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

Legal Sector Report

For Albania

2004

PREFACE

The Rule of Law is the backbone of democracy. When actions of the state are based on these principles, the population is more likely to have confidence in authorities and to work with each other as members of one society. Absent the Rule of Law, people function very individualistically. The Rule of Law pre-supposes a functioning legal sector that provides guidance on the basic rules governing social organisation and helps to ensure their application. For these reasons, and generally to contribute to the Rule of Law, the OSCE has prepared this report on the current state of eleven elements of the Albanian legal sector.

Public Confidence in the Legal Sector Must Improve

The Legal Sector Report shows that public confidence in the Albanian legal sector is low. Such public confidence is necessary for economic development, as it creates a climate where investors are secure that they are on a fair playing field, where banks have security that delinquent loans can be retrieved, and where people pay their taxes, which in turn serve for improving infrastructure. The legal sector is a key actor in ensuring that culture develops, as it ensures that basic rules for television, schools, or publishing are enforced. With a non-functioning legal sector, people generally feel insecure. The key element in the creation of public confidence is the belief that rules agreed to in a democratic manner are followed by the entire society and by state structures.

One chapter in this report is on the Office of the Bailiff in Albania. We find that citizens throughout the country have considerable *difficulties in enforcing court judgements*. Often bailiffs simply do not have the necessary resources; sometimes the legal framework is faulty. Most disturbing, however, is that citizens who win monetary judgements against the Albanian state often find it especially difficult to execute their title. This violates the principle that the state and those exercising power on its behalf must obey rules just as any citizen must.

We also see several methods used by immediate superiors *to prevent prosecutors from carrying out their duties* in accordance with the law. They argue that they can be prevented in their career advancement if they refuse to sign documents they consider to be improper. They complain of harassment through unreasonable oversight of their routine duties. Prosecutors claim that important cases are often assigned outside official assignment structures. As long as state employees in key functions do not feel secure in their positions when they carry out their duties in a conscientious manner, and as long as official routines are easy to circumvent, the public will not have confidence in authorities.

Albanian notaries frequently are responsible for poorly drafted contracts or worse, for *false certification of property ownership* or transfers. This action leads to numerous court cases in spheres where security is crucial for economic development, for until title to property is reliable, investors will choose other places to locate their assets.

The Legal Sector Must Operate More Transparently

Transparency is a major issue in this report. When an actor in the legal sector behaves in a transparent manner, people will be far more likely to have confidence in that actor. A system that is transparent must necessarily seek to eliminate corrupt elements. It should be noted that corruption is a phenomenon in which some people become involved involuntarily. For that reason, it is important for the legal sector to protect its participants against involuntary corruption. For those who are voluntarily corrupt, the legal system must apply sanctions in a strict and uniform manner.

The legal sector in Albania possibly has a reputation that is worse than it deserves. This results from people not understanding how institutions function and thus becoming suspicious. We have suggested improvements with a view to eliminating distrust. In a transparent system, corruption is considerably more difficult than in a nebulous one; when people understand processes they are less likely to assume that they are corrupt.

The Purpose of this Report

The ultimate goal of the Legal Sector Report is to help establish a transparent legal system, working for and trusted by the Albanian people. Therefore each chapter gives an overview of what the OSCE considers priorities in legal sector reform. Each chapter also seeks to explain how the various parts of the legal sector are meant to function from a legal point of view. This is meant primarily for those working in other state institutions and for international organisations. It is hoped that these descriptions will help these organs in their contact with the legal sector.

The OSCE intends to develop projects to address several of the recommendations made in this report. It is hoped that the Albanian authorities and other international organisations will also consider the recommendations important and will develop projects where the OSCE does not have the resources to act. Nonetheless, it should be noted that the development of projects likely will require additional research. The Legal Sector Report is a long document even without great details on the exact implementation strategies for various legal sector reforms. It is hoped, however, that the Legal Sector Report will serve as a catalyst for change in that it gives ideas for change and the introductory information necessary for developing useful projects.

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ABBREVIATIONS

ABA-CEELI	American Bar Association-Central and East European Legal Initiative
ACAC	Albanian Coalition Against Corruption
ACMG	Albanian Anti-Corruption Monitoring Group
BO	Bailiff's Office
CCBE	Council of the Bars and Law Societies of the European Union
COP	Center of Official Publications
COP	Council of the Office of the Prosecutor
DANIDA	Danish International Development Agency
DoOC	Directorate of Organized Crime
EC	European Commission
EU	European Union
GPO	Prosecutor General's Office
GTZ	Deutsche Gesellschaft für technische Zusammenarbeit (German Technical Cooperation)
HCJ	High Council of Justice
HR	Human Rights
IPRS	Immovable Property Registration System
IRZ	Deutsche Stiftung für internationale rechtliche Zusammenarbeit (German Foundation for International Legal Coorperation)
IULN	International Union of Latin Notaries
JP	Judicial Police
KESH	Korporata Energjitike Shqiptare (Electric Power Corporation)
MSI	Management Systems International
NGO	Non-Governmental Organization
PHARE	Pologne Hongrie Actions pour la Reconversion Economique (EU assistance program for candidate countries)
PIU	Project Implementation Unit

PMU	Project Management Unit
TLAS	Tirana Legal Aid Society
USAID	United States Agency for International Development

THE COURTS

KEY RECOMMENDATIONS

1. ***Court decisions should be published regularly – not only for the High Court and Constitutional Court.***
2. ***The workload of courts should be studied so that judges throughout the country have comparable workloads.***
3. ***Courts need stronger mechanisms to ensure that witnesses testify and defendants appear before court.***
4. ***Assignment of cases should be based on transparent and strictly regulated drawing of lots in order to avoid accusations of corruption.***

I. INTRODUCTION

The courts in Albania, as in any country, are a key element for making possible a state ruled by law (***Rechtsstaat,*** Albanian ***shteti juridik)***. Thus, like the whole legal sector, they have attracted a great deal of national and international attention in the years of Albania's transition to democracy. Promoting their independence while seeking to assure their professional qualifications and responsibility has been seen to be of special importance.

A. Historical Overview

When the last Communist Constitution, that of 1976, was repealed and replaced by the law "On the major constitutional provisions" early in 1991,[1] the creation, organization and activity of the courts and the judicial sector in general were left as they had been, except to the extent inconsistent with the new constitutional structure.[2]

However, intensive work was going on to restructure this sector, and exactly a year later, a major amendment to the transitional Constitution was passed on the organization of justice.[3] Many of the new elements created at this time, such as Albania's first Constitutional Court and a mixed judicial/executive body known as the High Council of Justice (HCJ), which supervises the lower courts, continue in somewhat modified form under the Constitution that became effective on November 28, 1998.

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[1] Law no. 7491 dated 29 April 1991 [hereinafter Major Constitutional Provisions].
[2] See Major Constitutional Provisions, art. 42, as originally enacted.
[3] Law no. 7561 dated 29 April 1992, "On some amendments and additions to Law no. 7491 dated 29 April 1991 'On the Major Constitutional Provisions'" [hereinafter Amendments to the Major Constitutional Provisions].

In order to strengthen the judiciary after Albania's state of emergency in early 1997, a number of laws relating to the organization and functioning of the judicial power have been enacted. In addition, Albania's first post-university school for training magistrates (judges and prosecutors), established under Council of Europe sponsorship, began operating in 1997, and its fifth class will graduate in 2004. All of these developments will be reflected below, as appropriate.

B. Structural Overview of Court Reform

The first part of this report will detail the constitutional and legal framework as it exists today,[4] including the institutional structure and formal functioning of the court system. The next section will briefly examine current court operations based on statistical data received from the Ministry of Justice and the Constitutional Court. The last part will address some of the current aspects of the functioning of the courts, as articulated by the judges themselves, including their education and training, the resources available to them and some of their perceived problems.

The courts are often identified as one of the places where corruption creates great difficulties for ordinary citizens, in addition to hindering the integration of Albania into Euro-Atlantic structures. A clear look at the legal structure and functioning of the courts today is a good place to start for considering and analysing the underlying reasons for this in order to assist the Albanian Government and the judiciary itself in finding and implementing ways to deal with the problems identified.

II. LEGAL STRUCTURE

The current Albanian Constitution deals with the ordinary courts in Part Nine (articles 135 – 147) and with the Constitutional Court in Part Eight (articles 124 – 134). A similar court structure existed before the 1998 Constitution went into effect. Most of the laws governing these courts have been amended to conform to the Constitution or were enacted subsequently.

A. Ordinary District and Appellate Courts

Article 135 section 1 of the Constitution provides that "the judicial power is exercised by the High Court,[5] the courts of appeal and the courts of first instance,[6] which are created by law." Courts for particular fields may be created by the Assembly, according to

[4] That is, the end of January 2004, when this report was completed. As noted in the text, there are many on-going developments.

[5] Albanian "Gjykata e lartë," sometimes translated as "the Supreme Court." This court was known by this name before 1992, but the Amendments to the Major Constitutional Provisions renamed it the "Court of Cassation" and it kept that name until the 1998 Constitution became effective. Indeed, article 179 section 2 of the Constitution provides that "the members of the Court of Cassation continue their activity as members of the High Court, according to their prior mandate."

[6] The Albanian phrase "shkallë e parë" is here translated as "first instance," but the translation "first level" is also frequently used.

article 135 section 2, but "in no case extraordinary courts." A number of constitutional provisions apply to all the ordinary courts: the term of their judges may not be restricted and their pay and benefits may not be reduced;[7] their decisions are to be reasoned and state organs are obliged to execute them;[8] no judge may have any other state, political or private activity;[9] they have their own budget, which they propose and administer themselves;[10] they are independent and subject only to the Constitution and the laws, and interference in their activity entails legal responsibility;[11] all their decisions are given in the name of the Republic and announced publicly.[12]

The law governing the courts of appeal and the courts of first instance is the law on the organization of the judicial power in the Republic of Albania (the Judicial Power Law).[13] The High Court is specified in the Judicial Power Law as part of the judicial system, but it has a separate organic law of its own.[14] While the existing military courts and a new court for serious crimes, discussed below, might be thought of as "courts for particular fields," the Judicial Power Law defines them as courts of the first instance.[15] Thus, they are regulated by the provisions of the Judicial Power Law for first instance courts, unless specifically provided otherwise.

1. Regular First Instance Courts

The Judicial Power Law distinguishes the regular district courts from the military courts or serious crimes courts by calling them "courts of the judicial districts",[16] although these courts are also commonly called district courts or simply first instance courts. There are 29 courts of the judicial districts, with a current reported total of 276 judges;[17] the smallest number of judges is four, in seven different districts, and the largest number is 50, in the Tirana judicial district. Military 'courts' of the first instance exist in only five of these districts. As will be discussed below, courts for serious crimes have only recently begun to function and not all judges have been assigned to them. Until now, however, their judges primarily have been re-assigned from other courts, so the total number of judges in Albania probably will not increase or will increase only slightly.

a. Number of Judges

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[7] Constitution, art. 138.
[8] Ibid., art. 142 secs 1, 3. See Chapter V concerning the Bailiff's Office.
[9] Constitution, art. 143.
[10] Ibid., art. 144.
[11] Ibid., art. 145 secs 1, 3.
[12] Ibid., art. 146.
[13] Law no. 8436 dated 28 December 1996 amended by Law no. 8546, dated 5 November 1999, Law no. 8656, dated 31 July 2000, and Law no. 8811, dated 17 May 2001 [hereinafter Judicial Power Law].
[14] Law no. 8588 dated 15 March 2000. See also article 13 of the Judicial Power Law. While Law no. 8588 specifies the organization and functioning of the High Court, certain provisions of the Judicial Power Law also apply to High Court judges, particularly those defining general rights and duties of judges.
[15] Article 6, par. 1.
[16] Judicial Power Law, art. 11.
[17] Information received by the OSCE on 17 January 2003 from the High Council of Justice, Inspector's Office.

Under article 12 of the Judicial Power law, the total number of judges of all judicial instances, which includes the High Court, is set by decree of the President on the proposal of the Minister of Justice after receiving the opinion of the High Council of Justice.[18] Article 11 of the Judicial Power Law assigns the President the right, also on the proposal of the Minister of Justice and after receiving the HCJ's opinion, to decree the territories, centers and zones for the courts of the judicial districts, the courts for serious crimes and the courts of appeal.[19]

b. Appointment of Judges

Article 136 section 4 of the Constitution provides that all first instance judges (in fact, all judges of the ordinary courts except for High Court judges) are appointed by the President of the Republic on the proposal of the High Council of Justice. The Judicial Power Law elaborates on this: judges have to be Albanian citizens, at least 25, with full capacity to act, never convicted of a crime and having a good reputation; in addition to having higher legal education, they must have completed the Magistrates' School.[20] If they meet all the criteria except graduation from the Magistrates' School, whose first class received their diplomas only in 2000, they may still become judges if they meet certain experience criteria or have received a post-graduate juridical diploma from an approved program outside Albania.[21] The procedural steps for appointing persons who meet the criteria as judges, including the holding of a competitive examination, are detailed in articles 28-30 of the Law on the Organization and Functioning of the High Council of Justice (the HCJ Law).[22]

2. Regular Courts of Appeals

Six regular Courts of Appeal currently function in Albania: in alphabetical order, Durrës, Gjirokastër, Korça, Shkodër, Tirana and Vlora, with a total of 49 judges (including the four judges of the Military Court of Appeal in Tirana). As noted above, Article 11 of the Judicial Power Law gives the President the competency to specify the zones where these courts operate, on the proposal of the Minister of Justice and with the opinion of the HCJ having been taken, but the system is apparently functioning on the basis of an old decree and within the limits set in that decree.

[18] It appears that the latest decree setting the total number of judges precedes the Judicial Power Law and was issued prior to 1997 and was not published. See the following footnote.

[19] Although the Judicial Power Law in effect dates from just after the 1998 Constitution, this method of assigning territories, appellate zones and the number of judges in them (by the President on the proposal of the Minister of Justice) predates the Constitution. The role of the President in general was quite different under the prior constitutional structure, and, in light of article 135 section 1 of the current Constitution quoted in the text, it may be questioned whether the provisions of articles 11 and 12 of the Judicial Power Law are constitutional.

[20] Judicial Power Law, article 19.

[21] Judicial Power Law, article 20.

[22] Law no. 8811 dated 17 May 2001, effective 9 May 2002. This law, including its complex procedural history and the continuing controversy about it, is discussed below in this subsection under "The High Council of Justice."

Several of the judges interviewed (see Part III. below) suggested that there should be fewer appellate courts, since under the current arrangement some regions are much less active than others. Three was suggested as a suitable number, which could reduce administrative costs and simplify co-ordination issues. One concern about such a reform is access to the courts. Lawyers and parties from remote districts would have to travel quite far on Albania's difficult roads to get to court, which is a problem even now. This was doubtless one of the reasons why, after a period in the early 1990s when there was an appellate court only in Tirana, the number of appellate courts was expanded in 1998 to what it had been before 1990. The pre-1990 existence of appellate courts in these six cities, we have been informed, is of long standing in Albania, and even if some courts have a smaller caseload, there are reasons of history and tradition for their continuing to exist.

In addition to meeting the conditions required by Article 19 of the Judicial Power Law for becoming a judge, judges of the Courts of Appeal are required by Article 24 section 1 of that law to have at least five years of experience in first instance courts and be distinguished for professional capability and high ethical and moral qualities. The other provisions of the Judicial Power Law apply equally to judges of the Courts of Appeal and to first instance judges and will be dealt with collectively below.

B. Special Courts

1. The Courts for Serious Crimes

In the past year there has been much activity concerning the creation of courts for serious crimes, mainly in the context of improving the results of the fight against organized crime and trafficking. By the beginning of 2004, a law had been passed on the functioning of these courts[23] and the President had decreed the territorial jurisdiction of a single court of serious crimes, located in Tirana, to cover the entire territory of Albania. He had also decreed an appellate court with similar territorial jurisdiction. As this report was being completed in January 2004, the process of appointing judges had begun but was not complete.

The idea of a special court to deal with serious and complex criminal activity and to make the fight against organized crime more effective is laudable, but there has been a delay in setting up these courts in practice because of a number of technical and logistic difficulties. At present the Court for Serious Crimes and the Court of Appeals for Serious Crimes are operating out of the respective district and appellate courts in Tirana and it is not clear when they will be moved. Moreover, there is still a need to decree several judges.

The Law on Courts for Serious Crimes includes rather broad provisions as to what constitutes a serious crime. While international organisations have advocated such a court to deal with issues of organised crime and other crimes that place prosecutors and judges

[23] Law no. 9110, dated 24 July 2003, "On the Organisation and Functioning of the Courts for Serious Crimes" [hereinafter Law on Courts for Serious Crimes].

at risk, the Code of Criminal Procedure[24] has been amended to require any crime with a minimal penalty of 15 years imprisonment and any armed robbery, along with the organisation of criminal groups, to be judged by the Court for Serious Crimes. This broad jurisdiction risks overburdening the Court for Serious Crimes and thereby reducing its effectiveness. The OSCE has been informed by sources in the Ministry of Justice, however, that the Code of Criminal Procedure will be amended again in order to narrow this jurisdiction.

The Law on Courts for Serious Crimes provides that judges serve renewable nine-year terms.[25] The Assembly has been careful to provide for judges completing their terms on the Court for Serious Crimes to return to other judicial positions at the salary level of the Court for Serious Crimes, but it remains to be seen whether these provisions are sufficient to withstand challenges under articles 138 and 147 of the Constitution, which respectively prohibit term limits for judges and involuntary transfers.

2. Military Courts

Unlike the courts for serious crimes, military courts have a long history in Albania. Article 8 of the Judicial Power Law ratifies their existence, stating that they "are organized and function within the judicial system according to the competencies specified by law." (Apart from the Code of Criminal Procedure and the Military Criminal Code mentioned below, there appears to be no other law that gives additional competencies). Article 9 of the Judicial Power Law states that the military courts consist of first instance courts and courts of appeal, while article 10 recites that the military court of appeals[26] examines appeals from first instance decisions of military courts, and that they sit in three judge panels.[27]

For determining more about the operations of military courts, procedurally and substantively, the Code of Criminal Procedure,[28] the Military Criminal Code,[29] a decision of the High Council of Justice[30] and a decision of the Criminal Chamber of the High Court[31] all need to be consulted. Article 75 of the Code of Criminal Procedure provides

[24] Art. 75a,. added to the Code of Criminal Procedure by Law no. 8813, dated 13 June 2002 "On Some Additions and Changes to Law No. 7905, dated 21 March 1995 'Criminal Procedure Code of the Republic of Albania'".
[25] Law on Courts for Serious Crimes, art. 3.
[26] Article 14 of the Code of Criminal Procedure (law no. 7905 dated 21 March 1995, as amended) specifies that there is only one military court of appeals. Although the law does not so specify, it is in Tirana.
[27] Law no. 8656, the amendments of the year 2000 to the Judicial Power Law, adds to article 10 the sentence that "Serious crimes are adjudicated by five judges." This repeats the general rule established by those amendments for appeals of decisions from the serious crimes courts. (See article 7 of the Judicial Power Law, as amended). It is not clear yet whether there is to be a "military first instance court for serious crimes." If not, there is no need for this sentence in article 10. In any event, the new rules for courts for serious crimes should clarify this.
[28] Law no. 7095 dated 21 March 1995, with subsequent amendments.
[29] Law no. 8003 dated 28 September 1995, amended by law no. 8919 dated 4 July 2002 [the Military Criminal Code].
[30] Decision no. 50, dated 4 September 1999.
[31] Decision no. 100, dated 29 March 2000.

that "a military court tries soldiers for military criminal offenses,[32] prisoners of war and other persons specified by law;"[33] Article 80 stipulates that when there are multiple defendants, some under the competency of a military court and others under the regular court, the military court has jurisdiction over the entire case; Article 140 section 5 provides that notices to a military defendant may, in his absence, be given to his commanding officer, who must notify the defendant immediately. Otherwise, in general, that Code applies in its entirety to military defendants the same as to any others.

Currently, the "military courts" of the first instance consist of judges in five of the regular district courts (Gjirokastër, Korça, Shkodër, Tirana and Vlora) who have been assigned to handle military cases, but serve under the administrative auspices of the chairman of the court of the judicial district, like all other first instance judges.[34] Depending on their caseload, these judges also handle ordinary cases.

3. The Electoral College

With the adoption of a new Electoral Code in 2003,[35] a new chamber of judges was created at the Tirana Court of Appeals to handle electoral matters. The functioning of this special Electoral College[36] is governed by Part 12 of the Electoral Code.

Although the Electoral College is housed in the Tirana Court of Appeals, it does not function as a true appellate court; nor does it consist solely of judges from the Tirana Court of Appeals. Article 163 of the Electoral Code specifies that there is to be a lottery among appellate judges (excluding some minor categories of judges) from throughout the country to determine those who will serve in the Electoral College. Two governing and two opposition political parties then have the right to object to remove one judge each, after which another lottery is held. The lottery held in 2003 was universally lauded has having been completely fair.

The Electoral College functioned for the first time following the local government elections held on 12 October 2003. Its decisions and procedures were the source of considerable discussion. In particular, its decision to invalidate the votes in 118 voting centres in Tirana was the source of considerable controversy. Without going into the

[32] I.e., those specified by the Military Criminal Code.

[33] Article 2 of the Military Criminal Code gives one category of such persons: "Albanian citizens who commit a criminal offense in the field of defense."

[34] In some respects, this treatment deserves rethinking. Coming out of a more military era, the Albanian judicial system may assign too many cases to military jurisdiction. On the other hand, treating military judges as identical to other judges may be inappropriate in some cases. A candidate with ordinary experience, for example, who meets the criteria of the Judicial Power Law but has no adequate grounding in military law might not be a proper candidate for military courts; and the HCJ inspectors, who by law must meet the qualifications of civilian appellate judges, may not be adept at evaluation the work of or examining complaints against judges applying the Military Criminal Code. Without reaching any conclusions, we merely suggest consideration of these and related issues.

