more hearings to conclude.



1 Additional statistics are included in Annex 1 to this report.

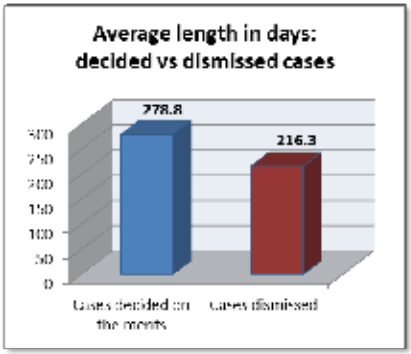
Length of trials

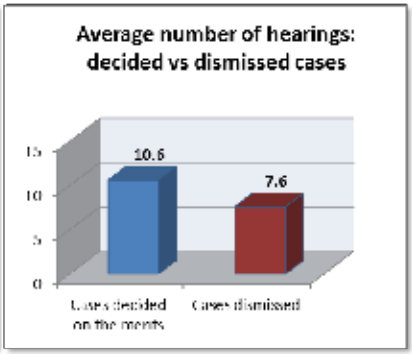
The average length of the observed trials, in number of days, was 281.7. The length of the shortest trial was 65 days, whereas the longest trial lasted for 653 days. The majority of cases, 76.2 % lasted more than 200 days. The data includes only the length of the first instance proceedings; any appeals proceedings would thus further delay the final settlement of the dispute.



Trials that were procedurally dismissed lasted almost as long as disputes that were decided on the merits: 216.3 days and 278.8 days on average, respectively. The difference in average number of hearings was furthermore not substantial: 7.6 hearings for dismissed cases and 10.6 hearings for trials decided on the merits, respectively.

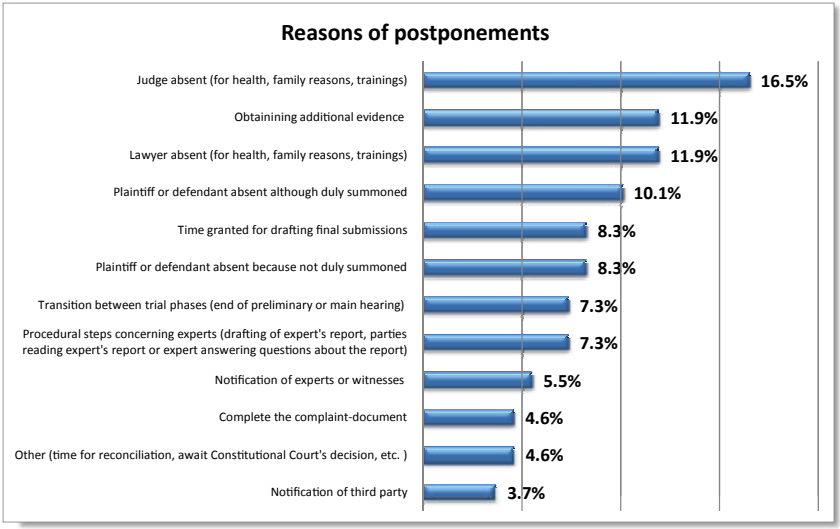
As dismissal does not preclude the plaintiff from restarting the case, such dismissals represent a considerable waste of resources for the courts and parties alike.



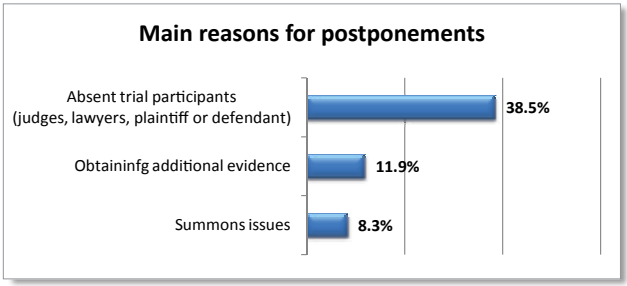


Reasons for postponement of hearings

The majority of observed hearings, 109 of 143 hearings, was postponed. The chart below shows the reasons for adjournments.



On the basis of the above detailed reasons for postponement, *Towards Justice* identified three main groups of causes for trial adjournments: Absent trial participants, obtaining additional evidence and summons issues. The chart below visualises the numerical significance of postponements caused by these problems, provoking overall more than half of all trial adjournments (58.7 %).



Time between postponed hearings

The time between hearings varied from court to court and case to case. On average, there were 21 days between observed hearings. However, 49.6 % of the observed hearings appear to be postponed for between 20 to 61 days. The judicial summer break of 30 days was excluded when calculating the time between hearings.

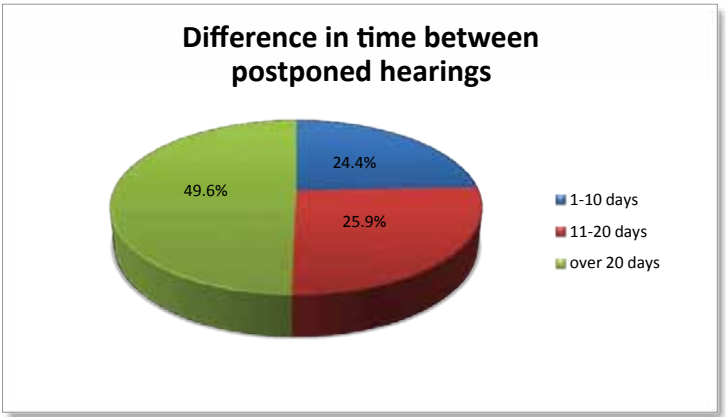


Table of Abbreviations and Acronyms

ABA-CEELI	American Bar Association-Central European and Eurasian Law Initiative (now known as ABA-ROLI, i.e., American Bar Association Rule of Law Initiative)
CC	Civil Code
CoE	Council of Europe
CPC	Civil Procedure Code
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EURALIUS II	European Assistance Mission to the Albanian Justice System
FTDP	Fair Trial Development Project
ICCPR	United Nations International Covenant on Civil and Political Rights
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UNHRC	UN Human Rights Committee

Council of Europe Recommendation No. R (84) 5
Council of Europe Committee of Ministers, Recommendation No. R (84) 5 to the Member States *"On the Principles of Civil Procedure Designed to Improve the Functioning of Justice"*

CEPEJ Compendium of "best practices"
European Commission for the Efficiency of Justice (CEPEJ) *"Compendium of "best practices" on time management of judicial proceedings"* (Strasbourg, 8 December 2006)

UNHRC General Comment 32
UN Human Rights Committee General Comment 32, UN Doc CCPR/C/GC/32 (2007)

SATURN Guidelines for Judicial Time Management
European Commission for the Efficiency of Justice (CEPEJ) *SATURN Guidelines for judicial time management*, (Council of Europe, Strasbourg, 11 September 2009)

ALI/UNIDROIT Principles of Transnational Civil Procedure
American Law Institute (ALI) and the International Institute for the Unification of Private Law (UNIDROIT), *"ALI/UNIDROIT Principles of Transnational Civil Procedure",* April/May 2004, http://www.unidroit.org/english/principles/civilprocedure/ali-unidroitprinciples-e.pdf

Introduction

For the last decade, justice reform has been one of the main focus areas of the OSCE Presence in Albania (the Presence). In addition to continuous support to legislative initiatives, the Presence has also provided recommendations for improving the justice system based on systematic assessments of court proceedings. In 2004 and 2006, the Presence published two analytical reports on the handling of criminal proceedings in first instance courts, and in 2007, criminal appeals proceedings were the topic of the Presence's third trial monitoring report.[2]

The focus of *Towards Justice* lies on civil proceedings in first instance courts. The purpose of this report is to identify areas of the civil procedure legislation and practice where there is still some room for improvement. Only widespread or systemic issues are mentioned and individual mishaps of lawyers, judges and court staff are thus not of interest for this report. Secondly, remedies for the identified issues are proposed.

The reforms suggested in *Towards Justice* are kept at a rather general level and should not be perceived as written in stone. The identified problems and recommendations should rather be used as basis for a broad consultative discussion among all actors in civil proceedings. The Presence intends to follow up *Towards Justice* with a second report in which these rather general recommendations of *Towards Justice* are turned into more specific suggestions for legislative and practice amendments.

Towards Justice is based on an analysis of information gathered through direct trial observation, consultation of court files and interviews with actors operating in the justice system. The Presence observed trials in two rounds: first in the District Court of Tirana in 2008-2009, and secondly in the district courts of Tirana, Durrës, Shkodra and Kruja in 2010-2012. In general, the monitored cases were selected randomly by choosing trials that started at the time when the trial observation commenced, although a few cases were selected based on the general interest in the specific dispute. With one exception, only cases with more than one party (in Albanian: çështjeve *civile me palë kundërshtare*) were observed, as one-party cases (in Albanian: çështjeve *civile pa palë kundërshtare*) are largely administrative tasks, not trials in the traditional sense. As mentioned above, the Presence also consulted court files and met practitioners in the justice sector. The Presence interviewed chief judges, judges, chancellors and court clerks of Tirana, Durrës, Shkodra, Kruja, Vlora, Gjirokastra, Berat, Elbasan, Fier, Kavaja, Korça, Kukes, Laç, Lezha, Lushnja, Mat, Peshkopi, Pogradec, Puka, Saranda and Tropoja in November 2011. In addition, the Presence held meetings on a regular basis with chairs, judges and court staff. For the purpose of the analysis, the websites of the Tirana, Shkodra and Fier District Courts were also consulted.

2 OSCE Presence in Albania, *Fair Trial Development Project - Interim Report* (Tirana, OSCE, 2004).
OSCE Presence in Albania, *Analysis of the Criminal Justice System of Albania* (Tirana, OSCE, 2006).
OSCE Presence in Albania, *Analysis of Criminal Appellate Proceedings in Albania* (Tirana, OSCE, 2007).

Towards Justice focuses on three main topics: length of trials, including the high number of unnecessary hearings (Chapter I), transparency of court proceedings (Chapter II) and access to justice (Chapter III). Detailed statistics of hearings observed by the Presence and extracts of official statistics are provided in Annex 1.

Due to the limited scope of *Towards Justice* it should be noted that this report by no means is intended to present a full and exhaustive account of problems which might be encountered in the civil justice system. The methodology of the study, i.e., trial monitoring, means that only issues observable in court hearings are included. This should not be understood to mean that the Presence does not recognize the importance of issues not raised in this report, such as allegations of corruption or lack of independence of the judiciary, low salary of judges and court staff, insufficient legal aid and deficient physical infrastructure in the court buildings (court rooms, backup power generators etc).

A number of national and international organizations are active in Albania in the area of justice reform. The USAID's Justice Sector Strengthening Project[3] focuses on transparency, fairness and efficiency of the courts by implementing a number of practical and legislative measures. EURALIUS III Consolidation of the Justice System in Albania, and its predecessor EURALIUS II, are also supporting the Albanian authorities in their legislative reform endeavours and conduct capacity building to bring the justice system closer to EU standards. *Towards Justice*, with its focus on monitoring court hearings rather than legislative review, is intended to complement these efforts. The Presence would like to thank EURALIUS II, EURALIUS III and the USAID's Justice Sector Strengthening Project for the fruitful exchange of opinions and recommendations which contributed to further deepening the analysis of this report.

The Presence would like to express its highest appreciation to the judges, court chairs, chancellors, chief secretaries, archivists and court clerks for their assistance. They were always available to facilitate the Presence's activities, even under time constraints and high workload. Further, gratitude goes to the High Council of Justice and the Ministry of Justice for their persistent encouragement to the project and their commitment for reforming the civil procedure. Sincere thanks go to the lawyers of the National Chamber of Advocates who shared their experience and knowledge in the field. The analysis of international law of *Towards Justice* relies to a large degree on OSCE/ODIHR's Legal Digest of International Fair Trial Rights.[4]

Towards Justice was written by Jo Faafeng (project manager 2010-2012), Maya Goldstein-Bolocan (project manager 2006-2009), Ama Kraja (legal assistant) and Fiorentina Azizi (head of Rule of Law and Human Rights Department).

3 http://albania.usaid.gov/JuST

4 Available at http://www.osce.org/odihr/94214 (last accessed on 23 October 2012).

CHAPTER I
THE RIGHT TO TRIAL WITHIN A REASONABLE TIME

"Optimum and foreseeable length of proceedings should be within the responsibility of all institutions and persons who participate in the design, regulation, planning and conduct of judicial proceedings."[5]

1. Introduction

The right to a trial within a reasonable time is one of the essential procedural human rights and a cornerstone in a society based on the rule of law. The purpose of this guarantee is to protect "all parties to court proceedings … against excessive procedural delays".[6] In *H v France*, the ECtHR emphasized "the importance of rendering justice without delays which might jeopardise its effectiveness and credibility",[7] as excessive delays in the administration of justice endanger the rule of law. This right is protected *inter alia* in Article 14 ICCPR paragraph 1 and Article 6 ECHR paragraph 1. Violations of this right are the most frequent reason for complaints to the ECtHR.[8]

As in criminal proceedings, delays in the processing of civil cases and court backlogs cause a number of problems for the parties. As time goes by, legal rights may be irremediably compromised (for instance, when the plaintiff goes bankrupt before he can enforce his claims or the disputed object may fall into disrepair), evidence may disappear or it may become more difficult to ascertain facts. Longer trials keep the parties in uncertainty for longer periods of time and may also cause increased procedural costs. Such problems may in turn reduce public confidence in the judiciary.

While judicial proceedings must be reasonably short in order to ensure the effectiveness of the parties' legal rights as outlined above, the speed of the trial needs to be carefully balanced against equally important exigencies of accuracy and fairness of proceedings, including the need for the parties to have adequate time to prepare their case.

During its trial monitoring, the Presence has observed several issues that may compromise the right to a trial within reasonable time. These issues include problems in legally summoning parties and witnesses, inefficient trial preparation (e.g., circulation of evidence and procedural requests can only take place in physical hearings), unjustified absence of trial participants, insufficient case management by the courts and delays in delivery of reasoned judgements. The purpose of this chapter is to present information on the main causes of

5 SATURN Guidelines for judicial time management, section I.E, point 1.

6 *Stögmüller v. Austria*, ECtHR, 10 November 1969, para. 5.

7 *H v. France,* ECtHR, 24 October 1989, para. 58.

8 Nuala Mole and Catharina Harby, *The right to a fair trial* (Council of Europe Human Rights Handbook No 3, 2006), p. 24.

delays in Albanian civil proceedings as observed during the Presence's trial monitoring, and to make concrete recommendations for improvements in this area.

2. Legal framework

2.1 International law and recommendations

Article 14 ICCPR

"(1) In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair… hearing…"

Article 6 ECHR

"(1) In the determination of his civil rights and obligations … everyone is entitled to a fair… hearing within a reasonable time …"

The right to be tried within a reasonable time is enshrined in Article 6 ECHR paragraph 1, which applies to both civil and criminal trials. This right is not explicitly protected in civil trials in the ICCPR[9], but the UN Human Rights Committee considers this right to be an integral part of the right to a fair hearing in Article 14 ICCPR paragraph 1.[10]

The right to a fair hearing is furthermore one of the essential commitments undertaken by OSCE participating States.[11]

2.1.1 Responsibility to ensure sufficient funding, resources and organisation of courts

States are responsible for delays that can be attributed to their administrative and judicial authorities - a duty which applies regardless of costs or resources.[12] To ensure a prompt administration of justice, States must guarantee efficient court services. In *Muti v. Italy*, the ECtHR held that States have a duty "to

9 The right to be tried "without undue delay" only explicitly applies to criminal proceedings, cf. Article 14 ICCPR paragraph 3 letter c.

10 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), para 27.

11 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990. "(5.16) — in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Other OSCE commitments to the right to a fair trial in criminal cases are enshrined in: Concluding Document of Vienna –The Third Follow-up Meeting, Vienna, 15 January 1989, Vienna 1989; Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, Moscow Meeting 1991 and Concluding Document of Budapest, 6 December 1994, Budapest 1994.

12 See D.J. Harris M. O'Boyle & Warbick, *Law of the European Convention on Human Rights*, (Oxford University Press, 2nd ed., 2009), p. 280, 282. See also *Mukunto v Zambia*, HRC Communication 768/1997, UN Doc CCPR/C/66/D/768/1997 (1999), para 6.4.

organize their legal systems so as to allow the courts to comply with the requirements of Article 6 paragraph 1, including that of a trial within a reasonable time".[13] In *Gjonbocari and others v. Albania,* the ECtHR held the State responsible for non-enforcement of a final judgment and the length of proceedings, stating that it should have been the domestic courts' task to identify related proceedings and, where necessary, join them, suspend them or reject the further institution of new proceedings on the same matter. The Court considered that better management of the parallel inter-related proceedings would certainly have contributed positively to the speedy clarification of the applicants' title. The Court observed that the Albanian legal system did not provide for a particular remedy, which the applicants could have used in order to obtain redress for the excessive length of the proceedings.[14]

Thus, severe caseloads and limited numbers of judges can justify a delay only if such circumstances are exceptional, temporary, and not institutional. In such cases, measures – such as the appointment of additional judges or administrative staff – must be taken promptly to address the problem.[15] Delays resulting from a long-term backlog of work in the court system coupled with the failure of the State to take remedial measures have been considered to be breaches of the ECHR.[16] In a number of cases, the ECtHR has found States responsible for delays in civil and administrative courts in the performance of routine registry tasks, conduction of court hearings, the presentation of evidence by the State, among others.[17] Courts are also responsible for the timeliness of an expert's report.[18]

As a result of the ECtHR findings of excessive length of proceedings, some States have modified their rules of civil procedure. For example, in the 1990s Italy introduced a system of time-limits, including requiring parties to introduce evidence at the second hearing, and a new judicial body of justices of the peace (single judges) to deal with *inter alia* low value claims. In Croatia, deadlines may only be extended once by the court for no more than 45 days.[19]

13 *Muti v. Italy*, ECtHR, 23 March 1994, para. 15; *Süßmann v. Germany,* ECtHR, 16 September 1996, paras 55-56; *Boddaert v. Belgium*, ECtHR, 12 October 1992, para 39 (stating that domestic courts are under a duty to deal properly with the cases before them); Nogolica v. Croatia, ECtHR, 7 December 2006, para 27.

14 *Gjonbocari and others v. Albania*, ECtHR, 23 October 2007, paras 66, 67 and 77.

15 *Bucholz v. Germany*, ECtHR, 6 May 1981, para. 51; *Horvat v. Croatia*, *ECtHR, 26 July 2001,* para 59.

16 *Zimmerman and Steiner v. Switzerland*, ECtHR, 13 July 1983, paras 27-32; *Guincho v. Portugal*, ECtHR, 10 July 1984, paras 40-41. Such delays have included those in the transfer of cases between courts, in the communication of judgement to the accused person, and in the making and hearing of appeals. Id. See also *Orchin v United Kindom (1983), 6 E.H.R.R 391 (entering of a nolle prosequi)*.

17 See D.J. Harris M. O'Boyle & Warbick, *Law of the European Convention on Human Rights*, (Oxford University Press, 2nd ed., 2009), p. 280.

18 See *Capuano v. Italy*, ECtHR, 25 June 1987, para 30.

19 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 72.

2.1.2 Responsibility for conduct of the parties

Civil proceedings are generally governed by the initiative of the parties (principle of party autonomy),[20] which gives the parties much more influence over the proceedings than in criminal cases. This may, in the words of Lord Woolf, cause additional problems for the right to a timely judgement:

[…] In the absence of any effective control by the court itself, […] the lack of firm supervision enables the parties to exploit the rules to their own advantage […] by litigating on technical and procedural points of peripheral issues instead of focusing on the real substance of the case. All too often such tactics are used to intimidate the weaker party and produce a resolution of the case which is either unfair or is achieved at a grossly disproportionate cost or after unreasonable delay".[21]

The ECtHR has however repeatedly emphasised that the principle of party autonomy does not absolve the courts from their responsibility to comply with the "reasonable time" requirement under Article 6 ECHR paragraph 1.[22]

In general, courts must play a pro-active role to ensure the rapid progress of proceedings. The Council of Europe recommends that courts exercise their powers, *inter alia*, to order the parties to appear in person, to raise questions of law, to call for evidence, to control the taking of evidence, and to exclude irrelevant or excessive numbers of witnesses.[23]

2.1.3 Assessing compliance with the right to a timely trial

Two questions must be answered when assessing compliance with the requirement of a trial within reasonable time: First, when did the trial start and when did it finish, and secondly, what would be a "reasonable" time period for the trial at hand?

2.1.3.1 Calculation of the length of the trial

In civil cases, the time period is calculated beginning from the moment when the case is referred to the competent judicial authority.[24] If a preliminary claim before an administrative authority is necessary, the time when this claim is lodged will be used.[25] The proceedings are generally considered to have ended when a judgment becomes

20 The principle of party autonomy in civil lawsuits generally indicates that it is up to a party to state, and prove, such facts as may be necessary to sustain his or her legal point of view. In most civil law jurisdictions, the court may also either indicate to the parties what additional evidence to adduce, or may order at its own initiative, the production of evidence by judicial inspection or expert opinion. By contrast, under the US Federal Rules of Civil Procedure and the law of most American States, evidence gathered on a court's own initiative is usually limited to cases where conflicting expert evidence is crucial to the decision of the dispute. See USAID, *Analysis of the 1997 civil procedure rules for the Republic of the Philippines*, ABA Legal Assessment Series, January 10, 2007, p. 21.

21 Lord Woolf, *Access to Justice*, 1995, section II, Chapter 5.

22 *Ciricosta and Viola v. Italy*, ECtHR, 4 December 1995, para. 30 (in that case, the ECtHR found that there had been no violation of Article 6 ECHR paragraph 1 by the State party).

23 Council of Europe Committee of Ministers, *Recommendation No. R (84) 5 to the Member States* "*On the Principles of Civil Procedure Designed to Improve the Functioning of Justice*", Principle 3.

24 *Scopelliti v. Italy*, ECtHR, 23 November 1993, para 18, and *Deweer v. Belgium*, ECtHR, 27 February 1980, para. 42.

25 *Jorg and others v. Portugal*, ECtHR, 19 February 2004, para. 30.

final[26] (*res judicata*). In some cases, the ECtHR may also include procedures for enforcement and other forms of implementation.[27] It is worth stressing that, in order to establish a breach of the right to trial within a reasonable time as protected by Article 6 ECHR paragraph 1, it is not necessary to show that the applicant has suffered prejudice or has been adversely affected by the procedural delay.[28]

2.1.3.2 Elements in assessing the timeliness of a trial

While the right to a trial within a reasonable time is of key importance for ensuring a fair trial, this right needs, as mentioned, to be balanced against other important interests. Such interests include ensuring that the decisions are factually and legally accurate, and the parties' right to adequate time to prepare their case. Consequently neither the ECtHR nor the UNHRC have laid down a specific maximum length of civil trials. Assessment of compliance is made by assessing the circumstances in each trial,[29] where the ECtHR and the UNHRC typically have considered the following factors (this list is not exhaustive):

The *complexity of the legal issues* being determined.[30] Such issues include changes in legislation, the transition to a market economy and the interaction between administrative and judicial procedures.

If the case raises issues that will have *repercussions on established national law*, e.g., questions about changing established principles of urban planning law, a longer trial is acceptable.[31]

The *factual complexity of the case* may be linked to factors such as the volume of evidence, the number of witnesses[32] or proof to be delivered by experts, the size of the file, the presence of intervening third parties, as well as the existence of related cases,[33] among others.[34]

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26 *Deweer v. Belgium*, ECtHR, 27 February 1980, para. 46. However, in cases concerning civil liability, the final date is that of the decision setting the level of damages to be paid, rather than the one establishing liability. European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 44.

27 In the case of *Scordino v. Italy*, the Court stressed that "the execution is the second phase of the procedure and that the asserted right finds its effective realization only at the moment of the execution". *Scordino v. Italy*, ECtHR, Judgement of the Grand Chamber, 29 March 2006, para. 197. See also *Jankovic v. Croatia,* ECtHR, 5 March 2009 para 68; *Hornsby v. Greece,* ECtHR, 1 April 1998, para 40; *Plazonić v. Croatia,* ECtHR, 6 March 2008, para 47.

28 *Jorge Nina Jorge and others v. Portugal*, ECtHR, 19 February 2004 (text available in French only).

29 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), para 35; *Obermeier v Austria*, ECtHR, 28 June 1990, para 72; and *Angelucci v. Italy,* ECtHR, 19 February 1991, para 15.

30 *Deisl v. Austria*, HRC Communication 1060/2002, *UN Doc CCPR/C/81/D/1060/2002* (2004), paras 11.2-11.6.

31 *Katte Klitsche de la Grange v. Italy* ECtHR 19 September 1994, para 62.

32 *Angelucci v. Italy,* ECtHR, 19 February 1991, para 15.

33 *Boddaert v. Belgium*, ECtHR, 22 September 1992, para 39.

34 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 24, available at http://www.coe.int/t/dghl/cooperation/cepej/Delais/Calvez_en.pdf (last accessed on 30 January 2012). See also *Triggiani v. Italy,* ECtHR, 19 February 1991, para 17.

The *conduct of the parties,*[35] including whether or not adjournments were requested by them or delay tactics adopted.[36] In civil proceedings, a more active attitude is expected from the parties than in criminal cases. For instance, a party may not wait until the last minute to send a response to court, and his behaviour in the course of proceedings (including the party's conduct vis-à-vis actions of a third party) will be taken into consideration in determining what constitutes an unreasonable delay.[37] Generally, an applicant in civil cases should show diligence in carrying out procedural steps relevant to him, refrain from using delaying tactics, and avail himself of the scope afforded by domestic law for shortening proceedings.[38] Only delays that are attributable to the State may be taken into account when determining whether there has been a breach of the guarantee of a hearing within a reasonable time. Thus, State authorities are not responsible for delays attributable to an applicant or his lawyers,[39] nor are they responsible for delays resulting from the conduct of the defendant against whom the applicant brings a civil claim.[40] This does not, however, absolve the courts from complying with the reasonable time requirement as set forth in Article 6 ECHR paragraph 1.

The *number of proceedings at various court levels* is also an element which the ECtHR will consider.[41]

With regard to the *conduct of the court,* it should adopt a pro-active approach and take appropriate steps to avoid any unnecessary delays and procedural abuses by the parties to a case. In assessing such conduct, the ECtHR will take into special consideration *what is at stake for the applicant.*[42] Court authorities have a duty of special diligence, among others, in cases concerning labour disputes, child-care cases and titles to land.[43] In dealing with the reasonable

35 *Scordino v. Italy*, ECtHR, 29 March 2006, para. 177.

36 *Unión Alimentaria Sanders SA v. Spain,* ECtHR 7 July 1989, para 35; *Eckle v. Germany,* ECtHR 15 July 1982, para 82; *Cagas v Phillipines*, HRC Communication 788/1999, UN Doc CCPR/C/73/D/788/1997 (2001), para 7.4; *Kelly v. Jamaica*, HRC Communication 253/1987, UN Doc CCPR/C/41/D/253/1987 (1991), para 5.11; *Johnson v. Jamaica*, HRC Communication 588/1994, UN Doc CCPR/C/56/D/588/1994 (1996), para 8.9; *Yassen and Thomas v. Guyana*, HRC Communication 676/1996, UN Doc CCPR/C/62/D/676/1996 (1998), para 7.11; *Sextus v. Trinidad and Tobago*, HRC Communication 818/1998, UN Doc CCPR/C/72/D/818/1998 (2001), para 7.3; *Hendricks v. Guyana*, HRC Communication 838/1998, UN Doc CCPR/C/76/D/838/1998 (2002), para 6.3; and *Siewpersaud, Sukhram, and Persaud v. Trinidad and Tobago*, HRC Communication 938/2000, UN Doc CCPR/C/81/D/938/2000 (2004), para 6.2

37 European Commission for the Efficiency of Justice (CEPEJ) *Delay in Judicial proceedings: A preliminary inquiry into the relation between the demands of the reasonable time requirements of article 6 (1) ECHR and their consequences for judges and judicial administration in the civil, criminal and administrative justice chains* (Strasbourg, 10 November 2003), p.5 available at https://wcd.coe.int/ViewDoc.jsp?id=1031009&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6
(last accessed on 30 January 2012).

38 See *Sürmeli v. Germany*, 2006, cited in D.J. Harris M. O'Boyle & Warbick, *Law of the European Convention on Human Rights*, (Oxford University Press, 2nd ed., 2009), p. 279. See also *Deisl v Austria*, HRC Communication 1060/2002, UN Doc CCPR/C/81/D/1060/2002 (2004), paras 11.2-11.6.

39 *König v. Federal Republic of Germany*, *ECtHR, 28 June 1978. See also Balliu v. Albania, ECtHR, 16 June 2005.*

40 See D.J. Harris M. O'Boyle & Warbick, *Law of the European Convention on Human Rights*, (Oxford University Press, 2nd ed., 2009), p. 280.

41 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 24.

42 *König v. Federal Republic of Germany*, *ECtHR, 28 June 1978.* See also *Deisl v Austria*, HRC Communication 1060/2002, UN Doc CCPR/C/81/D/1060/2002 (2004), paras 11.2-11.6.

43 See D.J. Harris M. O'Boyle & Warbick, *Law of the European Convention on Human Rights*, (Oxford University Press, 2nd ed., 2009), p. 281. See also *Tcholatch v Canada*, HRC Communication 1052/2002, UN Doc CCPR/C/89/D/1052/2002 (2007),

time requirement, the ECtHR tries to establish whether time has been used wisely at all stages of proceedings and censors periods of inactivity where these are not justified.[44]

While the ECtHR refrains from setting specific time frames and considers the circumstances of each case for the purpose of assessing a delay, a 2006 study[45] conducted by CEPEJ has shown that a duration of up to two years in non-complex cases is generally regarded by the ECtHR as reasonable.[46] In complex cases, the study found violations in cases lasting more than 8 years, and the Court has rarely approved cases that lasted more than five years.[47] In "priority cases",[48] which include disputes about state of health, child custody and employment, violations have been found even in complex cases lasting only 2 years and 7 months. Presumably, non-complex priority cases are subject to even stricter deadlines.

2.1.4 Specific provisions on postponement of hearings

Numerous adjournments of hearings (either on the court's own initiative or at request of the parties) and excessive intervals between them have been considered causes for unreasonable delay by the ECtHR.[49] More specifically, setting trial hearings too far apart may violate Article 6 ECHR where parties would be required to constantly update factual or financial information at the basis of their evidence.[50] The court's role to actively manage the case is central to the efficient organisation of proceedings and should include, among others, an early agreement with all participants regarding the procedural calendar.[51]

paras 8.9-8.11; *EB v New Zealand*, HRC Communication 1368/2007, UN Doc CCPR/C/89/D/1368/2005 (2007), paras 9.2-9.4; and *Hokkanen v Finland,* ECtHR 23 September 1994, para 72.

44 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 16, available at http://www.coe.int/t/dghl/cooperation/cepej/Delais/Calvez_en.pdf (last accessed on 30 January 2012). See also *Deisl v Austria*, HRC Communication 1060/2002, UN Doc CCPR/C/81/D/1060/2002 (2004), paras 11.2-11.6.

45 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 16, available at http://www.coe.int/t/dghl/cooperation/cepej/Delais/Calvez_en.pdf (last accessed on 30 January 2012).

46 Similarly, see *Casanovas v. France*, HRC Communication 441/1990, UN Doc CCPR/C/51/D/441/1990 (1994), paras 7.3-7.4.

47 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 6, available at http://www.coe.int/t/dghl/cooperation/cepej/Delais/Calvez_en.pdf
(last accessed on 30 January 2012).

48 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 95-96, available at http://www.coe.int/t/dghl/cooperation/cepej/Delais/Calvez_en.pdf

49 European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 67, available at http://www.coe.int/t/dghl/cooperation/cepej/Delais/Calvez_en.pdf (last accessed on 30 January 2012).

50 *Kubiźňáková v. the Czech Republic*, ECtHR, 21 June 2005, para. 35 (The ECtHR considered, *inter alia*, the intervals between the first instance hearings in proceedings regarding alimony payments, some of which were held at intervals of five and six months. In total, proceedings in two instances had lasted six years and four months). (Text available in French only)

51 SATURN Guidelines for Judicial Time Management, Principle III,B.2 . See also ALI/UNIDROIT Principles of Transnational Civil Procedure, http://www.unidroit.org/english/principles/civilprocedure/ali-unidroitprinciples-e.pdf, point 14.1 *"the court should actively manage the proceeding, exercising discretion to achieve disposition of the dispute fairly, efficiently, and with reasonable speed*." (hereafter "ALI/UNIDROIT Principles of Transnational Civil Procedure"). These Principles, adopted by the American Law Institute (ALI) in May 2004 and by the International Institute for the Unification of Private Law (UNIDROIT) in April 2004, are standards for adjudication of transnational commercial disputes. These Principles, which are not binding, may be equally appropriate for the resolution of most other kinds of civil disputes and may be the basis for future initiatives in reforming civil procedure.

More specifically, in exercising its power to direct the proceedings, the court should determine, after previous consultation with the parties, "*the order in which issues are to be resolved, the dates and times of deadlines, and the schedule of hearings*".[52] While setting realistic and measurable timeframes is fundamental to ensuring timely case processing, timeframes should be "*designed and implemented*" in consultation with all main stakeholders (court personnel and lawyers, judges, expert witnesses, users of the courts) to be truly effective.[53] An early "case management conference" between the parties might thus represent a very effective tool to avoid adjournments and concentrate hearings within an acceptable timeframe. For example, in Finland, the parties to each case should be informed about the estimated timeframe of respectively the pre-trial and trial phase, and detailed hearing schedules are sent to them in advance.[54]

In its *Recommendation on the Principles of Civil Procedure to Improve the Functioning of Justice*, the Council of Europe has indicated that, normally, civil proceedings should consist of "*not more than two hearings, the first of which might be a preliminary hearing of a preparatory nature and the second for taking evidence, hearing arguments and, if possible giving judgment. The court should ensure that all steps necessary for the second hearing are taken in good time and, in principle, no adjournment should be allowed except when new facts appear or in other exceptional and important circumstances*".[55] Where adjournments are necessary, these should be brief.[56] All participants in the proceeding have a "*duty to cooperate*" with the court in the observance of the set timeframe.[57] If a party does not take a procedural step within the time limits fixed by the law or the court, appropriate sanctions should be imposed.[58] These might include declaring the procedural step barred, awarding damages, costs, imposing a fine, up to striking the case off the list.[59] In cases of unjustified non-attendance of a witness, the court should not only apply appropriate sanctions (fines, damages), as done in many jurisdictions, but also decide whether the proceeding in the case should continue without the former's evidence. Similarly, the failure, or unjustified delay by a court appointed expert in communicating his report would warrant appropriate sanctions. These might consist in the reduction of fees, payment of costs or

52 *ALI/UNIDROIT Principles of Transnational Civil Procedure*, Principle 9.3.

53 European Commission for the Efficiency of Justice (CEPEJ) *Compendium of "best practices" on time management of judicial proceedings* (Strasbourg, 8 December 2006) (1.5).

54 Id.

55 Council of Europe Committee of Ministers, Recommendation No. R (84) 5 to the Member States "*On the Principles of Civil Procedure Designed to Improve the Functioning of Justice*", Principle 1.1. (Hereafter Council of Europe Recommendation No. R (84) 5.)
See also *SATURN Guidelines for Judicial Time Management*, Principle 5.B.3 stating that deviations from the agreed calendar should be minimal and justified, and that in principle, "the extension of the set time limits should be possible only with the agreement of all parties, or if the interest of justice so requires".

56 Principle 8, section 2.

57 *SATURN Guidelines for Judicial Time Management*, Principle V.C.1.

58 Id.

59 *Council of Europe Recommendation No. R (84) 5*, Principle 1.2. The SATURN Guidelines also indicate among potential sanctions fee reduction and striking from the list of experts. SATURN Guidelines for Judicial Time Management, Principle V.C. 3.

damages, as well as disciplinary measures taken by the court or a professional organisation.[60] Finally, when a party, or his or her lawyer, "*clearly misuses procedure*" as a dilatory tactic, "*the court should be empowered either to decide immediately on the merits or to impose appropriate sanctions*".[61]

The abovementioned principles are not in themselves legally binding, but they are mirrored in the ECtHR case law. In the 2002 *Tsirikakis v. Greece* judgment, for instance, the ECtHR found that even though civil proceedings were generally governed by the "initiative of the parties" principle, the reasonable time requirement required courts to scrutinise the conduct of such proceedings and to exercise great care in granting adjournments or requests to hear witnesses, as well as to ensure that experts' reports were submitted on time.[62]

2.2 Albanian law

2.2.1 Generally on the right to a trial within reasonable time

Mirroring international standards, Article 42 of the Albanian Constitution paragraph 2 states that everyone has the right to a fair and public trial within a reasonable time. Similarly, Article 28 CPC states that the court must adjudicate the case within a "reasonable time".[63] Consequently, both judges and court staff have a responsibility to ensure that all those who play a role in the proceedings do their utmost to avoid any unnecessary delay. The court shall decide when to hold hearings and the time limits for carrying out legal and other actions.[64] Before the expiry of the deadline, it may be extended. The extension may not exceed the length of the initial deadline, except in "particularly grave" situations.[65] Trial participants who do not obey court orders or are illegally absent from hearings may be fined up to 30.000 ALL.[66] Advocates are, however, excluded from the scope of these rules.[67] If the deadline is not complied with, the parties loose the possibility to determine facts and other evidence.[68]

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60 *Council of Europe Recommendation No. R (84)5*, Principles 1.3 and 1.4.

61 Id., Principle 2.1. See also *SATURN Guidelines for Judicial Time Management*, Principle V.d.

62 Cited in European Commission for the Efficiency of Justice (CEPEJ) *Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights*, (Strasbourg, Council of Europe, 2007), p. 71. See also *Costa Ribeiro v. Portugal*, 30 April 2003, paragraph 29-31. In that case, concerning paternity proceedings, the Portuguese government had argued that the defendant's lawyer's conduct was the main reason for delays. However, the Court found that, also considering the government's duty of special diligence in such proceedings, the latter was responsible for delays caused by excessive intervals in the proceedings, namely six, nine months and over a year. In relation to supervising experts, see *Zappia v. Italy*, ECtHR, 26 September 1996, paragraph 25. The case related to a breach of contract and the subsequent enforcement proceedings, which started on 9 May 1980. The hearings were postponed several times, including on 26 February and 25 June 1986, due to a failure of the expert to file his report within the sixty days he had been given. Id., paragraph 9. Further, an expert's supplementary report, which was ordered on 31 December 1992, had still not been filed at the registry on 26 January 1996 (as certified by the Reggio di Calabria District Court on the same date).

63 Article 28 CPC provides that courts express their opinion on all requests presented in civil lawsuits with impartiality and within a reasonable time.

64 Article 171/a CPC paragraph 2.

65 Article 147 CPC.

66 Articles 165 to 168 CPC.

67 Articles 165 to 168 CPC.

68 Article 180 CPC paragraph 5.

The parties to a civil proceeding are required to contribute to the proper conduct of the proceedings and the court can hold parties "responsible" for obstruction and omissions for which they are to blame, cf. Article 15 CPC. The CPC does not specify what is meant by "holding the parties responsible", although some specific sanctions for obstructionist behaviour are included elsewhere in the Code (see below).

Judicial proceedings should start at the time specified in the list of trials, which is posted in the court building, except when there is a justified cause.[69] However, the justified reasons are not specified. As stressed by the High Council of Justice, during the preliminary phase, judges should prepare the case for trial as best as possible, including by identifying the actions and time lines for trying the case.[70]

The civil procedural rules do not, unlike the criminal procedure,[71] lay down the maximum length of time between hearings. The High Council of Justice has however established guidelines on procedural time limits in certain types of cases.[72] These time limits are used when assessing the judges' performance. The time limits, as indicated below, start running from the registration of the case with the court.[73]

Proceedural time limits in proceedings at the first instance
Commercial disputes – maximum 6 months.
Family disputes – maximum 4 months.
Administrative disputes – maximum 1 month.
General disputes – maximum 6 months.

All judges interviewed by the Presence have criticised these time lines as being unrealistically short, lamenting that their observance would in practice negatively affect the quality of their professional performance.

2.2.2 Summons and notification of legal documents

Summons of the parties and witnesses to court is normally done by writ notified by the court clerk, but notifications may also be made by registered mail.[74] In addition to information on the nature of the lawsuit and the date and place of the trial, the summons must indicate the legal consequences if the person summoned does not appear in court.[75]

69 High Council of Justice Decision no. 238/1/b, dated 24 December 2008 "*On the solemnity of trials and the special outfit of judges*", article 4.

70 High Council of Justice decision no. 202/1 "*On the management and administration of the courts*", 2 November 2006, section VI. The same decision identifies judicial case management as a crucial element for the effectiveness of judicial services and to avoid unnecessary delays. See id. section V, paragraph 2.

71 Article 342 Criminal Procedure Code states that criminal trials should be completed within one hearing or, if not possible, during the next working day (and that only for good reasons trials can be postponed up to fifteen days).

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

73 But note that some courts do not register a case upon filing but only after a period of time, usually not more than one week, after the lawsuit has been checked for completeness and a judge has been chosen by lot.

74 In such case, the receipt issued by the post office must be attached to the original of the act, cf. Article 143 CPC.

75 Article 129 CPC.

As a general rule, summons and notification of documents are delivered to the recipient in person "wherever" he or she may be.[76] This means that the notification can take place where the recipient is from time to time.[77] If the person refuses the notification, the court clerk must make a note of it in the writ and, where possible, have a witness sign it.[78]

When it is not possible to follow the above procedure, the writ must be delivered to the recipient's domicile, residence or workplace. If the recipient is not found at the domicile, residence or workplace, the notification is left with a family member who is at least sixteen years of age, a neighbour or the guardian of the dwelling or workplace. [79] In all cases, individuals receiving the notification must sign the original and undertake to deliver it to its intended recipient.[80] If nobody accepts the notification or is unable to sign it, such fact is noted on the copy of the summons, and the notification is deemed to be completed.[81]

If the recipient's domicile or residence are unknown and he has not appointed a representative, the notification should be made by posting a copy of the act on the door of the courthouse where the trial hearing is to be held (sometimes referred to as "public notification") and at the place of the last known domicile.[82]

Where required by reasons of expediency or other "special circumstances", the court may order notification by return telegram, fax (provided the delivery is confirmed in writing), letter, or other ways which guarantee a regular notification.[83]

2.2.3 Consequences of non-appearance of parties and other trial participants

Albanian courts are provided with certain measures to ensure that the proceedings are not unduly delayed. These measures require however that the trial participant has been legally summoned as described above. If an absent participant was not properly summoned, the hearing cannot legally take place.[84] In such case, the court will have to renew its efforts in summoning the missing trial participant.

76 Article 130 CPC.

77 Note however that a court clerk may only serve notices within the territory of the jurisdiction of his or her court, cf. Article 130 CPC.

78 Article 130 CPC.

79 Article 130 CPC paragraph 2 and 3.

80 The copy kept by the court clerk should indicate relationship of the person receiving the notification to the intended recipient. Article 131 CPC.

81 Article 132 CPC.

82 Article 133 CPC paragraph 1.

83 Article 144 CPC.

84 Articles 122 and 175 CPC.

1) If the legally summoned *plaintiff is absent,* the court shall "investigate the causes" of the absence,[85] presumably during the hearing. The procedure to be followed is not specified and there is no measure in place that would allow the plaintiff to explain his/her absence. In practice, as observed during the trial monitoring, absent parties have sometimes submitted a note to the court before the hearing explaining this absence and requesting the hearing to be rescheduled. If the absence is due to "illness or any other legitimate cause", the hearing shall be adjourned to another day.[86] On the other hand, if the plaintiff is absent "without reasonable cause" although "duly notified", the court shall dismiss the case.[87] Unfortunately, the CPC does not provide any guidance on which causes are considered "legitimate" (other than "illness") and "reasonable".[88] Dismissing the case will not preclude the plaintiff from restarting the case again[89] (provided that the claim has not been time barred),[90]although new court fees would accrue.[91,]

Furthermore, if the plaintiff is responsible for an intentional unjustified delay, thus causing a postponement of the trial, he or she may be charged with the expenses sustained due to such postponement.[92]

2) If the legally summoned *defendant is absent*, the court should also "investigate the causes" of his absence.[93] If no "illness or any other legitimate cause"[94] is found, the case will be heard *in absentia* if the plaintiff requests it.[95] There is however no provision in Albanian law for abbreviated proceedings if the defendant's absence is unjustified (often referred to as default judgement).

Like for the plaintiff, unjustified delays caused intentionally allow the court to charge the defendant with the expenses of postponement.[96]

3) If a duly summoned *witness or expert does not appear* "without reasonable cause", the court may fine him or her up to 30.000 ALL and order his or her enforced appearance.[97] Presumably the fine is to be given in the hearing and no

85 Article 175 CPC paragraph 1.

86 Article 175 CPC paragraph 2.

87 Article 179 CPC paragraph 1. The same applies if both the plaintiff and the defendant are absent.

88 Presumably all "reasonable" causes must also be "legitimate" (though not necessarily vice versa). Otherwise the court would at the same time reschedule the hearing and dismiss the case.

89 Articles 201(1), 299 and 300 CPC. The same applies if the plaintiff voluntarily withdraws from the trial: He or she can choose to have the case procedurally dismissed, cf. Article 201 CPC paragraph 1, thereby reserving the right to restart the trial again.

90 Article 300 CPC and Title IV, Chapter I Civil Code.

91 Instruction no.13, dated 12 February 2009 "*On determining the service fee related to actions and services of the Judicial Administration*, *Ministry of Justice, Prosecution Office, Notary Office and Immovable Property Registration Office*", amended by Instruction no.991/3, dated 2 March 2010.

92 Article 107 CPC.

93 Article 175 CPC paragraph 1.

94 Article 175 CPC paragraph 2.

95 Article 179 CPC paragraph 3. If the plaintiff does not request a trial *in absentia*, the case will be dismissed if the defendant is absent in two hearings.

96 Article 107 CPC.

97 Article 165 CPC.

procedure for investigating the reasons for absence or for getting an explanation from the absent person is provided. Witnesses or experts who have been fined may however present a motivated request to revoke the fine to the court within three days. If the court finds the request grounded, it revokes the decision imposing the fine as well as the order for the enforced appearance.[98] This decision may not be appealed.[99]

3. Procedural delays in first instance courts

3.1 Introduction and statistics

"Everyone who, by his act or omission, causes delays and adversely affects the observance of set standards and targets in the time management should be held accountable. In addition to the individual accountability for ineffective time management, the state may be held jointly and separately accountable for the consequences caused to the users by the unreasonable length of proceedings."
*SATURN Guidelines for Judicial Time Management, Section III.*D[100]

During its trial monitoring activities, the Presence has observed a number of issues causing what might be deemed unnecessary delays during the pre-trial and trial phases.[101] Depending on the circumstances of the individual case, these issues may potentially cause procedural delays that violate both Albanian and international law. In addition, they increase the cost of the trial, strain the resources of the courts and reduce the public confidence in the judicial system. Some of the most important statistics are highlighted below, while the problems observed will be detailed in the following sections.

Assessing whether or not the length of the observed trials infringed the right to a timely trial goes beyond the scope of this report. That would, as mentioned above, require a complex analysis of, *inter alia*, the factual and legal complexity of each individual case, the parties' contribution to the delays, periods of inactivity and the actual length of the proceedings (including appeals proceedings). Nevertheless, some recurring features that caused easily avoidable delays and unnecessary work for both the courts, lawyers and parties may be pointed out.

In this chapter on length of proceedings, the most important reasons for procedural delays as observed by the Presence will be identified and remedies suggested. Section 3.3 will focus on the preparatory phase of the trial in

98 Article 169 CPC paragraphs 1 and 2.

99 Article 169 CPC.

100 European Commission for the Efficiency of Justice (CEPEJ) *SATURN Guidelines for judicial time management*, (Council of Europe, Strasbourg, 11 September 2009), available at www.coe.int/cepej (last accessed on 9 November 2012).

101 The same has been observed in criminal trials, see OSCE Presence in Albania, *Analysis of the Criminal Justice System of Albania*, (Tirana, OSCE, 2006), p. 180. The causes of delays in criminal trials were identified as: Failure to find/notify the persons involved; failure of persons notified to appear; failure of the police to bring persons detained on remand to court; failure of defence counsel to appear; failure of prosecutors to appear; lack of planning/preparation; unjustified prolongation of pre-trial investigations. See also OSCE Presence in Albania, *Analysis of Criminal Appellate Proceedings in Albania* (Tirana, OSCE, 2007), p.107.

general, including time consuming procedures for taking evidence, scheduling of hearings without ensuring the availability of trial participants and courts' sometimes inadequate management of the trial process. Specific problems concerning summons to hearings and unjustified absence of trial participants will be the topic of sections 3.2 and 3.4 respectively. Issues relating to the Annual Statistics will be considered in section 3.5 and some case studies that illustrate the identified problems will be reported in section 3.6. There is some overlap and interrelation between the sections, e.g. trial participants fail to appear in both preparatory and main hearings. The problems regarding summons and absence from hearings are however so important that they warrant special attention.

3.1.1 Length of observed trials

In 2010-2011, the Presence observed 21 civil trials in four district courts.[102] The average length of the trials, measured in number of days from registration of the case to pronouncement of the judgement was 281.7 days. The fastest trial ended in 65 days, while one case had been on-going for 653 days at the time the statistics for this report were finalised (the case is still pending). The general variation in length between the cases was surprisingly low: If the five longest and five shortest trials are excluded, the average length of the remaining "middle" 11 trials (second and third quartile) is 262.4 days, i.e. only 19.3 days shorter than the overall average. This indicates that the majority of civil trials in the first instance are decided within nine months.

It is, however, interesting to observe that in the trials monitored by the Presence, the first hearing was on average scheduled within 35.8 days of registration of the case. This is surprisingly fast compared to the total length of the trials.

3.1.2 Length of procedurally ceased trials

A considerable number, 45 %, of the observed trials were dismissed for procedural reasons, and thus not decided on the merits of the case.[103] The reasons for dismissal were either that the plaintiff was absent although duly notified, that the plaintiff's complaint was not complete or that the plaintiff withdrew from the trial. As such, the dismissals were attributable, without exception, to the plaintiff. It is interesting to note that on average, the dismissed trials lasted for 216.4 days before being dismissed, which is not much shorter than the cases decided on the merits (278.8 days on average).[104]

The Annual Statistics,[105] a publication of the Ministry of Justice containing official statistics on the judiciary, specifies that in 2009, 26 % of all civil

102 See Annex 1.

103 See Annex 1. Please note that three pending cases have been excluded from these statistics.

104 See Annex 1.

105 Ministry of Justice, *Annual Statistics 2009* (Tirana, Ministry of Justice, 2010), p.160.

trials in Albania were dismissed for procedural reasons,[106] while 73.9 % were decided on the merits.[107] As dismissal does not preclude the plaintiff from restarting the case, such dismissals represent a considerable waste of resources for the courts and parties alike.

3.1.3 Number of hearings in each trial

The number of hearings is another important aspect of the observed trials. The average number of hearings for all trials, both those decided on the merits and those dismissed for procedural reasons, was 10.5. The average number of hearings for cases decided on the merits was 10.6, while there were on average 7.6 hearings before a trial was procedurally dismissed. Unlike the statistics for the length of trials, the observed variation in the number of hearings was significant. Of the cases decided on the merits, one trial ended after 4 hearings, while the largest number of hearings in one case was 23.

3.1.4 Number of non-productive hearings

Of particular interest is the considerable number of "non-productive hearings" observed, i.e. hearings where nothing substantial happened with regard to settling the dispute between the parties. An astonishing 105 out of 220 observed hearings in the monitored trials were non-productive, amounting to 47.7 %.[108] These hearings were postponed for several reasons, e.g., one or both parties were absent although properly notified; an absent party was not duly notified; the lawyer had to attend another trial; the judge was sick or participated in a training/seminar; allowing parties to get familiar with the report of a court appointed expert; or waiting for decisions issued by higher level courts. Furthermore, in these 105 non-productive hearings, sanctions against the trial participants were not used a single time.

3.2 Problems with summoning parties to hearings

3.2.1 Observed problems

Unsuccessful summoning of trial participants is a frequent cause of postponements of hearings and thus unnecessarily increases the length of proceedings. Of the hearings observed by the Presence (excluding final hearings), 8.3 % (9 of 109 hearings) were postponed due to one party not being summoned in accordance with the law. As mentioned in section 2.2.3, a trial can only take place if all parties have been legally summoned. This effectively means that all hearings postponed due to problems related to summons were completely non-productive.

106 These statistics include both one-party "trials" (in Albanian: çështjeve civile pa palë kundërshtare) and cases with more than one party (in Albanian: çështjeve civile me palë kundërshtare), which may explain a lower frequency of procedurally ceased cases.

107 Disappointingly, only 0.25 % of civil trials ended by reconciliation in 2009, Ministry of Justice, *Annual Statistics 2009* (Tirana, Ministry of Justice, 2010), p.160.

108 See Annex 1.

Finding 1

Incomplete address information

The main reason for unsuccessful summoning of trial participants is incomplete address information for the recipients. Normally, the plaintiffs provide sufficient contact details for themselves in the initial complaint so that summoning plaintiffs is usually not problematic. In contrast, the contact details for the defendants are provided by the plaintiffs. Depending on how well the plaintiff knows the defendant, this information may either never have been accurate, or the defendant may in the meantime have changed his address. Court clerks have informed the Presence that in Tirana, about 40 % of defendants' addresses are accurate, while 60 % are inaccurate.

Finding 2

Difficulties locating accurate addresses due to new address system

Even if an accurate address has been provided, the court clerks may have difficulties locating that address. In Tirana, many buildings have been given new addresses, which has caused severe confusion in the summons process. In addition, not all buildings have been clearly marked with their new building numbers. Moreover, updated maps which show the new addresses have not been provided to the courts. The lack of an accurate address system is therefore still cause of concern, as it hampers the correct summoning of trial participants.

Finding 3

The courts do not have access to the National Register of Civil Status and to the National Registry of Addresses

To remedy the general lack of a an accurate civil registry and of an address system, the Government of Albania established in 2007-2010 an electronic National Register of Civil Status (NRCS), containing civil status data of all citizens, and a data protection framework.[109] The NRCS is now operational and forms the basis for issuing biometric passports to Albanian citizens and creating voter lists for central and local elections. The process of establishing a National Registry of Addresses (NRA) was also started at the same time, but the NRA has not been finalised. One of the aims of the original project was to give *inter alia* the courts access to the new NRCS and the NRA, thus providing them with updated identity and address information of all citizens in Albania.[110] It appears that currently, the Ministry of Interior (MoI) is the sole entity with access to the data contained in the NRCS and the NRA. Furthermore, a link between the NRCS and NRA, linking each person with a specific address, has not yet been created. In order for the courts to benefit from this identity and address data, the technical and legal framework for access has to be established.

109 The project was carried out as part of the EU funded Technical Assistance on modernisation of the addresses and civil registry systems, implemented by the Presence, the Government of Norway (Statistics Norway), the Government of Austria and the Council of Europe.

110 Interview with Frank Nan, former Civil Registry Project Manager.

Finding 4

The courts do not have access to the NRCS and municipal maps

While linking the NRCS and NRA may not happen in the near future, the courts may still benefit from having access only to the NRCS. In the NRCS, each person is assigned a 9 digit code called an Election Number. This number identifies the specific building in which the person lived in 2006, when the survey was carried out. Each municipality has maps showing the physical location of all buildings and their Election Number. In effect, the combination of the Election Number in the NRCS and the municipal maps identifies the physical residence of all citizens of Albania as of 2006. The Election Numbers and maps are still in use for election purposes and are, in various degrees, continuously updated. Currently, the technical and legal framework is not in place for giving the courts access to the Election Numbers in the NRCS and to the municipal maps.

While it is too early to predict, it is hoped that improvements in the courts' access to the NRCS and the municipal maps would substantially enhance possibilities to summon persons to court.

Finding 5

Court clerks cannot check the identity of the recipient of summons

Another problem pointed out by the court clerks is that they cannot check identity documents (ID) of individuals. If a person is unwilling to confirm his or her identity by producing an ID card, the court clerk has no way to certify that the correct person has received the summons. The court clerks pointed out that assistance from the State Police would improve the summoning procedure of unwilling recipients.

Finding 6

Courts do not use the fastest means of notification permitted by law

Generally, courts appear not to use the possibility to perform notification by other, faster means (e.g., by fax) as permitted by law in special circumstances.[111]

Finding 7

Courts remain inactive if the summons was not successful

The courts' inactivity in cases of unsuccessful summons may infringe the right to a timely trial. In the current practice of courts, notice slips from the court clerks or the post office (which document the outcome of the summons) are placed in the case file. Unfortunately, the judge does not assess whether the summons was successful or not when the notice slips are delivered by the court clerk or the post office. The outcome of the summons is not considered until the time of the scheduled hearing, when usually all other

111 Article 144 CPC.

parties and witnesses have come to the hearing. Only at this time, the judge would realise that one party was not legally summoned, decide to retry the summons and postpone the hearing. Consequently, the entire hearing was non-productive and both the court and the trial participants have wasted their time and money. As mentioned in section 3.1.2, the right to a timely trial requires the judge to proactively manage the entire proceedings to prevent any unnecessary delays. This means that the judge has the overall responsibility to ensure that also the summons process is as efficient as reasonably possible. Not following up on the outcome of the notification and, if necessary, taking additional steps to summon the parties, may therefore be at odds with fair trial guarantees.

Finding 8

Public notices are not available online

Currently, Albania does not have an operational address registry, which makes it difficult for courts and plaintiffs to find updated address information for defendants. The large number of Albanians living abroad, without known address, further complicates the notification process. The CPC therefore provides for summoning parties by "public notice", i.e., by posting the notice in the court building and at the last known domicile.[112] There is no system in place for publishing such notices online. After posting the notice in the court and the last domicile, the trial can continue without the party present.

It is impractical for people to monitor whether they have been publicly notified as this requires checking previous domiciles regularly. This system, although necessary in certain circumstances, prevents absent parties from defending their rights.

3.2.2 Remedies

As mentioned above, this report will only suggest general recommendations to remedy the observed problems described above. Further studies should be done, including in-depth discussions with practitioners of all legal professions and comparative studies, in order to make specific recommendations, in particular for legislative amendments.