[35] Law no. 9087, dated 19 June 2003, "The Electoral Code of the Republic of Albania".

[36] The Albanian term is "kolegji zgjedhor". Generally, a judicial "kolegj" is a chamber of a court, but in this case the international community in Albania universally has adopted the expression "Electoral College" when referring to this court in English.

merits of that decision, it should be noted that the court was criticised for stating that there were 130 voting centres, though a later examination of the list showed that 11 were duplicates and 1 was not in Tirana. Observations of the court's proceedings and of the final decisions issued lead to the conclusion, however, that many difficulties have been created by the requirement that the Electoral College reach its decisions within seven days from the depositing of the appeal.[37] While it is of great importance in electoral matters to reach speedy decisions, the complexity and number of cases brought before the Electoral College in 2003 made it unrealistic to expect high quality proceedings in such a limited period of time.

C. General Rights and Duties of Judges

Article 6 of the Judicial Power Law specifies that first instance courts operate according to the rules provided in the codes of procedure; article 16 of the Judicial Power Law extends this to the Courts of Appeal (and to the High Court) by providing that judicial decisions may be examined only on the basis of appeals and recourses[38] according to these codes.[39]

1. Division of Courts and Assignment of Cases

Chairmen of all lower courts are given the duty by Article 14 of the Judicial Power Law to divide their courts on an annual basis into civil and criminal chambers or, if the court is too small for that, cases are to be divided equally among all judges in an equal manner.

Cases are to be allocated "by lot." [40] The procedures for drawing lots are currently set in the internal regulations of each court. That is, there is no unified procedure. Inquiries by the OSCE into how lots are drawn generally found that names of cases are written on folded scraps of paper, which are then drawn by judges every morning. Because the assignment of judges to cases, however, is one area where lawyers and their clients can be extremely sensitive, it would be recommended that transparent and unified procedures be adopted. Moreover, the Judicial Power Law itself anticipates legislation, probably in the form of a sub-statutory act, to regulate the drawing of lots.

2. Standard Procedures and Regulations

Other general duties and rights of judges[41] include the following. Article 23 of the Judicial Power Law prescribes the oath they all take (in each case, before the "judges of

[37] Electoral Code, art. 173.
[38] The Albanian word "rekurs," here translated as "recourse," is the word used in the codes of procedure for appeals to the High Court.
[39] Article 16 adds "or by separate law," but we believe that no such separate laws have been enacted.
[40] Judicial Power Law, article 15.
[41] Many of these provisions also apply to High Court judges. As noted in the text, the High Court is part of the judicial system defined by the Judicial Power Law. The High Court's own organic law states that "the provisions of [the Judicial Power Law] are applicable to "all other problems that do not find resolution in this law." Article 31 of Law no. 8588 dated 15 March 2000 (defined in the text as "the High Court Law").

the instance where they have been assigned"); their retirement age is 65 (article 25). Chapter IV of the Judicial Power Law on the "Status of Judges" (articles 26-39) completes the range of rights and duties. Judges have immunity and may be criminally prosecuted only with the approval of the HCJ. They may not be removed from office except in strictly limited situations;[42] temporary transfers are permitted, but otherwise transfers or promotions are done only with their consent. They may not be party members or engage in political activity; they may hold no electoral mandate nor engage in any other public or private function and activity.[43] They must keep professional secrets and not make statements about on-going proceedings; respect the solemnity of judicial proceedings and wear appropriate clothing, as specified by the Minister of Justice;[44] and maintain dignity at all times. They are permitted to create organizations to defend their rights and interests, but are explicitly forbidden to strike.

3. Performance Evaluation and Discipline

Chapter V of the Judicial Power Law deals with the disciplinary responsibility of judges and lists the types of violations of discipline (article 41) as well as the disciplinary measures that may be taken (article 42). The HCJ Law, which was enacted after the Judicial Power Law and which will be discussed in the section below, details how disciplinary investigations and proceedings are carried out. However, it should be noted that article 44 of the Judicial Power Law begins with the statement that "a disciplinary proceeding…is put into motion by the Minister of Justice," and this has led to the dispute regarding the HCJ Law discussed below.

A final comment to be made about the Judicial Power Law is that its article 45 calls for the HCJ to make an evaluation at least every two years of the professional abilities of lower court judges,[45] based on the quality and volume of their work, speed of adjudication, reputation and publication of legal works. If evaluated "incompetent," a judge may be discharged. This article elaborates on the specific provision of article 147 section 6 of the Constitution that the HCJ may discharge a judge for "professional insufficiency." We are informed that one such evaluation has been performed to date

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Therefore, both laws have to be compared to see what the applicable rule is for High Court judges in any particular case.

[42] These situations, set out in article 27 of the Judicial Power Law, are resignation, reaching retirement age, a final court decision of criminal punishment, a conclusion being reached that they are physically or mentally incapable or professionally insufficient (under articles 45 and 48), disciplinary measures taken "by the competent organ in the cases contemplated by law," or actions in violation of certain articles of Chapter IV of the Judicial Power Law, such as political party membership, having private activity, or violating the secrecy of proceedings.

[43] Article 30/a, added in the year 2000, provides that they may serve in the Ministry of Justice in certain positions, with the period of service being added to their seniority as judges. Although not expressly so stated, the idea seems to be of a temporary secondment.

[44] But, according to article 33 of the Judicial Power Law, only after he receives the opinion of the Chairman of the High Court, the General Prosecutor (presumably, for the part of the article referring to decorum and clothing of prosecutors) and the National Chamber of Lawyers (presumably, for the part of article referring to private lawyers).

[45] Although article 45 refers only to "judges," High Court judges are obviously not covered, because of the different legal structure in their regard.

under the Judicial Power Law and that no judges were dismissed under it; methods of evaluation and the weight to be given to the different factors mentioned in article 45 are still under discussion.

D. The High Court

1. Constitutional Provisions

The High Court is treated differently in many respects from the ordinary courts. The HCJ has no authority over it. While, as noted above, many provisions of the Judicial Power Law also apply to it, it has its own organic law.[46] Under the Constitution, its members are appointed by the President, with the consent of the Assembly. They stay in office for nine years, without the right of re-appointment.[47] The Assembly's approval is required for their criminal prosecution;[48] if a judge is apprehended while committing a crime, the Constitutional Court reviews the case and, unless it consents within 24 hours, the judge has to be released.

The cases when the mandate of a High Court judge ends before the normal term are set out in Article 139 of the Constitution: a final decision of criminal conviction, absence without reason for more than six months, reaching 65, resignation, or a judicial declaration of incapacity to act. In Article 140, certain situations are set out when a High Court may be discharged by the Assembly, by the vote of two thirds of all its members: violation of the Constitution, commission of a crime, physical or mental incapacity, and "acts and conduct that seriously discredit the position and figure of a judge." Such a decision of discharge does not become effective unless examined by the Constitutional Court, which must find that one of those causes exists and then declares the discharge.

The situations described in article 140, and the mechanics, are similar to those for discharge of a judge of the Constitutional Court (article 128) and the Prosecutor General (article 149/2, except that no review by the Constitutional Court is contemplated in that case).[49] In 2000, Parliament received the only case to date involving article 140; it was proposed, by a motion of the then-Minister of Justice, also signed by the then-Prime Minister and other deputies, that three judges of the High Court be dismissed because of their involvement in a complex case from the city of Fier that ultimately resulted in the pre-trial release of a person in whose apartment large quantities of drugs had been found.

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[46] Law no. 8588, dated 15 March 2000, "On the Organisation and Functioning of the High Court of the Republic of Albania" [hereinafter High Court Law].

[47] This was a controversial question during the development of the 1998 Constitution. Previously, judges of the Court of Cassation had seven year terms, with the right of re-appointment. The Venice Commission of the Council of Europe urged a longer but single term, to reduce the possible pressure on judges who were nearing the end of their term and might be seeking to be re-appointed. Their position won out. Note that lower court judges have no term, but are protected against arbitrary removal.

[48] Constitution, article 137/1.

[49] See discussion regarding the dismissal of the Prosecutor General in chapter 3 on the Prosecutor. Compare also the situations listed in article 147/6 of the Constitution for discharge of lower court judges by the HCJ.

On 10 May 2001 (coincidentally, Albania's Law Day), the Assembly failed to reach the two-thirds majority necessary to discharge any of the three, so the matter ended there. But the case illustrates a problem that has also been faced in the recent removal of the Prosecutor General [50] and that will doubtless come up again in various contexts. Neither the Constitution nor the High Court Law provides for the handling and development of the evidence of a violation under Article 140 for the procedural rights of an accused judge, even the basic right to be heard.[51] Although it was not the only reason the case was not approved by two-thirds of the Assembly, the evidence against the three judges had not been developed satisfactorily. It seems important to have clear rules for cases like this, and those rules should be drafted and approved, so that the next such situation will be handled properly and in a way that underscores Albania's commitment to the rule of law.

Other constitutional provisions governing the High Court include those requiring its decisions, along with minority opinions, to be published;[52] giving it initial jurisdiction as well as review jurisdiction, the former when it tries criminal accusations against the President, Prime Minister or other ministers, deputies, and High and Constitutional Court judges;[53] and giving it the right to unify or change judicial practice by examining particular judicial questions in its Joint Colleges.[54] As the remarks of judges who interviews are reported in Part III suggest, the practice, and the unification of practice, by the High Court is an important feature of the development of the Albanian judicial system.

2. The High Court Law

What does the High Court Law add to this rather full constitutional framework? It sets the total membership of the High Court at 17,[55] mandates an experience requirement for them,[56] and requires that each of the civil and criminal colleges of the Court sit in panels of five judges.[57] It elaborates the duties of the Chairman;[58] it describes in detail how the civil and criminal colleges are set up and function,[59] as well as the joint colleges.[60]

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[50] See discussion regarding the dismissal of the Prosecutor General in chapter 3 on the prosecution offices.
[51] In fact, the Constitutional Court ruled in its decision concerning the dismissal of the Prosecutor General that such rules were necessary to guarantee due process. Such rules have yet to be promulgated, but we believe that Parliament is working on this.
[52] Constitution, art.142 sec. 2.
[53] Ibid., sec. 1.
[54] Ibid., sec. 2.
[55] High Court Law, article 1. Note that since article 12 of the Judicial Power Law requires the President to decree the overall number of judges at all levels, this number (17) must always be subtracted from the total to determine the judges of first instance and appeals who may be in office at any time.
[56] Ibid., art. 2. Judges who are candidates for the High Court must have at least 10 years' seniority; "distinguished jurist" candidates must have exercised the profession for at least 15 years.
[57] Ibid., art. 13. Previously, civil and criminal panels consisted of three judges.
[58] Ibid., art. 7.
[59] Ibid., arts. 10-13.
[60] Ibid., arts. 14-17.

The High Court Law is the first law governing the judicial system that mandates a full range of legal assistants (or "clerks") and support personnel for the judges.[61] As noted below in Part III, the lower court judges interviewed felt the lack of such assistance. One hopes that with time and increased financial resources, the system established by the High Court Law will also become widespread in the lower courts.

Finally, the High Court Law deals with the status of High Court judges (including a provision for pay equal to that of a Minister, with the Chairman's pay 20% higher).[62] As noted above in the discussion of the Judicial Power Law, article 31 of the High Court Law provides that the provisions of the Judicial Power Law are applicable to "all other problems" not solved in the High Court Law.

E. The Constitutional Court

As noted above, it was the 1992 amendments to the transitional Constitution that first created a Constitutional Court in Albania.[63] Unlike the United States, where all ordinary courts can decide constitutional issues with the Supreme Court having the last word, Albania chose to follow the path that is common in Europe, where a special court outside the regular judicial system has the competency to decide on the constitutionality of laws.[64]

1. General Constitutional Requirements

Currently, the Constitutional Court of Albania is regulated by the Eighth Part of the Albanian Constitution (articles 124 – 134). Like the High Court, and pursuant to article 7 of the Constitution, the Constitutional Court also has its own organic law ("Constitutional Court Law") further to regulate its organization and functioning, which was enacted in the year 2000.[65] It consists of nine members named by the President with the consent of the Assembly, who have at least 15 years work experience in the profession and who serve for nine years without the right of re-election.[66] There is to be a rotation every three years of one third of the court, so that all terms will not expire at once.[67]

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[61] Ibid., articles 20-21, 26-29. The system is functioning, and all High Court judges have such clerks.

[62] Ibid., articles 22-25. Note that article 25 gives a High Court judge the right, at the end of his nine-year term, to be named a judge in an appellate court, on his request.

[63] Amendments to the Major Constitutional Provisions, *supra* note 3.

[64] There are other models, such as that of France, where a "constitutional council" can decide on the constitutionality of statutes before they are passed by the national legislature, but no court can hold laws unconstitutional afterwards. Albania did not choose this model.

[65] Law no. 8577, dated 10 February 2000, "On the organization and functioning of the Constitutional Court of the Republic of Albania."

[66] Constitution, article 125 sec. 1, 125 sec. 2.

[67] Constitution, article 125 sec. 3. This practice was carried over from the transitional Constitution, which set up the Constitutional Court for the first time and gave its members 12 year terms. With various resignations and new appointments, and also considering the provision of article 179 section 1 of the Constitution that constitutional organs existing when the Constitution became effective serve out their terms under the transitional Constitution, the actual dates of the ending of particular terms are quite scattered and the situation is a little confusing. *See* article 82 of the Constitutional Court Law, which attempts to clarify this matter.

Like High Court judges, Constitutional Court judges have immunity from criminal prosecution, unless the Court itself agrees;[68] their mandate may end before its normal term only in a limited number of circumstances;[69] and the Assembly may discharge them by the vote of two thirds of all its members for the same reasons as a High Court judge.[70] Once again, such a decision of discharge does not become effective unless examined and approved by the Constitutional Court itself.[71] Clearly, the Constitutional Court, like the ordinary courts, needs assurances of its independence, balanced with responsibility and professional qualifications. Thus, it is appropriate that it have similar protections.

The overriding principles governing the operations of the Constitutional Court are set out in article 124 of the Constitution: it "guarantees respect for the Constitution and makes a final interpretation of it," and it is "subject only to the Constitution." Article 131 of the Constitution lists the specific matters the Court is competent to decide on: compatibility of a law with the Constitution or with international agreements, and the compatibility of international agreements with the Constitution prior to their ratification;[72] the compatibility of normative acts of central and local government with the Constitution; conflicts of competencies among parts of the government; the constitutionality of parties and other political organizations and their activity; matters concerned with referenda, the election of deputies, and the election of the President, as well as with removal of the President from office; and final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies have been exhausted.

2. Jurisdictional Questions

One of the on-going legal discussions deals with whether the mention of "interpretation" in article 124 gives the Constitutional Court a separate, free-standing right to interpret the Constitution in the absence of a specific controversy under Article 131. In the Constitutional Court Law, the position is taken that it does, and as the statistics reproduced below in Part IV show, a number of abstract interpretations have been issued.[73]

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[68] Constitution, art. 126. These are similar to those for High Court judges, set out in article 139: a final decision of criminal conviction, absence without reason for more than six months, reaching 70 (for High Court judges, the age is 65); resignation or a judicial declaration of incapacity to act.

[69] Ibid., art. 127.

[70] Ibid., art. 128.

[71] Once again, the absence of due process procedures needs to be addressed. Even the Constitutional Court Law itself, normally quite detailed, in addressing this issue in article 10 adds to the constitutional provisions only a requirement that initiating a discharge requires "the reasoned request of no less than half of all the members of the Assembly."

[72] Under article 122 of the Constitution, ratified international agreements have priority over internal laws that are inconsistent with them.

[73] One of the most widely discussed of these interpretive decisions was issued on 18 January 2002, concerning a question sent by President Rexhep Meidani: "If a decree of the President of the Republic issued in accordance with article 98 of the Constitution is not examined within 10 days, what are the effects of this failure to act by the Assembly? What are the competencies of the President of the Republic in this case, other than in cases provided for by articles 96, 104 and 105 of the Constitution?" *See* Krenar Loloçi,

On the important matter of standing or legitimacy to put the Constitutional Court into action, Article 134 sets out that only the following may initiate a proceeding: the President, the Prime Minister, one-fifth of the deputies (that is, 35), the head of High State Control, any ordinary court acting pursuant to article 145 section 2 of the Constitution,[74] the People's Advocate, local government organs, religious communities, political parties and other organizations, and individuals. The last five categories may only bring cases related to their interests.[75] Article 134 is in contrast to the analogous article of the transitional Constitution, which permitted the Constitutional Court to start proceedings on its own initiative.[76] The issue of what constitutes a case "relate to their interests" remains to be elaborated by the jurisprudence of the Constitutional Court, although so far as the People's Advocate is concerned, that jurisprudence is beginning to develop.[77]

3. Organisation of the Court

The Constitutional Court Law is quite detailed as to the organization of the Court, procedures for bringing different kinds of proceedings, including abstract interpretations, and so forth. One point of interest is article 45, which gives the Court the power to suspend the implementation of a law or act that may entail consequences affecting state, social or individual interests "until the final decision of the Constitutional Court enters into force." Presumably, this means the law or act whose constitutionality the Court is considering, but the article does not say so, and pursuant to this article, in February 2002 the Constitutional Court suspended an internal act of Parliament calling a session to debate the program of a newly-named Prime Minister, while it considered the constitutionality of the procedures of his nomination.[78] It should be noted that article132, section 2, of the Constitution states that "the Constitutional Court has only the right to repeal the acts that it examines."

III. Independence of the Courts

As noted above, the independence of the judicial power is sanctioned by article 145/1 of the Constitution: "Judges are independent and subject only to the Constitution and the laws." This subjection to the Constitution and the laws, of course, means that there must

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Kushtetuta e re dhe nevoja për një mentalitet të ri/The New Albanian Constitution and the Need for a New Mentality (Tirana: Horizont, 2002).

[74] Article 145/2 provides that judges who think that laws involved in their cases may be unconstitutional do not apply them, but suspend the proceedings and send the question to the Constitutional Court.

[75] Constitution, article 134/2. In the case of individuals, of course, there is the requirement of article 131 that they have exhausted their other judicial remedies before bringing due process cases.

[76] Article 25 of Law no. 7561 dated 29 April 1992.

[77] Decision no. 23/2000 spelled out in general terms what "criteria related to his interests" means in the case of the People's Advocate. Decision no. 26/2001 found that he had standing to challenge a decision of the Council of Ministers about property valuation, while decision no. 52/2001 found he did not have standing to challenge court decisions not involving acts of the public administration..

[78] See decision no. 28/2002 dated 21 February, which turned down the case on the merits and lifted the suspension, which had been enacted on the prior day by a Meeting of the Judges of the Constitutional Court, not separately reported.

be ways to assure oversight, that is, to assure responsibility and professional competency. Throughout the above discussion of the laws that govern different parts of the judicial system, as well as the Constitutional structure itself, we have tried to highlight provisions that are designed to do this: for example, the appointment mechanisms, immunity from criminal prosecution, arrest and detention, the disciplinary mechanisms, including appeals to the High Court from HCJ action, protection of tenure, pay and other benefits, and separate, self-administered budgets. While we have also highlighted a few of the problems, inconsistencies or gaps in the existing structure, we can say that it is more than a good start: it a well-developed structure that can be built on, improved and implemented.

IV. STATISTICS ABOUT THE OPERATION OF COURTS

A detailed analysis based on the statistics is outside the scope of this Report and, so far as concerns the ordinary courts, might be somewhat misleading, since the cumulative statistics depend on input from localities all over the country, and uniformity of reporting has not yet been established. As the Albanian judicial system continues to mature, the statistics should become more and more reliable.

A. The Ordinary Courts

The Ministry of Justice statistics show that in 2001 the first instance courts of Albania had almost 40,000 cases to deal with, an average annual caseload of 131 cases per judge ranging from 58 cases per judge in Tropoja to about 243 per judge for the district of Skrapar. Tirana had over 7,500 cases, but since there are 50 judges there, the average per judge was about 151, only slightly above the average. It appears that approximately 33,000 of these cases (over 80%) were completed. The completion rates given differ over districts without relation to the caseload. However, completion statistics can be misleading. They do not tell the type of case or the reason for delay. This is not to deny that delays in cases are common because of witnesses, parties, lawyers, even judges failing to appear.

There were over 800 military cases in the five judicial districts containing judges assigned to such cases, with slightly less than 80% of the cases receiving a final disposition (an average caseload of 58 for each of the 14 military first instance judges, but with wide variation – from 12 per judge in Korça to 178 per judge in Tirana. However, as noted above, military judges supplement their dockets with regular cases).

At the appellate level, the 47 judges on the six appeals courts handled almost 9,000 cases, or an average of over 190 cases per judge per year. According to Ministry statistics, caseload per judge ranged from about 59 in Shkodër to over 240 in Tirana, and the courts of appeal upheld on the average 57% of the civil cases brought to them and 83% of the criminal cases. A high rate of upholding criminal decisions is normal across the spectrum of different countries; for example, in the year 2000, US federal courts upheld

at least in part 82% of the criminal cases coming before them.[79] Military courts of appeal were reported to have dealt with 103 cases.

According to Ministry statistics, the High Court completed slightly fewer than 3,000 cases in 2001 and upheld about 70% of them.[80] Of its 17 judges, ten judges are assigned to two civil panels of five judges each and six judges to a criminal panel; rotations are made every six months. The chairman sits on different panels from time to time.[81] The larger number of judges assigned to the civil college reflects the fact that there were three times as many civil as criminal cases brought to the High Court in 2001.