Recommendation 1

Trial participants should provide contact details to the court

Certain steps may be made to immediately improve the courts' ability to contact the trial participants.

The court should ask the trial participants to provide, at their earliest opportunity, all possible addresses for serving summons, as well as other

112 See section 2.2.2.

contact information.[113] The trial participants should not only provide contact details for themselves, but also for all other trial participants, as far as available to them. Providing, *inter alia*, the work address and mobile phone numbers may enable the court clerk to call the trial participant to find out where she or he is. That way the summons may be delivered to the trial participants "wherever [they] are", cf. Article 130 CPC, thereby legally summoning the party. Any other address where summons can legally be delivered, cf. Articles 130 and 131 CPC, should also be provided. Draft forms, which may be used for specifying contact details, have been included in Annex 3 to this report.

The parties should be requested to provide such information at their first contact with the court. If the initial complaint is delivered by the plaintiff to the court, the court staff should ask the plaintiff to fill in the contact detail form in the court. Furthermore, when the court clerk delivers the summons for the first hearing, the court clerk should bring contact detail forms and ask the parties to complete them immediately and return them to the court clerk.

Such procedure is within the current legal framework and may, with minimal effort, be implemented immediately.

Recommendation 2
Improve the trial participants' ability to contact the court

Further to Recommendation 1, certain steps may also be made to immediately improve the trial participants' ability to contact the court. As recommended by the European Assistance Mission to the Albanian Justice System (EURALIUS II), the summons themselves could indicate the contact information, including email and telephone number, of persons to be contacted in case of delays or impossibility to attend hearings.[114]

Recommendation 3
Trial judge responsible to ensure summoning

Courts should ensure, at their own initiative, that all trial participants are duly summoned before the scheduled hearing takes place. This means that the trial judge (or someone with delegated authority from the judge) should at her or his own initiative assess the outcome of the summons. This should be done well in advance of the scheduled hearing, so that additional attempts at summoning can be made if the first attempt failed. The status of summoning should be continuously monitored until the judge is satisfied that all trial participants are duly summoned.

113 See also OSCE Presence in Albania, *Analysis of Criminal Appellate Proceedings in Albania* (Tiranë, OSCE, 2007), p. 106. For some of the other recommendations outlined in this section, see also OSCE Presence in Albania, *Analysis of the Criminal Justice System of Albania* (Tirana, OSCE, 2006), pp. 181-182.

114 EURALIUS*, Feasibility Study on Measures to Shorten the Duration of Court Proceedings* (Tirana, EURALIUS, 2006), p. 64.

In cases where one or more trial participants cannot be legally summoned before the scheduled hearing, the judge should cancel the hearing and inform the other trial participants. As this may happen only days before the scheduled hearing, the judge should contact the trial participants by any technical means available[115] (mobile phone, fax, email, sms etc) to ensure that the cancellation is received in time. As the CPC does not stipulate a required procedure for cancelling hearings, the court may freely decide the appropriate means of communication of the cancellation. As cancelling the hearing has limited legal consequences,[116] the need to document the correspondence is also very limited.

Cancelling hearings to which the parties have not been legally summoned may reduce the high number of unproductive hearings, but will not in itself reduce the overall length of proceedings.

Such procedure is within the current legal framework and may, with minimal effort, be implemented immediately.

Recommendation 4

Parties to be considered legally summoned when using the contact details they provide

In the medium term, if a system as described in Recommendation 1 is established and functions well, consideration should be given to changing the CPC so that summons delivered to the addresses or with the technical means actively provided by a party shall be sufficient to have legally summoned the trial participant. This would enable e.g., the court clerks to legally summon a party by delivering the notice to the address expressly provided by that party regardless of whether or not the recipient is present. In such case, sanctions should be applied against non-appearing trial participants.

Recommendation 5

Courts should use the possibility to summon parties by technical means

Presently, the court can notify trial participants by any means of communication (including telephone, fax, email and sms).[117] Such procedure requires that the trial participant confirms receipt of the summons in writing or that the summoning is made in another way that ensures a "regular notification", cf. Article 144 CPC. Such summons procedure is unfortunately only allowed in "special circumstances". With some notable exceptions,[118] courts do not seem to use this procedure even in "special circumstances", even though it has the potential to avoid numerous non-productive hearings.

115 See Recommendation 1 regarding contact details for trial participants.

116 Theoretically, an absent party may claim that the judge cancelled the hearing by phone. This does not, however, seem very realistic, as such claims easily can be investigated and appropriate action taken against lying parties and lawyers.

117 See section 2.2.2.

118 Lezha District Court has apparently regularly used notification by telephone in cases where the parties reside in distant rural areas so as to avoid difficulties related to notification by ordinary means.

Courts should therefore consider relying more frequently on the procedure specified in Article 144 CPC where expediency or other "special circumstance" so require.[119]

Recommendation 6

Summons by technical means and confirmation of receipt should be the standard procedure provided in the law

As mentioned above, the summons procedure outlined in Article 144 CPC is restricted to "special circumstances". This is unfortunate, as this procedure may improve both the speed and reliability of the summons process and thus reduce the workload of the courts.

Consideration should therefore be given to changing the CPC so that the procedure of Article 144 CPC becomes the standard notification procedure. In that case, simple notification by mail (or even email) with a signed return slip would be used in the court's first attempt to summon the trial participants. Only if the summons is not confirmed in writing, the court would proceed with other means of summoning.[120]

Recommendation 7

Courts should have access to the existing municipal and central government maps

The courts should have access to the existing municipal and central government maps. These maps contain, as mentioned above, updated street names and house numbers to wich the courts currently do not have access. Such access would improve the ability of court clerks to find the address specified in the summons.

Recommendation 8

Courts should have access to the National Register of Civil Status and maps with Election Numbers

The courts should be given access to the NRCS, which contains information on the identity and Election Numbers for all citizens. Furthermore, the courts should have access to the municipal maps that show the Election Numbers of each building. This will improve the court clerks' possibility to find the residence of the trial participants. To achieve this, both the technical and legal framework for access must be established.

119 Also recommended by EURALIUS II, see "*Prioritization of Measures to shorten the Duration of Court Proceedings (Activity 8.3.2)*" p. 6.

120 See Recommendation 3 regarding the court's follow-up in cases of unsuccessful summons.

Recommendation 9

The National Register of Civil Status and the National Registry of Addresses should be linked

In the medium term, the Ministry of Interior should finalise the NRA and a link between the NRCS and the NRA, linking each person with a specific address, should be created. Thereupon, the courts should be given access to the identity and address information in the NRCS. This will give the court clerks detailed information on the address of each citizen, substantially improving the success rate for summoning.

Recommendation 10

Parties to be considered legally summoned by delivery to their registered address

In the long term, when the NRCS and the NRA are updated on a continuous basis, these registries will be sources of very accurate identity and address information. Once this is the case, consideration should be given to amend the CPC so that summons delivered to the registered address shall be sufficient to have legally summoned a trial participant. In such case, sanctions should be applied against non-appearing trial participants.

Such a system seems to be the normal way of summoning parties in countries with continuously updated civil registries.[121] Introducing such system in the CPC obviously requires careful consideration of international experiences and the particular situation in Albania.

Recommendation 11

The State Police should, when necessary, assist in summoning parties

Measures should be taken to prevent people from sabotaging the summoning by refusing to identify themselves. One such measure could be to authorise the State Police to control the identity of the recipient and permit the court clerks to request the assistance from the State Police when delivering summons.

Recommendation 12

Publish public notices online

Under certain circumstances, parties may be summoned by public notice, which is posted in the court building and at the last known domicile.[122] Consideration should be given to publish all such public notices online to give people an easily accessible way to monitor whether or not they are summoned to a trial. The notices should be published on a national website, e.g., on www.gjykata.gov.al, as monitoring all court websites is not practically feasible.

121 E.g., Germany, Norway and Austria.

122 See section 2.2.2.

3.3 Time consuming preparatory phase

3.3.1 Observed problems

In the trials observed by the Presence, the preparatory phase was often unnecessarily long and more preparatory hearings than needed were held. In fact, of the postponements, 24.8 % were adjourned for evidence related issues (11.9 % for obtaining additional evidence and 12.9 % for procedural steps concerning experts), making this the most frequent reason for postponements.

Finding 9

Written documents are only circulated in court hearings

The procedures for circulating written documents, both evidence and written arguments of the parties, are of particular concern. Currently, only hearings held in court are used for circulating written documents between the court, parties and experts.[123] Parties receiving such documents usually request a postponement in order to evaluate them (i.e. review the written evidence and reply to legal arguments). Consequently, it is not uncommon that circulation of a single document is the only event occurring during a hearing. The Presence is, however, of the opinion that it is completely unnecessary to hold a hearing, where all parties and judge(s) must be present at the same time, to circulate written documents. Circulating documents can be done by other means which are less costly and much faster than delivery during physical court hearings.

Finding 10

Courts do not check availability of trial participants before scheduling hearings

When scheduling hearings, courts generally do not check the availability of trial participants (parties, lawyers, witnesses and experts) and thereby fail to ascertain the existence of potentially conflicting time-schedules,[124] thus causing avoidable postponements. In 10 out of 109 observed hearings, the Presence found that lawyers had a clash of hearings.

Finding 11

Insufficient planning and management of the trial by the judges

In current court practice, judges rarely actively manage the proceedings.[125] Active case management means that judges, in consultation with the parties, at an early stage of the process seek to first clarify the dispute, and secondly, to make a plan for the trial. In order to clarify the dispute, the judge would actively ask the parties

123 There is one exception: The plaintiff's initial complaint is attached to the summons for the first hearing, cf. Article 156 CPC.

124 This is only a problem when hearings are scheduled without the presence of all parties. If the judge schedules the next hearing in the presence of a party, that party will be formally notified immediately and further notification is not required.

125 Several organisations are promoting active case management. See e.g., studies of courtroom usage and conference on court leadership by USAID's Just project (available at http://albania.usaid.gov/JuST), EURALIUS III (http://www.euralius.eu/) and the Council of Europe's CEPEJ (http://www.coe.int/t/dghl/cooperation/cepej/default_en.asp).

which substantive questions are disputed and which are not, thereby avoiding spending time on undisputed issues. A plan for the trial process would require the parties to specify which procedural issues need to be resolved, which evidence, including witnesses, is required etc. Based on this information, the judge would decide how many hearings are required, when they will be held and which evidence and witnesses will be allowed. In order for the plan to be useful, it should be drawn up in one of the first preparatory hearings. For a more detailed description of active case management, see Recommendation 15.

Unfortunately, active case management is largely absent from the current court practice. To the contrary, the courts usually approve any request from the parties for additional hearings to provide additional evidence or make legal arguments. This lack of planning and structure unnecessarily delays the trials and increases the number of hearings.

Reportedly, some judges try to plan and schedule the hearings, in consultation with the parties' representatives,[126] but this is not common practice.

Finding 12

Evidence is not presented at the earliest opportunity

Parties do not seem to present all their evidence at their earliest possible opportunity. Giving a party the opportunity to present additional evidence (not including experts) caused postponement of 11.9 % of the adjourned hearings observed by the Presence, making it one of the most usual reasons for postponement. Evidence is rather often presented piecemeal and often as a reaction to evidence presented by the other party. The Presence has observed several cases, where additional evidence has been presented in the main hearings, i.e. after the conclusion of the preparatory phase. There may be several reasons for this, including tactical considerations and a lack of planning by the parties and their counsels. Exclusion of evidence or other sanctions were not used in any of the observed hearings. One reason for this is probably that the legal framework for excluding evidence presented at a late stage in the trial is not sufficiently clear, cf. Article 180 CPC.

Finding 13

The procedure for using experts is unnecessarily time consuming

Court appointed experts are frequently used in Albanian civil trials (experts were invited in 6 out of the 14 observed cases decided on the merits). Unfortunately, the procedure for using experts causes avoidable postponements of hearings. A minimum of three physical hearings are in fact needed for appointing and hearing an expert: In a first hearing, a party requests that an expert be appointed and the court decides on this request. In a second hearing, the expert is presented with (and accepts) the mandate, i.e. the questions the expert shall answer, by the court. In a third hearing, the expert delivers his

126 This is the practice adopted by some of the judges working at Tirana District Court. In Gjirokastra, some judges hold scheduling conferences with the parties and their lawyers, especially in divorce cases.

written report to the court and the parties, and orally presents the findings in court. Quite often, since the parties have not received the expert's report beforehand, they request a postponement to look into the report before cross-examining the expert. Such a postponement to allow for a fourth hearing is also rather common. At least 10.2 % of the observed hearings were postponed for expert related issues. In reality, the problem may be even bigger because some hearings were postponed for other reasons in addition to expert related issues.

3.3.2 Remedies

Recommendation 13

Written preparatory phase

The preparatory phase of the trial should move away from the current system, where every step of the trial takes place in physical hearings. To a much larger extent, the trial preparation should take place in writing. Physical hearings in the preparatory phase should only be held if the court finds it necessary or more expedient than written preparation. Changing from an oral to a written preparatory phase will have two important benefits: First, it will reduce the number of hearings dramatically, which will reduce the cost and the workload of the courts, parties and lawyers. Secondly, the length of proceedings will be reduced as a large number of unproductive hearings (see section 3.2.1) will be avoided.

Specifically, a written preparatory phase may include the following elements:

1. First, the court should send the plaintiff's initial complaint, cf. Article 153 CPC, to the defendant, requiring a written response within a certain time. The response should specify whether or not the defendant accepts the plaintiff's claims and whether or not the defendant disputes the factual and legal basis for the plaintiff's claims. Furthermore, the defendant should specify the factual and legal basis for its defences.[127]
2. If the parties see fit, additional written pleadings may be circulated to clarify and condense the dispute in terms of claims, counterclaims, legal bases and alleged facts.
3. The parties should circulate written evidence (in a sufficient number of notarised copies) in writing. This measure alone is likely to reduce the number of hearings considerably, as 24.8 % of the hearings observed by the Presence were postponed to take further evidence (including using experts). See also Recommendation 16 relating to exclusion of evidence that is presented too late in the proceedings.
4. The parties should suggest witnesses in writing. The court should make its decision on which witnesses to hear without a physical hearing and circulate its decision to the parties.

127 Currently, the parties are supposed to clarify their claims, statement of facts and evidence in the first court hearing, cf. Article 180 CPC. In the trials observed by the Presence, this rarely happened, usually because the process of taking evidence required numerous court hearings.

5. The parties' requests for appointing expert witnesses, the decision of the court on appointment of an expert and his mandate, the acceptance of the mandate by the expert and circulation of the written expert report may all be done in writing. Each party must, however, have the right to cross-examine the expert in a physical hearing, which should take place after the written report has been circulated to the parties.
6. The parties should raise any procedural issues, e.g., competence of the court, whether the court should be constituted with a single judge or panel of judges, in writing. The court should normally decide such procedural questions, after receiving written response from both sides, without a physical hearing. Consideration should be given to providing all parties and the court with the right to demand a physical hearing to orally argue the procedural questions. Procedural decisions may also be circulated in writing to the parties, without a physical hearing.

Written proceedings have the inherent risk of documents being lost in the mailing process. Careful consideration should therefore be given to finding procedures which will ensure that the written submissions (written pleadings, copies of evidence etc) are in fact received. In order to achieve this, it should be considered to require the parties who deliver documents to the court include sufficient copies to the other trial participants. The court should thereafter send the documents to the other trial participants. All dispatches from the court should be made in a manner both ensures that the recipient receives the dispatch and that the receipt is properly documented.

The suggested system for sending summons (see section 3.2.2) includes such guarantees by *inter alia* requiring the recipient to confirm receipt to the court. Consideration should be given to using the same system when the courts circulate documents to the trial participants.

Trial preparation by circulation of documents should only be tried once a system which sufficiently guarantees delivery of documents has been established.

Recommendation 14

Courts should ascertain availability of trial participants before scheduling a hearing

The court should always ascertain the availability of the trial participants before scheduling a hearing. This should be done without exception, regardless of whether the scheduling takes place in a hearing (i.e. in the presence of the trial participants) or not.

The availability-check is currently not a formal requirement in the CPC, which means that there are no requirements as to the procedure to be followed by the court. The court may therefore use any means of communication it finds

appropriate to check the availability of the parties, in particular through the contact details provided by the parties themselves (see Recommendation 1).

As no legislative change is required, this recommendation may be implemented immediately.

Recommendation 15

Active case management and pre-trial planning meeting

Many of the problems in the preparatory phase should be addressed by the courts adopting an active case management approach. As mentioned in section 2.1, the court's role to actively manage the case is central to the efficient organisation of proceedings and should include, among others, mandatory pre-trial conferences to establish the scope and schedule of the trial. Such "case management conferences" should be called by the judge and attended by all the parties and the lawyers.

The purpose of a pre-trial planning meeting may be two-fold:

First, such meeting should condense the trial. This involves establishing which questions, both of facts and law, are in fact disputed. This will reduce the time spent on proving and discussing non-disputed issues. The planning meeting should be preclusive so that there are strict limits on raising new claims after the meeting.[128]

Secondly, the court should, after previous consultation with the parties, decide on a time-table for the trial. This plan should include which evidence the parties will present, which witnesses will be heard, whether expert witnesses will be appointed etc. Deadlines for presenting evidence[129] and taking procedural steps, the sequence for hearing witnesses and experts and ideally fixing the dates of the hearings should also be decided by the court in the planning meeting.[130] This meeting will thus be an opportunity for the court to control the taking of evidence and to exclude irrelevant or excessive number of witnesses. The plan must of course be discussed and agreed with the parties and their representatives in order to make it realistic. Consideration should be given to introducing sanctions in the CPC for not complying with the agreed trial plan.

Such "case management conference" between the parties could thus represent a very effective tool to avoid adjournments and concentrate hearings within an acceptable timeframe.

128 Restrictions on presenting evidence at a late stage in the trial are suggested in Recommendation 16.

129 See also Recommendation 16.

130 *ALI/UNIDROIT Principles of Transnational Civil Procedure*, Principle 14, see also section 2.1.4 above.

The time-table should not be modified except for good cause and with the authorisation of the court. In line with international standards, adjournments should be granted only where exceptional and important circumstances so require.[131] Adjournments should not only be absolutely necessary, but also brief.[132] To avoid adjourning trials for extended periods of times, the CPC should be amended to include a provision spelling out the above mentioned principles.

Ideally, the planning meeting may also be used to try to find an out-of-court settlement of the dispute.

If, in the future, planning meetings achieve their purpose, consideration should be given to legally summoning the parties to all the scheduled hearings already in the planning meeting. In such case, an absent party could be sanctioned without having to summon the party to each hearing.

In order to be effective, the planning meeting must take place early in the trial. On the other hand, as both parties will be expected to *inter alia* present their lists of evidence and witnesses, discuss which questions are disputed and indicate time needed for each stage of the trial, the parties must have had the opportunity to circulate at least their initial written submissions to each other.[133] Ideally, the parties should have had the opportunity to exchange more than one written submission to further clarify the dispute before the planning meeting takes place. One possibility may be that the court at its own initiative calls the planning meeting a certain number of weeks after the defendant has circulated its written response. Another alternative may be that the court only calls the meeting when one of the parties so requests.

Consideration should also be given to regulating in the CPC how the planning meeting should take place. A flexible solution to be considered is to allow the court to decide the most appropriate means of communication. This will allow for the exchange of information to take place in either a physical hearing or in a "distance meeting" by telephone, email, mail or any other means, although a telephone conference between the parties, lawyers and the presiding judge could be chosen as the standard form. If telephone, email or other informal means of communication is used, the court should ensure that its decision on the plan for the trial is circulated in the proper form.[134]

131 Council of Europe Committee of Ministers, Recommendation No. R (84) 5 to the Member States "*On the Principles of Civil Procedure Designed to Improve the Functioning of Justice*", Principle 1.1. See also SATURN Guidelines for Judicial Time Management, Principle 5.B.3 stating that deviations from the agreed calendar should be minimal and justified, and that in principle, "the extension of the set time limits should be possible only with the agreement of all parties, or if the interest of justice so requires".

132 Council of Europe Committee of Ministers, Recommendation No. R (84) 5 to the Member States "*On the Principles of Civil Procedure Designed to Improve the Functioning of Justice*", Principle 8, section 2.

133 On suggestions for exchanging evidence and written arguments before the main hearing, see Recommendation 13.

134 See Recommendation 13 regarding suggestions for written contact between the court and the parties.

Several of the above mentioned suggestions for the pre-trial planning meeting will require amendments to the CPC. International experiences and recommendations and the special situation in Albania should be considered when drafting the detailed rules for the pre-trial conference.

Introducing pre-trial planning meetings is, as mentioned in section 2.1.2, recommended by several international organisations working in the area of judicial administration. It was also recommended by the European Assistance Mission to the Albanian Justice System (EURALIUS II).[135] Pre-trial planning meetings have also been introduced in a number of legal systems.[136]

Recommendation 16

Obligation to present evidence at the earliest opportunity

As mentioned in section 3.3.1, taking additional evidence is one of the most frequent reasons for postponements. Consideration should be given to require the parties to present all their evidence at their earliest possible opportunity. In order to enforce such rule, the courts should be empowered in certain circumstances to exclude evidence presented in violation of this rule, in particular when presentation of evidence has been delayed without reasonable cause. Courts may also be given the power to set a deadline for presenting new evidence. Other lesser sanctions may also be considered, e.g., ordering the delaying party to cover the additional costs (or standardised fee) associated with the delay.

Recommendation 17

Include length of proceedings when assessing judges

As detailed in section 2.2.1, the High Council of Justice has established guidelines for the length of various types of proceedings. Consideration should be given to include assessment of compliance with these guidelines when the High Council of Justice evaluates judges for promotion and transfer.

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135 European Assistance Mission to the Albanian Justice System (EURALIUS II) *Feasibility study on measures to shorten the duration of court proceedings*, Tirana, 12 June 2007 XIV (1) and *Prioritization of Measures to shorten the Duration of Court Proceedings (Activity 8.3.2)* p. 5.

136 Pre-trial conferences are routine in U.S. federal courts. In the course of these conferences, trial judges establish time limits for completing various stages of the proceedings, familiarise themselves with the case and set the trial schedule. They also simplify the issues and facilitate an out of court settlement. United States, Fed. R. Civ. P. Rule 16. Pre-trial conferences are also provided for in English civil procedure, see e.g., the practice direction 29 to the Civil Procedure Rules, available at http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part29 (last accessed on 19 November 2012).
While a common feature of common law jurisdictions, preliminary agreements between the parties and the judges are also used in some European civil law jurisdictions. For instance, in France a "procedural contract" appears to be used, namely the technique whereby judges and lawyers decide on the timetable for the proceedings at the very first hearing, thus making the length of the proceeding, at a least, more predictable. CEPEJ, *Administration and management of judicial systems in Europe*, p.15, available at http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin_en.pdf (last accessed on 19 November 2012). Pre-trial conferences were introduced in Norwegian civil procedure by the civil procedure reform of 2005, cf. § 9-4 Norwegian CPC, available at http://lovdata.no/all/tl-20050617-090-019.html#9-4 (last accessed on 19 November 2012). In Finland, the parties to each case should be informed about the estimated timeframe of respectively the pre-trial and trial phase, and detailed hearing schedules are sent to them in advance.

Several of the recommendations in this report may affect the length of civil trials. After the recommendations have been implemented, the guidelines should be updated in close consultation with the relevant stakeholders, in particular the judges, in order to ensure that they are both realistic and meet fair trial standards. Assessment of judges on compliance with the guidelines should therefore only be made once the guidelines have been updated with the consensus of the judges.

This measure is likely to increase the attention of individual judges to their responsibility to actively manage the trials.

3.4 Failure of trial participants to appear, reluctant exercise of sanctioning power by the courts and insufficient sanctioning powers

The problems and delays caused by improper summoning of parties were detailed in section 3.2. However, problems with summons are not the only reason for trial participants being absent. During its trial monitoring, the Presence observed delays caused by absent parties who in fact had been legally summoned were observed. Furthermore, absent lawyers and judges also caused delays.[137] This section 3.4 will focus on delays caused by absent trial participants unrelated to summons problems.[138]

The absent trial participants is a major cause of postponement of hearings in civil trials. In fact, out of the 109 observed hearings that were adjourned, 38.5 % were postponed due to the absence of a party, a lawyer or a judge.[139] All of these hearings were postponed without the occurence of anything contributing to concluding the trial, and as such were completely non-productive. Many of these hearings, 12.8 %, were postponed due to a lawyer or a judge being in another trial or the judge attending a training seminar. As such, these delays were easily avoidable. Absent parties, although having been legally notified, accounted for postponement of 10.1 % of these hearings, all of which could also have been avoided.[140] On the other hand, 15.6 % of the adjourned hearings were postponed due to health or family reasons of a judge or a lawyer, which, of course, are more difficult to avoid.

Sanctions against absent trial participants were not used in any of the trials observed by the Presence, apart from continuing the trial in the absence of the duly notified defendant.[141]

137 Lawyers and judges are not summoned to court hearings. Problems with summons only relate to absent plaintiffs, defendants, witnesses and third parties.

138 Additional statistics are provided in Annex 1.

139 This figure does not include, and is thus in addition to, postponements due to summons problems, cf. section 3.2.

140 Article 179 CPC paragraph 2.

141 Cf. Article 179 CPC.

3.4.1 Observed problems

Finding 14

Trial participants do not notify the court in time if they are unable to attend a hearing

It seems that trial participants do not notify the court about their unavailability at their first opportunity, but only inform the court shortly before the hearing. At that time, the court is unable to notify the other trial participants, thus making it impossible to reschedule the hearing. This contributes to a large number of avoidable non-productive hearings.

Finding 15

Courts sometimes remain inactive when notified about a trial participant or judge being unavailable

The Presence observed several instances where the court was informed about a party or a lawyer being unavailable, but the judge still remained inactive. The reason seems to be the same as with unsuccessful summoning (see section 3.2): Notices from trial participants are sometimes not assessed and acted upon when they are received by the court. Instead, they are left in the case folder and are only considered at the time of the hearing.

This problem was not only observed when parties and lawyers were unavailable. Judges being unavailable for family/health reasons or training accounted for 16.5 % of the postponed hearings observed by the Presence, making this reason one of the most common reasons for postponement. It seems that the judges rarely informed the trial participants about their unavailability before the time of the hearing.

In effect, trial participants were frequently informed about a postponement only at the time when the hearing should have taken place, thus wasting time and money of the court and the parties. This inaction on the part of the court may, as mentioned in section 2.1.3, infringe the right to a timely trial.

Finding 16

The CPC does not specify the procedure for investigating reasons for absence

Although the courts shall investigate the reasons for a trial participant's absence,[142] the CPC does not specify the procedure to follow when investigating the reasons for absence. As observed during the trial monitoring, the courts do not seem to question the accuracy of notices from trial participants that they are ill or in another trial, e.g., by checking with the other court or getting a second opinion from a court appointed medical doctor. Furthermore, if the

142 See section 2.2.3.

absent party has *not* provided any reasons for his or her absence, the CPC does not specify any measure that would require the absent party to explain his/her absence, e.g., by requiring the absent party to provide explanations the absence in the next hearing. Clear procedures for such investigation may in particular be important in cases of suspected abuse by the absent party.

Finding 17

The criteria for sanctioning absent trial participants are too vague

The legal definition of legitimate reasons for absence, and thus when certain sanctions may be imposed, is too vague. As detailed in section 2.2.3, the CPC specifies that the hearing shall be postponed if the absence of the party has a "legitimate" cause. If there is no "reasonable" cause for the plaintiff's absence, the case shall be dismissed. If the defendant is absent without "legitimate cause", the trial may continue in her or his absence.

However, neither the term "reasonable" nor the term "legitimate" are further clarified in the CPC, in the commentaries to the CPC or in High Court practice. It is thus difficult for judges to determine whether the legal requirements for dismissing the case or continuing in the absence of the defendant are met. Judges have indicated to the Presence that they fear having their decisions overturned by a higher court following belated production of a medical certificate by that same party. Consequently, these sanctions are not used as often as they could.

Finding 18

The current sanctions against absent parties are too lenient

As mentioned above, if the *plaintiff* is absent without reasonable cause, the case may be dismissed. The dismissal is however only a procedural decision, as opposed to a decision on the merits in favour of the defendant, so the plaintiff may restart the case at any time (provided that the claim has not been time barred).[143] As a large number of trials are dismissed, cf. section 3.1.2, this represents a considerable waste of time and resources. Restarting the case will however incur new court fees for the plaintiff, cf. section 2.2.3.

If the *defendant* is absent without legitimate cause, the trial may continue in his or her absence, as mentioned above. Albanian law lacks, however, provisions for expedited proceedings (often referred to as "*default judgement*") in case the defendant's absence is unjustified. Such expedited proceedings usually mean that the court makes a decision based on the plaintiff's presentation of facts without going through a full trial, subject only to a superficial review.[144] Provisions for default judgement would reduce the length of the trial substantially.

143 The same problem occurs if the plaintiff actively withdraws from the trial, cf. section 2.2.3.

144 Article 182 CPC states that if a party is absent without legitimate cause, that party will be deemed to have agreed to the other evidence. A full trial with all formalities for taking evidence must however take place and expedited procedures are thus not allowed.

Furthermore, a party who intentionally delays the proceedings without just cause may be charged with the additional costs of the delay.[145] Judges have, however, lamented that this is impractical, because it is too burdensome for the court to calculate such costs in the concrete case. Judges have also repeatedly complained that, even where fines are applied by the court, these are rarely executed.

Finding 19

Courts do not sanction illegally absent trial participants to the fullest extent possible

As mentioned above, the current legal framework for sanctioning the unjustified absence of trial participants has room for improvement. However, the courts do not seem to apply sanctions to the fullest extent possible under the current legal framework. The chair of one district court has informed the Presence that their implementation of a strict policy of fining non-compliant parties, experts and government authorities, considerably contributed to addressing some of the factors causing unjustified delays.

In general, the lack of effective sanctions for the failure of parties to attend as scheduled contributes to the inefficiency in the administration of justice, erodes the authority and credibility of the court and may, ultimately, contribute to violating the fair trial guarantees under Article 6 ECHR.

Finding 20

Sanctions against unduly absent lawyers

In several of the observed hearings, one or more lawyers were absent. The Presence did not have access to sufficient information to assess whether or not they had reasonable cause for their absence.

For several years, there has been an increasing demand to reform the disciplinary system for lawyers, mainly due to allegations of lawyers being unduly absent from court hearings. In September 2012, the Parliament passed an amendment to the law on the profession of advocates that reformed several aspects of the disciplinary system. At the time of publishing this report, it is too early to accurately assess the effect of these reforms. Recommendations for further reform in this area will therefore not be put forward.

3.4.2 Remedies against absent trial participants

Sections 3.2 and 3.3 suggest some measures to ensure that lawyers and trial participants are informed of the hearings, that they are available at the time of the hearing and generally to reduce the number of hearings in each case.

145 Cf. Article 107 CPC.

In addition, certain remedies to reduce the problem of absent trial participants should be considered.

Recommendation 18

Introduce a legal obligation for trial participants to inform the court in case of unavailability

A legal obligation for trial participants to inform the court at their earliest possibility if they are not able to attend a court hearing should be introduced in the CPC.[146] This will ensure that parties, experts, lawyers and witnesses will inform the court immediately if they discover that they will not be attending the hearing, e.g., due to a clash of hearings or illness. Ideally, as this may happen shortly before the hearing, the trial participants should use a fast means of communication, e.g., phone, email, fax or sms. Consideration should also be given to requiring the trial participant to confirm the message in writing as soon as possible.

In cases of abuse, e.g., by a party denying having conducted a phone conversation with the court, a criminal investigation should be opened. This would reduce future risk of abuse.

Recommendation 19

Courts should immediately inform the trial participants of cancellation of court hearings

The courts should act immediately to inform the other trial participants when receiving information that a hearing will not take place, e.g., due to the legitimate absence of a trial participant. The current practice of waiting for the other trial participants to arrive at the court before informing them of the cancellation is very wasteful and avoidable. The court should thus, by any means available, as further described in Recommendation 3, contact the other trial participants to avoid theire coming to court in vain. This procedure should be followed regardless of the reason for cancellation, e.g., lawyers or judges having a clash of hearings, illness or judge attending a seminar. If the judge is not in a position to inform the trial participants, the judge's secretary should be authorised to give the message.

This practice is allowed within the current legal framework and may be implemented immediately.

146 See similar recommendation suggested by EURALIUS II in: *Prioritization of Measures to shorten the Duration of Court Proceedings (Activity 8.3.2)*, Tirana, 23 Feb. 2009. p. 5.

Recommendation 20

A procedure for investigating the reasons for absence should be introduced

A procedure for investigating the reasons for absence should be introduced. Such procedure should in fact comprise two distinct components. First, a procedure should be introduced that allows the court to check the authenticity of any documentation for the absence. For instance, in cases where abuse is suspected, the court should be allowed to require parties to submit medical certificates from a court appointed doctor as opposed to the party's own doctor and the courts should regularly check the trial schedule of the other court when lawyers claim to have a clash of hearings. Secondly, the CPC should be amended to require an absent participant to explain his or her absence. If the explanation is not given to the court before the (cancelled) hearing, the explanation should be given as soon as possible after the hearing, e.g., in cases of absence due to traffic accidents on the way to the hearing.

Some of these new procedures will require amendments to the CPC. In addition, in order to reduce the fear of having a decision overturned by a higher court, the interpretation of these provisions should be discussed between the district courts, appeal courts and the High Court.

Recommendation 21

Clarifying the legitimate reasons for absence

The legal definition of legitimate reasons for absence, and thus when certain sanctions may be imposed, should be clarified in the CPC. Reducing the legal ambiguity for using sanctions is likely to increase their use by reducing the risk of having the decision overturned by a higher court.

Recommendation 22

Introducing default judgements for unlawfully absent defendants

Consideration should be given to introducing the possibility of default judgements in the CPC. In essence, a default judgement means that the court may (provisionally) decide the case in favour of the party present in court if the other party is unlawfully absent.

Provisions for default judgements are is found in numerous legal systems around the world, including in the applied legal framework in Kosovo/

UNMiK,[147] Norway,[148] Germany,[149] Austria,[150] Denmark, Sweden and England.[151] The EURALIUS II project also recommended that default judgements be introduced in the Albanian civil procedure.[152]

Default judgements may be seen as an extension of the party autonomy, i.e. a party's right to settle the dispute by agreement with the other party.[153] Unjustified absence may be seen as an implicit acceptance of the other party's claim. In such a situation, there would be no need for the court to go through a costly and time consuming trial, and issuing a default judgement will thus save resources for all parties. Default judgements may also be seen as a sanction against trial participants who are absent without justification. As long as all the safeguards and conditions are met, this sanction can be considered well balanced against the fault of the absent party.

Numerous alternative conditions and safeguards may be included in the provisions for default judgements and only some of these options will be indicated below. The experiences of other countries and international recommendations should be taken into consideration when drafting rules that are tailor-made to Albania.

The procedure for issuing a default judgement would normally start by the court investigating whether or not the absent party was duly summoned. Consideration should be given to only issuing default judgements in cases where the absent party itself has confirmed receipt of the summons. As mentioned above, summons may in certain cases legally be made by leaving the summons with a family member, neighbour or doorman or by public posting. In these cases, the court will not be entirely certain that the party in fact has received the summons. As default judgements may have quite severe consequences, issuing default judgements after such indirect methods of summons may not be appropriate.

After the court has determined that the absent party was duly summoned,

147 The Kosovo/UNMiK 2008 law on contested procedure Article 151 (1) permits the issuance of default judgements "upon proposal of the plaintiff or in accordance with the official task if these conditions are met: (a) if the accused was invited regularly to the session; (b) if the accused never contested the request for claims through a preliminary pre-note if the charged party didn't oppose it; (c) if the claim on the merits is sustained by the original complaint document; (d) if the facts on which the claims are based are not contradictory to the existing proofs presented by the plaintiff or other facts known worldwide; (e) if there are no circumstantial notes from which it can be determined that the charged party was stopped due to justified reasons no tot [sic] attend the session." See also Article 150 (1) (a)-(c) for default judgements in cases where the defendant does not respond to the plaintiff's claim even after being summoned to do so by the court.

148 The Norwegian law of 17 June 2005 no. 90 on civil procedure (hereafter Norwegian Civil Procedure Code) § 16-9 ff, unofficial English translation: http://www.ub.uio.no/ujur/ulovdata/lov-20050617-090-eng.pdf , last accessed 6 November 2012.

149 The German Civil Procedure Code §§ 330-347.

150 The Austrian Civil Procedure Code §§ 396-403.

151 The Danish, Swedish and English rules as reported by the preparatory works to the Norwegian civil procedure code (Norges Offentlige Utredninger 2001:32, item 22.3), see http://www.regjeringen.no/nb/dep/jd/dok/nouer/2001/nou-2001-32/52.html?id=379280 (last accessed 28 February 2012).

152 See CARDS 2004 Twinning Project Enhancing the judicial system in commercial matters, *Recommendations on changes to the Civil Procedure Code*, Sub-Recommendation 4.2, p. 19 and EURALIUS II: *Prioritization of Measures to shorten the Duration of Court Proceedings (Activity 8.3.2)*, Tirana, 23 February 2009. p. 21.

153 See e.g., Jo Hov *Rettergang III Sivilprosess*, Papinian, Oslo 2000, p. 311.

the court would assess the present party's case on the basis of the circulated documents[154] and only subject them to a superficial review. Unless the court, after a superficial review, finds that the present party's submissions cannot sustain its claim, the court would issue a decision in favour of the present party: If only the plaintiff is present, the court would accept the claim and, if only the defendant is present, the court would reject the claim.

The decision should not be a procedural decision to cease the trial – it should be a decision on the merits, thus making the decision *res judicata* and enforceable (i.e. finally decided by the court) subject only to cancellation and appeal as described below. Consequently, the parties should not be allowed to restart the trial in the district court.

There should be certain possibilities for a party to have the default judgement cancelled and the trial resumed. Obviously, the default judgement must be cancelled if the conditions for issuing the default judgement were not met, e.g., that the absence was legitimate or the absent party was not properly summoned. A number of additional reasons for cancellation exists in other legal systems, including (a) having an almost unconditional right to restart the trial once (but only once) and (b) restarting the trial only if the default judgement will be unfair considering the parties' interests, the absent party's fault and the nature of the trial in general. Careful consideration of the Albanian reality should be made before deciding the conditions for cancellation of default judgements.

It is important to restrict the possibility to appeal the default judgement to prevent the entire trial to be, in effect, restarted in the appeals court. The appeals court should be limited to review whether the factual and legal requirements for issuing the default judgement (and subsequent decision not to cancel the default judgement) were met and whether the procedure was correct.

Consideration should be given to restricting default judgements to certain types of cases, e.g., disputes that can be settled out of court by the parties, such as commercial cases and private real property disputes.[155] In other types of cases, e.g., certain administrative cases, Albanian law does not allow the parties to settle the case as they see fit. Since the justification for default judgements is the party autonomy and the parties' discretion to settle their claims, default judgments should be restricted to the types of cases that under Albanian law may be reconciled by the parties.

154 See Recommendation 13.

155 Further detail on which cases may be reconciled under Albanian law, see Alban Abaz Brati: *Procedura civile*, Botimet Dudaj, Tirana 2008, page 270.

Recommendation 23

Limiting the possibility for the plaintiff to withdraw from the case

Introducing default judgements, as described above, may restrict the plaintiff's right to restart a trial that was procedurally dismissed due to the plaintiff's absence. In addition, consideration should be given to restricting the plaintiff's right to restart a trial that was procedurally dismissed due to the plaintiff voluntarily withdrawing from the trial, cf. section 3.1.2. One possibility could be to amend the CPC to the effect that the plaintiff can only withdraw from the case by asking the court to find in favour of the defendant. In that case, the court decision would finally settle the dispute on the merits, thus making the decision *res judicata*. This would prevent the plaintiff from restarting the case.

Recommendation 24

The calculation of costs for unjustified delays should be standardised

As mentioned in section 3.4.1, the sanction of charging the absent party with the additional cost of the delay is hampered by difficulties in estimating the actual costs. In order to reduce this problem, consideration should be given to introducing a standardised cost, based *inter alia* on the length of the delay, whether or not the court and other participants were informed before the hearing, the degree of fault and the number of trial participants.[156]

Recommendation 25

Charging witnesses and experts with the costs of delays

In the current legislation, only the parties may be charged with the costs caused by their unjustified absence, cf. section 3.4.1. In addition, consideration should be given to introducing provisions that allow the court to charge absent witnesses and experts with the cost caused by their unjustified absence.[157] As mentioned in Recommendation 24, such costs should be standardised.

Recommendation 26

Introducing fines for absent parties

As mentioned in section 2.2.3, under the current legislation the court may fine unjustified absent witnesses or experts, but not unjustified absent parties. Consideration should be given to allowing courts to fine unjustly absent parties under similar conditions as for experts and witnesses. This will allow the courts to apply a lesser sanction than default judgement and thus allow a more flexible response to unjustified absence.

156 Such measure was suggested by judges attending the EURALIUS II workshop "*Measures to shorten the duration of court proceedings*", Tirana, 6 May 2009.

157 Such measure was also suggested by EURALIUS II: *Prioritization of Measures to shorten the Duration of Court Proceedings (Activity 8.3.2)*, Tirana, 23 February 2009. p. 23.

Recommendation 27

Correspondence from courts should include information on rights, duties and sanctions

This report makes several recommendations for stricter use of sanctions against unjustified absent trial participants. Such measures increase the importance of duly informing trial participants of the duties of trial participants and the consequences of unjustified absence.

Furthermore, in accordance with the practice followed in other jurisdictions, the trial participants should also be informed about their rights during the trial, e.g., in which situations a witness may refuse to testify and the right to compensation for witnesses.

Consideration should be given to ensure that all communications, including summons and notices, from the courts should indicate the rights and duties of the summoned trial participant, and sanctions for failure to appear. This may be achieved by attaching a pre-printed notice listing the right and duties of the summoned party to the summons, including indication of the potential consequences and sanctions (e.g., fines, procedural costs) for failure to appear at the hearing without just cause.[158]

Recommendation 28

Courts should apply the sanctions available in the current legal framework

In addition to improving the procedures and substantive rules for sanctioning unjustified absent trial participants, the courts should also consider implementing the current legal framework more strictly. Some courts have tried this and, according to information received by the Presence, see (Finding 19), it had a noticeable impact on unjust absenteeism. In particular, sanctioning various government agencies for not co-operating, e.g., in real property disputes, was reportedly fruitful.

Appellate courts and the High Court should set the example, by strictly interpreting civil procedural rules concerning delays caused by trial participants, and applying the relevant sanction where needed. The higher courts should formulate a clear practice in this regard, which should ultimately lead to upholding lower courts' decisions regarding the application of sanctions in response to (unjustified) delays.

158 In current practice, summons generally indicate that failure of the plaintiff to appear will result in a dismissal of his claim. Summons to the defendant indicate that his or her failure to appear may result in a trial *in absentia*, without specifying that this may only be declared (on request by the plaintiff) after the former was absent two consecutive times.

If the court suspects that a trial participant has committed a criminal offence, e.g., by committing perjury[159] or using falsified medical certificates,[160] the judge should routinely report such criminal offences to the prosecution authority.

Recommendation 29

Discussions in the judiciary on the causes and responses to absence

Regular discussions between the first instance courts, the appellate courts and the High Court on the causes of delays should be held, including on delays caused by the unjustified absence of trial participants. A common approach to the most frequent causes of trial postponements should be found, e.g., regarding the practice of lawyers submitting written justifications concerning conflicting trial schedules, such a common approach to these issues will reduce the problem of sanctions imposed by lower courts being overturned by higher courts.

3.5 Insufficient official statistics

3.5.1 Observed problems

Finding 21

The Annual Statistics on length of trials do not distinguish between cases with only one party and cases with more than one party

The Annual Statistics[161] are generally a good source of information on the judiciary. However, some of the provided statistics leave some room for improvement. The included statistics on the length of trials do not distinguish between cases with only one party (in Albanian: çështjeve *civile pa palë kundërshtare*) and cases with more than one party (in Albanian: çështjeve *civile me palë kundërshtare*), although such distinction is made for other statistics. This is unfortunate, because the two categories cover very different types of proceedings, thereby substantially reducing the value of the official statistics on length of proceedings. One-party cases are largely administrative tasks, not trials in the traditional sense, and include *inter alia* issuing of inheritance certificates, enforcement orders, certification of seniority at work or requests to change a company's name, the number of shares and the director. Such cases will normally be a mere formality and will be concluded very quickly. The number of one-party cases is also substantial compared to multi-party cases: In 2009, the courts examined 36.437 one-party cases and 22.623 multi-party cases. By including the length of one-party cases in the statistics for length of trials, the average length does not reflect the average time period for settling civil disputes in reality.

159 Cf. Article 306 Criminal Code.

160 Cf. Article 186 Criminal Code.

161 Ministry of Justice, *Annual Statistics 2009*, Ministry of Justice, Tirana 2010.

Finding 22

Insufficient statistics on length of those trials that last more than six months

The Annual Statistics divide the trials by length into three groups: First, trials that concluded in less than two months, secondly trials that concluded within two to six months and thirdly trials that took more than six months to finish. Unfortunately, the third group (ie. trials lasting more than six months) is not broken down into more detailed categories and the Presence has been unable to obtain such details from the Ministry of Justice. Considering that the trials observed by the Presence indicate that the majority of multi-party trials that are decided on the merits (i.e. not dismissed) last more than six months, the statistics of the Ministry of Justice are not sufficiently detailed to provide useful information for cases lasting longer than six months.

Finding 23

Statistics on average number of hearings are not available

As detailed above, the high number of hearings in each case is of major concern. Unfortunately, the Annual Statistics do not provide any statistics on the average number of hearings, thereby reducing the ability of relevant authorities to properly identify and remedy problems relating to non-productive hearings.

Finding 24

Statistics on length of proceedings are not broken down by reasons for termination of the proceedings

The Annual Statistics separately provide information on length of trials and the reasons for termination (i.e. decided on the merits of the case or dismissed on procedural grounds). Unfortunately, these two factors are not cross-tabulated, so that the statistics on length are not broken down by reasons for termination. This is unfortunate. The trials observed by the Presence indicate that the trials lasting a short period of time to a larger degree were terminated on procedural grounds than the ones lasting for longer periods of time.[162] For the parties and the judicial authorities, information on the duration of trials that actually lead to a decision on the merits of the case is more interesting than trials ending on procedural grounds. This information should therefore be provided by cross-tabulating the statistics on length of trials and the reasons for termination.

162 See Annex 1.

3.5.2 Remedies

Recommendation 30

The statistics on length of trials should distinguish between cases with only one party and cases with more than one party.

The official statistics on length of trials should distinguish between cases with only one party (in Albanian: çështjeve *civile pa palë kundërshtare*) and cases with more than one party (in Albanian: çështjeve *civile me palë kundërshtare*). This will give policy makers and court managers more precise information on the actual length of civil trials.

Recommendation 31

The statistics on length of trials should be broken down into more detailed categories

As mentioned, currently the Annual Statistics specify the percentage of trials that last for six months or more without providing any further details within this category. Consideration should be given to provide more detailed information on the length of these trials, e.g., by also showing the number of trials concluded within six to nine months, within nine to 12 months and more than 12 months.

Recommendation 32

Statistics on the number of hearings in each trial should be provided

The Annual Statistics should include statistics on the number of hearings in each trial, broken down by, e.g., type of dispute and court. Furthermore, the average number of hearings in the trials of each judge should be collected.

These statistics may be useful for court chairs when assessing the workload of the judges and for the Inspectorates of the High Council of Justice and Ministry of Justice.

Recommendation 33

The length of trials and reasons for termination should be cross-tabulated

The Annual Statistics should cross-tabulate the length of trials and the reasons for termination, thereby specifying whether trials of various lengths were decided on the merits of the case (i.e. accepted or rejected) or on procedural grounds (i.e. dismissed).

3.6 Case Studies

The following section provides some examples of cases in which the inadequate scheduling and planning of the trial, coupled with the unjustified failure of the parties and their representatives to appear, have caused undue delay in the proceedings. The study below was only based on review of the case files, not trial observation.

Case no. 1

The case was registered with the district court on 18 May 2006. Previously, on 7 April 2006, the plaintiff had requested to issue a precautionary measure, which was granted by the court. On 25 April 2006, the plaintiff filed a lawsuit against the defendant seeking the dissolution of the contract for non-fulfilment of contract obligations and compensation for damages.[163] Subsequent to that date, it appears from the case file that on six different occasions, the hearings were postponed for no apparent just cause. Thus, on 8 June 2006, the preliminary hearing was postponed to the 29 June to verify one of the parties' power of attorney. On 5 October 2006, the hearing was postponed due to absence of both of the plaintiff's lawyers (one of them travelling abroad, the second engaged in another trial), who had sent written notifications to that effect. Such written justifications seem to have been accepted by the court, without further inquiry. On 24 October 2006, the hearing was postponed as the judge was absent "for objective reasons", such reasons not having even been spelt out in the minutes. On 13 November 2006, the hearing was postponed as the judge was engaged in trying a criminal case. On 15 December 2006, six months after the first hearing in the case, the defendant requested a postponement as the plaintiff had not yet paid the fee for the registration of the lawsuit. This in spite of the fact that the fee should have been paid at the time the lawsuit was first registered.[164] On 23 January 2007, seven months after the first hearing was held, the case was heard by a panel of three judges. On 6 March 2007, the hearing was postponed due to the absence of the defendant's lawyer, who was abroad according to a written notification submitted to the court. On 12 June 2007, the hearing was postponed upon request of an expert, who needed more time to complete the task. On 3 July 2007, the same expert requested (for the second time) a postponement for the same reason, while the defendant requested the dismissal of the panel.[165] On 9 July 2007, the court postponed the hearing to notify the plaintiff about the defendant's request to dismiss the panel. On 16 July 2007, the hearing was not held due to illness of one of the judges. On 11 September 2007, the panel accepted the defendant's request and recused itself.[166]

163 On the same date, a lottery was drawn to identify the single judge competent to try the case.

164 See Article 158/a CPC paragraph 2. See also Article 65 CPC, according to which the value of the lawsuit, on which basis the tax is calculated, needs to be estimated at the time at which the lawsuit is filed with the court.

165 The request was based on the ground that the court had replaced the expert *ex officio* on 3 July 2007, and that it had accepted to review evidence sent by fax and email from the plaintiff, but not from the defendant.

166 While the panel denied the defendant's arguments at the basis of the request for its dismissal, it nevertheless decided to recuse itself to ensure an appearance of impartiality.

On 2 October 2007, the preliminary hearing took place before a new panel of judges. On 29 October 2007, the hearing was postponed because one of the judges was reportedly in attendance of a seminar. Hearings were subsequently held on 19 November and 17 December 2007, and on 7 February 2008, when the defendant requested the court to appoint an expert accountant to review the financial books of the company.[167] On 10 March 2008, the trial was postponed for one month, until 10 April 2008, in order to allow the expert to prepare his report. On 10 April 2008 and 15 May 2008, the hearings were again postponed for the same reason. On 5 June 2008, the panel *ex officio* decided to invite a third party and adjourned the trial to notify the party to 3 July 2008, on which date the whole discussion revolved around the fee to be paid by the parties to the court experts.[168] On 18 September 2008, at a hearing held in the judge's office, the defendant requested that the court panel recuse itself and cease the trial for lack of subject matter jurisdiction, following reorganisation of the court sections in March 2008.[169] On the same date, the panel accepted this request[170] (though, in the opinion of the Presence, the panel should have continued the trial as the reorganisation should not normally have had a retroactive effect). Following the plaintiff's appeal against this decision, on 25 November 2008, the High Court reversed the decision of the district court and sent the case back to the same court panel. On 2 April 2009, the hearing was postponed because one of the judges was reportedly on sick leave. On 16 April, a trainee judge replaced one of the panel members, reportedly engaged in "another duty", prompting the parties to request an adjournment until 7 May 2009. On 4 June 2009, the trial was postponed until 2 July 2009, following the death of the plaintiff and upon request by his representatives.[171]

On at least four occasions, the hearings had to be postponed due to the unjustified absence of the parties or their representatives. In four cases, the hearing was postponed due to conflicts in the judges' agenda. Because the absence of the judges (who were reportedly engaged in other trials or professional training) had certainly been foreseen, the court should have informed the parties well in advance that it would not be possible to hold the session and rescheduled the hearing. A number of hearings were also postponed due to delays of the experts in delivering their reports, without the court inquiring further into the experts' reasons for the delay or applying a sanction.

167 The object of the request was determination of: (a) the company's expenses (allegedly due by the defendant), and (b) contract obligations fulfilled (and supposedly not fulfilled) by the defendant.

168 The court estimated that each party pay a 50 % share of the total cost for the expert.

169 The defendant claimed that the panel had no longer competence over commercial matters, and therefore the case in question, following reorganisation of the district court sections in March 2008. The request was based on Articles 61 and 334 CPC, as well as on an order issued in March 2008 by the chair of the court on the reorganisation of chambers and sections.

170 The panel did this on the basis of Article 61 CPC.

171 The plaintiff's representative asked for the postponement of the trial for a couple of months on the basis of Article 297/c CPC in order to allow for inheritance proceedings to take place and to designate the new company's representative.

Case no. 2

The case was filed with the district court on 28 June 2005 and concerned the fulfilment of contractual obligations in a loan agreement between two brothers. Seventeen hearings were held between 4 October 2005 and 8 May 2006, out of which 14 could have been avoided.

The first hearing held on 4 October 2005, and devoted to the examination of the plaintiff's evidence, was postponed due to the defendant's request to be assisted by counsel (although the defendant did not express such a wish in the beginning of the hearing when the court raised this issue). The second hearing, on 26 October 2005, was postponed because the defendant was absent and the plaintiff requested his presence (in spite of the fact that the plaintiff had, at the preliminary hearing on 9 September 2005, requested to proceed in the defendant's absence, in accordance with the law).[172] The third hearing, on 10 November 2005, was postponed at the request of the defendant's lawyer to study the case file, although he should have presumably done so before trial. On 22 November 2005 (following a prior defendant's request for an expert witness), the hearing was postponed to give time to the expert (who was present at trial) to prepare his report. After that date, three subsequent hearings were postponed without taking any action, as it appears from the trial minutes: On 15 December 2005, a properly scheduled hearing failed to take place without any apparent reason,[173] while the hearings on 23 January and 7 February 2006 were postponed because the judge was on sick leave, a fact which could have been communicated to the other trial participants. On 22 February 2006, the hearing was postponed due to the absence of the defendant, without the court inquiring whether such absence was justified or not. On 2 March 2006, the hearing was postponed as the judge was reportedly in attendance of a meeting of the National Judicial Conference. On 8 March 2006, the hearing was postponed to summon the absent defendant. On 13 April 2006, after presumably assessing the evidence, the court postponed the hearing until 25 April to allow the defendant to produce an expert report, while during that hearing no such report was mentioned. Finally, on 8 May 2006, the court found in favour of the plaintiff.

Following the quashing of this decision by the court of appeals in July 2007 ,[174] a retrial took place before the district court in the same case. In total, 3 preliminary hearing sessions and 13 trial sessions were held, out of which at least six were postponed, in the opinion of the Presence, for no good cause. In the course of the preliminary stage, two hearings (on 5 and 15 May 2008) were postponed for no apparent reason. The

172 Article 170 CPC paragraph 3.

173 Nothing was indicated in the trial minutes as to the reasons for postponement.

174 The defendant's appeal against the first instance decision was filed with the district court on 15 May 2006, and the court of appeals annulled the first instance decision, reasoning that the right to a fair trial had been violated due to irregularities in keeping the trial minutes.

third trial hearing on 9 July 2008 was postponed upon request of the plaintiff, in order to provide the defendant with a copy of a previously requested (undetermined) expert report. Nonetheless, the hearing held on 2 September 2008, almost two months later, was surprisingly postponed again, this time upon the parties' request that they should be informed about the results of this expert report. As the defendant had previously requested an additional expert report,[175] the hearing on 24 October 2008 was postponed to grant the expert more time to complete his assignment, and the hearing on 4 November was postponed due to the absence of the expert (reportedly for health reasons, though no medical certificate appears to have been produced), and so was the hearing on 18 November. On 19 December 2008, the hearing was postponed due to the absence of counsel for the plaintiff, without the court seemingly inquiring into the reasons for such absence. The trial terminated on 19 January 2009, when the court decided in favour of the plaintiff.

Case no. 3

This case, involving a land ownership dispute, was filed with the district court on 22 August 2008 and was brought by a family against the Directorate of the Property Restitution and Compensation Agency (DPRCA). In the initial complaint document, the plaintiffs asked the court to declare an appeal decision issued by the DPRCA in 2008 invalid on the ground that this decision had not been issued within the legal time limits, and requested the court to confirm their property title in accordance with a July 2007 decision of the Property Restitution and Compensation Agency.

The first hearing was held on 11 October 2008 and was postponed for one month, until 12 November 2008, as the single judge required that the case be tried by a panel.[176] On 12 November 2008, the hearing was adjourned for three weeks, to 2 December 2008, as the court requested the parties to introduce additional evidence. On that date, the hearing was postponed to 17 December 2008 due to the absence of the State Advocate. At two consecutive times, on 17 and 24 December 2008, the hearing was postponed due to the absence of the Chair of the panel, who was reportedly in a meeting of the High Council of Justice. On 14 January 2009, the hearing was postponed until 4 February 2009 (3 week postponement) as the Chair of the panel was reportedly ill. On 4 February 2009, no hearing was held and the hearing was postponed *sine die* as the Chair of the panel was absent, having been appointed as a member of another court (although the same judge only took the oath before that court later). The next hearing was held almost two months later, on 24 March 2009, before a partly new panel.[177] That hearing was

175 At the hearing held on 3 October 2008.

176 The CPC requires a panel of three judges if the value of the claim exceeds a certain limit

177 A new judge joined the panel and one of the panel judges becoming chair of the panel.

postponed to 14 April 2009 due to the absence of the State Advocate (a sick leave note was produced, it is not clear whether it was a medical certificate). On 14 April 2009, the hearing was postponed until 5 May, upon request of the new judge to get familiarised with the case, and the court issued a decision to start the proceedings from the beginning (even though the new judge had joined the panel two hearings before, on 24 March 2009). On 5 May, the hearing was postponed until 18 May to allow the parties to produce additional evidence.[178] At a subsequent hearing, on 26 May 2009, the plaintiff requested to amend the lawsuit by requesting that the Property Registration Office (PRO) cancel the registration of the property in favour of the State as made on the basis of the contested 2008 DPRCA decision. The trial was adjourned until 9 June 2009, upon request of the plaintiff to call the PRO as a third party in the case. On 9 June 2009, the trial was postponed until 16 June to give time to the PRO to verify the authenticity of the certificate attributing to the State ownership of the property.