At all levels, not just the High Court, the civil docket contains many more cases than the criminal docket. For the 29 first instance courts of the judicial districts, Ministry statistics show that there are four times as many civil as criminal cases; for the six appellate courts, more than 3-1/2 times as many. The High Court itself, according to Ministry of Justice, has a backlog of some 8,000 cases from prior years, the vast majority of which are civil cases. (We do not have backlog statistics for the lower courts). There are several reasons for this phenomenon. One is the fact that criminal cases have tighter time deadlines, especially when the defendant is incarcerated before trial. Another is doubtless the large number of cases arising out of lengthy disputes about the ownership of property nationalized under the Communist regime and returned or returnable to prior owners under a series of laws enacted in 1991 and thereafter.

B. The Constitutional Court

The Constitutional Court data includes comparative information for the years 1999 through 2002. As noted above, the Constitutional Court has functioned in Albania since 1992, but 1999 was the first full year of its operations after the adoption of the 1998 Constitution, in which its competencies were somewhat modified. Thus, the last four full years are those most directly comparable.

Two general comments may be made. First, the steadily increasing number of cases brought suggests growing familiarity of citizens in general with the Constitutional Court. (As the third table below shows, the bulk of the increase in caseload comes from individuals). Second, the fact that there were twice as many decided cases (decided after full hearing) in 2001 as compared to 2002 is attributable to the parliamentary elections of the year 2001. Article 131 e) of the Constitution, and the Albanian Electoral Code of 2000 made the Constitutional Court the body that decided on questions related to the election of deputies.[82] Those elections, the first parliamentary ones held under that Code and the new Constitution, gave rise to many contested court cases.

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[79] Bureau of Justice Statistics: *Federal Justice Statistics,* available on Internet at <http://www.ojp.usdoj.gov/bjs/fed.htm#appeals>.

[80] Ministry statistics do not give the percentage of criminal cases upheld as against civil ones, but it is likely to be similar to the breakdown for the six appellate courts.

[81] The High Court has established the practice that when the chairman sits on a panel, whether criminal or civil, he hears all cases of the panel assigned that day.

[82] Law no. 8609 dated 8 May 2000, amended by law no. 8780 dated 3 May 2001.

Constitutional Court – Decisions Rendered, 1999 – 2002

	1999	2000	2001	2002
Total Decisions	67	96	213	240
Type of Decision:				
Decision after Hearing	24	30	93	45
Decision w/o Passing to Hearing	43	66	114	195

Constitutional Court – Disposition of Cases Decided after a Hearing, 1999 – 2002

Disposition of Cases Adjudicated:				
Rejected	16	15	53	21
Accepted	8	14	40	18
Provision Interpreted	0	8	2	3
Refused	0	1	0	3
Quashed	0	0	6	0

Constitutional Court – Subjects Who Brought Complaints[83]

Complainants:	1999	2000	2001	2002
President	0	1	0	1
Prime Minister	1	0	1	3
1/5 of the Deputies	0	0	1	0
Chairman of High State Control	0	0	1	0
Court	4	2	2	3
People's Advocate	0	1	2	0
Organs of Local Government	3	7	9	1

[83] Note by the Constitutional Court: The numbers in this table include the total number of subjects, that is, even those whose cases were concluded without a court hearing.

Religious Communities	0	1	0	0
Pol. parties and other societies or organizations	2	12	28	17
Individuals	14	67	170	212
Con.Ct. Judge[84]	0	1	0	1

V. THE STATE OF THE JUDICIARY

The legal framework described above and the statistical data presented do not draw a complete picture of the judicial system in Albania, nor can mere laws and statistics ever do so. In order to understand better how the courts operate day to day and what the major challenges they face are, we drew on recent interviews of judges and others conducted by the OSCE Field Stations in the course of their regular activities, and we also undertook a set of confidential interviews organized specifically for this project.[85]

While a set of interviews is not an exhaustive survey, we tried to obtain a many-sided impression of the overall judicial system as it currently stands. To this end, the interviews included both district judges and appellate judges, judges serving in northern, in central and in southern regions of the country, and some serving in large commercial centers and others in remote or thinly populated regions.

A. Legal Education

The education and experience of members of the Albanian judiciary is quite varied. Some have served for over twenty years in the judicial ranks, while others graduated from the Law Faculty more recently and, as noted above, some have come from the first three classes graduated from the Magistrates' School.[86]

A number of new judges were assigned to the courts in 1994 after taking a controversial six-month special course and then completing the "correspondence" system at the Law Faculty in Tirana on an accelerated basis (six more months).[87] The 1997 predecessor to the Judicial Power Law[88] would have removed these judges from their position, but after

[84] The two cases reported as 'brought' by Constitutional Court judges, one in the year 2000 and one in 2002, are administrative decisions accepting their respective resignations under article 127/1ç of the Constitution.

[85] Much of the information in this section, if not otherwise cited, comes from these OSCE sources.

[86] Another category of sitting judge consists of third year students at the Magistrates' School performing their internship as required under law no. 8136 dated 31 July 1996 "On the Magistrates' School of the Republic of Albania.". Article 20/a of the Judicial Power Law, added by law no. 8546 in 1999, provides for the President to appoint these students to the courts with the best conditions for the organization of the internship.

[87] Some were also appointed as prosecutors, investigators or to other governmental positions.

[88] Law no. 8265 dated 18 December 1997, "On the Organization of Justice in the Republic of Albania." Article 19 of that law required, among other things, that judges have performed "regular and complete university studies" in law; article 48 contemplated that those who had not would be transferred to other duties, such as assistant judge or employee in the state or judicial administration. As stated in the text, the

additional controversy, the Judicial Power Law repealed the earlier law, while requiring a one-time competency test for all first instance judges with less than ten years' judicial experience.[89] This test took place in 1999 and of the judges who participated in it, four failed but one was re-tested and passed. The three who failed, and over 30 who refused to take the examination, were discharged.[90] Now, nine years after the six-month courses and eight years after many of its graduates were appointed to judicial positions, the judges interviewed generally reported that those graduates who remain as judges have been well integrated into the system.

Many judges interviewed, and others, have expressed concerns about the quality of legal education provided by the nation's law faculties, the major one being the Faculty of Law at the University of Tirana, founded in the mid-1950's.[91] Both lack facilities and basic legal texts and have staffing problems compounded by low salaries.[92] Given this above situation, it is not surprising to find that some appellate judges interviewed complained about the quality of legal reasoning in district court decisions and failures to follow the procedural requirements of the basic codes.

Another problem is the restricted availability of written decisions from district and appellate courts. While the district level judges interviewed generally stated that they look to High Court decisions on similar issues for deciding cases,[93] making legal materials from other districts and appellate courts available would improve uniformity in the application of the law across the country, give guidance to judges coming up against an issue for the first time and in general increase the transparency of the legal system. Efforts to make such decisions available should not be neglected.

B. Judicial Training

One solution to the problems described above is increased judicial training, and the judges interviewed provided constructive insights on how training can be improved. Many of them have received training from Albanian and international bodies, and there is a growing and welcome trend toward coordination of training programs through the Magistrates' School. Many judges said that the training was quite helpful, but they

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law was replaced by the Judicial Power Law a year later, with the provisions cited in this footnote never having been enforced.

[89] Judicial Power Law, art. 48.

[90] The OSCE assisted in the administration of this examination (actually, it took place in several stages) and watched it closely; some of this information comes from that time. Subsequently, Constitutional Court case no. 59, dated 5 November 1999, held that removing judges solely because of they did not pass this examination (whether they failed it or refused to take it at all) was not constitutional; they had to be evaluated in light of all the factors mentioned in article 45 of the Judicial Power Law. After that occurred, their discharge was ratified.

[91] For a more complete discussion of legal education in Albania, see chapter 10 of this report.

[92] See the American Bar Association Central and East European Legal Initiative (CEELI) Judicial Reform Project for Albania, December 2001 (available through CEELI's offices in Tirana or its main offices in Washington, D.C.) See also the Report on the Law Faculties in the OSCE Legal Sector Report of which this Report on the Courts is a part.

[93] We were also told that High Court remand decisions explaining the way cases should be decided, both procedurally and substantively, have also been helpful.

differed about what its focus should be. Many enjoyed the opportunity to travel to other countries, meet foreign judges and lawyers and learn about the approaches of different legal systems. Other emphasized that training should be directly relevant to their work with Albanian law and should be guided either by Albanian jurists or at least by those well-trained in Albanian jurisprudence. The international community should take cognizance of the latter and ensure stronger links with Albanian law during their seminars, even those abroad, as well as involving experienced Albanian judges, lawyers and academics to a greater degree.

Judges also told us that they are taking the opportunity to receive short continuing education training at the Magistrates' School in Tirana. This kind of training is mandated by the law that established the school,[94] but it took a few years for the courses to become well established. While the courses were welcomed and highly praised, some judges who participated thought they should be longer, that more qualified instructors should lead them and that additional subjects should be covered. In any event, because of the importance of a highly qualified judiciary, based on our interviews we conclude that continuing education for sitting judges should receive emphasis, should be more available to all judges who seek it, and should take into account the input of sitting judges about topics to be covered in an expanded program.

C. Court Staffing, Resources and Security

As the Ministry of Justice statistics show, the *burden of caseload per judge is not evenly distributed* across the districts. Some judges, particularly in smaller districts, complain that there are not enough judges to handle the docket, although a change in the procedural code reducing the number of cases requiring a three-judge panel has eased the pressure on the docket.[95] An unsolved difficulty that remains for smaller district courts occurs when an appellate court remands a case to it for re-adjudication. Since the procedural rules bar the judges who heard the case the first time from doing so again, it is often necessary to import judges from other districts, causing scheduling delays.

Insufficient personal and technical resources, many judges reported, are major obstacles to the ability of the lower courts to make speedy and sound rulings. Although resources vary, many courts suffer from poor facilities, particularly in remote areas. Judges complain of having to work in inadequate buildings, sharing their chambers with secretaries and often conducting hearings in their offices because of a shortage of hearing rooms.

On the positive side, there are *two model courts* with adequate space and facilities, one being an annex to the Tirana District Court that opened in 2001, financed by the Open Society Foundation of Albania the Constitutional and Legislative Policy Institute

[94] See articles 23 and 24 of law no. 8136 dated 31 July, 1996 "On the Magistrates' School of the Republic of Albania."

[95] See article 35 of the Code of Civil Procedure, as amended by law no. 8812 dated 17 May 2001. Three judge panels are now required in civil cases only when the value of the lawsuit is more than 10,000,000 lek or if a finding is sought that someone has incompetent to act or has died or disappeared.

(COLPI, both part of the Soros family of foundations) and one in the small northern city of Burrel, which opened in December 2002 and was financed by the DANIDA project of the Danish government. It can also be reported that computers are now used in most of the courts, at least for basic word processing. Some courts are reported to have computerized their dockets and to include computerized versions of Albanian legislation.[96] The High Court has constructed its own internal computer network, but some other courts lack a sufficient number of modern computers, Internet connections, and even printers, reducing the efficiency of the computers they do have. Broader networking of the computers of all the courts, both internally and externally, would improve communication among the courts at all levels and would make decisions of other courts readily available; this is a project of importance.

The *support staff* of a district or even an appellate court tends to be modest, although large courts in urban centers may have bigger staffs. The usual staff consists of one legal secretary per judge, a chancellor, an archivist, and a few additional employees such as a driver, cleaning person, and messenger. Occasionally, judges have assistants to aid in their work, for example the third year Magistrates' School students performing their internship; none of those we interviewed had research clerks at their disposal. (As noted above, all High Court judges do have clerks). Some of the judges interviewed felt the support staff of their courts was too small, but others found it adequate. The National Judicial Conference in December 2003 made a strong statement that support staff salaries must be increased, just as judicial salaries had recently been improved.

The *supply of legal materials* is basic and often irregular in its delivery. All courts receive, for free, copies of the Official Journal,[97] which contains laws, other normative acts[98] and Constitutional Court decisions. Some of the judges interviewed complained that they are not given enough copies, that the delivery is often late, and that they have not received updated versions of the basic codes. Nonetheless, judges all report improvements in recent years. A more problematic matter is that often judges are the only actors in a particular case who have access to updated materials – prosecutors report less regular access to recent laws and decisions and lawyers in private practice along with notaries have very limited access, either because of distributions problems or because of a lack of effort on their part. Other judges mentioned that it would be helpful to have access to international and other juridical legal materials to broaden their perspective on complicated and novel issues in the law; no such materials are currently received by them.

[96] A USAID funded program for judicial training has worked on such a program; there is also a commercially available program; and one will be developed by the World Bank.

[97] Since the year 2000, the Official Journal has been published by the State Publications Office under the Ministry of Justice. Previously, it was published by Parliament. A journal of this sort containing legal enactments (during the Communist regime, under the name "Official Gazette") has been published in Albania on a fairly regular basis since April 1920.

[98] It has been a continuing problem for the State Publishing Office (and Parliament before it) to get copies of the normative acts of the Council of Ministers and other ministries, but the situation seems to be improving.

Though Official Journals are now distributed more regularly than before, and High Court decisions are distributed in a special publication, it should be noted that the future of this High Court publication is not secure due to the fact that it is funded by extra-budgetary means. Appellate and district court decisions are not published, either by regular or by special courts.

So far as *compensation and benefits* are concerned, there are few grievances about High Court and Constitutional Court judge salaries, but across the board, lower court judges frequently complain that their salary is too low. In first instance courts, monthly salaries range from 50,490 lek to 65,850 lek, while in the appellate courts, from 65,850 to 83,400 lek.[99] The debate goes on between those who stress the economic difficulties of the state budget and those who would raise judicial salaries to reduce the incentive for corruption and to increase the standing of the judiciary in the eyes of the public. The judges we interviewed suggested that monthly salaries of 90,000 to 100,000 lek a month (approximately $680 to $750) would be appropriate.

Judicial security is a problem for district and appellate courts across the country. It was a repeated complaint of the judges interviewed that they do not feel secure even in the courthouse; all testified to inadequate security outside it. This is despite the guarantees of the Judicial Power Law.[100] Many judges have reported being threatened over the phone and in person, and there are several known instances of actual physical assault.[101] Increased outlays for security are certainly under consideration; the legal provisions about courts for serious crimes will doubtless include special protections for those courts and their judges, but again, pressure from the State Budget make changes in this direction difficult. Other, less expensive changes might also be considered, such as revising procedural rules to facilitate keeping dangerous persons in custody.

D. Inspections

The judges interviewed all reported that the Inspectors of the High Council of Justice and the Ministry of Justice were performing their regular inspections as mandated by law, and that both bodies of inspectors performed investigations in responses to complaints. None

[99] Judicial salaries are set pursuant to law no. 7800 dated 2 March 1994, as amended, which provides for the Council of Ministers the index the salaries when other state salaries change. The current such decision of the Council of Ministers is no. 299 dated 27 June 2002. Converting these salaries at the exchange rate in effect at the end of January 2003 (132 lek/dollar), the range at courts of first instance is from about US$380 to US$495, with the low end representing ordinary judges in courts outside Tirana and the high end, the Chairman of the Tirana District Court. For appellate courts, the range is from US$495 (for ordinary appellate judges) to US$630 (for the Chairmen). (Law no. 7988 dated 13 September 1995 provides that military appellate judges receive the same salary as regular appellate judges(..

[100] See articles 36 of the Judicial Power Law, which provides for a continuous police force at the courts "to guarantee order and security," and article 38, giving judges the right to special protection for themselves, their family and property. Article 38/a, added in the year 2000 by law no. 8656, acknowledges special additional protection for the family and property of judges of the serious crimes courts, to be further elaborated by law. The problem remains as to how to make such articles effective.

[101] One of the most serious of these occurred in December 2002, when for unknown reasons an explosive was placed at the residence of Shkodër district court judge Besnik Hoxha. Fortunately, there were no injuries when it went off.

of the judges questioned had any complaints about the inspectors. All stated that to their knowledge the inspectors conducted themselves fairly and in accordance with the law. This is good to hear, but as noted above in this Report and in the Ministry of Justice Report included in the OSCE Legal Sector Report, a better definition and clearer delineation of the roles of these two inspectorates in their respective laws would be helpful too.

IV. CONCLUSIONS AND RECOMMENDATIONS

We began this report by noting how important it is to promote the independence of judges while at the same time seeking to assure their accountability, responsibility and professional qualifications. This report has detailed many ways in which the existing legal and constitutional structure as well as additional factors such as special training aim at fostering and promoting these values. The judges who were interviewed occasionally reported instances of undue pressure from other branches of the government to make particular decisions, especially in cases when the State was a party, while all expressed their determination to resist such pressure. Continued emphasis by the international community on constructive programs in these key areas, along the lines discussed above, will support and strengthen their determination as the Albanian judiciary continues to mature and the problems of corruption are tackled.

It is important for courts to be more transparent in their activities so that they are no longer such a target for *accusations of corruption*. For example, a more transparent system should be adopted for *assigning cases*. A the moment there is no special law, nor a unified sub-statutory act, specifying how lots for assigning court cases are drawn. It is not clear that this drawing functions in the same manner everywhere in the country. Most importantly, however, the people do not have confidence that the system is not manipulated to ensure that cases are assigned to judges who will issue opinions favourable to one of the parties. A system similar to that used so effectively in assigning judges to the Court for Serious Crimes could rather easily be implemented for assigning cases to courts throughout the country.

Moreover, the courts do not regularly publish decisions and those decisions that are published are not always widely available. Moreover, a relatively small number of decisions – unifying decisions of the High Court and Constitutional Court decisions – is required to be published. Publication would make it less likely that courts will knowingly reach unfair decisions, as the public scrutiny that arises from publication would limit the arbitrary behaviour of courts. Moreover, not publishing decisions also encourages courts to provide decisions which may be fair, but without explaining their reasoning in an open manner. In other words, the broader publication of court decisions would almost certainly result in higher quality decisions. Finally, the publication of court decisions is particularly important in a country with many new laws and few commentaries. They provide an additional resource for judges contemplating important legal cases that come before them. If court decisions cannot immediately be published on a large scale due to financial constraints, at least there should be a distribution system to allow courts throughout the country to see what other courts have decided.

As stated in section IV above, there are no uniform practices for reporting from district courts around the country. In the interest of guaranteeing citizens in all parts of the country high quality legal institutions, it would be advisable to institute basic standards of reporting, which should be the same everywhere. Naturally such basic standards would not prevent additional reporting which would allow for local differences.

In addition to such technical matters, it would be recommended that a redistribution of judges in Albania be looked into, so that judges have roughly even workloads. Moreover, this must be done in such a way that courts have relatively even distributions of experienced and new judges. This could be difficult because few new judges graduating from the Magistrates' School want to leave Tirana and the major population centres. It should be noted, however, that in some cases inequalities in workload will have to be accepted in order to provide reasonable access to justice to people in all parts of the country.

Because many judges have complained about difficulties in securing witness testimony, it would also be recommended that the Ministry of Justice study the possibility of providing stronger legislation to enable courts to require testimony. This would necessitate serious consequences for failure to appear before a court. It may also require, however, the provision of assistance to those for whom such testimony is very difficult logistically. Among the witnesses that are most problematic is the Albanian state – especially when it is not simply a witness but a defendant. This also requires urgent action, perhaps in the form of requiring default judgements against parties that do not appear within a specified period of time.

THE HIGH COUNCIL OF JUSTICE

KEY RECOMMENDATIONS

1. ***Provide clear guidelines for the roles of separate inspectorates in the Ministry of Justice and High Council of Justice.***

2. ***Adopt legal provisions on the transfer and promotion of judges.***

I. INTRODUCTION

An independent judiciary is one of the foundations of a democratic state based on the rule of law. No judicial body, however, should operate free from any accountability , and all judges should be held to strict standards of competence, fairness and honesty. In achieving these goals a democratic system must ensure that undue pressure from other branches of government does not undermine the judiciary's ability to render decisions according to the law.

The High Council of Justice (HCJ) is the primary governing organ attempting to strike that balance in the Albanian legal system. The Albanian Constitution, primarily through article 147, establishes this body. Legislation completed in 2002 provided the legal framework to regulate the functioning of the already-existing body. The HCJ is not a court, but a mixed executive-judicial body that supervises and regulates the judges of the first level and the appellate level. Similar organs exist in a number of Western European countries, such as Italy and Spain. Its functions include the appointment of judges, the transfer of judges, the periodic evaluation of judges, the investigation of complaints against judges, and the discipline and discharge of judges.

This report will analyse the constitutional and organic legal frameworks establishing the structure of the HCJ. It will find that, while the structure of the HCJ goes a long way toward creating independent oversight of the judiciary, there are serious concerns about administrative domination by the executive branch.

II. CONSTITUTIONAL PROVISIONS

From April 1992, when it was first created by an amendment to the transitional Constitution, until 9 May 2002, the HCJ operated only on the basis of the Constitution (or transitional Constitution) and some internal rules. Its actions in removing or transferring judges throughout this period, especially in the early part of the period, were often criticised for being too hasty.

The current Constitution establishes the High Council in part 9, with the structure primarily delineated in article 147. There the Constitution stipulates that the HCJ's

fifteen members are to consist of the President of the Republic, the President of the High Court, the Minister of Justice, three members elected by the Assembly and nine judges of all levels elected by the National Judicial Conference. The term of service is five years, and elected members do not have the right to seek immediate re-election. The Constitutional text gives no guidance on selection criteria for the Assembly's three members or filling vacancies. The President of the Republic serves as the Chair of the HCJ, and the HCJ members elect, on the proposal of the President, a Vice-Chair from its ranks to organize the activities and chair in the President's absence.

Article 147 further outlines some primary duties of the HCJ, namely transferring and disciplining judges and, for certain offenses, removing them from their posts. The Article does not outline any procedures for performing these duties, though it provides the reasons the HCJ may remove judges: commission of a crime, mental or physical incapacity, acts and behavior that seriously discredit judicial integrity and reputation, or professional insufficiency. A removal can be appealed to the High Court. Article 137 gives the HCJ further discretion in judicial discipline, for the prosecution of any judge below the level of the High Court requires the HCJ's approval, and if the HCJ does not consent to prosecution within 24 hours of notification of the charges, the law enforcement organ must release the judge.

In reliance on Article 136, the HCJ serves a crucial role in appointing judges. For positions below the High Court level, the HCJ proposes nominees for the President to appoint, with the conditions and procedures for such selection to be defined by law. The HCJ also elects three members to serve on the Central Election Commission, in accordance with Article 154.

III. ORGANIC LAW OF THE HIGH COUNCIL OF JUSTICE

The High Council of Justice is provided for by the Law No. 8811, dated 17.5.2001, on the Organization and Functioning of the High Council of Justice [HCJ Law].[102] Article 2 outlines the specific duties of the HCJ:

> a) It proposes to the President of the Republic the appointment of judges of the courts of the first level and the courts of appeal.
> b) It decides on the discharge of judges of the courts of the first level and the courts of appeal.
> c) It decides on the transfer of judges.
> ç) It decides on the taking of disciplinary measures against judges.
> d) It sees to the qualification of judges.
> dh) It decides on the criteria for the evaluation of judges, it oversees and guarantees the process of evaluation and it examines complaints of judges about their evaluation.
> e) It appoints and discharges the chairmen and vice chairmen of the courts of the first level and the courts of appeal.
> ë) It appoints and discharges the inspectors of the Inspectorate of the High Council of Justice.
> f) It performs other duties specified by law.

The duties of sections (a) through (ç) come directly from article 147 of the Constitution, whereas (d) through (ë) are not explicitly outlined in the Constitution, but may reasonably

[102] Law No. 8811, dated 17 May 2001 [hereinafter HCJ Law].

be implied as necessary to execute effectively the duty under article 136 of proposing judges for the President to appoint and the under article 147 of disciplining judges or removing them on grounds of professional insufficiency.

A. Structure and Operations

1. Statutory Requirements for Membership

The HCJ Law fills in constitutional gaps on the HCJ's form and functioning. Article 4 stipulates that judges elected to the HCJ must have served for at least ten years and those elected by the Assembly must be jurists with at least 15 years experience. Article 5 also excludes prosecutors, "members of the management or executive organs" of political parties or those currently practicing law at the appellate or district court level from serving on the HCJ. In theory, then, the Assembly could still elect one of its members to serve on the HCJ, provided he or she were not a party official. Article 7 outlines conditions ending a member's mandate on the HCJ, including prolonged absence, conviction of a criminal offence, judicially declared incompetence or working in one of the excluded capacities. If a judge serving on the HCJ receives a disciplinary measure by the HCJ for his activities on the bench, he loses his mandate only by a majority vote of the HCJ. Articles 9 and 10 provide for verifying the qualification and legal compatibility of new members through the creation of a three-member investigative commission, which, if necessary, provides a report justifying the disqualification of the new appointee.

2. Operations

Chapter 3 of the HCJ Law outlines the institution's regular operations, mandating a meeting at least every two months as scheduled by the Chairman or upon the request of at least five members, the Vice Chairman or the Minister of Justice.[103] An announcement with an agenda and relevant materials attached is to be issued to all members no later than 48 hours before a meeting,[104] unless it is a meeting determining whether a judge accused of a crime should be prosecuted, where the HCJ only has 24 hours to act.[105] Article 22 stipulates that the detailed agenda set by the Chairman ensures that each member is aware of each meeting's proceedings, and new items can only be added at the meeting with a two-thirds vote of all the members.

A quorum consists of eight of the fifteen members and members may not abstain from voting unless barred by conflicts of interest as stipulated by Article 37 of the Code of Administrative Procedure[106]. The HCJ makes its decisions by a system of open voting, except in cases where the question at hand relates to one of its members. There the HCJ has the option of voting by secret ballot should a majority of members decide in such a manner.[107] According to Article 25, those legally barred from voting are also barred from

[103] HCJ Law, art. 19.
[104] Ibid., art. 20.
[105] Ibid., art. 21.
[106] Ibid., art. 24.
[107] Voting on whether conduct a secret ballot may undermine anonymity, for one might infer that those voting for a secret ballot are more likely to vote against the member whose case is at issue.

debate on the question. Whether open or secret voting, in accordance with Article 26 of the HCJ Law, the HCJ makes decisions by majority vote of the members present, with ties acquitting the accused in a disciplinary procedure and accepting the nomination of those proposed for appointment.

The HCJ's proceedings are fully recorded in minutes taken by the Vice Chairman and inspected by the members. Although results and manner of votes are recorded, it does not appear that individuals' votes are recorded, for the member has the option to note in the minutes that he voted against a proposal. Further, while the minutes are deposited with the HCJ, their availability to the public is not explicit in the legislation.[108]

B. Appointment, Transfer and Discipline of Judges

1. Judicial Appointments and Transfer

Chapter 4 ("Appointments and Transfers of Judges") stipulates the procedures by which the HCJ proposes judicial candidates to the President. After setting requirements for advertising vacancies, the Law mandates a special commission headed by the HCJ's Vice Chairman to examine whether applicants for the vacancies meet the required legal qualifications and to hold professional testing of all candidates. The law leaves determination of the commission's rules of functioning and verification, as well as the testing procedures to the HCJ,[109] which is consistent with Article 22 of the Judicial Powers Law. All candidates meeting the legal requirements for the competition then have their data, qualities, abilities and testing results presented to the HCJ, which proposes individuals for appointment by majority vote.[110]

Chapter 4 is flawed because, despite its title, it fails to address the transfer of judges. It is not clear why transfer is paired with appointment, for it appears most transfers would come under disciplinary or general docket management procedures. That no part of the law discusses procedures for transferring judges is an omission worth addressing. There are also no special provisions or criteria for dealing with the promotion of judges, nor for the appointment of Court Chairs and Vice-Chairs, as delegated to it in Article 2 of the HCJ Law.

2. Overlap with Ministry of Justice in the Evaluation of Judicial Competence

The Law gives the HCJ Inspectorate a mandate to collect information about the professional ability of judges and craft reports based on that information, as provided for by law. The HCJ evaluates the reports after the judges have an opportunity to review the documents and submit a written response.[111] The HCJ Law provides no other instructions besides this rough outline, but Articles 45-46 of the Judicial Powers law provide more detailed stipulations of this duty of the Inspectorate.

[108] HCJ Law, art. 27.
[109] Ibid., art. 29.
[110] Ibid., art. 30.
[111] Ibid, art. 16 (d), (dh).

There is, however, also language in the HCJ Law giving the Ministry of Justice the ability to conduct its own evaluations. As noted before, under the heading "Disciplinary Proceeding," Article 31, section 2 says the Minister of Justice "carries out inspections according to special thematic of territorial programs, drawn up on his own initiative or in implementation of duties set by the High Council of Justice." When put in context of the rest of Article 31, which discusses disciplinary hearings, this is in conflict with Article 17 of the Judicial Power Law, which says the "Minister of Justice puts the specialists of the Ministry of Justice at the disposition of the groups of inspection to assist in the performance of the above duties, except for those that have to do with the professional capabilities of the judges."

This overlap is quite confusing and there is no strong textual indication about which body has more power, and discussions with both judges and counselors for the Executive give conflicting reports about who is taking the lead. It appears that the HCJ's inspectorate is performing their evaluations, but the Ministry of Justice maintains the right to conduct its own evaluations. The jurisdictional overlap creates problems of clarity and concerns about the independence of judicial oversight. It is a source of frequent complaints from judges.

3. Discipline of Judges and Inspections

The HCJ is charged with disciplining judges for misconduct. The HCJ Law gives responsibility to two organs for investigating and presenting findings in response to complaints by individuals or other legal persons. The law does not, however, neatly divide the duties between the two bodies, creating the possibility for territorial disputes on paper and, in practice, raising concerns about giving too much power to the Ministry of Justice.

a. Functions of the High Council of Justice Inspectorate

Chapter 3 first establishes the HCJ's Inspectorate. The office's Chief and inspectors are named by the HCJ on the proposal of the Vice Chairman, and all candidates must meet the qualifications of becoming a judge in the Courts of Appeal or, barring that, served on the bench for at least five years.[112] The inspectors are appointed for five-year terms and are directed by the Vice Chairman of the HCJ, though the Chief Inspector organizes the day-to-day activity.[113]

Although the Inspectorate has other functions, Article 16 explains the Inspectorate's duties relating to complaint procedures:

> a) It verifies or sends to the Minister of Justice for handling complaints of citizens and other subjects that are directed to the High Council of Justice about actions of judges considered to be in conflict with the proper fulfillment of duty. . . . It verifies the complaints of citizens and other subjects that are

[112] Ibid, Art.14.
[113] Ibid, Art.15

directed to the Minister of Justice and that are judged by him to be followed up by the Inspectorate of the High Council of Justice.

b) The verification is performed only after the judge has first been notified. The Inspectorate verifies whether the complaints contain facts and circumstances that might constitute a legal cause for a disciplinary proceeding or for a moral and professional evaluation of the judges.

c) If legal reasons for a disciplinary proceeding are observed, the explanatory supporting statement and the respective documentation are sent immediately to the Minster of Justice, through the Vice Chairman of the High Council of Justice, for judgment about a disciplinary proceeding.

ç) It performs verifications about a disciplinary proceeding proposed by the Minister of Justice in cases when it is considered appropriate and requested by the High Council of Justice. The report prepared by the Inspectorate is submitted to a meeting of the Council by the Vice Chairman.

On the other hand, Article 31 ("Disciplinary Proceeding") states:

1. The Minister of Justice carries out the inspection of judges of the first level and judges of appeal . . . and he also realizes and decides on a disciplinary proceeding of [first level and appeals] judges.

2. The Minister of Justice carries out inspections according to special thematic or territorial programs, drawn up on his own initiative or in implementation of duties set by the High Council of Justice, as a continuation of the process of verification of the complaints of citizens and juridical subjects, as well as according to data of which he is made aware on his own initiative or through the Inspectorate of the High Council of Justice.

3. At the conclusion of the inspection and on the basis of the results of the inspection, the Minister of Justice proposes a disciplinary proceeding of judges before the High Council of Justice and deposits the respective documentation with the High Council of Justice.

4. A request for a disciplinary proceeding, in addition to the documentation with the respective data that show the violations committed by the judge, also includes a proposal for the type of disciplinary measure that it is considered should be taken with respect to the judge proceeded against.

5. The Inspectorate of the High Council of Justice, when it is charged with duties of verification, is obligated to carry out the procedures of verification within 15 days and to deposit the respective report.

6. The Minister of Justice informs the High Council of Justice of the cases and reasons for not beginning a disciplinary proceeding of a judge under the conditions of letter "a," point 1, of article 16 of this law.

b. Comparison of HCJ and Ministry of Justice Inspectorates in Verification

Reconciling the duties of the HCJ and the Ministry of Justice in light of these legislative complexities is quite difficult, but after close analysis of the texts and discussion with officials working closely with the system, two set tracks of discipline emerge. The first is discipline in response to a complaint. It appears that the HCJ Inspectors receive complaints and either verify and send them on to the Minister of Justice or simply send them directly to the Minister of Justice. In most cases, however, people send their complaints directly to the Ministry of Justice. After the complaint goes to the Minister, he has the power to continue verification and then make a judgment on whether there will be a disciplinary hearing. Presumably inspectors at the Ministry are involved in this process. If the Minister proposes a disciplinary hearing and posture, the HCJ Inspectors have the power to "perform verifications" of the disciplinary hearing at HCJ's request.

What this verification consists of is not clear, though it is possible that the above-mentioned language about collecting and processing data in sections 16(d) and (dh) of the

law could be referring to such duties rather than general inspections.[114] The posture of this ambiguous verification is quite important. If it is a true inspection, it appears to give the HCJ some check on recommendations for judicial discipline hearings, but leaves the power to propose such hearings in the hands of the Minister of Justice. If the verification is simple data preparation, all of the decision-making power on holding disciplinary hearings remains in the hands of the Minister. Discussions in 2002 with those close to the HCJ indicate that after the Minister's decision, the HCJ usually decides whether to agree with the punishment recommended by the Minister or to change it. As a result, it does not appear that the HCJ Inspectorate plays a very important role after the Minister's recommendation. With the appointment of a permanent Vice Chair of the HCJ, however, it appears that this institution is becoming more active, which is likely to lead to a more significant role for its inspectors.

c. Comparison of HCJ and Ministry of Justice Inspectorates in Disciplinary Matters

The second track is discipline in response to poor performance evaluations. The text of Article 31 presumes a broad power for the Ministry of Justice to conduct inspections and initiate disciplinary proceedings based on those inspections, though the HCJ Inspectors seems to have the same ambiguous power to verify the basis for a hearing. Article 31, however, also contemplates regular inspections from the HCJ Inspectors, leaving the overlapping duties discussed in the previous section. Regardless of who is performing the general inspections, as in the case with complaints, the Minister of Justice appears to have the power to propose disciplinary hearings, though the HCJ Inspectorate may exercise its vague verification duties at the request of the HCJ.

The Law's *procedural redundancies* in terms of inspections and the vague nature of verification duties in response to complaints and requests for disciplinary hearings are problematic, and some with the Albanian government have voiced concern over the dual inspectorate system as a breach of separation of powers. Overall, it also appears that the legislation gives a central role to the Minister of Justice in deciding whether the HCJ conducts disciplinary hearings. While this arrangement arguably may be a helpful division of powers between the executive and the judiciary, it also poses considerable worries about the status of an independent judiciary. While not controlling the outcome of the disciplinary hearings, the Minister, a member of the executive branch, would have paramount control over which judges are candidates for discipline. This is in contravention with the separation of powers and *de facto* places many functions of the purportedly independent HCJ into the hands of the Minister of Justice.

As currently drafted, the law provides a number of rights for judges brought to disciplinary hearings. Verification of complaints and the ensuing inspection can only

[114] Limiting the reading of 16(d) and (dh) to simple verification rather than general inspection, however, could contradict of Article 45 of the Judicial Power Law, which seems to place the HCJ Inspectorate as the evaluating body as well as Article 31 of the HCJ Law, which appears to contemplate the ability of the HCJ Inspectorate to collect its own data.

proceed after the judge is notified of a complaint.[115] At the conclusion of the investigation, either the Ministry of Justice or the HCJ's Inspectorate must ask the judge to present his claims in writing for the final documentation,[116] and he has a right to familiarize himself with the documentation.[117]

d. Procedures in Disciplinary Hearings

Article 33 states that, in accordance with the Code of Administrative Procedures, the HCJ must call the judge in question to any disciplinary hearing, where he has the right to be represented by an attorney. At the hearing, either the Minister of Justice or the Vice Chairman first explains the reasons for proceeding, followed by an opportunity for the accused judge to speak and field questions from the HCJ.[118] The HCJ then confers and votes outside the presence of the accused. Beyond this, the Law leaves any other hearing procedures undefined despite Article 33.3's assertion that a "detailed regulation for the examination of a disciplinary proceeding is set in the respective regulations of the High Council of Justice." Whether this phrase refers to the not-so-detailed regulations outlined in the Chapter, rules omitted from the Law or the HCJ's ability to promulgate its own procedures, or an oblique reference to the Code of Administrative Procedures is unclear, but the lack of guidance is troubling.

Article 34 provides the accused the ability to appeal to the High Court any disciplinary measure adopted by HCJ, though any member of the High Court who sat on the HCJ for the ruling may not participate in deliberations on the appeal. This Article conflicts with Article 46 of the Judicial Powers Law, which allows for appeal only on disciplinary hearings resulting in dismissal. How the High Court is to evaluate an appeal is also unclear, particularly in light of the lack of outline procedures. While the HCJ's treatment of the judge is at least partially governed by the Code of Administrative Procedure, there is no explicit guidance in the HCJ Law on burden of proof, the right to confront accusers or the admissibility standards for any other evidence. In the wake of the High Court's recent ruling the Rakipi case, it will be interesting to see whether it measures any of the HCJ's procedures against a general due process standard or simply looks for a failure to abide to whatever procedures the HCJ adopts.

The investigation rules also do not stipulate whether the documents accessible to the judge during the process identify the person filing the complaint. Balancing judges' rights to know their accuser (or possibly confront them during the hearing) against the fear that judges could later punish complainants with cases still pending or likely to appear before the judge again is a difficult matter, but one the legislation ought to address.

[115] Ibid, Art.32.
[116] Ibid, Art.31.
[117] Ibid, Art.32.
[118] Until recently, delays and absences on the part of the accused judges had slowed down the proceedings almost to a standstill. Recent reforms by the HCJ allowing for the procedures to continue in the presence of the accused judge's lawyer after three consecutive absences by the judge has expedited matters without greatly sacrificing fairness.

4. Prosecution of Judges

Article 21 specifically stipulates that the HCJ must convene for a special meeting when a judge is detained or arrested to determine within 24 hours whether further criminal proceedings against the judge should continue. There are not other specific regulations, though the requirements of a quorum and majority voting would still pertain. The Article states that the HCJ is not to hold any special meetings in any other case.

C. Court Administration

Other powers delegated to the HCJ but not included in the HCJ Law are consulting the President and Ministry of Justice on the creation of territorial judicial districts for the courts of first instance and the appeals court, as well as advising on the number of judges to be placed in each district. The HCJ receives these powers from Articles 11 and 12, respectively, of the Judicial Power Law.

IV. CONCLUSIONS AND RECOMMENDATIONS

With its powers of judicial appointment, evaluation and discipline, the High Council of Justice stands a crucial institution for ensuring the integrity of the Albanian legal system. There are many virtues to the HCJ as it is currently structured. Organizationally, in many respects it is a model of balance. While there are some legal gaps, there are no glaring clauses allowing unfair procedural manipulations in terms of setting and voting on the agenda. While members of the executive branch have key administrative roles and parliamentary appointees also sit on the HCJ, judges constitute the majority of the membership. As a result, an independent judiciary has in many ways the largest say in the discipline of its members, but that the role of the Chairman and the Ministry of Justice check that power. Interviews with judges also indicate little dissatisfaction with the activities and the procedural fairness of the HCJ, though that satisfaction could be interpreted to indicate inaction on the part of the HCJ.

On the other hand, there is definite room for improvement. There is no legislative guidance for the transfer or judges and no criteria for their promotion. The redundancy in creating inspectorates for both the HCJ and the Ministry of Justice also creates administrative confusion. Without clear guidelines delineating the competencies of each inspectorate, there is a risk to independent nature of the HCJ. Of even greater concern are the broad powers the Minister of Justice possesses in vetting complaints and recommending disciplinary proceedings against judges. Although the HCJ does not have to adopt the recommendations of the Minister, the Minister's ability to sort and process complaints before they reach the HCJ greatly reduces the HCJ's independent oversight of the judiciary and violates principles of separation of powers.

Consequently, giving the power to process complaints to the HCJ's Inspectorate as well as limiting and more explicitly defining, the role of the Ministry of Justice's Inspectorate would eliminate this imbalance. Such alteration could create worries that the judiciary, with nine of the fifteen members, would unduly dominate its own oversight, but this

might be offset by altering the legal framework to add one more HCJ member from the executive or legislative branch, or designating that the role of Vice-Chair, while elected by the HCJ, cannot be held by a member of the judiciary.

The HCJ already has strong legal foundations for the promotion of a fair, talented and independent judiciary. Adopting these recommendations can improve on its positive framework and help build and protect the rule of law in Albania.

PROSECUTION OFFICES

KEY RECOMMENDATIONS

1. ***There should be specialised prosecutors at all levels of prosecution, with prosecution offices organised according to these specialisations.***
2. ***District prosecutors should remain involved in prosecutions when cases are appealed.***
3. ***Prosecutors should be trained in courtroom presentation skills and evaluated on their courtroom performance.***
4. ***Rules of assigning cases to prosecutors should be standardised and followed strictly.***

I. INTRODUCTION

Prosecutors have received somewhat less attention than judges from the international community although they occupy a pivotal position in the judicial system. Advances against corruption, organized crime, and general criminality depend vitally on the competence as well as the integrity of prosecutors whose conduct and expertise, together with those of the judicial police, are fundamental to an effective judicial system.

II. STRUCTURE OF THE PROSECUTION OFFICE

A. Organisation into Directorates

Article 3 of the Prosecutor Law specifies the overall structure of the Office of the Prosecutor. There is an Office of the Prosecutor General, a Council, and prosecutor offices attached to the judicial system. Every first level court and court of appeal has a prosecutor office attached to it.[119] Each prosecutor office prosecutes cases within the jurisdiction of the court to which it is attached.[120] There are in total 29 first level prosecutor offices, 6 second level prosecutor offices, and one appeal level prosecutor office dealing with military prosecutions. The total number of prosecutors is approximately 296, and there are approximately 245 designated judicial police officers attached to the prosecutor offices.

Prosecutors from the Office of the Prosecutor General are attached to the High Court and the law specifically directs that it is these prosecutors who conduct prosecutions against

[119] Law No. 8737, dated 12 February 2001, "On the Organisation and Functioning of the Office of the Prosecutor in the Republic of Albania" [hereinafter Prosecutor Law], arts. 14-15.
[120] Ibid.

the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies, and judges of the High Court and Constitutional Court.[121]

The *directorates of investigation* and *control of criminal prosecution* (in the Office of the Prosecutor General) coordinate, control and assist the offices of the prosecutors attached to the courts.[122] The Prosecutor General "approves the structure, personnel chart and the rules of functioning of the offices of the prosecutor attached to the courts and of the Office of the Prosecutor General."[123] The Office of the Prosecutor being a centralised and hierarchical structure, prosecutors are subject to instructions received from higher level prosecutors.[124] The highest authority in this hierarchy is the Prosecutor General. The Office is divided into several directorates, which function as follows:

The *Directorate of Foreign Relations* handles mutual legal assistance procedures and relations with foreign counterparts in general. The Directorate of Studies is responsible for providing analysis on key issues. It also prepares draft instructions which the Prosecutor General then issues to all prosecutors in the country. The Judicial Directorate consists of four special prosecutors who argue cases before the High Court.