In total, 13 hearing sessions were held in the first instance between 11 October 2008 and 9 June 2009. Out of these, at least four were adjourned due to the easily predictable absence of one of the judges (especially where this judge was reportedly in attendance of High Council of Justice sessions). A number of these delays should have been prevented by the court, including postponement based on the request of a newly appointed judge to get familiarised with the case..

Case no. 4

The following is a case in which the repeated failure to appear by the defendant/his counsel, and the court tolerating this practice, as well as repeated requests of the plaintiff to adjourn the hearing so as to prompt the defendant to appear, caused undue delays.

In this case, concerning a request to cease unlawful land occupation and to pay damages, twenty six hearing sessions were held between February 2006 and 9 May 2007. Of these, ten hearing sessions were adjourned due to the absence of the defendant, most of them supported by a medical certificate. On 8 and 24 November 2006, counsel for the defendant did not appear - the first time because he had a trial on the same date, the second time "for objective reasons". On 27 February 2006, the trial was again postponed upon request by the plaintiff that the defendant, who was absent for unknown reasons, appear at the next hearing. In none of these cases did the court react by questioning and objecting to the reasons for the adjournment and by applying a sanction (e.g., by charging the party with the payment of procedural costs, as permitted by law).

178 Specifically, to allow the State Advocate to produce evidence regarding ownership from the Immovable Property Registration Office.

4. Delays and other problems in delivery of written reasoned judgments

One of the shortcomings observed in civil proceedings are the frequent delays and inconsistencies in practice related to the delivery of written decisions by the courts of first instance.

4.1 International law and recommendations

As mentioned in section 2.1.3, the entire period from the moment of filing a claim until the judgement becomes final has to be considered when assessing whether the length of the trial was reasonable. An excessive length of time from the last hearing to the issuance of a reasoned judgement may thus violate the right to a trial without undue delay.

An excessive delay in pronouncing the reasoned judgement may also hamper the ability of a party (be it the plaintiff or the defendant) to effectively exercise his or her constitutional right of appeal, cf. Article 43 of the Constitution. Without a fully reasoned judgement, the parties will have limited ability to review the court's factual and legal assessments and write arguments against it. The right to appeal is not in itself a human right in civil trials,[179] but, if national law provides for a right to appeal, both the ECtHR and the HRC have found that the appeal proceedings must meet fair trial standards. In *Hadjianastassiou v. Greece*, the ECtHR found that the failure to provide the accused with a reasoned judgement in time so as to allow him fully to set out his grounds for appeal to the Court of Cassation denied him adequate time and facilities to prepare his appeal.[180] The Court found that this violated Mr. Hadjianastassiou's right to a fair trial. Similarly, the HRC has held that the failure of a court to render a reasoned written judgement within a reasonable time has the effect of preventing the defendant from enjoying the effective exercise of his or her right under national law to have the judgement reviewed by a higher tribunal.[181]

In addition to the unavailability of a reasoned judgement, the existence of unreasonably short timeframes for lodging an appeal can represent obstacles to the realisation of the right to appeal.[182] While the cases discussed above related to criminal proceedings, the same principles can be applied, by analogy, to Albanian civil proceedings as the right to appeal is guaranteed under

179 Article 14 ICCPR para 5 only guarantees persons "convicted of a crime" the right to review by a higher tribunal.

180 *Hadjianastassiou v. Greece*, *ECtHR, 16 December 1992.* In that case, the Greek Martial Appeals Court had rendered its judgment orally in the presence of the accused person, but only in a summary fashion and without disclosing a series of questions that had been considered in reaching the decision. By the time the accused received the full record of the court's judgment, he was barred from expanding the grounds for his appeal to the Court of Cassation.

181 See Report of the Human Rights Committee in the case of *Currie v. Jamaica*, 29 March 1994 (Communication No. 377/1989). The case concerned an appeal of an appeals court judgement. Such second level appeal is not guaranteed under the ICCPR, but was a right under national law.
See also *Victor Francis v. Jamaica*, Human Rights Committee, 24 March 1993 (Communication No. 320/1988); *Little v. Jamaica*, Human Rights Committee, 1 November 1991 (Communication No. 283/1988).

182 *Report on The Situation of Human Rights in Panama*, OEA/Ser. L/V/II.44, doc. 38, rev. 1, 1978. See also *Hadjianastassiou v. Greece*, *ECtHR, 16 December 1992.*

national law (see below). Furthermore, the Council of Europe's Committee of Ministers Recommendation No. R (84) 5 on the Principles of Civil Procedure has pointed out that a concise judgement "*should be given at the conclusion of the proceedings or as soon as possible thereafter*".[183]

4.2 Albanian law

The Albanian CPC provides that after hearing the final claims of the parties, the court shall withdraw to the consultation room and decide the case, presumably in the same hearing. Article 308 CPC provides that, in complex cases, the court may either announce only the dispositive part of the decision, while delivering the fully reasoned decision within ten days to the secretariat, or postpone the announcement of the fully reasoned decision for up to five days.[184] As this latter provision seems to be worded as an exception to the general rule, it is reasonable to assume that the court normally should pronounce a fully written reasoned decision and deposit a copy of it at the court secretariat immediately after its pronouncement in a hearing at the end of the trial.[185]

The right to appeal court decisions is protected by the Constitution.[186] The deadline for appeals against civil judgements is 15 days[187] and it starts to run the day after the judgement was announced to the party.[188] Announcement of the dispositive part of the judgement is assumed to be sufficient to start the time-limit for appeals, regardless of when the written reasoned judgement becomes available to the parties.

4.3 Observed problems

As mentioned above in section 4.2, Albanian law seems to imply that written decisions be reasoned (and deposited at the court's secretariat) upon pronouncement of the judgement.[189] Only in complex cases, the court can pronounce the dispositive part of the decision and thereafter orally pronounce the reasoned decisions within five days, or deposit it in writing within ten days.[190] Nonetheless, all judgements in the cases observed by the Presence were pronounced orally by the judge reading aloud the "*dispozitivi*", i.e., the conclusion of the decision without reasons and on the basis of notes made by the presiding judge. The written reasoned judgement was later deposited with

183 Council of Europe Committee of Ministers Recommendation No. R (84) 5 to Member States on the *Principles of Civil Procedure Designed to Improve the Functioning of Justice*, Principle 6.

184 Article 308 CPC paragraph 2. Further, the CPC states that any of the parties may request completion of the decision within thirty days from its announcement if the court has not pronounced itself on all the requests on which the party has submitted evidence, cf. Article 313 CPC.

185 Final decisions are to be notified to the parties or other trial participants when the trial was conducted in their absence, (though the law does not indicate the term for carrying out such notification), cf. Article 316 CPC.

186 Article 43 Constitution.

187 Article 443 CPC.

188 Article 444 CPC. If the party was not present, the time-limit starts running the day he or she received the notification of the decision, ibid.

189 Article 308 CPC.

190 Article 308 CPC paragraph 2.

the court secretariat. Through a random search of the Tirana District Court's website, the Presence discovered that, out of 30 appealed decisions in civil cases issued between 18 and 26 June 2012, 17 reasoned decisions had been published on the court's website three weeks later (11 July 2012). [191]

The Presence has also interviewed some justice officials about the time to deliver written judgements. Officials at the High Council of Justice have indicated that judges normally deliver reasoned decisions within five to ten days (in effect making the exception for complex cases the general rule) and sometimes even after the maximum legally foreseen time of ten days. In some cases, the written decision is delivered only after a couple of months. While, normally, such delays should be taken into account in assessing a judge's performance, the High Council of Justice inspectors would only consider delays of over fifteen days as relevant for this type of evaluation. Delays in delivering decisions in civil cases, no matter how protracted, would never form the ground for disciplinary action.

Court chairs, judges and lawyers have also reported that written decisions in non-complex cases are usually issued within 10 days. The reasoning of decisions in complex cases may take on average some twenty days.

Judges and officials at the High Council of Justice have lamented that it is difficult to ensure good quality legal reasoning when delivering the written judgement in less than 15 days.

In some courts, informal reports from the chancellor to the chair ensure that, on at least an irregular basis, there is some oversight of the length of time between pronunciation and deposit of the fully reasoned decision in writing.

Finding 25

The legal deadline for delivering the fully reasoned judgement is unrealistically short

The deadlines provided in the CPC for delivering a reasoned decision appear to be unreasonably short. The general rule, i.e., delivering a reasoned decision in the same hearing as the parties give their final remarks, would rarely allow the judges time for proper deliberation and formulation of a reasoned decision. But even the procedure reserved for complex cases, i.e., depositing the written judgement within 10 days, may compromise the right to a fair trial.

It is commendable that the courts seem to avoid delivering the reasoned decision in the same hearing in which the parties provide their final remarks, and rather take more time (to the extent legally possible) to properly reason their decisions.

191 The 30 decisions were randomly selected by the OSCE from the court website and they regarded two party cases.

Finding 26

The time between first availibility of the reasoned decision to the deadline for appealing is too short

The parties' ability to draw up arguments against the judgement and find flaws in the judge's interpretation of the law will be compromised if the party does not have access to the written and reasoned decision. However, as mentioned above, the deadline for appeals is only 15 days and it starts to run when the dispositive part of the judgement is read out in court, not at the time the written judgement becomes available. It is therefore not uncommon for lawyers to file an appeal (to "book the appeal", as it is called by judges and practitioners) without first having had access to a copy of the fully reasoned decision. Several lawyers have indicated to the Presence that frequently they have to submit a "simplified" appeals' notice drafted on the basis of their recollection of the decision as it was orally pronounced in order to exercise the right within the prescribed legal timeframe. While they often obtain copies of the decision before the appeal is heard, this is not always the case. If they do get access to the reasoned decision, the secretary notifies the relevant lawyer and assigns a term of five days within which to complete the appeal[192], which by some lawyers and observers,[193] is deemed to be too short. Unlike the Criminal Procedure Code,[194] the Civil Procedure Code does not provide for the possibility to amend a notice of appeal after its filing. Delays in giving reasoned decisions in combination with tight deadlines for appeals may thus violate the parties' constitutional right to appeal. Furthermore, even if the deadline for appeals is met, the insufficient time to review the written reasoned judgement before the deadline for appeals will furthermore compromise the right to a fair trial at the appeals court.

Finding 27

The date of deposit of the reasoned decision is not recorded

As mentioned in section 2.1.3, the entire time from filing the claim until the judgement becomes final is considered when assessing the timeliness of the trial. An excessive length of time from the last hearing to the moment when the reasoned judgement is issued may thus violate the right to a trial without undue delay.

In the district courts, the length of this time is however difficult to assess, as the date of deposit of the reasoned judgement is not recorded anywhere.

192 Article 455 (b) CPC.

193 According to some observers, the term for filing appeal and counter appeal appear to be too short and should be extended to thirty days in both cases. See CARDS 2004 Twinning *Project Enhancing the judicial system in commercial matters, Recommendations to the Civil Procedure Code*, Component B, p. 39 recommended to amend Article 443.

194 Article 415 Criminal Procedure Code paragraph 2.

4.4 Remedies

Recommendation 34

Judgements should only be pronounced by issuing a written reasoned decision

Consideration should be given to abolishing the current option of orally issuing the dispositive part of the judgement earlier than the written reasoned decision. Instead, the fully reasoned written decision should be presented within a fixed deadline, e.g., three weeks after the last main hearing. The length of the time-limit should be decided after careful consideration of the corresponding time limits in other countries and the special situation in Albania.[195] First, this will allow judges enough time to properly review the case and write a properly reasoned decision. Secondly, requiring full reasons together with the decision ensures that a thorough factual and legal assessment of the case has been made before the decision is published. Thirdly, the date of conclusion of the trial (i.e. the date the parties received the judgement) will be easier to establish as this date will be recorded. This will enable a unified system of recording the date of conclusion of the trial (cf. Recommendation 38).

Recommendation 35

Judgements should be announced to the parties by sending a written copy to the parties

In line with the recommendations for a more written trial preparation (cf. Recommendation 13 above), consideration should be given to changing the system of announcing the judgement. Currently, judgements are presented in a physical hearing. However, announcing the judgement is one-sided communication from the court to the parties that does not require interactive communication. The judgement can therefore successfully be announced by sending a written copy to the parties. Changing from an oral to a written pronouncement will, as with written trial preparation, reduce the number of hearings and the length of the trials. Written pronouncement naturally requires that the judgements be made in a manner that both ensures that the recipient receives it and that the receipt is properly documented. The suggested system for sending summons, see Recommendation 6, includes such guarantees by *inter alia* requiring the recipient to confirm receipt to the court. Consideration should be given to using the same system when the courts circulate the judgements.

In addition to announcing the decision to the parties, it is also important to make the full text of the judgement available to the parties. Recommnedations to this effect are made in Chapter II Transparency of Court Proceedings.

195 In Italy, the time-limit for giving the fully reasoned judgment is 30 days in cases adjudicated by a single judge, cf. Article 281 quinquies Italian CPC, and 60 days for cases heard by a panel of judges, cf. Article 275 Italian CPC. Under § 19-4 (5) of the Norwegian Civil Procedure Code, the written reasoned decision shall normally be issued within two weeks if the case is heard by a single judge and within four weeks if it is heard by a panel.

Recommendation 36

Time-limit for appeals should not start running before the party has received the written reasoned decision

The CPC should be amended so that the time limits for appeals only start running when the parties receive (or are deemed to have received) the written reasoned decision.[196] This will ensure that the party can review the court's factual and legal assessments before preparing his appeal.

Recommendation 37

The time-limit for appeals should be reassessed

The length of the time-limit for appeals should be reviewed to ensure that it gives sufficient time to the parties to prepare the appeal. The time-limit should be decided after careful consideration of the corresponding time-limits in other countries and the special situation in Albania.[197]

Recommendation 38

A system for recording the date when he parties receive the judgement should be established

A unified system for recording the date when the written reasoned decision was given to the parties and to the court secretariat should be established. This date should be used by the judicial institutions for calculating the length of proceedings.

196 This system is used in a number of legal systems, including Italy (Article 326 Italian CPC section 1) and Norway (§ 147 Courts Law).

197 In Italy, an appeal against a first instance decision must normally be filed within thirty days from its notification according to law. The time-limit for appeals in Norway and Germany is normally one month after the party received the written judgement, cf. § 29-5 of the Norwegian Civil Procedure Code and §§ 517 and 548 German Civil Procedure Code.

CHAPTER II
TRANSPARENCY OF COURT PROCEEDINGS

"The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of power…Without publicity, all other checks are insufficient".
In re Oliver, 333 U.S. 257, 68 S. Ct. 499 (1948)

1.Introduction

The openness and transparency of judicial activities and court proceedings are important principles that foster many fundamental values, including public confidence in the judicial system, understanding of the administration of justice, and judicial accountability. Access to information from courts and court administrations is indispensable in preventing corrupt practices and ensuring realisation of the right to a fair trial. The purpose of the right to a public hearing is to "protect litigants from the administration of justice in secret with no public scrutiny", thereby fostering public confidence in the courts and contributing to the achievement of a fair trial.[198]

According to Freedom House's 2012 study "Nations in Transit", the Albanian justice system lacks sufficient transparency and is often subject to external interference.[199] Further, in Transparency International's Corruption Perception Index for 2011, the judiciary was rated 3.0 out of 7, a figure which indicates that the judiciary is still being perceived as influenced by the executive, businesses and citizens.[200] In 2010, USAID funded a survey that showed that citizens' trust in the judiciary in fact had declined since 2009[201] and that a large share (64.1%) of the citizens had little or no trust in the judiciary. The study further placed courts as the second least transparent institution in the general public's perception.[202] Moreover, the study indicated that obtaining information from the courts was perceived as more difficult compared to the previous year.

This chapter briefly introduces the international and domestic legal framework on the right to a public hearing and to information about judicial activities. It

198 *Pretto and others v. Italy*, ECtHR, 8 December 1983, paragraph 21. The Human Rights Committee has stated that the "publicity of the hearing is an important *safeguard in the interest of the individual and of the society at large*." General Comment 32 at paragraph 28.

199 Freedom House *Nations in Transit 2012,* http://www.freedomhouse.org/report/nations-transit/nations-transit-2012 (last accessed on 10 October 2012).

200 Available at http://www.transparency.org/country#ALB, last accessed on 15 October 2012. Transparency International's score on the judiciary ranges from 1 (heavily influenced) to 7 (entirely independent).

201 Compared to 2009, the number of people who trust the judicial system has decreased by 10.7 percentage points, from 34.6% to 46.6% in 2009. See Institute for Development Research and Alternatives, C*orruption in Albania-Perception and experience survey 2010*, p. 22.

202 According to the same source, the general public believes that factors influencing the outcome of trials are more related to corruption than to justice, with monetary considerations and personal or business connections of the judges playing a major role.

then discusses how these rights are reflected in the Albanian practice in relation to the right of public access to court proceedings. Some recommendations are finally formulated to address the problems observed in these areas.

2. Legal framework

2.1 International law and recommendations

2.1.1 International instruments

Article 10 UDHR

"Everyone is entitled in full equality to a fair and **public hearing** by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

Article 14 ICCPR paragraph 1

"[…] In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and **public hearing [**…]"

Article 6 ECHR paragraph 1

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and **public hearing** […] **Judgment shall be pronounced publicly** […]"

Article 47 Charter of Fundamental Rights of the European Union, paragraph 2

"Everyone is entitled to a fair and **public hearing** within a reasonable time by an independent and impartial tribunal previously established by law. […]"

Emphasis added.

All OSCE participating States have furthermore committed to the right to a public hearing. The Concluding Document of the Vienna Meeting 1986 states that *"The participating States should […] ensure that effective remedies as well as full information about them are available to those who claim that*

their human rights and fundamental freedoms have been violated; they will, inter alia,[…] effectively apply the following remedies: the right to a fair and public hearing […]".[203]

This right applies not only to the parties in the case, but also to the general public, including representatives of the media, all of whom have the right to be present at oral hearings on the merits of a case. This right cannot be limited to a particular category of persons.[204]

The general principle of public hearings has a few limited exceptions. Courts can exclude all or parts of the public only in the interest of justice, morality, public order, national security, or privacy of the parties.[205] The ECtHR has allowed exclusion of the public from divorce proceedings and from medical disciplinary proceedings for the protection of the private life of the parties, and has held that "the interest of justice" may justify hearing witnesses *in camera* to ensure their safety.[206] These exceptions are mirrored in OSCE commitments. The 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE states that "… *it is understood that proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments."*[207]

To guarantee the right to a public hearing, courts must make information about oral hearings easily and promptly accessible, and facilitate attendance by members of the public.[208]

2.1.2 Access to the trial schedule

The ECtHR has stated that "a trial complies with the requirement of publicity only if the public is able to obtain information about its date and place".[209] It follows that, as part of their obligation to ensure the publicity of a hearing, the authorities must make such information readily available to the public.

2.1.3 Access to court buildings and courtrooms

Trial hearings must be open and public in fact as well as from a legal

203 *Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States*, Vienna 1989, Principle 13.9, http://www.osce.org/mc/16262 (last accessed on 1 September 2012).

204 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32 (2007),* paragraph 29.

205 See Article 6 ECHR paragraph 1; Article 14 ICCPR paragraph 1.

206 See D.J. Harris, M. O'Boyle, C. Warbrick, *Law of the European Convention on Human Rights* (Oxford: Oxford University Press, 2009), p. 272.

207 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990, paragraph 12 visit http://www.osce.org/odihr/elections/14304 (last accessed 1 September 2012). The 1975 Conference on Security and Co-operation in Europe (CSCE) later evolved into the Organization for Security and Co-operation in Europe (OSCE). See http://www.osce.org/who/timeline.

208 *Van Meurs v. the Netherlands* (215/1986), 13 July 1990, Report of the Human Rights Committee, (A/45/40), 1990, paragraph 6.2.

209 See *Riepan v. Austria*, ECtHR, 14 November 2000, paragraph 29.

standpoint. Indeed, the right to a public hearing also requires that the relevant authorities provide, within reasonable limits, adequate facilities for the trial attendance of interested members of the public.[210] In *Riepan v. Austria*, the ECtHR held that, to comply with Article 6 of the ECHR, the place of the trial must be "easily accessible to the public"[211] which will normally require the holding of hearings in a "regular courtroom large enough to accommodate spectators".[212]

Further, public access to court buildings and courtrooms applies also to people with disabilities who should have access to hearings on an "equal basis with others".[213] The physical access of disabled persons to the court is of essential importance, although as mentioned in Chapter III Access to Justice, case law on this subject has been hesitant.[214] Under the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, people with disabilities have the right to "effective access" to hearings on an "equal basis with others".[215]

2.1.4 Access to court decisions

The right to a public hearing applies not only to the proceedings as such but also to the decisions of the court. Broad access to judicial decisions allows public scrutiny of the work of the judiciary while at the same time fostering transparency and judicial accountability. The publication of court decisions educates the legal community and the wider public on legal and judicial matters while at the same time favouring the development of a country's jurisprudence. All court judgements must be made public except in narrowly defined circumstances[216] and should be made available to any interested party. A judgement is considered to be public if it is pronounced orally in a session of the court which is open to the public or if a written judgment is published. The requirement that judgements be made public applies even if the public has been excluded from all or parts of the trial.[217] The ECtHR has held that the right to a public judgement is violated if judgments are made accessible only to a certain group of people or if only people having a specific interest are allowed to inspect a judgement.[218] Further, Council of Europe Recommendation R

210 *Van Meurs v. the Netherlands* (215/1986), 13 July 1990, Report of the Human Right Committee, (A/45/40), 1990, paragraph 6.2.

211 *Riepan v. Austria*, ECtHR, 14 November 2000, paragraph 29.

212 Id.

213 UN Convention on the Rights of Persons with Disabilities, Article 13 (Access to Justice) Albania signed this convention in 2009, but it is not yet ratified.

214 Judge Loukis Loucadis, "The European Convention on Human Rights and the rights of persons with disabilities", available online at URL http://www.coe.int/t/e/social_cohesion/soc-sp/text_LoucaidesE.pdf (accessed 1 September 2012), p.5; *Farcas v. Romania*, ECtHR, 14 September 2010 (decision on admissibility).

215 UN Convention on the Rights of Persons with Disabilities, Article 13 (Access to Justice). Albania signed this convention in 2009. At the time of priting this report, the convention is approved in the Assmbly, but not published in the Official Gazette. .

216 Article 14 ICCPR section 1; Article 6 ECHR section 1. The exceptions to the requirement of a public judgement under Article 14, section 1 ICCPR are cases involving juveniles, whose privacy is to be protected, matrimonial disputes and cases about the guardianship of children. See Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), paragraph 29.

217 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), paragraph 29.

218 In the Sutter Case, in which a judgement was not read aloud in open court but the parties to the case received copies and

(2001) 3 on the delivery of court and other legal services through the use of technology calls on the court system of State parties to make their information, including case law, accessible to the public.[219]

2.1.5 Proper maintenance of the trial minutes and the case file

Accurate trial records should demonstrate a clear trail of the decision making process so that each procedural step is clearly identifiable. A properly kept case file contains all the necessary and appropriate documents for the determination of the case. The trial records and the case file may thus be considered "the evidence of the evidence" and represent the primary, if not the exclusive, basis on which the final court decision will be taken.[220] Proper case files and records provide the parties and the public with a means to scrutinize the performance of the judiciary and enable an effective review of the trial by an appeals court. Well documented, clear court records are also a "basic element in any anti-corruption policy" as they make the judiciary more "predictable and transparent",[221] and are an expression of overall court efficiency. As such, the trial records and case file are essential in ensuring fair and impartial adjudication. The Council of Europe therefore recommends that "the most modern technical means should be made available to the judicial authorities" so as to enable them to dispense justice speedily and efficiently.[222]

2.2 Albanian law

2.2.1 Public access to the court buildings and the court rooms

The right to a public hearing is laid down in Article 42 paragraph 2 of the Albanian Constitution. The CPC further specifies that civil proceedings are, as a general rule, open to the public.[223] Courts can exclude the public or the media from all or part of the proceedings only in the interest of morality, public order, for the protection of classified information or information on national security, in the interest of minors or privacy of the parties.[224] They can also

the judgement was deposited in the court registry, available to anyone who could establish an interest, the ECtHR held that there was no violation of Article 6, paragraph 1 of the ECHR. *Sutter v. Switzerland, ECtHR, 22 February 1984, paragraph 34.*

219 Council of Europe Committee of Ministers, Recommendation No. R (2001) 3 to the Member States *"On the delivery of court and other legal services to the citizen through the use of technology"*, Article 3.

220 Carpi, Taruffo, *Commentario breve al Codice di Procedura Civile* (Padova: CEDAM, 2006), p. 207 (comment to Article 207 of the Italian CPC – Minutes on the hearing of evidence).

221 Court records "form the basis and the substance of case management. They determine caseload and case-flows. Statistics drawn from court records serve as a roadmap for court administrators and presiding judges alike". World Bank, *Court Records Assessment Manual* (Washington, 2003), p. 2.

222 Council of Europe Committee of Ministers, Recommendation No. R (84) 5 to the Member States *"On the Principles of Civil Procedure Designed to Improve the Functioning of Justice"*, Principle 9.

223 Article 26 CPC.

224 Articles 26 CPC paragraph 2 and 173 letters "a" – "ç".

order that proceedings be held behind closed doors where the publicity of trade and invention secrets would affect interests protected by law or, in special circumstances, where this would be prejudicial to the interest of justice.[225]

It should be noted that a regulation on the courts' public relations, issued by the Ministry of Justice, allows the courts to exclude members of the public and media if the court room is too small. [226] In such cases, the chair of the court would allow first the parties and their lawyers, secondly the family members and relatives and last, media representatives. When the number of family members exceeds the number of available seats, the chair of the court makes a proportional choice but always preserving a representative quota for journalists too. [227] Although these rules show willingness to resolve a practical situation, they seem to conflict with the CPC provisions on public access to court hearings and may thus not be valid.

As will be discussed in section 3.2, a large proportion of the hearings observed by the Presence were held in judges' offices. In order to limit this problem, the High Council of Justice has ordered that all judicial proceedings, to the extent possible, should be held in court rooms that are appropriate to the nature of the concrete case.[228]

2.2.2 Access to the trial schedule

The public is entitled to full access to information on schedules of trial sessions.[229] The courts are even required to post updated and real-time information on, among others, the schedule of hearings for every registered case, intermediary decisions for trial adjournments and reasons for postponements on the court's website.[230]

2.2.3 Access to court decisions

The Constitution provides that all judicial decisions must be publicly announced.[231] In addition, as provided in the Law on the Right of Information on Official Documents, anyone can generally request information on official documents pertaining to the activity of State organs without explaining the motives of their requests.[232]

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225 Article 173 letters "d" and "dh".

226 Ministry of Justice Regulation *"On the court's public relations"* approved by order no. 6777/5, dated 30 September 2010.

227 Ministry of Justice Regulation *"On the court's public relations"* approved by order no. 6777/5, dated 30 September 2010, section IV, 2.2.

228 High Council of Justice Decision no. 238/1/b, dated 24 December 2008 *"On the solemnity of trials and the special outfit of judges"*, A Data Protection Commissione999, CPC reform le in one case the party seeks for compensation, in the second seeks the anulment rticle 2.

229 Ministry of Justice Regulation *"On the organisation and functioning of the judicial administration"* approved by order no.1830, dated 3 April 2001 of the Minister, Article 24, section 8.5; Ministry of Justice Regulation *"On the court's public relations"* approved by order no. 6777/5, dated 30 September 2010, section VI, 3.3.

230 Ministry of Justice Regulation *"On the court's public relations"* approved by order no. 6777/5, dated 30 September 2010, section III, 4.1.

231 Article 146, paragraph 2 Constitution.

232 Law no. 8503, dated 30 June 1999 "On the Right to Information about Official Documents", Article 3.

According to the Regulation on the Court's Relations to the Public, judicial decisions rendered by any level of court fall under the category of unrestricted information and therefore are made available to the public. The Regulation specifies that decisions issued by courts, indicating whether they have become final or not, should be contained in the website of each court.