The *Directorate of Personnel and Inspection* maintains the personnel files of the prosecutors and the administrative staff as well as applicants including the correspondence with regard to appointments, transfers, promotions and dismissals. The Directorate is also responsible for verifying assets and carrying out inspections in order to evaluate the work performance of prosecutors.

The *Directorate of Organized Crime* (DoOC) is organized into 4 divisions dealing with drugs, financial crime, trafficking and corruption. One prosecutor from the corruption division sits on the government's Anti-Corruption Working Group, and some of the cases dealt with in the division come to it from this same working group.

Cases of corruption that come to the attention of the first level prosecutors are immediately reported to DoOC and throughout the investigation and prosecution DoOC will continue to monitor and supervise progress and to discharge a coordinating function as well. DoOC deals with all corruption cases whether or not they relate to organized crime. Prosecutors of the first level continue to investigate and prosecute the case. If, however, a case is particularly important, or if it involves elevated risk of injury to the first level prosecutors, or if it ties in with criminal activity in other districts, then conduct of the investigation and prosecution will be taken over by DoOC. One shortcoming in the current legislative and institutional framework is that the cases that are taken over by DoOC must continue to be prosecuted through the district court where the charges originated rather than through a court in Tirana where DoOC is based.

[121] Ibid., art. 13.
[122] Ibid., art. 9.
[123] Ibid., art. 8.
[124] Ibid., art. 4.

B. Competencies

1. Constitutional Provisions

Part Ten (Articles 148 and 149) of the Constitution provides for an independent Office of the Prosecutor General that is responsible for the prosecution of criminal cases and for representing the accusation in court. Article 148 sets out the functions and organisation of the office. According to that provision, the tasks of the prosecutor consist of carrying out criminal prosecutions, presenting accusations in court and performing other duties required by law. The Prosecutor Law in article 2 states the same, again not specifying other duties, though the law does mention tasks that can be seen as connected to the constitutionally required duties (e.g., informing the public about its general activities and maintaining confidentiality about cases where private life or human dignity could be at risk).[125]

The Constitution does not give any other body a criminal prosecution function. Nor is there any provision for the appointment of an "independent prosecutor" separate from the Office of the Prosecutor.

2. The Prosecutor Law

The Prosecutor Law is the organic law regarding the Prosecution Offices in Albania. Following closely the constitutional provisions, the law provides that the "Prosecution Office carries out criminal prosecutions and represents the accusation in the name of the state during the adjudication" and that this function is carried on through the prosecutors.[126]

Article 5 points out that the Prosecution Office has not only repressive but also *preventive* activities. This because the prevention of crimes is a matter of security, a field which belongs to the competence of the police. Article 3 provides that the Prosecution is a centralised structure attached to the judicial system. Article 7 provides for the appointment and discharge of the Prosecutor General in conformity with the constitutional provisions.

3. The Role of the Prosecutor General

a. Duties and Responsibilities

The principal duties of the Prosecutor General include proposing to the President the total number of prosecutors, nominating or recommending the transfer or promotion of prosecutors, nominating directors of prosecution offices and their deputies, approving the structure of prosecution offices, ordering the secondment of prosecutors, directing the prosecution office at the High Court, representing the Prosecution Office in relations with

[125] Ibid., art. 6.
[126] Ibid., art. 2.

other parties, determining rewards to be given to witnesses or funds necessary for securing evidence, and giving instructions for the work of the judicial police.[127]

The Prosecutor General may issue orders and instructions for the exercise of the duties of prosecutors, and delegate certain responsibilities to the director of a directorate.[128]

In addition to his regular functions, the Prosecutor General is a member of the Inter-Ministerial Anti-Trafficking Task Force, the Inter-Ministerial Group for Developing a Strategy in the Battle Against Drugs, the Ministry of Justice Working Group on Changes in Criminal Law and Criminal Procedure, and the Witness Protection Task Force.

b. Organisation

The basic structure of the Office of the Prosecutor General includes, *inter alia*, a cabinet and directorates of investigation and control of criminal prosecution.[129] The Prosecutor General specifies the structure and organization of the units.

4. Prosecutors at the High Court

The prosecutors at the High Court carry out criminal prosecution and represent the accusation in court against "the President of the Republic, the Prime Minister and members of the Council of Ministers, deputies, judges of the Constitutional Court and judges of the High Court."[130] This has the salutary effect of avoiding any ambiguity with respect to the structure and prosecutors to be engaged in cases of alleged criminal conduct (including corruption) against the named officials. In cases of allegations against other public officials, the same procedures are to be followed as when assigning a prosecutor to any other case, having proper regard to the experience and skills necessary for handling the prosecution.

The law charges the Minister of Justice with a supervisory function to "control the legality of the activity of the prosecutors…."[131] The functions of the Ministry of Justice include ensuring "the regularity and continuity of the performance of investigative actions" and "respect of the legal obligation of the prosecutor to begin a criminal prosecution".[132] The powers of the Ministry of Justice in respect of this supervisory function are not specified. The Constitution contains nothing that would authorize the Ministry of Justice to encroach on the independence of the Office of the Prosecutor and it is reasonable to conclude therefore that this Article gives the Ministry of Justice no power to influence or interfere with prosecutions being conducted by the Office of the Prosecutor.

5. Prosecutors at the Courts of Appeal

[127] Ibid., art. 8.
[128] Ibid.
[129] Ibid., art. 9.
[130] Ibid., art. 13.
[131] Ibid., art. 56.
[132] Ibid.

The prosecutors at the Courts of Appeal exercise the same functions as the Prosecutors at the High Court, only their sphere of activity is restricted to that of the Courts of Appeal. Article 16 of the Prosecutor Law sets up an exception in case of an order of the Prosecutor General. In this case, a higher prosecutor can conduct investigations and represent the accusation as a prosecutor at a lower level as well.

Prosecutors at the appellate level do not generally carry out investigations. Instead, they receive documentation from lower courts and prepare their presentations based on the work of the district prosecutor. Often crucial non-documented knowledge is lost in this process.

6. Prosecutors at First Instance Courts

The prosecutors at the First Instance Courts carry out the criminal prosecution and present the accusation at district courts. Each prosecution office at the district level has a chief prosecutor responsible for organising the work of the prosecutors. With the exception of military prosecutors and prosecutors at the Court for Serious Crimes, there are no specialised prosecutors responsible for particular types of crimes. Thus juvenile crimes, economic crimes, crimes against the constitutional order, and ordinary crimes of violence are all handled by the same prosecutor. This prosecutor may or may not have training in the special investigative techniques used for each different type of crime.

Code of Criminal Procedure

Under the Code of Criminal Procedure, it is the prosecutor who conducts and controls criminal investigations: "The prosecutor conducts the criminal prosecution, carries out investigations, controls the preliminary investigations, brings accusation before the courts and takes measures for the execution of decisions…."[133]

Article 304, entitled "The Investigative Activity of the Prosecutor", states that the "prosecutor leads the investigation operations and carries out personally any investigation action, which he considers necessary." Nevertheless, the prosecutor may delegate investigative functions to the judicial police.[134] The judicial police must carry out investigations as directed by and subordinate to the prosecutor.[135]

The Code of Criminal Procedure specifies the investigative duties and powers of the judicial police.[136] Both the prosecutor and the judicial police are obligated to investigate allegations of criminal offences that come to their knowledge, whether by formal complaint or otherwise.[137] The judicial police should immediately notify the prosecutor of essential information it receives regarding a criminal offence.[138]

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[133] Code of Criminal Procedure, art. 24. *See also* arts. 327-328.
[134] Ibid., art. 304.
[135] Ibid., arts. 30, 33.
[136] Code of Criminal Procedure, art. 293-303.
[137] *See* ibid., art. 30, 280 and 293.
[138] Ibid., art. 293.

Of critical importance is that these provisions place the judicial police under the supervision and control of the prosecutor who is responsible for investigating all the aspects of the prosecution. It is the prosecutor who decides to initiate or terminate a criminal proceeding[139] and throughout the prosecution process it is the prosecutor who either performs the requisite actions or supervises and controls the actions of the judicial police.

7. Relationship Between Prosecutor General's Office and District Prosecutors

The prosecution office is organised as a unitary and centralised institution headed by the Prosecutor General. As stated above, each prosecution office in the country is headed by a chief prosecutor. This person has responsibility for supervising all prosecutors in his or her district when it comes to bringing charges to court in the name of the state and carrying out other prosecutorial functions. Every prosecutor is subject to orders and instructions of prosecutors working at a higher level.

The Criminal Procedure Code provides rules with regard to the functioning of the the prosecution offices. These rules concern three aspects, namely authority, subject matter and territorial jurisdiction. Subject matter and territorial jurisdiction follow the system of the courts, i.e., the prosecution office attached to the first instance court has jurisdiction to prosecute all criminal offences, apart from those which fall under the jurisdiction of the recently established Prosecution Office for Serious Crimes, Military Prosecution and the General Prosecutor's Office.

Concerning territorial jurisdiction, the prosecution office competent for prosecuting an offense is determined by the place where the offense happened, the place of the consequences of the offense, the residence or domicile of the perpetrator, or the prosecution office that first recorded the offense.[140] The prosecution offices must co-ordinate their activity with prosecution offices of the same level in other districts when it comes to performing special investigations or investigations covering several districts. The Prosecutor General's Office primarily controls the activities of subordinate offices, but can also provide assistance when necessary.

II. PROSECUTORS AND JUDICIAL POLICE IN PRELIMINARY INVESTIGATIONS

When information is received in the prosecution office from police or individuals about a criminal offense, the case is registered and assigned by the chief district prosecutor to a prosecutor who performs the preliminary investigation with the assistance of the judicial police.[141] Within three months from the registration of the committed criminal offense,

[139] Ibid., art. 24.
[140] Ibid., art. 76.
[141] The investigation period begins to run from the date the name of the person accused of a crime is filed. *See* ibid., art. 323.
[141] Ibid., at art. 290 sec. 1. This section provides:

based on the investigation performed by the judicial police, the prosecutor must make a decision, about whether the case should be sent to court, dismissed or suspended.

In urgent cases, the prosecutor may order the judicial police to arrest somebody even without an authorization by the court.[142] In these cases, the accused is taken into interrogation by the prosecutor of the district where the arrest took place or the judicial police officer authorized by the prosecutor. The prosecutor may release the arrested person if he or she discovers that the procedural laws have not been applied correctly or that the arrested person is not the suspected perpetrator.[143] Otherwise, within 48 hours from the arrest, the prosecutor must ask the District Court to validate the decision of arrest.[144]

Under certain conditions, the prosecutor may decide not to prosecute a case if, for example, if no criminal act has been committed, if an act that has been committed does not constitute a criminal offense, or if a criminal act has been pardoned by the President.[145] The victim may challenge the decision of the prosecutor in the District Court, which may decide the starting of the criminal proceedings of the case.

According to the criminal procedure rules, a person is considered a defendant from the moment of being informed of an accusation.[146] It is the prosecutor or the judicial police officer, authorized by the prosecutor, who must inform the suspected person of the accusations against him or her. At the hearing for validating the act of arrest performed by the prosecutor, the court may decide change the security measure of arrest into a less severe one if it concludes that the needs for security are not so high.[147]

III. PROSECUTORIAL CAREERS

Article 149 of the Constitution specifies the powers of appointment and discharge of the Prosecutor General and other prosecutors.

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[142] This includes also the case when the perpetrator is caught at the moment of committing the criminal offense. Ibid., at art. 252.

[143] Ibid., at art. 257.

[144] Ibid., at arts. 258-259.

The prosecution may not initiate and, if initiated, must be dismissed in any stage of the proceedings when:

a) the person has died;

b) the person is irresponsible or has not reached the age of criminal responsibility;

c) there is no complaint by the injured or he withdraws the complaint;

ç) the fact is not provided by law as criminal offence or it becomes clear that the fact does not exist;

d) the criminal offence has ceased;

dh) an amnesty has been announced;

e) in all other cases provided for by law.

[146] Ibid., art. 34.

[147] Naturally, the individuals against whom a security measure has been imposed have the right to complain against the decision of the District Court regarding the measure. They can file a complaint with the Court of Appeals within 10 days from the day they are informed of the measure or the day it has been applied. Ibid., at art. 249 sec. 1.

A. Appointment and Discharge

1. The Prosecutor General

a. General Legal Framework

The main constitutional provision providing for the independence of the Prosecutor General's Office is article 149, which states that the Prosecutor General is appointed by the President of the Republic, with the consent of the Assembly. The President discharges the Prosecutor General, but only on the proposal of the Assembly and only if specific grounds exist, namely:

- violations of the Constitution;
- serious violations of the law during the exercise of his/her duties;
- mental or physical incapacity;
- acts and behaviour that seriously discredit prosecutorial integrity and reputation.

There are no detailed procedural provisions in the Constitution regarding the determination of whether any of these grounds exist. No legislation exists to fill this gap and provide the missing procedures and competencies.[148]

Simply leaving to an Assembly vote the decision of whether the specified grounds exist for a resolution or motion seeking the dismissal of the Prosecutor General without any specified procedures or investigation undermines the independence of the Prosecutor General. It also can leave the Assembly vulnerable to accusations of politicisation when it removes a prosecutor for whose dismissal grounds really do exist. Thus, the development of such measures would help fulfill the Constitutional guarantee.

b. The Rakipi Discharge

In fact this exact point became an issue in 2002 in the dismissal of the Prosecutor General: In mid-February, a group of deputies proposed a debate to request a Presidential decree for the dismissal of Arben Rakipi, the Prosecutor General at the time. After a debate on 18 March 2002, at which Mr. Rakipi who was given no opportunity to defend himself and little factual evidence presented, the Assembly decided to propose to the President Mr. Rakipi's dismissal for acts and behaviour seriously discrediting the integrity and reputation of the Office of the Prosecutor General.

Following this decision, a group of deputies filed a request to the Constitutional Court requesting an interpretation of what procedures were required by the Constitution for the dismissal of the Prosecutor General. Prior to the issuance of the Constitutional Court opinion, however, the President acted upon the Assembly's proposal and decreed Mr Rakipi's dismissal. After the President's decree, Mr Rakipi filed a case on his own behalf challenging his dismissal on due process grounds.

[148] See discussion in the next part of this section concerning the dismissal of Prosecutor General Rakipi in 2002.

The Constitutional Court then issued its first opinion on a request filed by the group of deputies as to what procedures were constitutionally required to satisfy standards of due process. The Constitutional Court ruled that

> prior knowledge by the person against whom the measure of discharge is sought of the materials that charge him with responsibility, respect of the right to be heard and to defend oneself, both in giving preliminary explanations as well as during the examination of the case, are several of the basic elements that guarantee the constitutional right of everyone to due process, a basic right the breach of which the jurisprudence of the Constitutional Court has identified in every case as a violation of the Constitution.[149]

Shortly thereafter, on 25 April 2002, the Constitutional Court issued its decision on Mr Rakipi's personal case. In this opinion, the Constitutional Court ruled that the decision of the Assembly and the decree of the President should be repealed as violations of the due process rights guaranteed by the Constitution. In its ruling, the Constitutional Court stated,

> the Assembly considered all the accusations directed against the appellant as true, relying only on the discussions of the deputies, without giving arguments for concrete violations, without properly notifying the appellant of the content of the material charged against him, without giving him the necessary time to prepare his defense and without hearing him present his counter-arguments about these accusations.[150]

The Constitutional Court further explained that because the President had failed to cure these deficiencies by merely approving the decision of the Assembly, he had compounded the original Constitutional violation. Accordingly, the Constitutional Court ordered that the Assembly should repair the due process violations and re-examine Mr. Rakipi's case in conformity with constitutional principles and international standards of due process.

The Parliament, however, challenged the validity of this decision. The Speaker of Parliament even resigned in protest. After a debate, the new Speaker of Parliament succeeded in having the Parliament issue a declaration on the issue which was a compromise on at least one point.[151] In this declaration, the Parliament acknowledged the necessity to draft procedures to regulate dismissal procedures in Parliament in order to comply with the Constitution and the Prosecutor Law.

The Prosecutor Law follows the constitutional provisions with some minor discrepancies. With respect to the Prosecutor General, article 7 of the Prosecutor Law uses "functions" instead of "duties", and refers to "acts or conduct that seriously discredit the position and figure of the Prosecutor." There is a difference between the "position and figure of the Prosecutor" and "prosecutorial integrity and reputation". In practice the difference might not be important, as any act or conduct of the Prosecutor General that discredits

[149] Constitutional Court Interpretative Decision no. 75, dated 19 April 2002.

[150] Constitutional Court Decision no. 78, dated 25 April 2002.

[151] In his declaration, the Speaker of Parliament acknowledged the necessity to draft procedures to regulate the dismissal procedures in Parliament.

prosecutorial integrity and reputation also discredits the position and figure of the Prosecutor General. In any event, if the Prosecutor Law provisions are found by the court to be inconsistent with their counterparts in the Constitution the formula found in the Constitution will of course prevail.

c. Regular Prosecutors

i) Appointment

All prosecutors other than the Prosecutor General are also appointed and dismissed by the President, but on the proposal of the Prosecutor General.[152] No grounds or procedures are specified in the Constitution for these appointments and dismissals. Civil service legislation also does not provide appropriate regulations in this area.

As for prosecutors other than the Prosecutor General, article 21 of the Prosecutor Law accurately reflects the appointment provision in the Constitution but then adds that the appointment and proposal are to be on the basis of a "competition". The details are described in article 20: The application process commences with a public announcement of the Prosecutor General, spread by at least two newspapers, as well as Public Radio and Television. Afterwards, the candidacies are examined and a decision is reached based on a discussion of qualifications and the examination. This evaluation is performed by the Council of the Office of the Prosecutor General.

This procedure is an attempt to avoid arbitrary and corrupt appointments. It is arguable that it fetters the appointment and proposal powers in the Constitution, but nonetheless it is defensible in that it reinforces the objective of the Constitution with regard to prosecution offices. The requirement of a minimum level of competence encourages the recruitment of competent prosecutors within an independent prosecutorial structure.

ii. Evaluations

A more substantial concern expressed by prosecutors, even at the highest levels, is that evaluation procedures do not really consider the quality of a prosecutor's work. The system is based on points assigned to cases based on the type of crime committed. A murder case therefore receives more points than a theft. If a prosecutor is not assigned many cases with a relatively high number of points, it is impossible for him or her to get a good evaluation even if his or her work is done very well. While it is probably inevitable that any system of performance evaluation will create difficulties and while it is certain that no evaluation will be perfectly objective, the bias created by this system is sufficiently obvious that it should be removed.

OSCE trial observations have shown that prosecutors do not show much engagement in representing charges in court. They often appear late or entirely miss the scheduled sessions. Moreover, they are not sufficiently prepared to question witnesses or to comment on requests made by defense lawyers. Thus, the handling of the case more or

[152] Albanian Constitution, art. 149 sec. 3.

less depends on the court, although it is the duty not only of the judges, but also of the prosecutors to apply the law. Prosecutors should not be passive participants in the cases they present. Therefore, the system of evaluation needs to be changed so that not only the written work is subject to evaluation, but also the prosecutor's performance during trials.

d. Disciplinary Proceedings for Regular Prosecutors

The Prosecutor Law deals with discipline and dismissal of ordinary prosecutors in articles 26 to 34. The Prosecutor General may suspend a prosecutor when criminal or disciplinary proceedings are brought against a prosecutor and when the Prosecutor General makes a proposal to the President that the prosecutor be discharged.[153]

On the other hand, a prosecutor "is discharged" (a) when the prosecutor is punished for a criminal offence by a final court decision, (b) when he is ordered to be discharged in a disciplinary proceeding, and (c) when he is evaluated as incompetent in a Performance Evaluation.

There have been reports from prosecutors that disciplinary measures, usually short of removal, are used in order to prevent prosecutors from taking actions that are proper but do not serve the interests of the chief prosecutor in the district. In other words, chief prosecutors who may be under the influence of the alleged victim or of the defendant have mechanisms for ensuring that their staff do not investigate too independently. These include exerting extreme and unreasonable levels of control over the routine work of prosecutors, using case assignment mechanisms to ensure that truly independent prosecutors do not get certain cases, assigning independent-minded prosecutors only to cases that get them few points in the evaluation system, and making sure that such prosecutors are not promoted. Studies should be conducted into measures that can be taken to ensure that prosecutors truly are independent in their investigations and assessments, while still maintaining necessary levels of accountability.

Articles 28 through 31 provide for the procedures to be followed in the conduct of a disciplinary proceeding. The disciplinary violations that can be the subject of a proceeding are the following:[154]

a) failure to take the oath or violation of the oath[155];
b) failure to conduct or serious delay in the conduct of proceedings or other obligations;
c) revealing secret or confidential information;
ç) absence from work for more than 5 days without cause;

[153] Prosecutor Law, art. 26. A distinction is made between "removal" of a prosecutor and "discharge" of a prosecutor. Removal of a prosecutor occurs when the prosecutor resigns, reaches the age of 65, or has his juridical capacity to act removed or limited by a final court decision. Ibid., arts. 27, 42. A distinction is made between "removal" of a prosecutor and "discharge" of a prosecutor. Removal of a prosecutor occurs when the prosecutor resigns, reaches the age of 65, or has his juridical capacity to act removed or limited by a final court decision. Ibid., art. 27.

[154] Ibid., art. 32.