It should be noted that in 2011, the Albanian Data Protection Commissioner passed a new instruction with relevance for publication of court decisions.[233] This instruction specifies that when publishing criminal and civil decisions on the internet, courts should make sure that certain information, *inter alia* names of parties, third parties, witnesses and experts, appear either in initials or coded.[234]

2.2.4 Maintenance of and public access to the case file

The content of the case file is very important for the trial in order to guarantee fair proceedings. The responsibility for maintenance of the file lies with the judge and one of the criteria for assessment used by the High Council of Justice is the judges' ability to structure the contents clearly in order to make them easily accessible.[235] Further, the secretary of the session is responsible for binding and numbering the file's pages at the end of each court session or whenever a new document is submitted,[236] while the court secretary must check that the file's pages are numbered and that its inventory is complete.[237]

Under the CPC, the court shall keep records of the court sessions, [238] and these records form an important part of the case file. The court records shall indicate *inter alia* the place, the date and the time of the hearing; general information on the parties and their representatives and whether the persons summoned were present or not. It must also include an "accurate summary" of the requests, objections of parties, witness and expert statements, documents constituting evidence, the contents of audio and video recordings, all interlocutory decisions by the court and the final (written) claims of the parties.[239] Also, minutes must be kept of any out-of-court examination,[240] and must be signed by the judge, the parties and any other individual who was present at the examination.[241] It should be noted that, unlike the situation in

233 Data Protection Commissioner Instruction nr.15, dated 23.12.2011 *"On the elaboration and publication of personal data in the judicial system"*

234 Id, sections 5-7.

235 High Council of Justice Decision no. 261/2, dated 14 April 2010 approving *"The System of Judges' Evaluation"*, Chapter II, section 1, Article 12.

236 Ministry of Justice Regulation *"On the organisation and functioning of the judicial administration"* approved by order no.1830, dated 3 April 2001, Article 21, section 1.

237 Id., Article 18, section 14.

238 Article 118 CPC.

239 Article 118 CPC. In contrast with this provision's requirement to keep an "accurate summary" of the parties statements at trial, see Article 21 section 12 of the Minister of Justice Regulation *"On the organisation and functioning of judicial administration"* approved by order no. 1830, dated 3 April 2001 (stating that the secretary "faithfully reproduces" what was stated by the trial participants).

240 The minutes must indicate the parties who have participated in the examination, their claims and remarks, as well as the findings and conclusion of the examination, cf. Article 291 CPC.

241 Id.

certain other jurisdictions, parties and witnesses making statements are not required to read and sign the content of such statement as reflected in the trial minutes.[242] Finally, the CPC fails to expressly indicate which authority is responsible for the accurate keeping of the trial minutes. By contrast, the Criminal Procedure Code states that it is the responsibility of the chair of the panel to ensure that records are kept in an accurate and clear form.[243] The CPC specifies however that invalid or absent court records are in itself grounds for the court of appeal to send the case for retrial at the first instance. [244]

In a 2006 decision on the management of court activities, the High Council of Justice called for the use of the "most advanced techniques" to ensure timely and accurate record keeping.[245]

The content of a case file, including the court records, is considered restricted information, which is defined as "data contained in the documents that are administered by the court, whose access to the public may be refused".[246] The public may not access information in the case file if the content is by law confidential or if this affects the progress of judicial proceedings. The decision to grant access or not is made by the chair of the court or the presiding judge of the adjudicating panel.[247]

3. Public access to court hearings

3.1 Access to the trial schedule: information on date and place of the hearing

3.1.1 Observed problems

Finding 28

Insufficient access to the trial schedule

Currently,[248] the district courts of Tirana, Shkodra, Vlora and Fier have operational websites where information about hearings can be found (although, at the moment, the trial schedule is not available on the websites of Shkodra and Vlora). The Presence has however observed that the websites for

242 Article 216 CPC, requesting that statements of the parties and witnesses be read into the record by using the first person and then be read to, and signed by, the individual making the statement, only refers to evidence taken outside the territory of the court. See also Articles 171 and 172 CPC.
By contrast, the Italian CPC article 207 requires that parties' and witnesses' statements be reflected in the trial record in the first person, be read to the person making the statement and then signed by the same.

243 Article 345, section 2 Criminal Procedure Code.

244 Article 467, letter "e" CPC.

245 High Council of Justice Decision no. 202/1, 2 November 2006 *"On the management and administration of courts"*, p. 4. Unlike the Criminal Procedure Code, civil procedural rules do not mention whether the minutes could be taken by using technical means, instead of handwriting, where these are available. (See Articles 112 and 114 Criminal Procedure Code, providing that minutes can be kept in handwriting, in the absence of other technical means).

246 Ministry of Justice Regulation *"On the court's public relations"* approved by order no. 6777/5, dated 30 September 2010, section III, 4.1, letter "f".

247 Id., section VI, 4.1.

248 Last accessed on 21 November 2012.

these four courts do not always publish information about upcoming hearings in due time and in a few instances the web page containing the trial schedule was not operational.

In almost all the observed courts, the trial schedule was available in the entrance of the court building, either on paper or on electronic terminals. However, in one court neither an electronic nor a printed schedule was observed at the time of the monitoring.

On the positive side, it should be noted that court staff is fairly easily available for the public in the entrance to all the court buildings. The court's trial schedule is therefore available to the public if they show up at the court building in person.

The Ministry of Justice is working to establish an internet portal for all courts of all levels in Albania which would contain links to every court and their trial schedules.

The following are illustrations of our observations:

> Generally, the website of Tirana District Court publishes its trial schedule. The information is clearly presented and provides separate links to the schedule for civil and criminal cases. The information is however not always updated, and postponements of hearings might go unreported. In many instances, the date of an upcoming hearing is not posted in time but inserted many days after it has actually occurred.
>
> In addition to the web page, information on the trial schedule is provided by computer terminals at the entrance of the court building. As these terminals display the same information as the web page, the problems described above apply also to these terminals. Therefore, users may have to verify the information on the trial schedule by asking the court secretariat.
>
> The website of Shkodra District Court contains a link to "the calendar of cases" where information on ongoing civil cases should appear. The link leads to a page which does not show any data apart from a search function. Unfortunately, the search engine only displays hearings that took place more than six months ago. Data on current or future hearings does not appear.
>
> In addition to the electronic posting, the Shkodra District Court publishes and updates a hard copy of the weekly trial schedule. The schedule is posted on a billboard behind the desk of the receptionist and security guard in the entrance hall of the court building. Access to

and consultation of the schedule by the public is thus quite difficult. While postponements are also shown on the computer terminal at the entrance of the courthouse, this terminal was, at the time of observation, out of order. The Presence was told that this is due to problems related to the new IT software system.[249]

Finding 29

Hearings held before the scheduled time

In one case, the Presence observed that a hearing was held before the scheduled time. Apparently, the rescheduling was agreed between the judge and the parties, but this information was not publicly available.

Finding 30

Lack of information about the venue of the hearing

In most of the observed courts,[250] indication of the venue of the hearing is missing from the trial schedule. The parties are only informed of the location of the hearing when the hearing starts.

In April 2012, Tirana District Court started indicating the place of the hearing in the trial schedule.[251] Recently, Kruja District Court has also installed electronic screens in the entrance to the court that display the exact venue of the hearings.

Finding 31

Insufficient possibilities to contact the court

Phone numbers are not easily available for any of the observed courts. None of the courts publish their phone number on the web site. Some court web sites have electronic contact forms for contacting the court chair or the chancellor. This measure is commendable, but it is not very useful for those citizens who are not computer proficient.

Currently, the only practical way of getting in contact with the courts is often by physically going to the court. This option is however not very useful for citizens from remote areas or disabled people.

249 Visit of the Presence at the Shkodra District Court dated 4 November 2011.

250 Elbasan, Durrës, Saranda, Shkodra, Gjirokastra and Puka District Courts.

251 The USAID Just Project assisted the court with the installation of an electronic calendar for the courtrooms that allowed the trial schedule to include information about the place of the hearing.

3.1.2 Remedies and recommendations

Recommendation 39

The trial schedule should be posted in the court building and online

All courts should ensure that their trial schedules are available in the entrance to the court buildings, either on paper or on information screens. All courts should also ensure that their trial schedules are published online.

If hearings are rescheduled, detailed information about the rescheduling should also be presented together with the original schedule. Information about any such change should be accessible to the public as soon as possible, in order to enable the public to effectively access the hearing.

Recommendation 40

Information about the trial venue

All courts should publish information about where the trial will take place – either the court room or the judge's office. The example of Tirana District Court, which indicates such information in the trial schedule, should be considered by other courts.

Recommendation 41

The public should be able to contact the court by telephone

The courts should publish their official telephone numbers widely. As a minimum, the phone number should be published on the court's web site, in the court building, in all correspondence and in the phone directory. The official phone of the court must be staffed at all times during the working hours of the court and the staff must be able to answer questions about the trial schedule.

3.2 Public access to court buildings and courtrooms

3.2.1 Observed problems

Chapter III Access to Justice details some of the parties' problems in accessing the court, e.g., physical access for people with disabilities. These problems also apply to the public's access to the court, but will not be repeated here to avoid duplication.

Finding 32

Lack of waiting room

The Presence has observed that parties and witnesses wait outside the court room or the judge's office before the hearing starts. Chairs are available. While this may be acceptable in the majority of cases, this may constitute a problem in high tension cases. In such cases, parties and witnesses may be subject to undue pressure by other parties or may find close contact with other parties offensive. Considering the limited resources of the judiciary, it is understandable that many of the first instance court buildings are not provided with waiting rooms. [252]

Finding 33

Public access to the trial is hampered by hearings taking place in the judges' offices

As detailed in Chapter III Access to Justice, a large part of civil hearings takes place in the judges' offices rather than in proper court rooms. In addition to creating the above mentioned problems for the parties, this also poses problems for public access to the trial. Issues that may discourage the public from observing the hearing include the lack of seating, but also the fact that the public is less likely to attend hearings in judges' offices than in a public court room. The remedies suggested in Chapter III Access to Justice for increasing the court room usage would also improve the public's access to the trial, and will not be repeated here to avoid duplication.

3.2.2 Remedies

Recommendation 42

Provide waiting rooms

In the long term, consideration should be given to provide all courthouses in Albania with adequate waiting rooms. Due consideration should be given to avoiding waiting in the same place for trial participants and members of the public in high tension cases.

252 The Presence has observed that the Tirana, Shkodra, Kavaja, Elbasan, Laç, Puka, Pogradec and Saranda District Courts do not have proper waiting rooms.

4. Public access to court records and files

4.1 Proper maintenance of trial minutes

4.1.1 Observed problems

Finding 34

Inaccurate trial minutes

During the early stages of its monitoring, the Presence observed some irregularities in the keeping of trial minutes by the courts.[253] In some instances, the court failed to indicate fundamental procedural steps in the trial record, such as the fact that the plaintiff or defendant had submitted evidence and the type of evidence. In several cases, the trial records failed to indicate the questions put to the witnesses by the parties and which party (e.g., the plaintiff, counsel for the defendant) asked the question. In other cases, while the minutes reported a party's request to call an expert, no further indication was given of the kind of expertise requested, nor of the relevant decision taken by the court, nor of the expert's written report and testimony. Strikingly, where the minutes indicated the presence at trial of an expert, they were often silent on the content of her or his declarations to the court. The circumstances surrounding absent trial participants and postponements of hearings were also often missing in the trial minutes. The case file usually contained all the documentary evidence submitted at trial bound together and enclosed at the very beginning of the file.

These omissions reduce the ability of the public and of the parties to understand how the proceedings developed, how evidence was presented, to know the content of oral statements, and, ultimately, to assess whether the court undertook a fair, thorough and impartial review of the case. Accurate and complete trial minutes are not only necessary to ensure that the court adjudicates the merit of cases fairly and impartially, but also to guarantee that procedural rules, such as those regarding consequences of parties' failure to attend hearings, are adequately enforced.

It should be noted that the number of case files reviewed by the Presence was limited and thus, it is difficult to say whether the practice described above constitutes a widespread phenomenon.

The following is an example of a case in which some of the shortcomings discussed above were observed:

> The trial concerned fulfilment of contractual obligations in a loan agreement. 17 hearings were held between October 2005 and May 2006 in the district court. The minutes of the first hearing report

253 Observation of eight court files carried out in March 2008.

the plaintiff's request for an expert opinion, but without specifying the nature, or the object of what the expert would investigate, nor do the minutes reflect the content of the court decision related to this request. At the fourth hearing, the plaintiff requested an expert to calculate the interest due on the loan. At the sixth hearing, the minutes only report that the expert read out his/her report, without mentioning the main findings of the expert's report. In the seventh hearing, no minutes were kept for that trial session. The eighth hearing was postponed due to the request of one of the lawyers, but the minutes fail to indicate whether it was counsel for the plaintiff or the defendant who made the request. In the fourteenth hearing, upon request of the parties the court decided to appoint a technical expert, without indicating the issues the expert should clarify. The minutes also indicated that the court "administers the evidence", and thus lists fourteen items of evidence. However, the counter lawsuit was also incorrectly included on the list of evidence. The same hearing was postponed to allow the defendant to produce an expert's report, without mentioning neither the nature nor the object of such report. No additional reference is contained in the minutes of the two following hearings regarding that expert's report. Finally, the district court finds in favour of the plaintiff.

Following an appeal by the defendant, the court of appeals annulled the first instance decision reasoning that the right to a fair trial had been violated due to irregularities in keeping the trial minutes. Surprisingly, rather than pointing out the court's repeated failure in keeping accurate and complete minutes of the trial (including failure to indicate the specific content of the parties' requests during the trial, such as requests for technical expertise), the court of appeals pointed out that the trial minutes were missing only on three specific dates. On those dates, indeed, no hearing was held due to the absence of the judge for health reasons and due to the absence of the defendant. While the appeals decision appears to have emphasised some irregularities regarding record keeping (by stressing that the minutes must indicate date, place, parties and panel attending trial, together with the signature of the presiding judge and the secretary), it missed an opportunity to stress the, perhaps more important, need for the minutes to reflect a complete summary of the court investigation, including statements of the witnesses and experts and content of decisions taken by the court in the course of the trial.

In the subsequent retrial of 2008 by the district court in the same case, minutes from one of the preliminary hearings indicated that the judge withdrew from the case, without providing the reasons and the legal basis for doing so. The minutes were also silent on actions taken by the judge on two consecutive preliminary hearings. As for

> the main trial, minutes from one of the hearings indicated that the defendant requested a court examination, without further specifying what type of examination and the court decision in this respect. In the same session, the minutes stated that the court "administered the evidence", i.e. the case file from the initial first instance trial, as well as "all the documents listed in that trial" (without specifically indicating which documents). Minutes of a later hearing indicated that, on that date, the expert read the report, without identifying the expert or specifying the nature and object of that report. In another hearing, the defendant asked for an additional expert's report, without further specifying the exact type of the request. The next session was postponed as the expert was absent due to health reasons, without the minutes mentioning whether a valid medical certificate had been produced. The two following hearings were postponed due to the absence of the expert and the defendant's counsel respectively, without mentioning any reasons for these absences or whether the court had deemed them justified or not.

In the example below, in addition to other issues, the Presence found that the minutes repeatedly failed to accurately and completely reflect circumstances surrounding trial adjournments due to the absence of one of the parties.

> The plaintiff requested that an administrative decision issued by the Regional Construction Police, which had ordered the demolition of his property, be declared invalid.[254] The case was tried by the competent district court in 2005. The first hearings were postponed due to the absence of the plaintiff's lawyer on three different occasions. The minutes from the first hearing did not however indicate any reason for the postponement, while for the second hearing the minutes reported that the lawyer was engaged in another trial. In the third hearing, the court decided to terminate the trial due to the absence of both the plaintiff and his lawyer, reasoning that such absence had not been communicated to the court. However, both the observers from the Presence, as well as the court of appeals (in its later review) found a written note in the case file to that effect. Although the absence may have been unjustified (a written communication does not as such absolve the party submitting it), the court of appeals found that the first instance court had committed a procedural violation in failing to record this (belated) submission, quashed the decision and sent the case for re-trial. In the ensuing trial, four consecutive hearings were again postponed due to the absence of the plaintiff's lawyer for various reasons, including participation in another trial and attendance of a professional course. Whereas it appears from a review of the case file that written communications of the lawyer were sent on three occasions to the court, the trial minutes do not

254 The statement of claim argued that the Construction Police had exceeded its competence in issuing that decision.

mention anything about their content. Consequently, this would hamper any observer to understand whether decisions to postpone the trial in these cases were indeed in accordance with the law, or whether the court should have rather dismissed the case.

In 2011, the Presence reviewed case files of some of the trials observed in 2010 and 2011. Some of the issues observed in 2008 were also observed in 2011, e.g., the circumstances surrounding absent trial participants and postponements of hearings were often missing in the trial minutes. However, the frequency of such problems seemed to be reduced in 2011, which could indicate a positive trend. The case file review was however very limited, so no firm conclusions can be drawn.

Finding 35

Preliminary hearings are sometimes held without a secretary

Court secretaries were not present in many of the pre-trial hearings observed and the trial minutes were kept by the judges themselves. In the main hearings, the practice seems to be that the secretary participates and takes the minutes.[255] This practice may be at odds with the CPC, which seems to require the secretary to be present in all "actions of the court for which court records are taken".[256]

Finding 36

Unreadable court records

In 2008, the Presence reviewed case files related to cases tried in 2005-2008 and decided in 2008. This review revealed that in many cases, the handwritten records proved to be unreadable. This hampers the right of any interested party effectively to have access to these records and to review them. Fortunately, a repeated exercise in 2011 on cases adjudicated in the course of 2009-2011 and decided in 2011 showed an improved situation. Except those partially readable records supposedly kept by judges during the pre-trial phase, minutes related to main hearings were computer typed and easy to comprehend.

With the assistance of the USAID Just Project, courts will be equipped with an audio-recording system for trials in courtrooms. The system was successfully tested in March 2012 in the Lezha District Court. The new system will be installed in the other first instance and appeal courts, including the serious crimes courts, by December 2013. The system guarantees verbatim records of hearings. Subsequently, secretaries will act more as moderators by taking down who takes the floor, without any additional efforts for keeping minutes or typing the content of statements.

255 A 2007-2011 USAID-funded project trained secretaries in fast typing first at nine pilot courts and later extended to the other courts. The project equipped courts with computers and courtroom monitors which allow trial participants and the public to see the minutes as they are being typed. The same project has also been providing assistance to all pilot courts in case file maintenance and archiving, while supporting the Ministry of Justice in the drafting of a regulation to improve the court archiving system. In addition, audio recording equipment is being installed in the court rooms.

256 Article 77 CPC paragraph 2.

4.1.2 Remedies

Recommendation 43

Audio recording system should be implemented in all courts

The audio recording system currently being installed should be implemented in all courts so as to allow rapid and accurate record-keeping.

Recommendation 44

Accurate handwritten minutes

In hearings that are not audio recorded, the accuracy of the written trial minutes should be improved. More specifically, trial minutes should always indicate:

- Specific questions asked during the trial by the judges, the parties, their representatives as well as a comprehensive, reliable summary of the answers given to those questions;
- All procedural requests made by the parties and the court's decision, e.g.,
    - parties' motions for admission/exclusion of evidence by specifically identifying the requesting party and the type of evidence at issue; and
    - if exclusion of evidence is requested, the court's decision, concisely reasoned;
- The specific questions an appointed expert should answer.
- The court's decision, properly reasoned, for postponing hearings.

Recommendation 45

New procedural provisions on supervision of record keeping

The CPC could be amended to more clearly state that the chair of the panel is responsible for ensuring that accurate trial minutes are kept.

Recommendation 46

Secretaries should be present in all hearings

The courts should ensure that the secretary is present in all types of hearings, including pre-trial hearings, as prescribed by the CPC.

4.2 Proper maintenance of case files

4.2.1 Observed problems

Finding 37
Disorganised case files

As mentioned above, a well-documented and properly maintained case file is a basic aspect of judicial transparency.

The Presence's case file review at the Tirana District Court[257] revealed that the case files are often kept in a disorganised way. Loose papers and documents (e.g., documentary evidence, witness reports) were often found in a random manner without preserving their sequential or chronological order, thus creating confusion as to the development of the trial proceedings. In all the case files, the documentary evidence had been bound together and placed at the beginning of the case file, after the initial complaint. However, each piece of evidence routinely failed to indicate their date of submission, the party submitting them, or a sequence number. The files usually also contained all documents that presumably were given to the judge by the parties. Occasionally, the case file also contained evidence that on its face did not seem relevant to the case, without the court specifying why this evidence was allowed.

The following is an example of a case in which the shortcomings discussed above were observed:

> In the above-mentioned case concerning the fulfilment of contract obligations in a loan agreement, thirteen documents (supposedly produced by the parties as evidence) were contained in the evidence package in the case file. These included the loan agreement between the parties, a subsequent agreement between them under which the defendant undertook to construct a new building and the plaintiff to pay part of it, as well as an expert's report on the calculation of interest to be paid on the loan. Among these documents, at least three seem to be, at face value, irrelevant to the case, without the court specifying why they were allowed as evidence. A counter claim filed by the defendant (on an unspecified date) was also included in the evidence package. Out of the twelve documents submitted as evidence and contained in the case file, only the original loan contract is mentioned in the final decision by the district court. In deciding that the defendant had not repaid the loan, the court stated that this fact was proved "by the plaintiff's statements, by the defendant's statements, by the documentary evidence, such as the loan contract no. x, dated x, as well as by the other evidence administered in the civil court file".

257 In 2008 and in 2011, the Presence reviewed respectively eight and five case files of concluded civil cases.

Finding 38

Insufficient system for tracking the physical location of case files

In the majority of Albanian courts, no system for recording the physical location of the court files appears to be in place. The absence of such system increases the risk of misplacing or losing the files when they are moved between offices or sent between courts.[258]

Finding 39

Cases are not assigned a unique identification number

Albanian courts do not use a unique case identification number for the hard copy of each court file, but give each pending case a new number at the beginning of the year. A case is furthermore given a new case number in the appeals court and in the High Court.[259] Consequently, the same case frequently has several case identification numbers. This creates confusion and has reportedly sometime caused difficulties for both the parties and court officials in tracking a case file.

The case identification system is even more confusing in courts which use electronic case management systems. These systems issue their own case number that differs from the case number used on the hardcopy of the case file.

Finding 40

Lack of infrastructure to consult court files

The Presence observed difficult conditions for consulting the court files. At the Tirana District Court, several rooms that hold the court files are full from the floor to the ceiling and make retrieval and review difficult. Although the archivist and the chancellor of the court show willingness to cooperate and create facilities to consult court files, the physical conditions of the archive are extremely poor and impeding, thus failing to provide any place for the consultation.

4.2.2 Remedies

Recommendation 47

The table of contents of the case files should be more detailed

In order to enable sufficient transparency and usefulness of the case files, the judges should ensure that each piece of written evidence is individualised in the case file's table of contents, rather than grouping a collection of documents under the same description. Each document

258 According to the Chief Secretary of the Gjirokastra District Court, whereas movements of files between offices are not recorded, the file is expected to be under constant supervision of the respective judge's secretary. Questionnaire on Court Proceedings in civil cases, March 2009.

259 Case files display on their cover as many different identification numbers (each divided by a slash) as the number of years the proceedings in the case lasted.

should furthermore be assigned an ordinal number (according to the order of inclusion), the date of filing, the party filing it, the title of the document, and the total number of pages. If a second or subsequent case folder is used due to the volume of documents in the case, the documents should continue to be listed on the inside of the front cover of the first case file/folder.

The table of contents should be kept up to date on a continuous basis, including during the pre-trial phase, rather than being completed only after the trial has ended.

Recommendation 48

The organisation of the documents in the case files should be improved

The judges should ensure that the documents in the case files are organised in an orderly manner. The documents should be stored according to their sequence number in the table of contents, (cf. Recommendation 47), and evidence that has been rejected by the court should be removed from the case file. Each document should be marked with the date of filing and the party filing it, unless this information is recorded in the table of contents.

Recommendation 49

Facilities to consult the case files should be provided

In order to guarantee that case files and their contents are accessible to the public, the chancellors of each court should ensure that they are stored in a way that allows easy retrieval. The chancellors should furthermore ensure that the court provides adequate facilities for the public to consult the court files, either by providing copies of the documents or facilities to read the original case file.

Recommendation 50

Registration of the location of the case files

The current location of all case files should be indicated in the court's case register. This will reduce the chances of the case file being lost or misplaced. It also makes retrieval of the case files much faster, as the location can be ascertained by only searching the register rather than asking the judge, searching the court secretariat and various storage archives.

Some courts operate more than one case register, e.g., one paper-based and one electronic. In order to make the case tracking system effective, it is important that the whereabouts of the case file is recorded in all case registers that are in actual use.

Recommendation 51

Each case should have a unique case identification number

In order to improve the identification and tracking of case files, both electronic and hard copy case files should be given a unique case identification number. This number should not change from the initial registration until the case is completed, regardless of whether the case is appealed, transferred or returned from another court or the case is reopened. For ease of registration and transfer of cases between courts, a unified case numbering system for all courts in Albania should be introduced.

4.3 Public access to court decisions

During the monitoring period, the Presence observed some instances where access by the public to first instance court decisions was limited. Instead of making court judgments generally available to any interested party, decisions to provide access to them were often made by the relevant court authorities in each individual case, leading to *ad hoc*, discretionary practice. This practice compromises the basic right of the public to scrutinize the work of the courts and to review decisions taken in its name. It should also be noted that very few district courts are equipped with websites and thus are able to publish decisions on-line.

However, the High Council of Justice has recently established a website where all court decisions issued by Albanian courts will be published. This website will, when fully operational, be a big leap forward in ensuring transparency and building trust in the judiciary. It remains to be seen whether systems to verify that all decisions are published will be established and how fast the publication process will be. Due to this recent development, neither problems nor recommendations will be formulated on this issue.

CHAPTER III
ACCESS TO JUSTICE

"[…] in civil matters one can scarcely conceive of the rule of law without there being a possibility of having access to the courts."
Golder v United Kingdom, ECtHR, 21 February 1975, paragraph 34

1. Legal framework

1.1 International law and recommendations

Article 10 UDHR

"**Everyone** is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

Article 14 ICCPR paragraph 1

"[…] In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, **everyone** shall be entitled to a fair and public hearing […]"

Article 6 ECHR paragraph 1

"In the determination of his civil rights and obligations or of any criminal charge against him, **everyone** is entitled to a fair and public hearing […]"

Article 47 Charter of Fundamental Rights of the European Union, paragraph 2

"**Everyone** is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. […]"

Emphasis added.

The purpose of the right of access to the courts is to enable individuals to claim justice.[260] Legal rights remain theoretical and illusory unless individuals can assert their rights in court and have the court's decision implemented. As such, access to court is required to ensure the rule of law.

The right of access to court is not explicitly protected in international instruments. Nonetheless, the ECtHR has found that access to a court is an integral part of the right to a fair trial, cf. Article 6 ECHR.[261] Similarly, the UN Human Rights Committee has held that Article 14 ICCPR "encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law".[262]

Both legal and practical restrictions have been found to infringe the right to access courts.

A legal restriction to note is the amount of payable court fees. Imposing court fees that in practice prevent a party from asserting his or her rights in court has been held to violate the right of access to court.[263] In the case of *Weissman and others v. Romania,*[264] the ECtHR interestingly found that a court fee of ca. 1% of the value of the claim, in the specific circumstances of that case, violated the right to court.

Several practical obstacles have been found by human rights protection bodies to violate the right of access to justice. In the *Golder* case,[265] the ECtHR found that preventing a prisoner from contacting a lawyer, and thus in practice preventing him from initiating a civil trial, infringed his right to access the courts. However, passively allowing a person to access a lawyer may not always be enough to ensure access to justice. In order to provide the litigants with effective access to court, the State is in certain cases required to provide legal aid.[266]

The place of the hearing must enable the parties to effectively participate in the trial.[267] Lack of facilities that allow physical access is of particular importance

260 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), paragraph 9.

261 *Golder v. UK*, ECtHR, 21 February 1975, paragraph 34; *Steele and Morris v UK*, ECtHR, 15 February 2005, paragraph 59, where the court held that "it is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court (ibid.) and that he or she is able to enjoy equality of arms with the opposing side […]".

262 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), paragraph 9.

263 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), paragraph 11 and *Kreuz v Poland* (no 1), ECtHR, 19 June 2001.

264 *Weissman and Others v. Romania*, ECtHR, 4 May 2006.

265 *Golder v. UK*, ECtHR, 21 February 1975.

266 *Airey v. Ireland*, 9 October 1979, paragraph 26 and *Steele and Morris v UK*, ECtHR, 15 February 2005, paragraph 61, in which the court held that the obligation to provide legal aid must be decided on the "basis of the particular facts and circumstances of each case and will depend *inter alia* upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively".

267 See D.J. Harris M. O'Boyle & Warbick, *Law of the European Convention on Human Rights*, (Oxford University Press, 2nd ed., 2009), p. 250.

to disabled persons, although case law on this subject has been hesitant.[268] Under the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, people with disabilities have the right to "effective access" to hearings on an "equal basis with others".[269]

Insufficient information about the time and place of the hearing may, as with the public's access to court (see Chapter II Transparency of Court Proceedings), violate the parties' right to effectively access the court.[270] The right of access also requires that the State takes reasonable steps to serve documents and decisions on the parties to proceedings.[271]

The right to a fair trial requires that the parties in a civil case and their legal representatives be granted access to all relevant information, including evidence and other documents that might help them to adequately prepare their case or exonerate them from responsibility.[272] Such access should be provided at the earliest appropriate time.[273]

The possibility for a party to consult the court records in a civil case is a fundamental expression of the right to have "adequate facilities" for the preparation of his or her own defence.[274] In *Lobo Machado v. Portugal*, the ECtHR stated that the right to adversarial proceedings means, in principle, that the parties to a criminal or civil trial have had an opportunity "to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the Court's decision".[275] In *Nideröst-Huber v. Switzerland*, the Court stated that "…litigants' confidence in the workings of justice… is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on *every document in the file"*.[276]

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268 Judge Loukis Loucadis, "*The European Convention on Human Rights and the rights of persons with disabilities*", available online at URL http://www.coe.int/t/e/social_cohesion/soc-sp/text_LoucaidesE.pdf (accessed 13 August 2012), p.5; *Farcas v Romania*, ECtHR, 14 September 2010 (decision on admissibility, app. 32596/04).

269 UN Convention on the Rights of Persons with Disabilities, article 13 (Access to Justice). As mentioned, Albania signed this convention in 2009, but it is not yet fully ratified.

270 *Ziliberberg v Moldova*, ECtHR, 1 February 2005, paragraph 40.

271 *Bogonos v. Russia*, ECtHR, 5 February 2004 (decision on admissibility) and *Hennings v. Germany*, ECtHR, 23 November 1992.

272 Principle 21, *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

273 Id.

274 Article 6, section 3 (b) ICCPR. The Human Rights Committee has deemed this right to include the right for the accused and his defence counsel to access basic information, files and documents necessary for the preparation of a defense. (O.F. v. Norway, Communication No. 158/1983 (26 October 1984), sec. 5.5.). This case was heard as a criminal trial, although it concerned two minor administrative infractions. In order to prepare their case, parties in both criminal and civil trials need access to evidence and legal arguments submitted by the other party. Thus it can be argued that the right to access the case file applies in both civil and criminal cases.

275 *Lobo Machado v. Portugal*, ECtHR, 20 February 1996, paragraph 31. In *HAL v. Finland*, ECtHR, 27 January 2004, paragraph 45, the ECtHR found that there is furthermore a duty of the court to take the initiative to inform a party to civil proceedings of the existence of such evidence or observations, not being sufficient that the material is on file at the court for the party to consult. However a party must use all available procedures for obtaining disclosure, cf. the *McGinley and Egan v. UK*, ECtHR, 9 June 1998, paragraph 90. See mutatis mutandis *Ruiz Mateos v. Spain*, ECtHR, 23 June 1993, paragraph 63. The same principle applies if the observations were made by another court, cf. *FR v. Switzerland*, ECtHR 28 June 2001 paragraph 40 and *Ziegler v. Switzerland*, ECtHR, 21 February 2002, paragraph 39.

276 In that case, the ECtHR found a violation of the right to a fair trial where a Swiss Cantonal Court transmitted the appeal to the Federal Court together with the case file and one page of observations which were not communicated to the applicant.

The right of access to justice should also be seen in conjunction with the right of equality of arms. If only one party is subject to restrictions in his or her access to justice, the right to equality of arms may also be infringed.[277]

The right to access courts may however be subject to legitimate restrictions such as requiring a party to post security for the other party's trial expenses,[278] statutory limitation periods and regulations concerning minors and persons of unsound mind.[279] The parties' right to attend oral hearings may, under certain circumstances, be limited in appeals proceedings.[280] Any distinctions regarding access rights must be based on law and justified on objective and reasonable grounds[281] and be proportionate to the aim sought to be achieved.[282] The limitations applied must not, however, "restrict or reduce the access afforded to the applicant in such a way or to such an extent that the very essence of that right was impaired".[283] The ECtHR applies a margin of appreciation in considering how the regulation of access to courts is achieved by each country.[284]

1.2. Albanian law

1.2.1 Introduction

The right to a fair trial by an independent and impartial court is enshrined in Article 42 of the Constitution. On several occasions, the Albanian Constitutional Court has held that "the denial of the right to address the court and to receive a final answer for all the claims raised constitutes an infringement of the basic right to a fair trial, provided by Article 42 of the Constitution and Article 6 of the ECHR".[285]

1.2.2 Information about time and place of hearings

Albanian civil procedure is based on the principle of adversarial trial.[286] This principle, among others, gives the parties the right to participate in person in the trial.[287] In order to ensure an adversarial trial, Albanian law requires the parties to be legally summoned to hearings.[288] The procedures for summoning

The court stressed that it is for the parties to say whether or not a document calls for their comments.

277 *Komanicky v. Slovakia*, ECtHR, 4 June 2002 paragraph 45 in which the Court held that "each party should be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent".

278 *Kreuz v Poland (No 1)*, ECtHR, 19 June 2001, paragraph 54.

279 *Z and Others v United Kingdom*, ECtHR, 10 May 2001, paragraph 93.

280 *Kremzow v. Austria*, ECtHR, 21 September 1993, paragraphs 67-69.

281 Human Rights Committee General Comment 32, *UN Doc CCPR/C/GC/32* (2007), paragraph 9.

282 *Kreuz v Poland (No 1)*, ECtHR, 19 June 2001, paragraph 55, *Steele and Morris v UK*, ECtHR, 15 February 2005, paragraph 62.

283 *Kreuz v Poland (No 1)*, ECtHR, 19 June 2001, paragraph 54.

284 *Lithgow and Others v United Kingdom*, ECtHR, 8 July 1986, paragraph 194; and *Brualla Gómez de la Torre v Spain*, ECtHR, 19 December 1997, paragraph 33.

285 Constitutional Court Decision no. 5, dated 2 March 2001; Constitutional Court Decision no.14, dated 3 June 2009.

286 Article 18 CPC ff.

287 Articles 18 and 22 CPC.

288 Article 18 CPC.

parties are described in Chapter I section 3.2.2. As detailed above, the normal procedure for summoning the parties is to deliver the summons to the parties in person,[289] thereby ensuring that they are informed of the time and place of the hearing. If delivery in person is not possible, the summons may be made to certain members of the party's family, neighbours or colleagues, provided that the recipient undertakes to deliver the summons to the party.[290] Only in cases where the recipient's domicile or residence are unknown, or he has not appointed a representative, the summons may be made by posting a copy of the summons on the door of the courthouse and of the place of the last known domicile (sometimes referred to as "public notification").[291]

1.2.3 Access to the venue of the hearing

In addition to receiving information about the hearings, the right to an adversarial trial also requires that the parties be given an opportunity to participate in person in and to comment on all the "means, explanations, documents and other evidence" that form the basis of the court's decision.[292] The parties must therefore have an opportunity to physically access the court hearing.

Physical access to the hearing may be particularly problematic for parties with various disabilities. The Law on Protection from Discrimination[293] requires the State to make "essential and appropriate regulations or changes" in order to allow people with disabilities to access the courts on an equal basis, as long as these changes do not impose an "excessive burden" on the State.[294] Furthermore, a new law incorporating the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, cf. section 1.1, is currently being drafted. Presumably, this law will give people with disabilities the explicit right to access justice on an equal basis, thus removing the current limitation that the accommodation must not constitute an "excessive burden".

1.2.4 Access to the court records and content of the case files

Under the CPC, parties to civil proceedings have the right to read the content of the relevant case file – including court records – subject to the permission of the court. Permission must also be sought by any of the parties in order to withdraw documents contained in the case file in order to make photocopies.[295] However, the CPC does not provide any further guidance on the criteria for the court's discretion to decline the request for access.

289 Article 130 CPC.
290 Article 131 CPC.
291 Article 133 CPC paragraph 1.
292 Article 20 CPC paragraph 2.
293 Law no. 10221, dated 4 February 2010 "On Protection from Discrimination".
294 Article 5, paragraph 2 and Article 3, paragraph 7, Law "On Protection from Discrimination".
295 Article 158 CPC.

The courts can charge the parties for any photocopies taken.[296] Requests to copy the content of files of ongoing cases must be satisfied by the court within forty eight hours from their submission.[297] The High Council of Justice has stressed the need for the courts to ensure conditions that allow lawyers to consult their clients' case files.[298]

1.2.5 Court fees

In order to start a civil trial, the plaintiff is required to pay a court fee.[299] The fee for contractual disputes and tort cases for claims with a value less than 100.000 ALL is 12.000 ALL, whereas for claims above 100.000 ALL the fee is 3% of the value of the claim. The fee for division of property and invalidity of a legal transaction is 12.000 ALL, for family cases it is 9.000 ALL.[300] There is no fee for claims to be reinstated in a previous employment position. In case of difficulties in determining the value of the claim, the court makes an approximate estimation of the fee.[301] There is no possibility for the courts to reduce the court fee in special circumstances, except in those instances where the person belongs to a specific category exempted from taxes.[302] If the case is decided in favour of the plaintiff, the court will, as a general rule, order the defendant to reimburse all the plaintiff's expenses (e.g. the court fees, expenses related to the proceedings and the lawyer's fee).[303]

1.2.6 Procedural rights during proceedings to remove capacity to act

The Albanian Civil Law provides that a person's capacity to act may be removed or limited based on a court decision.[304] The case is heard as a special trial, but the procedure appears to be fairly simple. According to the CPC the case is initiated at the request of individuals who are closely related to the person concerned. The initiator may be the spouse, a next of kin, the prosecutor as well as any other person who has a legitimate interest in the issue.[305] Their request is examined by a panel of three judges[306] who base their decision on the questioning of the person concerned,[307] on the opinion of those who are closely

296 Article 77 CPC

297 Article 10, section 23, Minister of Justice Regulation "On the organisation and functioning of the judicial administration" approved by order no.1830, dated 3 April 2001.

298 High Council of Justice Decision no. 202/1, dated 2 November 2006 *"On the management and administration of courts"*, p. 5

299 Article 102 CPC.

300 Minister of Finance and Minister of Justice Instruction no. 13, dated 12 February 2009 *"On determining service fees for actions and services in the judicial administration, Ministry of Justice, Prosecution Office, Notary and Immovable Property Registration Office"*, amended by Instruction no. 991/3, dated 2 March 2010.

301 Article 104 CPC

302 See Article 105/b CPC, which reads as follows: "The persons, according to the provisions for taxes on legal actions, who are exempt from payment of these taxes, shall also be exempt from payment of other court expenses. In such cases, the costs shall be afforded by the relevant funds provided by the State Budget, institutions of public authority and other legal persons that, according to the provisions for taxes on legal actions, are exempt from payment of the tax shall pay other court expenses."

303 Article 104 CPC.

304 Article 10 Civil Code.

305 Article 382 CPC.

306 Article 35 CPC.

307 The person at issue is questioned in court and, wherever this is not possible, at the institution where the person is treated or in the place of abode.

related to her or him, on the testimony of the doctor who treats her or him, or of other expert doctors. The panel may also allow additional evidence if deemed necessary.[308] The hearing is attended also by a temporary guardian to the person, who may be appointed at any stage of the trial by the court.[309]

However, the procedural position of the actual person, whose capacity to act is at stake, appears to be very narrow. The person is subject to questioning, but he/she does not have the status of a litigating party as the request is heard as a non-adversarial case.[310] The person lacks the right to express himself/herself and thus to defend himself/herself before the court.

It seems that the Albanian procedural rules for the removal or limitation of capacity to act are very similar to those enshrined in the Italian Civil Procedure Code. However, unlike the Albanian law, Italian law provides the opportunity to the person concerned to be present during the trial and perform all procedural steps on his or her own, including the summons, even when a temporary guardian has been appointed.[311] The purpose of this provision is to enable the person to defend his rights by preserving his procedural capacity to act. The Italian doctrine maintains that the aim of the legislator is not only to provide such opportunity, but that it should, in a certain sense, enhance the active participation of the person during the trial. According to this doctrine, the presence of the person during the trial ensures an adversarial process and gives the person concerned effective access to justice.[312]

2. Findings and recommendations

2.1 Introduction

Considering that the basis for this report are observations of physical court hearings and a limited review of case files, the problems identified will be limited to issues observed during these activities. Several issues that potentially could be problematic for the right of access to justice, e.g., access to legal aid or underfunding of the judiciary, cannot be observed in physical hearings or in case files and will therefore not be mentioned below. This, however, is not an indication that the Presence does not find such issues problematic, and the present report should thus not be perceived as an exhaustive list of problems in accessing justice in civil cases.

Several of the issues raised under Chapter II Transparency of Court Proceedings will also be of importance for the parties' access to justice, e.g., proper maintenance of case files and access to the trial schedule. These issues are not repeated in this chapter to avoid duplication.

308 Article 383 CPC.

309 Article 384 CPC.

310 Alban Abaz Brati, *Procedura Civile* [Civil Procedure] (Tirana, Botimet Dudaj, 2008), pg. 407.

311 Article 716 Italian Civil Procedure Code.

312 Federico Carpi, Vittorio Colesanti and Michele Taruffo, C*ommentario breve al Codice di Procedura Civile* [Short commentary to the Civil Procedure Code] (Padova, CEDAM, 2006), pg. 2038.

2.2 Access to the venue of the hearing

Finding 41

Hearings are held in the judge's office due to lack of court rooms

A large part of the observed hearings were held in the judges' offices, not in a court room. In the trials observed by the Presence in 2011 and 2012, 38 % were held in judges' offices. However, the presence of trial monitors may have increased the court room usage in the monitored trials so that the courtroom usage is even lower in reality. Civil hearings are reported to take place in judges' offices in courts throughout the country.

A similar observation has been made by USAID's JuST project. In their study of court room usage in Tirana and Durrës District Courts, they found that only 2 % of hearings in civil cases in Tirana were held in court rooms.[313] In Durrës, 24 % of all cases were held in court rooms. The study further indicated that in at least some courts, the court rooms are greatly underused and that there was always at least one court room not in use. On average, the court rooms in the civil section of Tirana District Court were only in use 18 minutes per day and in Durrës District Court the average was two hours and forty-seven minutes. Interestingly, 56 % of judges reported that lack of information about availability of court rooms was a reason for holding hearings in their offices.[314]

The lack of court rooms has also been identified as a problem in the Justice Cross-cutting Strategy of the Ministry of Justice.[315]

It should be pointed out that the Durrës District Court has established a good practice for allocation of courtrooms. Despite the few courtrooms available compared to the number of judges, the chair manages to implement a distribution plan of the rooms in order to maximize their use. Starting from April 2012, the Tirana District Court, with the help of the USAID JuST Project, has implemented an electronic calendar for its court rooms that helps the allocation of court rooms. Now, the website of the court indicates the number of the courtroom or office where each scheduled hearing will take place.

Finding 42

Certain types of hearings are held in the judge's office

Some judges have indicated that they find it more appropriate to hold certain types of hearings in the office rather than in a court room. This applies in particular to pre-trial hearings and family cases, even though no decision has been issued regarding the holding of *in camera* proceedings.

313 USAID report "The use of courtrooms at the Tirana and Durres district courts", Tirana, 2011. The report is available at http://albania.usaid.gov/JuST, last accessed 16 June 2012.

314 See USAID report "The use of courtrooms at the Tirana and Durres district courts", page 30.

315 See Official Gazette no. 116, dated 18 August 2011.

Finding 43

The venue of the hearing is sometimes too small

On some occasions, the Presence has observed that the number of parties exceeded the available chairs in the judge's office. While usually all parties could attend the hearing, in some cases parties and observers had to remain standing. The crammed venue of the hearing negatively affects the parties' ability to actively participate in the hearing, which may unduly restrict the parties' access to justice.

This problem was not observed in hearings that took place in court rooms.

Finding 44

Difficulties in accessing court buildings for people with disabilities

All court buildings in the monitored courts have stairs in their entrance, thus complicating access to the reception area. In addition, in several buildings additional stairs must be climbed to access the court rooms.

Recommendation 52

Hearings should, to the extent possible, take place in court rooms

The courts should take measures to ensure that hearings are held in court rooms, unless no court room is available or *in camera* proceedings have been decided. The practice of holding certain types of hearings, e.g., preliminary hearings or family cases, in the judge's office, should also cease, unless the legal requirements for *in camera* hearings are met. Holding hearings in the court rooms is particularly important in trials with multiple parties, as the limited number of chairs in the judges' offices is especially a problem in such hearings.

The most efficient measure to increase the ratio of hearings taking place in courtrooms is probably to reduce the number of non-productive hearings, as suggested in Chapter I The Right to Trial within a Reasonable Time. Fewer hearings per trial will reduce the demand for courtrooms and thus allow a higher ratio of hearings to be heard in a courtroom.

In addition, considering the current lack of a sufficient number of court rooms in many court buildings, in the short-term, courts could consider establishing an electronic calendar for the court rooms such as the calendar used by the Tirana District Court. A number of recommendations for increasing the court room usage was suggested by the USAID JuST Project[316] and due consideration should be given to implement these and other measures.

316 USAID report "The use of courtrooms at the Tirana and Durres district courts", Tirana, 2011

In the long term, after the frequency of non-productive hearings has been reduced,[317] and the recommendations for increased court room usage are implemented, consideration should be given to increasing the number of court rooms in courts where lack of court rooms remains a problem. This measure is likely to be costly and will depend on available funds.

Recommendation 53

Court staff should provide extra assistance to people with disabilities

In order to give people with disabilities effective access to justice on an equal basis with others, court staff should be instructed to provide extra assistance to this group. Stairs may, as mentioned above, restrict physical access and the court staff at the entrance to the building should be instructed to proactively help people with disabilities. The trial schedule is, in most courts, only available on paper or on screen. Court staff should therefore be instructed to assist people with impaired vision. This measure will not require any additional resources or legislative changes and can thus be implemented immediately.

Recommendation 54

Court buildings should be made more accessible for people with disabilities

Consideration should be given to improve the physical access to court rooms for people with various disabilities. In the short term, such measures could include locating at least one court room on the ground floor, wheelchair ramps and proper railings for the stairs. Information about these accessible court rooms should be disseminated to lawyers and trial participants. Trial participants with disabilities should also be encouraged to request that the court schedules hearings in the accessible court room. These measures will only require modest additional resources and can thus be implemented immediately.

2.3 Access to case files

While the right of the parties to consult the case file is a basic expression of the right to a fair trial (namely of the right to adequate facilities to prepare one's case and of the adversarial principle), there is inconsistency in the practice with which Albanian courts recognise the exercise of this right. For instance, while some lawyers practicing at the Tirana District Court have stated to the Presence that they have not experienced any difficulties in consulting court files in the civil cases they work on, others have reported that it is often difficult to do so, as this would depend on the relevant court officials' willingness to overcome logistic constraints, primarily the absence of rooms and offices dedicated to that purpose and of viable supervisory mechanisms. The perception is also that access may be granted or denied depending on the lawyer's professional reputation or his standing with the court. Where

317 See Chapter I The Right to Trial within a Reasonable Time.

consultation of the file is allowed, this is usually done in ongoing cases at the judge's office (with obvious disruption to the judge's work), or in the archive room for closed cases. In the latter case, the request must be approved by the Chancellor. Often, the judge in the case or the judge's secretary have been reportedly unwilling to spend time dealing with such requests. In some cases, court staff has refused to issue photocopies of the documents contained in the court file to the requesting lawyer by citing a shortage of computer cartridges or functioning photocopying machines as the basis for such denial.

While acknowledging that, in principle, there is a right of parties to a case to consult the relevant court file, one court chair disputed that the parties always have a legitimate interest in consulting the court file. The reason for his opinion was that the parties should provide each other with copies of the evidence and other documents produced in the course of the trial, so that they would not need to see the content of the case file. However, this position does not take into account that the purpose of accessing the case file is for the parties to check whether they have, in fact, seen all the documents that will form the basis of the court's decision. The cost of photocopying and high work-load of the court staff was also identified as justification for limiting the parties' access to the case file.

The Presence has observed one case in which a district court rejected a defendant's counsel's request to consult the case-file and obtain a copy of the records. Details are provided below:

> The case related to a contractual dispute. During a hearing in 2009, the lawyer of the plaintiff asked the court to have access to the case-file and to be provided with copies of the trial minutes. In response to that request, the presiding judge challenged the lawyer to specify the provision in the CPC granting such a right. In a subsequent hearing on the same case, while the judge granted the right to consult the file, the party was not given the possibility to make copies of its content. According to the party, the court clerk in question justified the court's denial by claiming unawareness of the number of copies that could be provided to the parties making the request. In the same case, a request of the Presence to consult trial minutes was met with annoyance and suspicion by the presiding judge. While access to the minutes was eventually granted, that judge repeatedly questioned the Presence on the reasons for such requests and on whether similar demands had been made in other ongoing cases.

Finding 45

Unclear criteria for allowing parties access to the case file

As mentioned in section 1.2 above, parties can only access the case file with the permission of the court. This leaves a wide discretion to the courts, which increases the risk of arbitrary decisions and violation of international standards.

Finding 46

The discretionary power to refuse access to the case file is sometimes not used in line with international standards

The courts seem to refuse access to the case file based on a number of reasons: lack of time, logistical constraints, non-recognition of the importance of accessing the case file, poor relationship between the court and the lawyer etc. These justifications do not seem to conform to international standards.

Recommendation 55

Introduce clear criteria, in conformity with international standards, for accessing the case file

The CPC should be amended to explicitly provide for the parties' unconditional right of access to and copying of the case file. Only information which by law must be kept confidential from that party should be exempt from this right. Logistical difficulties should not allow a court to limit access to and photocopying the contents of the case file. Consideration should be given to regulate any photocopying and other fees in order to clarify another practical obstacle for accessing the case file.

Recommendation 56

The current discretionary power to refuse access should be used in line with international standards

Changing the CPC in line with international standards for accessing case files, (see Recommendation 55), may take some time. In the interim, judges, chairs and court staff should ensure that the current discretionary powers to refuse access are exercised in line with international standards.

2.4 Court fees

As described in section 1.2.5, the court fee for most civil disputes is 3 % of the value of the claim and the courts are not allowed to reduce the court fee under any circumstances. As mentioned above, such fee system has been held by the ECtHR to violate the right of access to court.[318] The Presence understands that the Constitutional Court is currently considering this question and will therefore not formulate any recommendations on this issue.[319]

318 See section 1.1.

319 See pending case at the Constitutional Court, based on a complaint lodged in 2012 by the Tirana District Court and the Pogradec District Court, on the constitutional control over article 11 of Law no. 9975, dated 28 July 2008 "On national taxes", amended by Law no. 10065, dated 29 January 2009.

2.5 Written submissions not circulated to the other party

The Presence frequently observed parties submitting written documents (copies of evidence, written arguments etc) to the court without providing copies to the other party. Often, but not always, the courts correctly asked the party to provide additional copies to the other party. After doing so, the court accepted to receive the written documents. Presumably, the parties dutifully followed the court's order, although the Presence was unable to determine this.

Finding 47

Insufficient opportunity to comment on the written submissions of the other party

As mentioned above, the ability to respond to the submissions of the other party is an essential element in the right to a fair trial. When the other party is not immediately provided with copies of the document, the court creates a risk that the right to an adversarial trial is compromised.

Recommendation 57

Courts should ensure that written submissions are given to all parties

The court should ensure that copies of written submissions are given to the other party(ies), either by making photocopies itself, or ordering and checking that copies are provided between the parties. Otherwise the court should reject the written deposition.

2.6 Procedural rights in proceedings to remove the capacity to act

Removing a person's capacity to act has far-reaching consequences. It impacts, e.g., the person's ability to enter into contracts, to make requests to public authorities and to take procedural steps before the courts.

Finding 48

The person in question does not have party rights during proceedings to remove his/her capacity to act

As mentioned in section 1.2.6, proceedings to remove a person's capacity to act are heard as one-party cases. This means that the person concerned does not have the status of a party during such proceedings. The person's opportunity to present his or her case in court is thus very limited. This lack of the right to an adversarial trial in disputes with such importance to the individual compromises the right to access to justice under international law.

Recommendation 58

The person in question should have party rights in proceedings to remove his/her capacity to act

The CPC should be amended so that proceedings to remove a person's capacity to act become two-party trials. The CPC should also explicitly state that the person in question has the procedural status of defendant. This will ensure that such proceedings become adversarial and meet international human rights standards.

Until the person concerned has received full procedural rights following the suggested legal amendments, the courts should hear the testimony of the person concerned to the fullest extent possible.

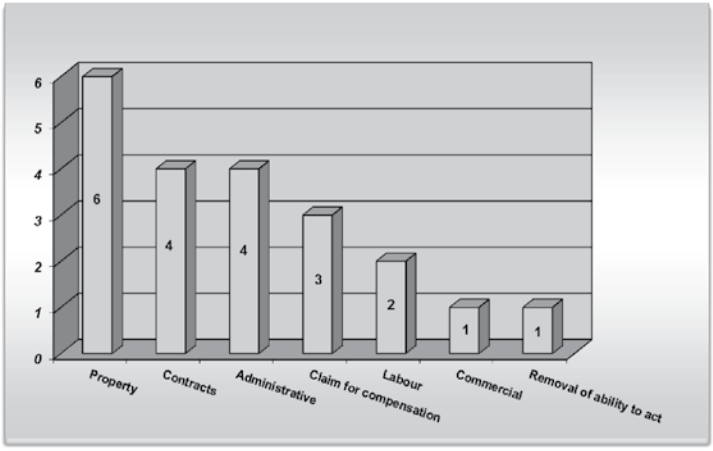
ANNEX 1
STATISTICS ON MONITORED CIVIL CASES

Introduction

The statistical information provided in this annex is based on data gathered in the course of the Presence's court observation activity. Twenty-one civil cases were monitored between 24 May 2010 and 15 March 2012 in the district courts of Tirana, Kruja, Durrës and Shkodra.

In order to have representative samples, different categories of civil cases were selected for review. As showed in the table below, the majority of cases related to property disputes. The other observed cases were contractual, administrative, claims for compensation ("tort"), and labour and commercial disputes. In addition, one application to remove the ability to act of an individual was also found of interest.[320]

Chart 1
Observed cases, divided by type

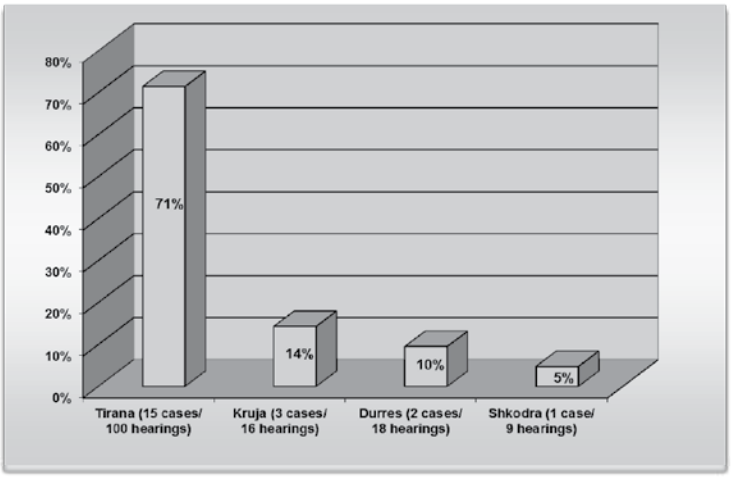


A major focus was given to the court of Tirana given the high number and variety of claims lodged with it. Fifteen cases were randomly selected in Tirana, in which 100 hearings were held. Some cases were also followed in

320 Requests to remove the ability to act are technically a one-party trial, not a dispute between two or more parties, see Chapter III Access to Justice.

other neighboring courts: three cases with 16 hearings were monitored in Kruja, two cases with 18 hearings were observed in Durrës and one trial with 9 hearings was followed in Shkodra. A total of 143 hearings were monitored.

Chart 2
Observed cases, divided by court



Length of proceedings

In order to measure the duration of the observed cases, a calculation of their length in terms of days and number of hearings was made. For the purpose of calculating their length, the date when the case was registered with the court was used as the starting point whereas the date of pronouncing the first instance judgement was used as the ending point. The longest trials in terms of days, for each type of case, are highlighted in the table below. [321]

321 It should be noted that two of the observed cases were still ongoing when the monitoring period concluded. The starting date of calculation is the date of registration, similarly to the other cases, but the ending date is 15 March 2012. In addition, one case is a suspended case. The calculation of days for this case starts with its registration and ends with its suspension day.

Table 1
Number of hearings and days for each case, listed by type of case

No.	Type of case	Number of total hearings	Number of total days
1	Property	14	205
2	Property	7	322
3	Property	10	354
4	Property	11	281
5	Property	16	358
6	Property	7	166
7	Contractual	2	65
8	Contractual	23	418
9	Contractual	6	218
10	Contractual	8	289
11	Administrative	13	566
12	Administrative	8	244
13	Administrative	11	316
14	Administrative	28	653
15	Claim for compensation	15	311
16	Claim for compensation	14	428
17	Claim for compensation	5	170
18	Labour	5	162
19	Labour	9	176
20	Removal of ability to act	4	95
21	Commercial	4	119
	Average	10.5	281.7

As shown in Table 1, the average number of days for all trials is 281.7 days, while the average number of hearings is 10.5. If the five shortest and longest trials are excluded, thus leaving only the second and third quartile, the respective averages are 262.4 days and 9.5 hearings. This means that the majority of civil cases are decided within nine months, but require almost 10 hearings to finish.

Below follow separate data on length of cases decided on the merits and cases dismissed for procedural reasons.[322] It should be noted that dismissed cases lasted almost as long as cases decided on their merits.