[155] This oath is provided in Article 22: "I solemnly swear that during the performance of duty I shall always be faithful to the Constitution of the Republic of Albania, the laws in force, and I shall keep the image of the prosecutor clean. I so swear!"

d) commission of actions that seriously discredit the image of a prosecutor;
dh) commission of actions that according to law are incompatible with the functions of a prosecutor.[156]

If a violation is found it can be punished by a reprimand, by a reprimand coupled with a warning that future actions of the sort will result in discharge, by a suspension and demotion, or by discharge.[157]

IV. WORK PROBLEMS AND RECENT INNOVATIONS

A. Witness Protection

In the fight against organised crime, one of the key tools prosecutors have at their disposal is the ability to obtain witness testimony. This necessarily involves providing protection to witnesses. Procedurally, article 340 of the Criminal Procedure Code allows for closed court sessions in order to "protect witnesses." The Criminal Procedure does not specify who makes the request for the closed door sessions but presumably, either the prosecutor or the defendant can make this request. Also, according to article 326 of the Code, during the preliminary investigation, the prosecutor or the defendant may ask the court to hold a hearing to "secure the evidence." This is a procedure for obtaining the testimony of a witness before the trial has started, when there are grounded reasons to believe that the person may be subject to violence, threats, or offers of money or other profits in order not to testify or to give false evidence. The prosecutor can also ask the court to detain the defendant during the investigation of the case if there are reasonable doubts that the defendant may threaten witnesses.[158]

The procedural code has no provisions about concealing witness identity or procedures for doing so. It also provides no other protective measures. The Serious Crimes Court Law does provide for the court, as appropriate, to order the testimony to be given without visual contact with the defendant, without communicating the identity of the witness to

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[156] These incompatibilities are specified in Article 39 of the Prosecutor Law. They consist of membership in a political party, involvement in political activities including candidacy, possession of an electoral mandate, public duty or activity, double employment and participation in management organs of commercial companies.

[157] Prosecutor Law, art. 33. The proceeding is commenced by the Prosecutor General either on his or her own initiative or on the recommendation of the Council of the Office of the Prosecutor (COP). The prosecutor against whom procedures are instituted is to be given notice in advance of the hearing date and documentation relating to the hearing and has the right to be defended. Although COP conducts the hearing it is the Prosecutor General who decides whether there will be a disciplinary measure taken and what the measure will be, this decision being made after COP gives its opinion. *See* ibid. arts. 30, 31, and 33. Consistent with the Constitution the discharge of a prosecutor is done by way of a proposal made by the Prosecutor General to the President who discharges the prosecutor. The Prosecutor General's proposal for discharge must be accompanied by the objections of the prosecutor proceeded against. Ibid., art. 33.

This is consistent with the plain interpretation of the Constitution that the President has a discretion when making his decision whether or not to discharge the prosecutor notwithstanding the proposal of the Prosecutor General. Appeals to the Court of Appeals in Tirana may be taken in respect of disciplinary measures (a) through (c), however, no appeal may be taken from the President's decree of discharge. Ibid., art. 34.

[158] Criminal Procedure Code, art. 228/3.

the defendant, or in other cases provided under witness protection legislation.[159] Witness protection legislation has not yet passed, though there is a draft law in Parliament awaiting approval. This draft law would regulate the special measures to be taken to protect witnesses and would provide clearer procedures. It provides for a special programme of protection that is closely tied to the prosecutor of the case.

According to this draft law, only the prosecutor would have the authority to file a request for witness protection with a Commission for the Evaluation of Special Protection Measures for Witnesses. The prosecutor would have to argue that there are reasons justifying the special protection measures. According to the draft law, the prosecutor also would have the right to refuse the request of a victim for protection if the prosecutor deems it not to be necessary. Once the draft law is adopted, it will become necessary to adopt the relevant sub-statutory legislation to create a complete system of witness protection.

B. Safety

A matter of crucial importance is the personal safety of prosecutors and judicial police officers. This problem is especially acute in the districts outside Tirana but is a serious problem in Tirana as well. It is now widely recognized that resolution of this security issue is vital if significant progress is to be made against organised crime. The establishment of a secure court facility in Tirana for the trial of organised crime cases, which is in process, will be a major step toward solving this problem. Notwithstanding how determined prosecutors may be to prosecute cases linked to organized crime, the very real dangers posed by organized crime against prosecutors and their families and witnesses are a serious impediment to effective prosecution.

It is a positive step that a specialised prosecution force has been established recently to handle cases at the Court for Serious Crimes. One of the defects of legislation on serious crimes, however, is that while there are now provisions to provide judges on the Court for Serious Crimes with special protection, prosecutors have fewer guarantees of equal protection. Considering that prosecutors are often more at risk than judges, legislation for protecting prosecutors, especially in the area of organised crime, must be strengthened.

C. Organised Crime Task Force

An Organised Crime Task Force, working directly under the supervision of the Prosecutor General, has been established in order to investigate and prosecute criminal organisations and armed gangs, as well as these organisations' criminal offenses involving trafficking in narcotics and human beings, as well as violent crimes related to trafficking. Proceedings on these criminal activities will be handled from the initial investigation through any second-instance appeal by the Task Force. In the first phase of the project, the Task Force is covering the districts of Tirana, Durrës, Shkodra, Fier and Vlora; ten districts will be added in the second phase.

[159] Law No. 9110, dated 24 July 2003, "On the Organisation and Functioning of Courts for Serious Crimes".

V. STATISTICS

On 28 October 2002, the Prosecutor General delivered a report to Parliament concerning the activities of his office for the first nine months of the year. The report contained many statistics concerning the work of his office as well as suggestions for improvement of the functioning of the prosecutorial service which is summarised below.

A. General Prosecution Statistics

The Prosecutor General's Office has worked to document and bring accusations to court in 9573 criminal proceedings. More specifically: 2749 cases were carried over from 2001 and 6824 were initiated in 2002; 6459 defendants were involved and 3241 of them received the security measure of arrest; 2449 cases were sent to court covering 2945 persons; 2159 cases were closed for different reasons including lack of proof or absence of the elements of a criminal offense, or for other legal reasons including the latest amnesty; and 900 cases were suspended because their perpetrators were not discovered. The rest of the cases were still to be dealt with. During the first nine months of 2002, an increase of about 19% in the number of the registered cases in the Prosecutor General's Office, compared to the same period of 2001 has been identified. This could be due to a better work of police as well as to an increase of denunciations of the organs of financial control.

1. Organised Crime

There have been improvements in the criminal and procedural legislation. Also, new organs have been established at the Prosecutor General's Office (GPO) such as the Directorate of Organised Crime and a Directorate of Jurisdictional Relations with Abroad for assistance to and checking of prosecutors in the districts and for coordinating work with foreign judicial authorities. During the first nine months of 2002, ten criminal organisations have been uncovered and attacked; 24 persons have been arrested under charges for the establishment of criminal organizations and crimes committed by them; and 19 of them are in the process of adjudication and the rest are under investigation.

2. Trafficking and Prostitution

The amendments to the Criminal Code by Law No. 8733, dated 24.01.2001, appears to have led to a decrease of criminal offences in the field of trafficking. From January to September 2002, for ***trafficking in human beings***: 26 proceedings were registered; 21 persons were taken as defendants; four criminal proceedings were sent to trial, with seven defendants under arrest. For ***trafficking of children***: four proceedings with four defendants under arrest were registered, which continue to be under investigation. For ***trafficking of women for prostitution and exploitation of prostitution*** under aggravating circumstances: 183 criminal proceedings were registered, with 156 defendants of whom 148 are under arrest; 37 proceedings were sent to trial, with 57 defendants, 48 of them

under arrest; the investigations were closed for 8% of the cases registered because of the absence of a criminal offense or the absence of evidence; and 6% of the cases registered were suspended. Following the blocking of speedboats the trafficking in human beings and in women for prostitution fell by about 80%, compared to the same period of past years, while during the period July – September 2002, the cases have been sporadic. The sinking of a speedboat on 9 January 2004 resulted in increased calls for even more stringent measures against speedboats.

With respect to the ***criminal offenses of cultivation and sale of narcotic or psychotropic substances,*** during the first nine months of 2002 the Prosecutor General's Office has registered 318 criminal proceedings in the field of narcotics; 246 of which involve cultivating and selling narcotic substances within the country and 66 were sent to court, with 87 defendants, 57 of them under arrest. For ***trafficking in narcotic substances***: 72 proceedings were registered; eight were sent to trial, with nine defendants under arrest; 9% of the proceedings registered were investigations closed for lack of evidence or lack of the elements of a criminal offense and for investigations continue for the other matters; and 1100 kg of heroin worth approximately EUR 20 million were captured by Italian authorities from Albanian citizens cooperating with Italian citizens.

3. Corruption and Money-laundering

- With respect to the ***acts against state activity committed by state employees or those in the public service***, 266 criminal proceedings have been registered in the prosecution offices, with 146 defendants, 21 of them under arrest. There is an increase of 112% in the proceedings registered compared with the first nine month period of 2001. Of these offenses, 44 proceedings have been sent to court, with 66 defendants of whom 14 are under arrest. Defendants criminally prosecuted for these acts are made up of 112 civil employees in the central and local Public Administration, at the following management levels: high, seven; middle, 34; low, 24; executive, 20; and simple employees, 27.

- Regarding ***money-laundering cases***, it should be noted that there are only few proceedings of this nature, because of the lack of reports of such offenses to the relevant authorities.

4. Other Serious Criminal Offenses

Crimes against the person. Criminal proceedings registered for crimes against the person for the nine month period, compared to the total of proceedings registered, take up 27.7% or, compared to the first nine months of 2001, there is an increase of 22.5%. These proceedings are divided according to the following categories: ***a) Willful crimes against life cases*** take up to 39.9% of all the criminal offences against the person. There have been 310 proceedings for willful murders committed or attempted and for willful murders committed for reasons of revenge or blood vengeance, or because of special qualities of the victim, 153 proceedings. ***b) Sex crimes cases*** occupy 3.4% of the criminal offenses against the person. ***c) Kidnapping cases*** occupy 5.5% of the criminal

offenses against the person. ***d) Theft of property cases.*** During this nine month period, the organ of accusation initiated 1,782 criminal cases that have to do with the criminal offenses of property theft in all its forms, charging 1,113 persons, 743 of them under arrest.

B. Indicators

1. Principal Indicators of the Policy of the Criminal Proceeding in Trials

Observations of trials by the OSCE have shown that there appears to be a pre-selection of cases by prosecutors. When outside influence in the form of bribery, threats, or other exertion of influence occurs, it mostly takes place at a pre-trial stage of the proceedings, which makes camouflage easier, as the public is not involved. Almost no cases of organised crime, corruption and money laundering are tried in court. This means, that either no criminal proceedings are initiated at all or that charges are dismissed at the conclusion of the preliminary investigations.

2. Indicators of the Execution of Final Criminal Judicial Decisions

In the first nine months of 2002, the execution of final criminal decisions was ordered by the prosecutors for 2226 sentenced persons: 22 of them for life sentences, 1628 for other periods of imprisonment, and 576 for a fine. Of these, 1811 decisions were executed by the judicial police and bailiff, meaning 23% were not yet executed as of the end of the year, seven of these having been sentences of life imprisonment, 328 of imprisonment and 80 of a fine. At the end of 2002, 1880 persons sentenced to imprisonment by final court decisions, some for serious crimes, were being sought for arrest. Of the wanted persons 904 were wanted for murder; 154 for attempted murder; 63 for serious injury; 43 for kidnapping; 38 for exploitation of prostitution; 283 for violent armed robbery and/or robbery causing death; 20 for contraband; and 69 for drug crimes.

VI. CONCLUSIONS AND RECOMMENDATIONS

In any democratic society, Prosecution Offices play a vital role in bringing about law and order in a system that operates under the rule of law. In the last two years, the Prosecutor General's Office has made significant improvements in its operations and it is now placed in a good position structurally to move forward on different levels. Prosecutions at the district level and their organisation require improvements.

There is a need for a unified structure of specialisation within the prosecution offices, which means that at each level of prosecution one establishes special departments, following the same patterns and handling cases of certain kinds of crime (e. g., economic crime, organised crime, drug delinquency, juvenile delinquency). Currently, specialised units exist only in the form of the directorates at the Prosecutor General's office[160] and of

[160] See *supra* section II.A.

the recently established Prosecution Office for Serious Crimes, which is set up only in Tirana, where the Court for Serious Crimes is located.

Despite the creation of the Organised Crime Task Force, there remains a need for a better co-operation between prosecutors and judicial police at the district level. The application of special investigative measures (e. g., interception of telecommunications or computer communications, covert video surveillance in private premises, covert monitoring of conversations) assumes close co-operation between prosecutors and judicial police officers in charge of particular cases. The closer both parties are to the scene of the crime and the more closely they work together, the more quickly and efficiently the investigations are carried out.

As different kinds of criminal offenses require different techniques of investigation, specialisation is indispensable. For example in trafficking cases due to the transnational character of the crime, knowledge of mutual legal assistance procedures is useful; economic crimes could be handled more effectively by prosecutors with a specialisation in business matters.

Because prosecution offices are attached to courts of different levels, different prosecutors are in charge of a case for the district courts, courts of appeal and High Court. This system is often inefficient, especially in complex cases, as the knowledge of the prosecutor leading the investigations and representing the accusation during the first instance gets lost on appeal. Moreover, it is questionable, if a thorough preparation in proceedings with files of hundreds of pages is guaranteed at a higher level. This is even more problematic because there is very little communication between first and second instance prosecution offices, which sometimes leads to contradictory requests and thus damages the reputation of the prosecution. If separate appellate prosecution offices are kept, the prosecutors working in them should work in teams with district prosecutors when presenting cases.

Prosecutors, especially at a lower level, must be motivated and trained to present their cases well in court. This requires training not only in theoretical legal knowledge, but more importantly in professional skills related to presenting a case in court and working with witnesses. It also requires evaluating prosecutors on their courtroom presentations and success.

I. THE JUDICIAL POLICE

KEY RECOMMENDATIONS

1. Simplify the organisation of judicial police structures.

2. Clarify the relations of judicial police with other police structures.

3. Require judicial police officers to obtain approval to investigate from prosecutors only in matters that implicate the rule of law.

4. Improve education and training of judicial police and apply stricter employment criteria.

I. INTRODUCTION

This section provides an analysis of the organisation, structure and practical functioning of the judicial police in Albania. This body carries out investigation of criminal offenses under the direction and supervision of the prosecution office. The judicial police was initially established under the Code of Criminal Procedure adopted in 1995. Before its establishment, its functions were performed by so-called investigators.[161]

For the purposes of the report, the analysis of the organization and structure of the judicial police is based on the relevant laws applicable to the judicial police, while the practical functioning is based on interviews of different prosecutors and judicial police officers, as well as on an observation of the work they perform in practice.[162]

II. THE REGULATION OF THE JUDICIAL POLICE

A. Historical Background

The Judicial Police, as a body involved in the investigation of the criminal offenses was first provided for by the Criminal Procedure Code adopted in 1995. The organisation and functioning of this body was based on a subsequent presidential decree.[163] This decree was abolished when Law No. 8677, dated 02.11.2000, "On the Organization and Functioning of the Judicial Police" was adopted[164]. Based on this law, a common

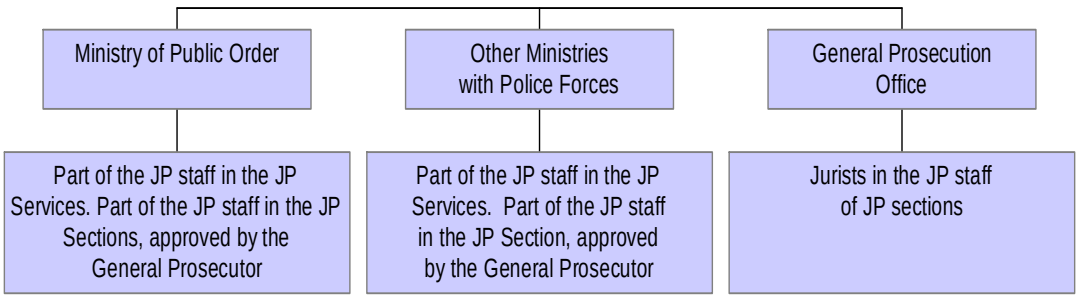
[161] The word in Albanian "hetues."
[162] For the purposes of the anonymity, the names of the persons that have been interviewed are omitted.
[163] Decree of the President of the Republic, No. 1188, dated. 10 August 1995, "On the Judicial Police".
[164] Law No. 8677, dated 02 November 2000 [hereinafter Judicial Police Law]. The general structure and the main functions of the judicial police are regulated by the provisions of the *Criminal Procedure Code*, articles 30-33. The Judicial Police Law regulates in more details the structure, organization and matters of discipline of the judicial police bodies.

instruction of the Prosecutor General and the Minister of Public Order[165] was issued regarding the organization of the different kinds of the judicial police.

As mentioned above, prior to the establishment of the Judicial Police, there was the office of the investigator. Its responsibilities included investigation and preparation of cases for court. Investigators had decision-making powers regarding all procedural actions performed during the investigation. Nevertheless, they had to inform the prosecutor of the case of all these actions. At the end of the investigation, based on the result of this work, the prosecutor presented the case in court. The situation changed after the reformation of the whole criminal process in Albania upon the collapse of the communist regime. The institution of investigation ceased to exist and the rules of criminal procedural rules established the judicial police in place of the investigators.

B. Organization of the Judicial Police

Judicial Police Institutional Organisation



1. Services of the Judicial Police

The Judicial Police are divided into two types: ***Services of the Judicial Police*** based in the district police offices, but performing duties for and under the supervision of the district prosecution office and **S*ections of the Judicial Police*** functioning within the districts prosecution offices.[166] According to the legal definition of the ***Services of the Judicial Police***,[167] this category is composed of the staff of the State Police and other police forces that have been given the status of judicial police by Judicial Police Law.[168]

[165] Common Instruction, "On the functioning of the Judicial Police in the State Police and Section at the Prosecution Office", dated 01.03.2003 [hereinafter the Common Instruction.].
[166] Criminal Procedure Code, art. 31.
[167] Judicial Police Law, art. 6/1. It refers to article 30 of the Criminal Procedure Code dealing with the powers of the judicial police.
[168] Judicial Police Law, article 6/1 provides:

These are, for example, Forest Police or Customs Police. At the district police level, Services of the Judicial Police are the following bodies of the State Police:

a) sections of the Criminal Police,
b) subsections of the Border Police,
c) subsections of the Traffic Police, and
d) sections of the Order Police.[169]

Directors of these services are the heads of the different commissariats. At the regional level, the functions of the Services of Judicial Police are performed by:

a) the Regional Office of the Fight against the Constitutional and Terrorist Crimes,
b) the Regional Office for the Fight against Drug-related Crimes,
c) the Regional Office for the Fight against Economic and Financial crimes.
d) the Regional Office for Serious Crimes Against Individuals,
e) the Regional Office Against Illegal Trafficking, and
f) the Office of Technical Detection.[170]

Directors of these services are the heads of these Offices. Special Services of the Judicial Police exist also in the General Directorate of State Police, namely the following bodies:

a) the Sector of the Fight against Constitutional and Terrorist Crimes;
b) the Central Service for the Fight against Drug related Crimes;
c) the Sector for the Fight against the Economic-Financial Crimes;
d) the Sector for the Serious Crimes Against the Individuals and Property;[171]
f) the Sector of Special Operations;
g) the Sector of Special Investigations.[172]

Directors of these services are the heads of these Sectors. Administratively, these Services of the Judicial Police are organized based on the hierarchical structure of the State Police, thus falling under the authority of the Ministry of Public Order. Nevertheless, all services of the judicial police are obliged to work for the prosecutors and carry out their orders and instructions related to an investigation. Thus, the directors of the services of the judicial police report to the prosecutor on the performance of the investigative duties by their staff. They submit to the prosecution office a list of the names, role and rank of the officers who work in the services of the judicial police. The

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1. Within the meaning of article 31 of the Code of Criminal Procedure, all the entities of the State Police, police forces and other public institutions on which, according to law, the competent organ charges the primary and continuing duty of performing the functions contemplated in article 30 of the Code are services of the judicial police.

[169] The Common Instruction, point 3/a.

[170] Ibid.

[171] According to the Instruction, this Directorate covers the investigation of offenses committed against individuals and against property differently from the regional services, which cover only the investigation of offenses committed against individuals. It could be either that this is a clerical error or that the General Directorate has in fact broader investigative powers than the structure at the regional level.

[172] Ibid.

Judicial Police Law and the Common Instruction are not very clear on the organization of the *services of the judicial police in other police forces*. Presumably, from the interpretation of the provisions of the Judicial Police Law,[173] the Head of each Police Force whose officers can perform judicial police functions under the Judicial Police Law, presents to the Prosecution Office a list of those officers who have the status of judicial police.[174]

The heads of the different police bodies have the power to transfer to another duty or promote the directors of the services of the judicial police. This is done, however, only after having received the prior consent of the Prosecutor General or the prosecutor to whom he has delegated this right. The Prosecutor General may refuse the transfer or promotion through a reasoned decision, but may not do so in cases of giving ranks to the directors of the services of the judicial police.[175]

3. Sections of the Judicial Police

Sections of the Judicial Police function in the prosecution offices at the district courts. Special sections of the judicial police are also created in the prosecution offices at other courts of the judicial system. The staff of the Sections of Judicial Police is hired by the Minister of Public Order and the Ministers who have police forces under their jurisdiction, such as the Minister of Finance, Minister of Agriculture, and Minister of Defense. The Prosecutor General also must approve any officer employed for the judicial police sections.. Thus, the staff of the sections is selected among the staff of different police bodies. As regards jurists in the capacity of *officers* of the judicial police, they may constitute not more than one-fourth of the number of personnel of the section of the judicial police. Jurists are appointed by the Prosecutor General and are under the administrative supervision of the heads of the respective district prosecution offices. In the composition of a section of the judicial police, not less than half of personnel are *officers* of the judicial police.[176] The rest are *agents* of the judicial police. The needs for staff in judicial police sections are defined every two years by the Prosecutor General together with the Minister of Public Order, Minister of Justice and other Ministers that have police forces in their jurisdiction.

As regards the distinction between officers and agents, based on the rankings in State Police, judicial police officers are employees of the State Police, in a high or mid-level role, while judicial police agents are those in a more basic role. Officers of the judicial police must have police or other special professional education at the university level, while agents of the judicial police must have at least secondary education.

The requirements for appointments to the judicial police sections are:

a) a clean criminal record,

[173] See note 163 above.
[174] This issue will be discussed more in subpart C3.
[175] Judicial Police Law, art. 6/6.
[176] Ibid., art. 11/8.

b) a record of performance of judicial police activity in compliance with the rules of the Code of Criminal Procedure and the requests of the competent prosecutor,
c) a lack of disciplinary proceedings during the performance of the police activity, and
ç) a record of proper relationships with members of the police personnel, including when off-duty.[177]

The transfer, even if temporary, of judicial police staff in the sections of the Judicial Police is done only upon the consent of the Prosecutor General or the prosecutor to whom this right has been delegated. The Prosecutor General may refuse a transfer through a reasoned decision, but may not do so in cases of promotion in duty, role or ranking of the officers and agents of the Judicial Police.[178]

C. Competencies of the Judicial Police

As mentioned above, the judicial police perform criminal investigation proceedings under the direction and supervision of the prosecutors.[179] Their principal duty is to obtain information about criminal acts, collect evidence, prevent further consequences of these acts[180] and carry out full investigative activities. This can be performed upon their own initiative in any case where they become aware of a criminal offence. It can also be as a result of an order or delegation by the prosecution office or court.[181] As a general rule, judicial police perform any investigative duty ordered or delegated by the prosecutor.

The performance of the duties by the officers and agents of the judicial police is directed and overseen by the prosecutor. The judicial police may perform such actions as interrogations, searches, the pressing of charges, and the arrest of the accused upon the authorization of the prosecutor and the court. As a rule, cases that have been brought to the prosecution office by individuals are investigated by the judicial police who are in the sections of the judicial police at the prosecution offices, while those that have been detected by police are assigned by the prosecutor for further investigation to the judicial police in the services at the police district offices. In other words, after the judicial police in the services inform the prosecution office of a criminal case that they may have come across, the prosecutor continues the investigation of the case making use of these judicial police. This rule is not absolute, however; according to several prosecutors, it does not forbid the prosecutor to make use, if deemed necessary, of the judicial police working at the prosecution office for cases reported by the police.

According to the Law on the Judicial Police, officers and agents of the judicial police are obligated to perform their duties as members of the judicial police even in the following cases:

[177] Ibid. at art. 10.
[178] Ibid. at art. 11/10.
[179] Criminal Procedure Code, art. 30.
[180] Presumably, this refers to those criminal activities that have been interrupted because of the intervention of the police, and therefore their goals have not been accomplished.
[181] Judicial Police Law, at art. 3.

a) when not serving in the service of the judicial police,
b) regardless of the territory and circumstances in which they find themselves,
c) outside normal working hours.[182]

D Relation to Other Police and the Prosecution

Given the investigative nature of their functions, the Judicial Police co-operate with all police bodies that operate in their area of concern. It must also be noted that according to the Code of Criminal Procedure, Law on the Judicial Police and the respective sub-statutory acts, police bodies such as the financial police, the forest service police, and the military police perform judicial police functions. The judicial police officers who work for these police bodies should inform immediately the prosecution office if they come across criminal activities. Then the prosecutor assigned to the case co-ordinates the investigation of the case in co-operation with these judicial police officers.

III. BUDGET

According to police officials, the budget of the judicial police is prepared by the Ministry of Public Order for the part of the judicial police that are under the Ministry of Public Order, while the budget of the jurists who are hired as judicial police officers in the sections of the judicial police is prepared by the prosecution office**.** The budget of the rest of the judicial police in the sections is prepared by their respective institutions that have the police force in their jurisdiction. These include the State Police (Ministry of Public Order), Tax Police and Customs Service (Ministry of Finance), Forest Police (Ministry of Agriculture) and Military Police (Ministry of Defense).

The budget contains the salaries of all judicial police officers working for the judicial police, based on their ranks and qualifications. According to the same sources, the salaries of police officers working as judicial police are much higher than the salaries of their police colleagues who do not have the status of the judicial police. This is often mentioned as a reason for discontent among police.

According to the Ministry of Public Order, for the 2002, the budget of the judicial police in the sections is as follows:[183]

Salaries	**74.423.475 Lekë**
Social insurance	22.475.889 Lekë

[182] Ibid., at art. 4/3.
[183] Information sent upon request to the Rule of Law/Human Rights Department from the Ministry of Public Order on 16 January 2003, Protocol Number 83. We were not able to get an information on the budget for the judicial police depending on the Prosecution Office.

Other operative expenses	3.479.000 Lekë
TOTAL	100.378.364 Lekë

The budget of the judicial police for the 2003 is as follows:

Salaries	**80.534.034 Lekë**
Social insurance	23.163.122 Lekë
Other operative expenses	3.479.000 Lekë
TOTAL	107.176.156 Lekë

IV. DATA ON PERSONNEL

In Tirana, there are approximately 20 police officers working at the Sections of the Judicial Police attached to the Tirana district prosecution office. This number includes only *officers* of the judicial police. There are no judicial police *agents* reported by the prosecutors as working at the Sections of the Judicial Police. According to several Tirana prosecutors, the number of judicial police *officers* working at the Commissariats is approximately 10-15; each Commissariat has approximately 3-4 judicial police officers. The number of the judicial police *agents* working at the Commissariats is less than 10. According to the same source, one prosecutor supervises the work of one judicial police officer working in the Commissariats and another judicial police officer working at the Sections of the Judicial Police, in the prosecution office. In other words, in Tirana, each prosecutor utilizes the work of two officers of the judicial police.

In other districts, the composition of the sections of the judicial police is as follows:[184]

[184] These data are based on the information received by the Directorate of Personnel in the General Prosecution Office. We were unable to get the same information from the Ministry of Public Order with regard to the composition of the Services of Judicial Police.

District	State Police Officers	Jurists (1/4 of the staff)	Tax Police Officers	Custom Service Officers	Forest Police Officers	Military Police Officers
Berat	3	3	2			
Bulqizë	1	1			1	
Dibër	2	2	1		1	
Durrës	10	8	2	2		
Elbasan	8	6			1	
Fier	9	6				
Gjirokastra	3	2	2	1		1
Gramsh	1	1	2			
Kavajë	3	2				
Kolonjë	1	1	1			
Korçë	7	6	1	1	1	2
Krujë	3	2			1	
Kukës	3	2		1	1	
Kurbin	3	2				
Lezhë	3	2	1			
Librazhd	1	1				
Lushnjë	3	3	1			
Mat	2	2			1	
Mirditë	1	1			1	
Përmet	1	1				
Pogradec	2	2	1	1		
Pukë	1	2			1	
Sarandë	2	2	1	1		
Shkodër	9	6	1	1	1	3
Skrapar	1	1				
Tepelenë	1	2				
Tiranë	20	16	5	2	2	5
Tropojë	3	3				
Vlorë	9	6	1	1	1	3

Except for the category "jurist," who are hired and depend administratively (salaries, dismissals, transfer, etc.) on the Prosecution Office, all of the above categories are hired

and depend administratively on the respective Ministries, namely Ministry of Public Order, Ministry of Finance, Ministry of Agriculture, and Ministry of Defense. As explained above, every two years the above institutions review the size of the sections of the judicial police and submit the list for approval to the Prosecutor General.

V. STATISTICS ON CASES OPENED AND COMPLETED

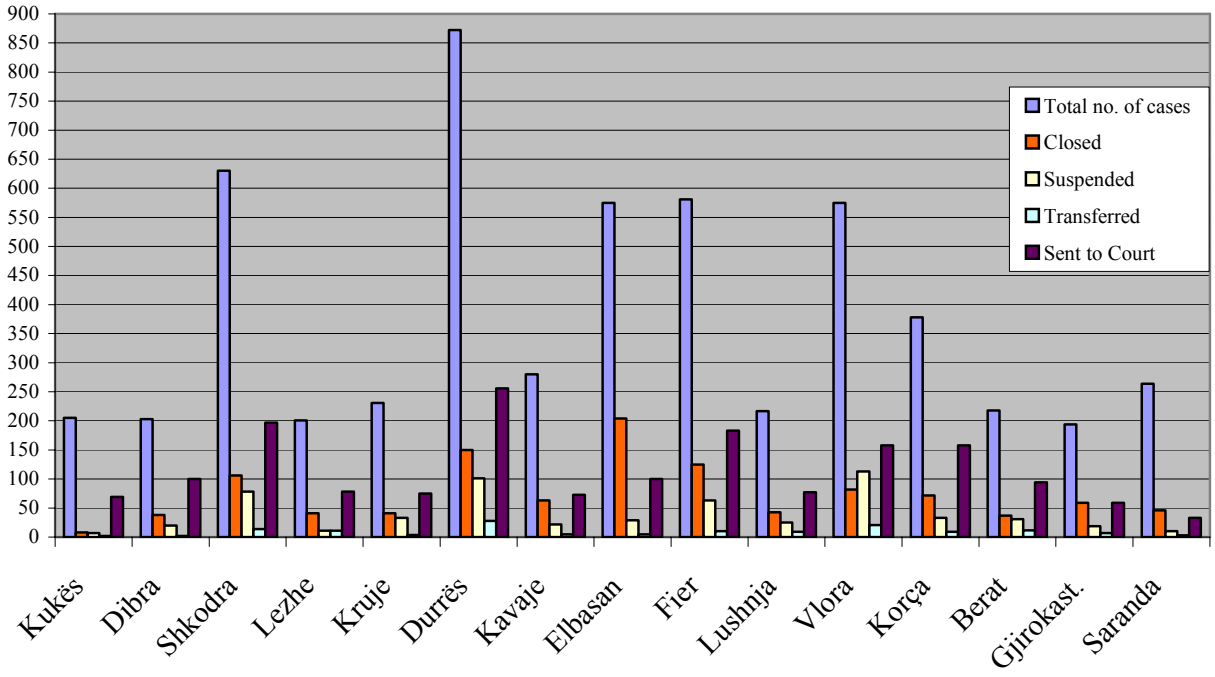
As mentioned above, the judicial police perform investigation of criminal cases under the supervision of the prosecutor. At the end of the investigation process, the prosecutor of the case makes a decision regarding the issue whether the case should be closed, suspended, transferred, or sent to court. In other words the "fate" of a case depends on the results of the investigation process performed by the judicial police under the supervision of the prosecutor of the case. According to the statistics of the General Prosecution Office for the year 2002, in the district of Tirana during the 2002 there have been registered 2648 criminal offenses out of which 392 have been sent to court.[185] Other 799 cases have been closed, 207 have been suspended and 144 cases have been transferred to other districts.

For other districts in the country, the figures for the 2002 are as follows:

District	Total no. of cases	Closed	Suspended	Transferred	Sent to Court
Kukës	205	8	7	2	69
Dibra	203	38	20	2	100
Shkodra	630	106	78	14	197
Lezhe	201	41	11	11	78
Kruje	231	41	33	4	75
Durrës	872	150	101	28	256
Kavaje	280	63	22	5	73
Elbasan	575	204	29	5	100
Fier	581	125	63	10	183
Lushnja	217	43	25	9	77
Vlora	575	82	113	21	158
Korça	378	72	33	9	158
Berat	218	37	31	12	94

[185] The statistics are based on the data that Rule of Law/Human Rights Department received from the General Prosecution Office in November 2002.

Gjirokast.	194	59	19	7	59
Saranda	264	46	10	3	33



It can be seen from the data above that district prosecution offices vary considerably in the percentage of cases they send to court. The reasons for this could be different. Thus, a number of cases are carried over from the previous year. The characteristics of a case in terms of truthfulness, evidence, complexity, seriousness are also influential. Naturally, the performance of the judicial police directed by the prosecutors, with regard to the investigative work for completing and presenting a case to court is also a factor to be considered.

From the table it appears that the district prosecution office of Durrës has sent more cases to court than the rest of the districts, but in comparison with the total number of cases opened, it has sent to court only slightly more than half. In this regard, the judicial police and the district prosecution office in Dibra seem to have been more successful than the rest of the districts in completing investigations and preparing for the court 69% of the cases left open after the calculation of the closed, transferred and suspended cases. Other districts, such as Shkodra, Elbasan and Fier have low percentages of cases sent to court. For example, from a simple calculation, Shkodra has sent to court only 197 cases out of 432 cases left after the deduction of closed, transferred and suspended cases, or 45% of them. The same is also true for Durrës which has sent to court only 43% of the opened cases after the deduction of the closed, transferred and suspended cases. The capital has also low figures; it has sent to court only 26% of the cases left opened after the deduction of the closed, transferred and suspended cases. Saranda seems to have the worst figures:

it has sent to court only 16% of the cases remaining after the deduction of the closed, transferred and suspended cases.

There are also districts that have suspended a considerable number of cases in comparison with the number of the opened cases. As a rule, this happens when it has not been possible for the judicial police to find the authors of a criminal act or when the person accused has a grave health condition, which makes it difficult to continue the investigation. It appears that in Durrës and especially in Vlora there have been many cases of this kind. Thus, in Vlora, one fifth of the total of opened cases have been suspended. As mentioned above, this is directly related to the investigative work of the judicial police for the part that relates to the lack of information on the author of the case.

Regarding closed cases, this also depends on the results of the work of the judicial police under the direction of the prosecution. Thus, as mentioned above, if during the investigation of a case by the judicial police it is found that a criminal act has not been committed or that the act committed does not constitute a criminal offense, the prosecutor may close the case. It seems that the judicial police and the district prosecution office in Elbasan have found many cases of this kind, around 35% of the opened cases, and consequently has closed more cases than the other districts. The lowest figure for this category, however, appears to be in Kukës, where only 4% of the opened cases have been closed.

VI. OBSERVATION OF THE IMPLEMENTATION OF THE JUDICIAL POLICE LAW IN PRACTICE

A. Issues of Jurisdiction and Supervision

As mentioned above, according to the Judicial Police Law, there is a difference between the authority that has jurisdiction over the judicial police, the Ministry of Public Order, and the authority that supervises its work, the prosecutors. The main discussion concerning the judicial police revolves around this situation – whether this structure allows for a productive relationship between the prosecution office and the judicial police, as the two main subjects performing criminal prosecutions. The supporters of the law argue that this is the structure utilised in Italy with good results.

1. Arguments for the Current System

The main argument in support of the different jurisdictions over the judicial police is the non-centralisation of the power over this body in the hands of one state institution. This structure allows for a division of the duties between the Ministry of Public Order and prosecution office in order not to give full power to one body. Given the negative experiences of the totalitarian system of Albania in the past, this could be considered a positive measure. Nevertheless, others in the justice community assert that the separation of accountability between the Ministry of Public Order and the prosecutors discourages an efficient relationship between the Judicial Police and the prosecutors. The confusion

caused by two different "masters" results in problems with accountability and supervision, which lead to substandard investigations and prosecutions.

2. Arguments Against the Current System

For the purposes of this discussion, the OSCE Rule of Law and Human Rights Department met with different prosecutors in the Tirana Prosecution Office as well as judicial police officers. During the meetings with the prosecutors, it was argued that the law on the judicial police, as it is currently in force, must be changed. It does not provide for an efficient and productive relationship between the prosecutor and the judicial police. Essentially, the main argument presented is that the powers of the judicial police as regulated by the Judicial Police Law are not sufficient to handle the investigation and preparation of a case for the court.[186]

The prosecutors agreed that there is no need for the sections of the judicial police as they are now. Judicial police should be working in Commissariats where the information about crimes is received. In order to facilitate the relationship between the judicial police officers of the Commissariats and the prosecution office, the prosecutors suggested that there should be one or two prosecutors placed in the Commissariats. The prosecutor should supervise and control the performance of the judicial police officers. He or she could review the documents compiled by the judicial police officers with the purpose of improving the content of these acts, thereby increasing the quality of the investigation and the chances for a successful prosecution. According to the majority of the prosecutors interviewed, this would also increase the professionalism of the judicial police, which is another big concern of the prosecutors.

There is another consequence of the current regulation of the relationship between the prosecutor and judicial police. Given that the prosecutor is the authority responsible for the prosecution, the prosecutors claim that judicial police officers do not feel motivated in the performance of their duties. It is surprising to hear from the prosecutors that at crime scenes, police go first and often do not immediately inform the prosecution office. According to one prosecutor, in practice it also happens that the police discuss cases only among themselves and do not share such information regarding the crime with the prosecutors. In other words, it may be that the police consider the prosecution office as having duties that are different and separate from the work of the police, whereas they should be operating as a law enforcement team. This shows the lack of co-operation between the police and the prosecution office possibly arising from the current organizational structure of the judicial police under the Law on the Judicial Police.

One prosecutor who has been working for more than 15 years in Tirana prosecution office argued that the old Criminal Procedure Code that was in force during the Communist regime provided for a better relationship between the police and prosecutor. Based on the provisions of this Code, all the pre-trial procedural steps were performed by the "investigators."[187] The institution of investigation[188] was separated from that of the

[186] Ibid. at p. 1.
[187] The word in Albanian is "hetues."

prosecution office and the investigators had the powers to make all necessary decisions. The prosecutor of the case was, however, informed of the procedural measures taken for the purposes of the investigation by the investigator of the case. The work of the investigator was over when the file for the court was completed. According to this prosecutor, in this way, prosecutor was familiar with the case and this the presentation of a complete case in court. This structure provided for a difference between the investigators and the judicial prosecutors, namely those who would present the case in the court. According to the same prosecutor, the judicial police should be in the same position as the investigators of the old system. While the OSCE would not advocate reversion to the previous system, it would recommend that steps be taken to clarify to judicial police officers exactly what their area of competence is, so judicial police are required to seek prosecutorial approval only in cases where this is really necessary for protecting the rule of law.

In light of the provisions of the current criminal procedural rules, judicial police cannot make any decisions without the authorization of the prosecutor. Technically speaking, the collection of evidence, such as the interrogation of witnesses or searches, is performed by judicial police. Nevertheless, the performance of all these acts is requested by the prosecutor of the case. In relation to this argument, judicial police officers complain about the limited scope of their work. According to a judicial police officer in Gjirokastra, a judicial police officer performs only the initial steps of the investigation, while the rest of the procedure is performed by the prosecutor assigned to the case. As mentioned above, they do not have power to handle the investigation from the beginning of the procedure of prosecution until the completion and submission of the file to court. This affects the results of their work, limiting them only to the preparatory phase of the investigation. If the judicial police follow up the investigation of a case until the completion of the file for court, there is a clearer delineation of responsibilities and thus a better chance for a complete investigative process. On the other hand, the limited scope of work of the judicial police has also prevented the professional "growth" of the judicial police by limiting them to mere preparatory work performed only at the direction of the prosecutor.

B. Education and Training

Prosecutors also have other concerns, which counter the argument of affording more powers to the judicial police. These relate to the allegedly inadequate education and preparation of judicial police officers. The majority of police officers have only a high school diploma and those with a higher degree have graduated from the Police Academy. Thus, as regards education, the situation is as follows: among the ordinary members of police and deputy officers only 6.3% of them have studied at the Police Academy , the remaining 93.7% have a different education, and only 19.9% of them have had some police training. Among officers, 51.5% have studied at the Police Academy, 23.8% have

[188] The word in Albanian is "hetuesia."

studied at the Military Academy and 24.7% have studied for a University degree, the majority for a law degree.[189]

As regards training, only 40% of those with military or civil preparation have had police training courses. According to the Ministry of Public Order, this situation is a consequence of the police hiring practices during the last 10 years, where no clear criteria were applied, thus violating the legal requirements regarding necessary police or higher education as well as years of experience.[190] Finally, there is also another side of the police situation that explains part of the problems with police. The average salary of police members is around 18,000 lekë per month. The majority of police members have families to support and a considerable number of them have no homes of their own. Thus, the poor performance of police is often excused based on the lack of proper education and low salaries. [191]

C. Relationship with other police bodies that have judicial police status

As explained above, besides the offices and sections of the judicial police, other police bodies may be given the status of judicial police by law. Thus, such police bodies as the financial police, construction police, and forest police may perform judicial police functions under the law. As a rule, officers from each of these bodies are assigned judicial police functions. If they come across a criminal offense during the performance of their functions, they must inform the prosecution office and co-operate for the prosecution of the case.[192] They are under the jurisdiction of the respective Ministry, but perform their duties under the authority of the prosecutor. Their appointment, however, needs the approval of the Prosecutor General.[193]

Asked about the relationship with the members of these police bodies who have the status of the judicial police, the prosecutors explained that there are no cases where they have "made use" of their work. They prefer to work with judicial police officers who are placed at the district police offices because of the advantages they have compared to the rest of judicial police bodies. There are more of them, they are better equipped, and they work faster and more efficiently because of the greater experience in crime detection. Thus, practically, the prosecution office handles the majority of cases solely with the services of the judicial police placed at the district police offices.

VII. CONCLUSION

[189] It should be mentioned here that the restriction that in the composition of the section of the judicial police only one-fourth of the staff can be jurists seems as a very rigid one. In practice there are many police officers who besides police education have also studied law as a second degree. It sounds as if in situations where a qualified candidate with police experience also has a law degree, he or she would not be hired merely because of the fact that the number of jurists cannot be higher than one-fourth of the total number. This is probably a matter of poor wording, with the idea being simply that no more than one-fourth can be hired for positions requiring legal education.
[190] The official website of the Ministry of Public Order at http://www.mpo.gov.al.
[191] Ibid.
[192] See arts 30, 31 and 32 of the Criminal Procedure Code.
[193] See art.4, sec. 1 and 3 of the Judicial Police Law.