Table 2
Length in days and number of hearings - cases decided on their merits

Type of case	Total number of hearings	Total number of days
Property	14	205
Property	7	322
Administrative	13	566
Administrative	8	244
Contractual	23	418
Claim for compensation	15	311
Contractual	8	289
Labour	5	162
Labour	9	176
Removal of ability to act	4	95
Average	10.6	278.8

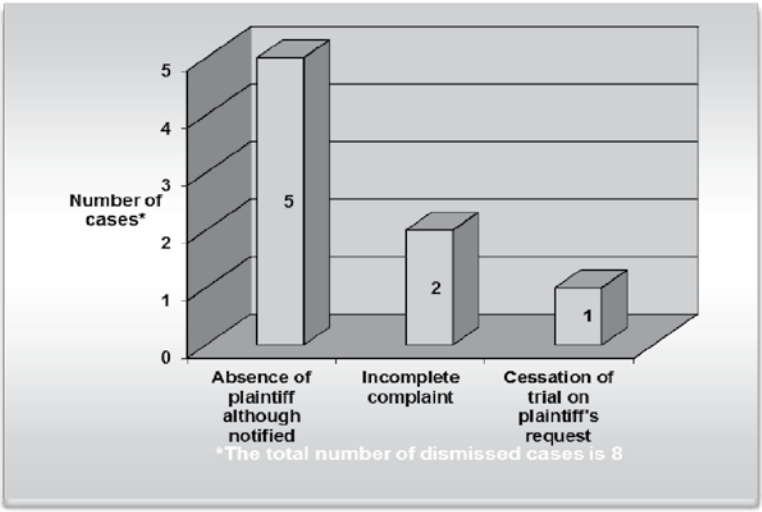
Table 3
Length in days and number of hearings - dismissed cases

Type of case	Total number of hearings	Total number of days
Property	10	354
Property	11	281
Property	16	358
Property	7	166
Contractual	2	65
Contractual	6	218
Claim for compensation	5	170
Commercial	4	119
Average	7.6	216.37

322 This data does not contain figures on the three ongoing or suspended cases.

Of the cases that were dismissed for procedural reasons, the most frequent reason for dismissal was the absence of the plaintiff (5 of a total of 8 dismissed cases). In two instances, cases were dismissed because the complaint was not completed by the plaintiff, while in one case the plaintiff withdrew from the trial. It should be noted, however, that only 8 dismissed cases were observed and that this sample is too low to draw any firm conclusions.

Chart 3
Reasons for the dismissal of cases

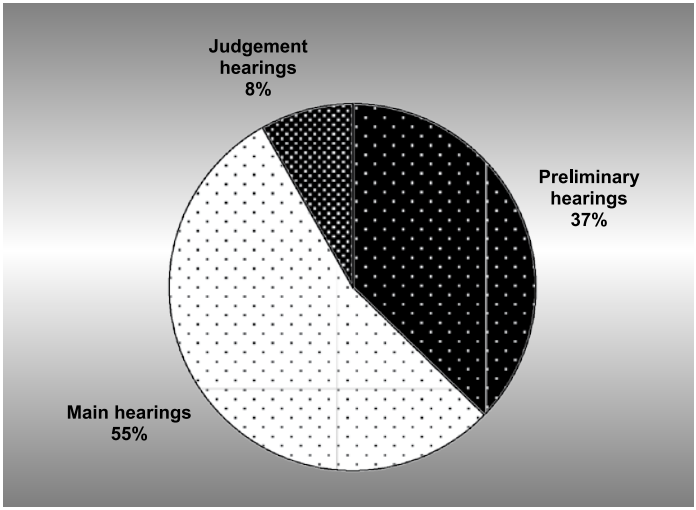


The table below shows the number of hearings held for each case grouped by type of hearing (preliminary, main and judgement hearings). In 7 cases out of 17, the court dismissed the case before sending it to the main hearing. In the majority of these cases, a considerable number of hearings were nevertheless held.

Table 4
Number of preliminary, main and judgement hearings per case

Type of case	Total number of hearings	Number of preliminary hearings	Number of main hearings	Number of judgement hearings
Property	14	1	12	1
Property	7	6	0	1
Property	10	9	0	1
Property	11	5	5	1
Property	16	15	0	1
Property	7	1	5	1
Contractual	2	1	0	1
Contractual	23	3	19	1
Contractual	6	5	0	1
Contractual	8	1	6	1
Administrative	13	1	11	1
Administrative	11	11	0	0
Administrative	8	4	3	1
Administrative	28	1	27	0
Claim for compensation	5	4	0	1
Claim for compensation	15	6	8	1
Claim for compensation	14	2	12	0
Labour	5	1	3	1
Labour	9	1	7	1
Removal of ability to act	4	1	2	1
Commercial	4	3	0	1
Total number	220	82	120	18
In percentage	100%	37.3%	54.5%	8.2%

Chart 4
Percentage of hearings by type



The Ministry of Justice publishes annual statistics for trials conducted by all courts. Among others, the publication provides data on the number of civil adversarial and non-adversarial trials concluded between 0-2 months, 2-6 months and over 6 months. The following table, which is copied from the annual statistics of the Ministry, contains information about trials concluded in 2009.[323]

Table 5
Length of civil trials (Ministry of Justice 2009)

	Timelines of cases' conclusion		
	0-2 months	2-6 months	over 6 months
Adversarial trial	7370	5818	9435
Non-adversarial civil trial	26429	6364	3644
Total	33799	12182	13079

323 Taken from the publication "Vjetari Statistikor 2009" [Statistical Yearbook 2009], issued by the Ministry of Justice in 2010.

The statistics do not contain information on the average number of court hearings held in civil trials.

The annual statistics of the Ministry of Justice also specify the number of pending cases (i.e., ongoing cases) at the end of each calendar year. These statistics reveal that the courts with a higher number of trials have a higher ratio of pending cases at the end of the year, and thus a higher ratio of backlog.

Inactivity

The Presence has observed a considerable number of non-productive hearings. These are hearings where nothing substantial happened with regard to the solution of the dispute. These trials were adjourned because of several reasons, e.g., one or both parties were absent although notified; a party was not duly notified; a lawyer had to attend another trial; the judge was sick or participated in a seminar; allowing parties to get familiar with the expert's report; waiting for decisions issued by the higher level courts etc. The threshold for considering a hearing to be productive was set very low: A hearing would only be considered non-productive if no argument was made, no document or written pleading circulated, no evidence taken and no request made.

Table 6
Number and percentage of non-productive hearings, listed by case

Type of case	Number of total hearings	Number of non-productive hearings	Percentage of non-productive hearings
Property	14	5	35.7%
Property	7	6	85.7%
Property	10	9	90.0%
Property	11	4	36.4%
Property	16	12	75.0%
Property	7	2	28.6%
Contractual	2	2	100.0%
Contractual	23	7	30.4%
Contractual	6	5	83.3%
Contractual	8	1	12.5%
Administrative	13	4	30.8%
Administrative	11	7	63.6%
Administrative	8	4	50.0%
Administrative	28	11	39.3%

Claim for compensation	5	2	40.0%
Claim for compensation	15	7	46.7%
Claim for compensation	14	12	85.7%
Labour	5	0	0.0%
Labour	9	2	22.2%
Removal of ability to act	4	0	0.0%
Commercial	4	3	75.0%
In total	220	105	47.7%

Reasons for postponements

As indicated above, the Presence observed 143 hearings in total and 109 of them were postponed for various reasons. Below follows a chart which indicates the reasons for postponements and their frequency in numbers and percentages.

Chart 5

Reasons of postponement of hearings (grouped by type of reason)

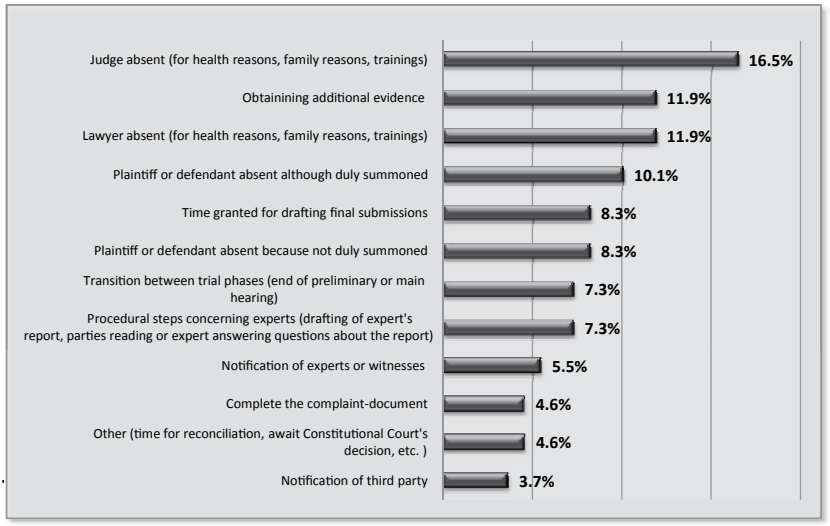
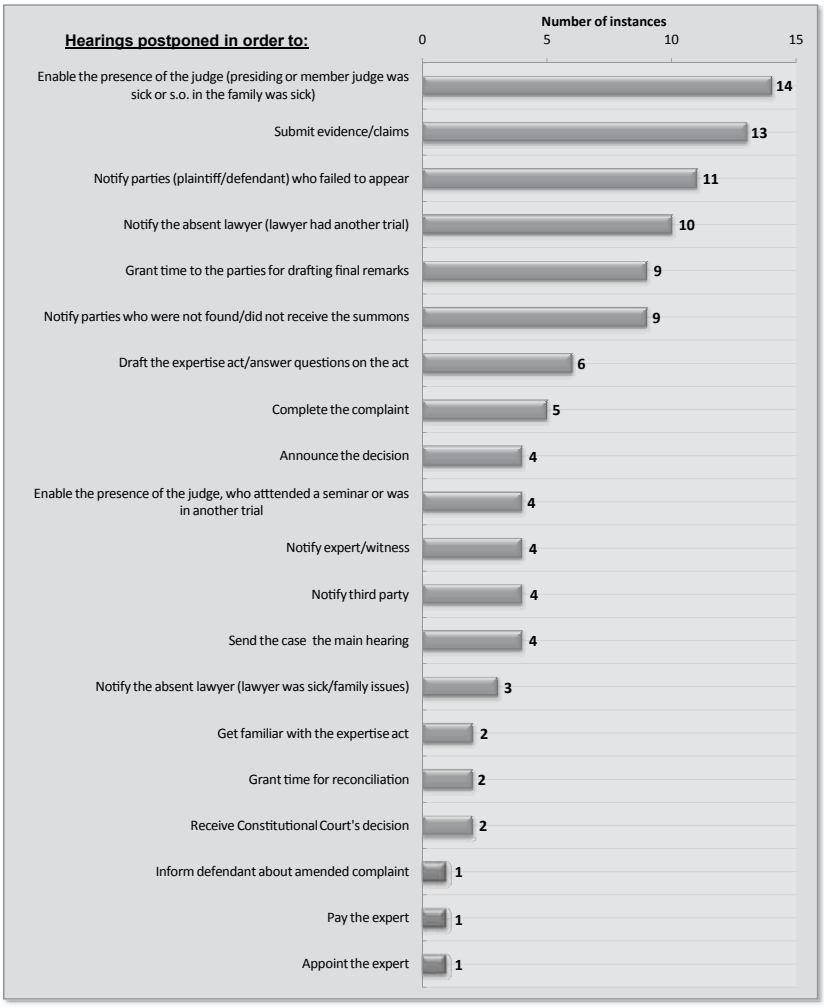


Chart 6
Detailed reasons for postponements of hearings



On average, each postponement caused the trial to be delayed by 21.6 days. Further details of the length of postponements are provided in Table 7.

Table 7
Average delays for each (grouped) reason of postponement

Grouped reasons of postponements	Averages
Taking evidence (including expert's report)	21.6
Judge or lawyer absent for health/family reasons	22.2
Judge or lawyer had clash of hearings/trainings	21.3
Other (notify third party, time for reconciliation, complete the complaint)	24.2
Party absent although notified	27.9
For drafting the parties' final remarks	14.8
Concerns related to summons	24.4
Announce the decision or send the case to the main hearing	16.1
In total	21.6

Time from registration to the first hearing

The Presence calculated the elapsed time in days between the date when a case was registered with the court and the date when the first court hearing was held for each case. Figures are shown below:

Table 8
Time in days between the date of registration and date of first hearing

Excluding 30 calendar days of summer break

Case no.	Difference in days between the date of registration and date of first hearing
Case 1	42
Case 2	32
Case 3	47
Case 4	63
Case 5	47
Case 6	40
Case 7	42
Case 8	34
Case 9	70
Case 10	11

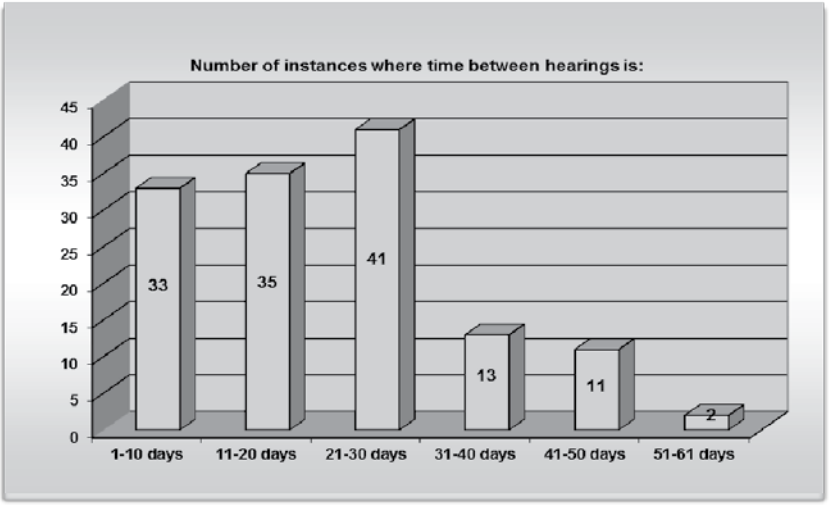
Case 11	49
Case 12	39
Case 13	31
Case 14	41
Case 15	18
Case 16	27
Case 17	22
Case 18	24
Case 19	1
Case 20	35
Case 21	36
Average difference in days	35.8

This shows that civil proceedings in general are initiated one month after the plaintiff has filed the initial complaint.

Time between hearings

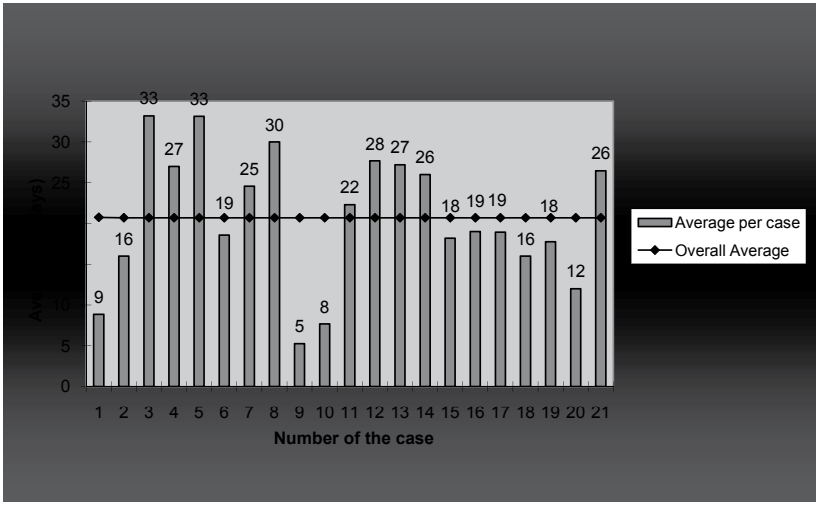
The chart below shows the time elapsed between the hearings in the observed cases.

Chart 7
Time between hearings



The shortest period between hearings was 1 day, while the longest was 61 days. If the judicial summer break of 30 calendar days is excluded, the average time between hearings amounts to 21 days.

Chart 8
Average time between hearings for each case
Excluding 30 calendar days of summer break



Way of concluding cases

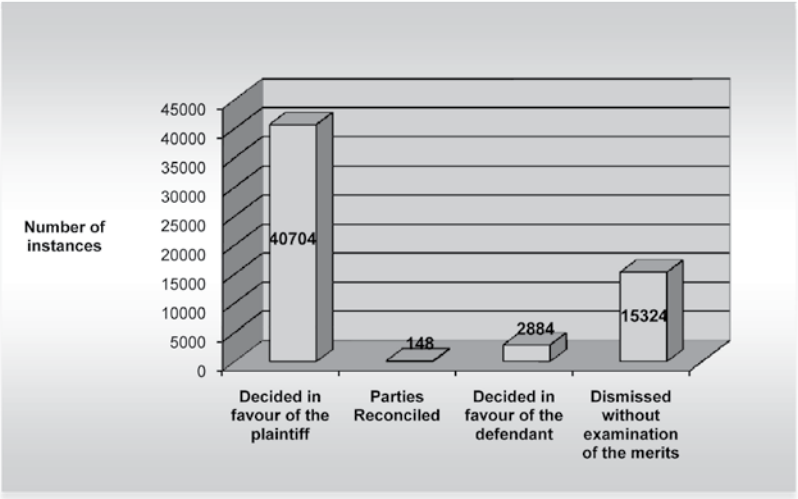
Of eighteen concluded cases, eight were dismissed without an examination of the merits of the dispute. The other ten were decided in favour of the plaintiff. No cases were decided in favour of the defendant and no cases were reconciled.

Table 9
Way of concluding cases

District Court	Decided in favour of the plaintiff		Dismised without examination of the merits		Total of concluded cases
	Number of cases	%	Number of cases	%	
Tirana	8	80%	5	63%	13
Kruja	1	10%	2	25%	3
Durrës	0	0%	1	13%	1
Shkodra	1	10%	0	0%	1
In total	10	100%	8	100%	18

Chart 9

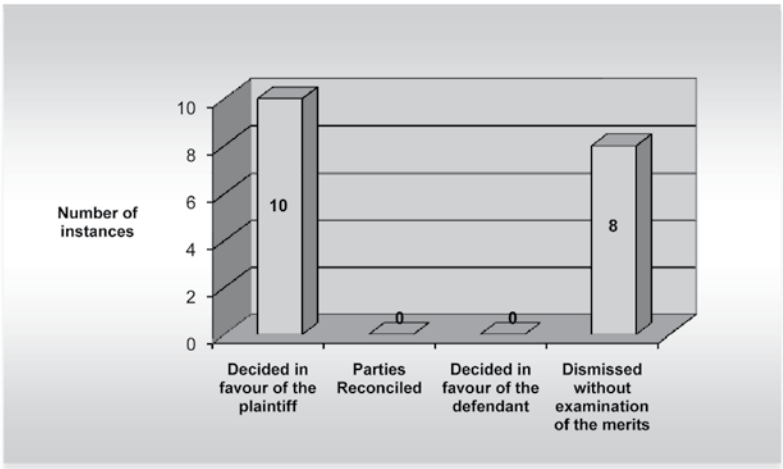
Way of concluding cases (cases observed by the Presence)



The Ministry of Justice's annual statistics provide similar statistics. The statistics below are taken from the official statistics for 2009.

Chart 10

Way of concluding cases (official statistics of the Ministry of Justice)



Both the Presence's trial monitoring and the official statistics show that a large part of the trials are dismissed without examination of the merits of the dispute. As detailed in Chapter I The Right to Trial within a Reasonable Time, the plaintiff will generally be allowed to completely restart these trials. Dismissed trials therefore represent a considerable waste of resources in the courts.

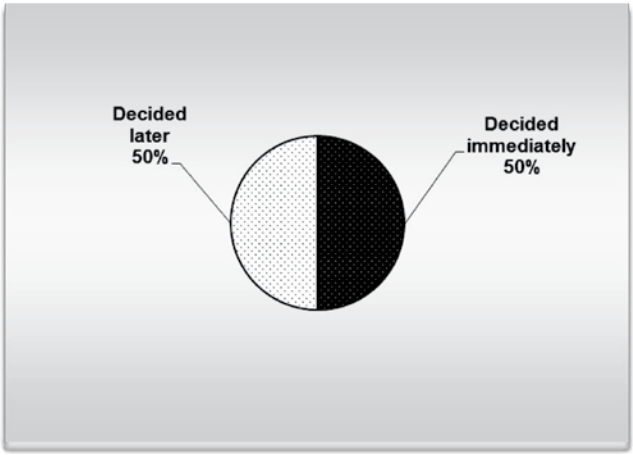
Timeline for pronouncing decisions

As mentioned above, the Presence observed 10 cases decided on the merits. In five of them, the court deliberated briefly and read out the dispositive part of the decision shortly after the parties presented their final remarks. In the other five cases, the court postponed the hearing to deliberate before deciding the case. One of the decisions was announced two days after the final hearing, the second decision was announced after three days, the third decision was announced after five days, while the fourth and the fifth decisions were announced respectively seven and eight days after the hearing. The later cases are in violation of the CPC, which states that in complicated cases, the court may announce only the dispositive part of the decision, while delivering the reasoned decision to the secretariat not later than ten days or may postpone the announcement of the justified decision for up to five days. [324]

The official statistics of the Ministry of Justice corroborate the Presence's finding that in 50 % of civil cases the decision is issued immediately after the last hearing.

Chart 11

Decision issued in last hearing or later (official statistics of the Ministry of Justice)

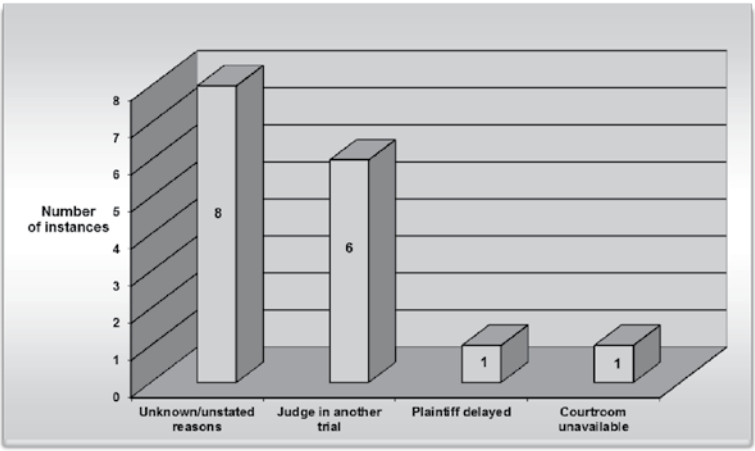


324 Article 308 CPC, paragraph 2.

Delayed hearings

Delays in starting the hearings on time were observed in only 11.1 % of the hearings. The chart below details the reasons for the delays:

Chart 12
Reasons of delays in starting the hearings



Hearings held in judges' offices

The majority of the monitored hearings (62 %) were held in courtrooms, while the remaining hearings were held in the judges' offices. The presence of trial monitors may, however, have affected the judges' decisions to hold trials in the courtroom rather than in offices. Cases 7 and 15 were not completed when the observation ended.

Table 11
Hearings held in the judges' offices

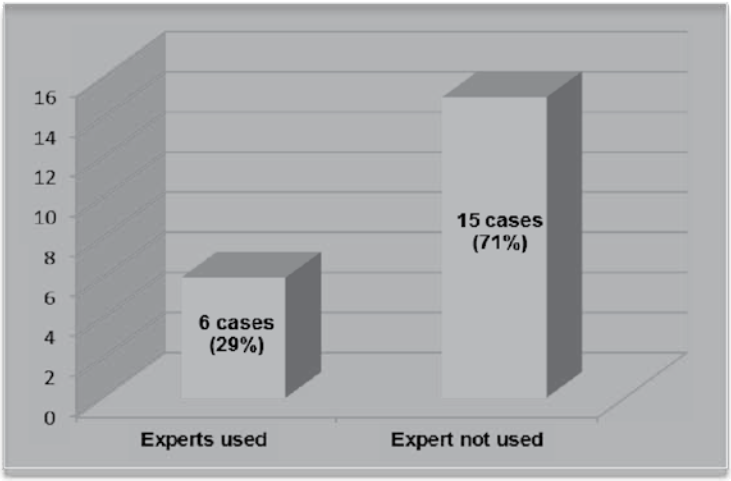
Observed case	Type of case	Total number of hearings	Hearings in courtroom		Hearings in office	
			Number	Percentage	Number	Percentage
Case no. 1	Property	7	7	100%	0	0%
Case no. 2	Claim for compensation	2	0	0%	2	100%
Case no. 3	Property	6	1	17%	5	83%
Case no. 4	Property	7	7	100%	0	0%
Case no. 5	Administrative	9	5	56%	4	44%

Case no. 6	Property	8	6	75%	2	25%
Case no. 8	Contractual	10	6	60%	4	40%
Case no. 9	Administrative	4	0	0%	4	100%
Case no. 10	Contractual	4	4	100%	0	0%
Case no. 12	Contractual	4	0	0%	4	100%
Case no. 13	Contractual	5	3	60%	2	40%
Case no. 14	Labour	3	0	0%	3	100%
Case no. 16	Removal of ability to act	1	1	100%	0	0%
Case no. 17	Property	13	13	100%	0	0%
Case no. 18	Property	4	4	100%	0	0%
Case no. 19	Labour	9	2	22%	7	78%
Case no. 20	Commercial	4	3	75%	1	25%
In total		100	62	62%	38	38%

Use of experts

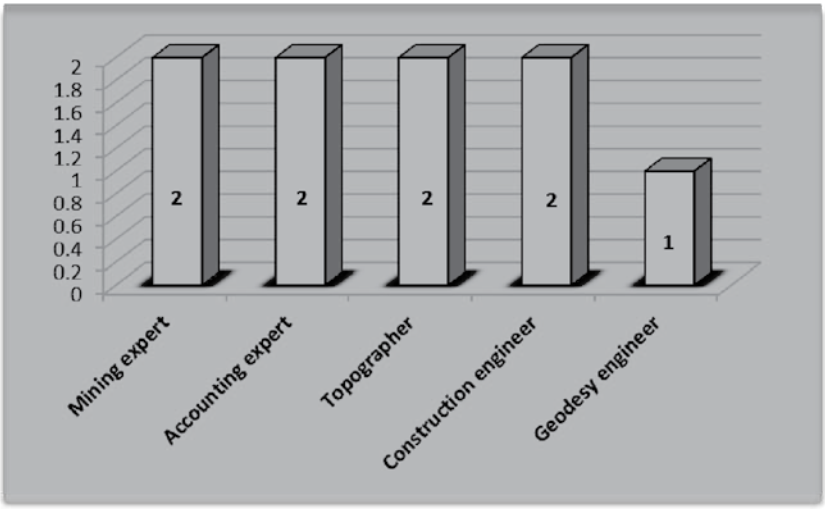
Experts were used as evidence in a surprisingly high number (29 %) of the observed trials that were decided on the merits.

Chart 13
Use of experts



The chart below shows the types of experts who were invited by the court.

Chart 14
Type of experts



ANNEX 2
LIST OF RECOMMENDATIONS

Chapter I - The right to trial within a reasonable time

ANNEX 3
CONTACT DETAILS FORMS

The purpose of this document is to facilitate the contact between the parties, lawyers, witnesses and the court to ensure successful completion of the case.

The form should be completed by the plaintiff and, if possible, the plaintiff's lawyer when the complaint is submitted to the court. As much information about the defendant(s) and third party(ies) as possible should be submitted to ensure that the defendant and third party(ies) are legally summoned.

The defendant and, if possible, the defendant's lawyer, should complete the form when the summoned complaint is received by them and subsequently be returned to the court at the earliest convenience. If summoned by a court clerk, the clerk should ensure that the form is completed and attach it to the duplicate of the summons. If the form cannot be completed before the first hearing, the court should ensure that the defendant completes the form in the first hearing.

Any party calling a witness should provide contact details for the witness.

If there is more than one plaintiff, defendant, third party or witness, a separate sheet should be completed for each person.

PLAINTIFF:

Name	
Father's name	
Surname	
Date of birth	
Place of birth	
Address at which you can normally be found during daytime (this place will be used by the court to physically hand the summons to you)	Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your domicile (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your workplace (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Phone number	
Mobile number	
E-mail address	

PLAINTIFF'S LAWYER:

Name	
Surname	
Address at which you can normally be found during daytime (this place will be used by the court to physically hand the summons to you)	Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your domicile (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your workplace (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Phone number	
Mobile number	
E-mail address	

DEFENDANT:

Name	
Father's name	
Surname	
Date of birth	
Place of birth	
Address at which you can normally be found during daytime (this place will be used by the court to physically hand the summons to you)	Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your domicile (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your workplace (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Phone number	
Mobile number	
E-mail address	

DEFENDANT'S LAWYER:

Name	
Surname	
Address at which you can normally be found during daytime (this place will be used by the court to physically hand the summons to you)	Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your domicile (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your workplace (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Phone number	
Mobile number	
E-mail address	

THIRD PARTY (if any):

Name	
Father's name	
Surname	
Date of birth	
Place of birth	
Address at which you can normally be found during daytime (this place will be used by the court to physically hand the summons to you)	Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your domicile (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your workplace (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Phone number	
Mobile number	
E-mail address	

WITNESS (if any):

Name	
Father's name	
Surname	
Date of birth	
Place of birth	
Address at which you can normally be found during daytime (this place will be used by the court to physically hand the summons to you)	Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your domicile (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Address of your workplace (this address will be used by the court if you are not found at the address provided above)	Time when you can be contacted at this address: Name of recipient: Street: House no: Entrance no: Apartment no: Neighbourhood: Postal Code: Town/District:
Phone number	
Mobile number	
E-mail address	

Completed by party/witness/lawyer (circle correct option)

(name) _____ (signature) _____

On date: _____

TOWARDS JUSTICE

Analysis of civil proceedings in the district courts

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