Judicial Police play an important role in the investigative process of criminal offenses. Nevertheless the legal framework regulating the organization, functioning and powers of this body is not adequate. The division of the jurisdiction between the Ministry of Public Order and Prosecution Office creates confusion as to which body has the ultimate jurisdiction over the judicial police. The dual structure influences also the efficiency of the work of judicial police in practice. Prosecutors suggest giving more powers to the prosecution office over the judicial police, though they generally prefer to have them physically located in the police commissariats. This will have positive effects also with regard to the specialization of police staff dealing with investigation and the efficiency of the criminal prosecution process. The OSCE believes that the current regulation is unnecessarily complicated. A simpler organization of the judicial police than the current one, perhaps of the kind suggested by the prosecutors for a judicial police dependant in all aspects on the prosecution office, may prove more effective.

With regard to the powers of the judicial police, the current situation places almost all responsibility upon the prosecutors, with the judicial police doing very little work upon their initiative for the purposes of the investigation. This does not mean that the institution of the former investigators is the solution to this issue; however, as suggested by the prosecutors, the advantages of the functioning of this institution, in terms of some decision-making powers and responsibilities, should be taken into consideration.

Besides this, the relationships of the judicial police with other police bodies that have the status of judicial police is not clear and practically non-existent. The legal framework should be more specific with regard to the scope of this relationship. Education and training of the police staff that have the status of the judicial police is another area that needs improvement. Official sources indicate that the education and qualification of police is not at a desirable level. If this can be realised, then stricter hiring criteria for judicial police staff should be applied. International bodies with relevant experience in the area of criminal procedure issues could also help with regard to training on the investigative process.

KEY RECOMMENDATIONS

1. ***Citizen complaint structures should be established for bailiffs' offices.***
2. ***Failure to comply with execution orders should be criminally prosecuted on a regular basis.***
3. ***Bailiffs need a clearer fee structure.***
4. ***Bailiffs should be trained to work more closely with prosecutors, police and courts. These in turn should be trained to work better with bailiffs.***
5. ***It should be made easier for bailiffs to obtain information on debtor assets.***

I. INTRODUCTION

Execution of court decisions is a key element in a constitutional state - absent execution, a party in a civil legal proceeding does not realize his rights in a recognizable way. In Albania, the Bailiff's Office is the institution charged with executing civil judgments issued by the courts, i.e., if a civil plaintiff gets a monetary judgment, the amount is collected through procedures implemented by the Bailiff's Office. Albania has been urged especially in the context of the Stabilization and Association negotiations to improve the functioning of this office.

In this part of the report, a different and more intensive methodology was used which included interviews with three target groups, whose members are the main actors in matters of execution: the bailiffs, successful plaintiffs and lawyers. More than 50 interviews were conducted throughout the country in Bajram Curri, Kukës, Durrës, Vlora, Korça and Tirana.[194] This methodology is reflected in the more analytic discussion concerning the challenges confronting the Bailiff's Office in many aspects.

The first part of this section gives an overview on the procedures the bailiffs are legally required to follow according to the Civil Procedure Code as well as some of the issues arising in the implementation of such procedures. The second part of the section deals

[194] These interviews were also used in preparing a report on the Bailiff's Office for a seminar held by the Council of Europe in June 2002. Council of Europe thus funded the costs of the interview while the OSCE Presence in Albania conducted the interviews and prepared the report with the co-operation and assistance of the Tirana Legal Aid Society (TLAS) - Cafod Albania.

with the internal structure and functioning of the Bailiff's Office, which falls under the responsibility of Ministry of Justice.[195]

II. EXECUTION PROCESS

The execution of judgements is a state duty. In an environment where faith in the judiciary and respect for the rule of law is still evolving, there is little if any voluntary fulfilment of court decisions. Thus, the successful party must regularly seek to have his judgement enforced. The execution of judgements is regulated in part four of the Civil Procedure Code.[196] The court and the bailiff, as executory officer, are jointly responsible for the execution.

A. Prerequisites for an Execution

An execution can only be done when several prerequisites are fulfilled:

- the execution of a legal obligation is done only on the request of the creditor since there is no execution process on the initiative of the bailiff.[197]
- The creditor and the debtor must be capable of being a party in a lawsuit and legally capable of conducting a proceeding in their own name.
- The execution is done on the basis of the title (i.e. the written order issued by the court). The title specifies pertinent information regarding creditor and debtor and the kind and extent of the claim to be enforced. The most important types of judicially-enforceable instruments are: 1) final court judgements, 2) provisionally enforceable judgement, 3) decisions of international courts and arbitration tribunals and 4) directly enforceable instruments drawn up by a notary .[198]
- A judicially-enforceable instrument must bear a court certificate of enforceability .[199]

With regard to the prerequisites, some problems can arise from imprecise court decisions. If details are omitted, this can allow the debtor to manipulate the result or make it difficult to identify the object of the execution; e.g., one court decision reviewed stated that a person should surrender a Mercedes-Benz with a license from Vlora, without specifying the type, color, and number of the chassis or the engine of the car. Another example revealing problems regarding the prerequisites is that the agency desiring execution might not provide the correct documentation. For example, the Bailiff's Office in Bajram Curri received 80 bills from KESH, the public power provider in Albania, in a plastic bag with no explanation whatsoever. Since KESH has the legal authority to issue legally binding orders for payment of utility bills,[200] it was likely that KESH wanted the Bailiff's Office to execute the bills.

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[195] See chapter 8 on the Ministry of Justice.
[196] Law No. 8116, dated 29 March 1996, "Civil Procedure Code of the Republic of Albania", amended by Law No. 8431, dated 14 December 1998, Law No. 8491, dated 27 May 1999, and Law No. 8812, dated 17 May 2001, arts. 510-617.
[197] Ibid., art. 511.
[198] Ibid., art. 510.
[199] Ibid., art. 511 *et seq*.
[200] Law No. 8369, dated 9 July 1998, "On the treatment as executive titles of bills for the consumption of electric energy to be paid by state subjects and by private subjects".

Another issue is that many cases cannot be executed because of the debtor's emigration out of Albania. (There has been no single case according to which after a debtor has emigrated, a representative of the debtor was appointed as allowed by Article 522 Civil Procedure Code.) Finally, the public is generally not aware of the procedures required for enforcing a legal obligation. As a result, creditors often do not ask for and thus do not receive a certificate of enforceability from the court before seeking to have the judgment enforced by the bailiff. This lack of knowledge causes confusion among the clients of the Bailiff's Office and dissatisfaction with the legal system. Most citizens merely assume that the Bailiff's Office is needlessly harassing them.

1. Payment of Fees

The judicially-enforceable instrument, along with the court certificate of enforceability, is sent to the Bailiff's Office with a request asking for execution .[201] Before the execution can start, the creditor has to pay the required fees[202] as shown in the table:[203]

For the execution of court decisions and other executive titles with equivalent subject with no specific sums	750 Leks
For the execution of other executive titles with equivalent subject with specific sums: - For citizens - For legal entities	 3% of the value 7% of the value
For notifications and other actions of the bailiff	100 Leks
For the issuance by the bailiff of any act or other document requested by the party	100 Leks
For the execution of the decision on alimony pensions	Free of charge

These fees are ultimately paid by the debtor. The creditor who initially pays will be reimbursed if the execution is successful.

Several issues arise regarding the fees to be paid. Those fees that are calculated based upon the value of the judgements often result in legal uncertainty. The method of calculating the specific execution fee varies by geographical area. Obviously, this creates problems of uncertainty and it should be clear how the fee is calculated and such calculation method should be applied throughout Albania in a standard way.

Further, the fact that one should pay for the execution whether it is successful or not, is seen by most of the creditors and the bailiffs as unfair. The overwhelming majority would prefer a fee which is to be paid only if the execution is successful- or a fee that would be split in such a fashion that one half would be paid in any case and the other half only if the execution was successful. According to one bailiff in Vlora, the Vlora Bailiff's Office returned the execution fee in several cases where the execution was not successful. This

[201] Civil Procedure Code, art. 515 Civil Procedure Code.
[202] Ibid., art. 525.
[203] Figures are as of May 2002.

might not be the correct solution: especially if one bailiff applies the law differently than other colleagues. However, it shows that there is a need for discussion and maybe a need to create a new fee system or at least unification of the practices.

The fee system should contain an incentive for the bailiffs to be successful and an incentive for the clients to use the Bailiff's Office and to abstain from other legally questionable means. At present, it appears that plaintiffs who use the court system often lose their patience and then solve the conflict via their own means or just do not execute since they fear the Bailiff's Office is not working properly.

In addition, there are no deadlines for the bailiffs to act and no provisions of the number and frequency of attempts a bailiff should make in order to execute. By changing the fee system, this situation might improve. If a creditor initially has to pay a lower fee and then has to pay for each attempt it would be up to the creditor to decide on the efforts spent by a bailiff in enforcing judgements.

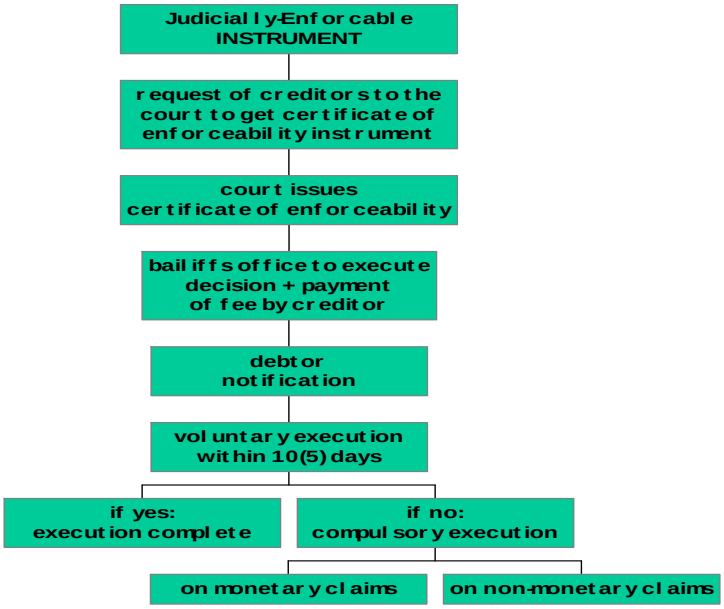
2. Notification of the Debtor

The execution itself starts with the notification of the debtor, who has ten days (five days in the case of salaries and obligation for sustenance) to execute voluntarily.[204] Only at this point does the compulsory execution start.[205] In cases where the required time-period has not expired but the bailiff learns that execution would become impossible if the required time period was respected (e.g., the debtor is leaving the country before the end of the ten day period), the compulsory execution may start immediately.[206]

The execution procedures anticipate that the first step of the execution is a voluntary one. The debtor is informed that the debt is being executed and thereafter has ten days to pay the debt voluntarily. However, to give notice to the debtor remains complicated. In theory the certificate letter procedure should work, there is even a return receipt procedure. But, people often do not have addresses (or the Courts are not carefully including the addresses in the judgement). The postal carrier has to know everybody and the delivery system is thus in practice quite informal. Often it is the creditor delivering the notifications. In addition, some regions –especially in the north – are not covered completely by the postal system.[207] Obviously, the notification will just not be possible.

[204] Civil Procedure Code, art. 517.
[205] Ibid., art. 519.
[206] Ibid.
[207] One extreme example is Curraj i Epërm. From Bajram Curri to Curraj it takes 1 hour 15 minutes by automobile and then, because there is no possibility to travel by car, another 6 hours of walking to Curraj i Epërm.

Overview: Execution



B. The Execution Itself

The procedure of execution varies according to whether it is a monetary claim or a non-monetary claim and according to the subject-matter seized. Some of the rules, however, do apply to all different procedures.

1. Integration of the Creditor

The creditor is involved in all stages of the execution. The law does not require it, but all the bailiffs to whom we spoke consider the participation of the creditor at the enforcement procedure as necessary. Without this participation, bailiffs often threaten to drop the particular case. A creditor who is not involved and does not show any particular interest is not seen as a "real" creditor for whom judgements have to be enforced. The creditor's participation is required for two reasons: to avoid allegations of corruption and to use the creditor's infrastructure (in some cases the creditor's participation might be helpful because the creditor can take possession of the returned property). If the bailiff is not successful in executing the legal obligation, it is quite likely that he will be accused of being corrupt. Therefore, bailiffs insist that creditors should come to supervise the actions of the bailiff and see themselves why the execution was not successful.

Apart from the bailiff's fee, no additional payment for the execution is legally required from the creditor since the bailiff is paid by the state for transport and accommodation.

But in practice, the bailiffs rely on the resources of the creditor. It is common (and accepted by creditors all over Albania) that the creditor provides the means by which execution can occur (e.g., better transportation by car, better means of security). As a consequence, the creditor not only pays the execution fee, but also provides the means of execution.

Plaintiffs who are not able to provide resources to the Bailiff's Office will not be able to help in the execution and will consequently be disadvantaged. In other words, access to justice depends on the resources of the creditor. For a "poor" creditor who cannot provide such resources, the execution is less likely to succeed than for one who can provide the bailiff with assistance. Although the debtor is obviously required to pay statutory fees for execution according to article 525 of the Civil Procedure Code, these informal "extra-legal" costs associated with providing assistance to the bailiff will never be returned, a situation totally contrary to the idea of the Civil Procedure Code. It would therefore be advisable to re-examine the fee structures so that the state imposes sufficient costs on debtors so that bailiffs can have the resources necessary to execute judgements.

2. Assets of the Debtor

It is not clearly specified in the law who should gather the needed information about the assets of the debtor. Should it be the bailiff or the creditor? From a logical interpretation of Articles 583 and 593 of the Civil Procedure Code and Article 26 of the Bailiff's Law, however, it is clear that the bailiff himself should be the one to gather the needed information on the assets.

Nevertheless, to gather proper information on assets remains very difficult. The registry of immovable property for instance is still not kept properly. Firstly, not all immovable properties are registered. As of September 2002, registration information existed for only 2263 cadastral zones out of 3064 and 2.181.430 million out of 4 million properties were registered.[208] Following this rate it may be years before all properties are registered. Secondly, not all the changes in ownership are registered. Since the notary fees are high and the registration procedure somewhat complex, many people do not submit documents to change the register when buying or selling land, a situation leading to inaccurate records.

Moreover, obtaining information from other administrative bodies regarding the debtor's assets also remains difficult. The administrative bodies are often slow in answering such requests by the bailiffs, if they answer at all. On the other side, it should be noted that the commercial registry generally functions well. All the commercial persons acting in Albania are registered and the registry is open and available to the public, which can obtain commercial information quickly.

It is also difficult to discover the other creditors of the debtor and the level of debt. While the movable property register contains such credit information as to debts secured by

[208] Registration started in rural areas, where there are fewer properties than in the urban areas. This is why over two-thirds of the cadastral zones are registered but only half of the properties.

movable property, it would be helpful if a credit information registry contained all such information in a consolidated way which could be useful for the creditor to decide whether to continue the enforcement and to allow the bailiff to operate with broader information.

3. Involvement of Lawyers

Execution is not regularly considered being part of a lawyer's duties. Especially in the north, lawyers do not often assist a client with execution. Usually, lawyers deal with a case until judgement and then it is up to the successful plaintiff himself to organise the execution. If these lawyers participated in the execution process they could facilitate and hasten the process.

This situation highlights a need for more public awareness concerning execution procedures, especially in remote areas. Successful plaintiffs find it difficult to receive expert assistance and most are not capable of interpreting the law themselves, since the civil procedure code is not addressed to the layperson. Its prose is not easily understandable – many sentences are convoluted, a lot of complex cross-references are made and technical terms are not self-explanatory. The bailiffs have consulting hours for the general public which are mainly consumed by people seeking information on execution procedures. But, such expert consultation may be beyond the training of some bailiffs and certainly adds to their already difficult job. A public information campaign on such procedures could relieve that burden somewhat.

4. Limitations on Enforcement

In order to protect the debtor's basic standard of living, there are certain exemptions from execution: things of personal and family use (clothing, sheets and covers, furniture), decorations and souvenirs, letters, documents of the family, things necessary for the scientific and artistic activity of the debtor and the family (books, musical instruments); the financial assistance given to mothers with many children or to single mothers; retirement, disability or family pensions (maximum that can be seized: 50%).[209] For persons earning their livelihood through agriculture, up to 3000 square meters of land, two animals for tilling the land, one cow, six sheep or six goats, seeds for future planting, as well as food for these animals for three months are also exempted.[210] Further, only one half of the salary of the debtor can be seized.[211]

The terms of the law seem to be quite unclear and therefore open for differing interpretations depending on the will of the bailiff. In addition, we are unaware of any instance in which article 533 Civil Procedure Code was used. In any case, the provisions makes no real sense: the basis of the debtor's basic standard of living does not depend on the percentage of the salary but on the absolute amount that he has available to him for living expenses.

[209] Civil Procedure Code, art. 529.
[210] Ibid.
[211] Ibid., art. 533.

5. Rules Based Upon the Type of Property Involved

a. Execution of Monetary Claims on Movable Objects

Execution starts with the development of an inventory. This inventory is then used to proceed with attachment of the debtor's personal property, which deprives him of his power of disposition.[212] In order to do this, the bailiff will either take possession of any chattel in the debtor's custody without examining the status of ownership, or he will leave the seized items in the custody of the debtor who may use them on the condition that he will not diminish the value.[213] The Bailiff should note the claims of third persons in relation to inventoried items, however, it is left to the third party to file a third-party claim to prevent the realisation of the object seized.[214] When there is no storage place and when the debtor refuses to accept seized items into custody, the bailiff may appoint another person for this, determining a fee for this third person .[215]

Money, negotiable instruments and other valuables are to be taken by the bailiff and held in judicial custody by a bank.[216] All other items are left in the debtor's custody. The above process is supported by the Criminal Code[217], which has provisions for criminal sanctions if the seizure is not carried out properly.[218] Sale of goods taken in execution is performed by public auction or by free sale. Proceeds of a public sale are to be given to the creditor in order to discharge the debt, after deduction of the costs of the execution procedure. The debtor is entitled to any surplus. Free sale is not practiced in Albania as there are no free sale shops.

One problem arising in this context is that the Bailiff's offices throughout Albania have no warehouse or any other place to store seized goods. This is why they often leave the seized with the debtor. This causes many problems, e.g., long discussions and disputes on the condition of the seized goods if the debtor continues to use them. In most cases the creditor sends his guards to the debtor's place in order to protect the goods from the debtor's actions. This might be understandable, but creates obvious legal and practical difficulties since the creditor is not entitled to enter the debtor's home to protect the seized goods. Violent disputes often occur.

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[212] Ibid., art. 531.
[213] Ibid., art. 542.
[214] Ibid.
[215] Ibid., art. 546.
[216] Ibid., art. 548.
[217] Law No. 7895, dated 27 January 1995, "Criminal Code of the Republic of Albania".
[218] *See* ibid., art. 320 (Preventing the enforcement of court decisions): "Hiding, altering, using, damaging or destroying the things which have been the subject of a court decision, or carrying out other acts with the intent of preventing the enforcement of the court's decision, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment"; art. 321 (Acts opposing court's decision): "Committing acts that oppose a court's decision about obligations arising from additional punishment ordered by it, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment"; art. 322 (Destruction of seals and signs): "Intentional destruction of seals and other signs placed upon different objects by the organs of criminal prosecution and of the judiciary, constitutes criminal contravention and is punishable by a fine or up to six months of imprisonment."

Moreover, there are issues relating to the access of bailiffs onto debtor's property. The Constitution guarantees the inviolability of the residence and states that "searches of a residence, as well as premises that are equivalent to it, may be performed only in the cases and manner provided by law."[219] The Criminal Code supports this constitutional provision, stating that, "entry into premises without the consent of a person living therein, committed by a person holding a state function or public service during the exercise of his duty, except in cases when it is permitted by law, is punishable by a fine or by up to five years of imprisonment."[220] There is no legal explicit authorisation for the bailiff to search the debtor's apartment or premises, as required by the Constitution and the Criminal Code. Although in practice this does not present much of a problem, should be clarified in the future.

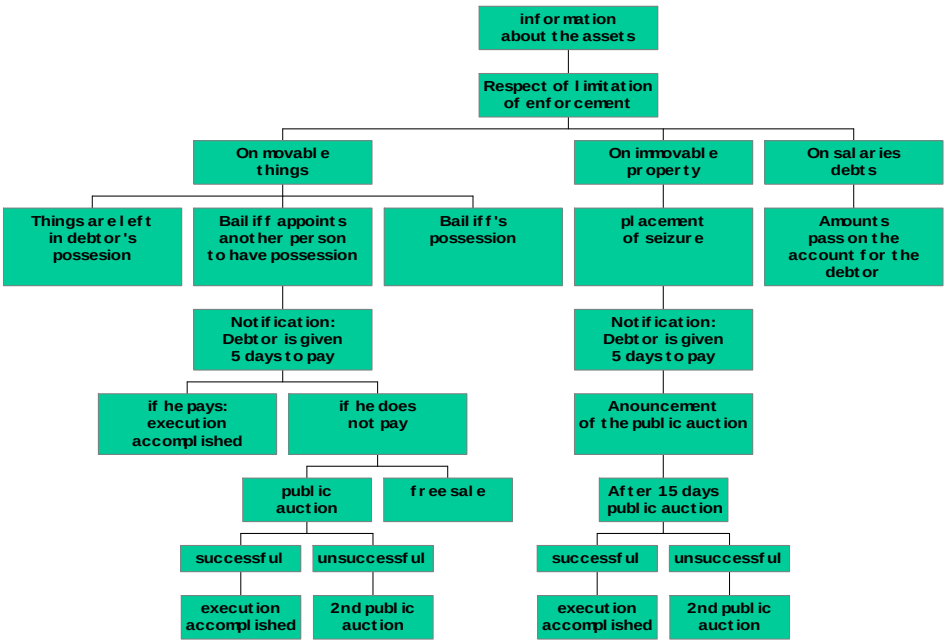
b. Execution of Monetary Claims on Immovable Property

Land and property treated as real estate (as well as means of navigation and flying) are also subject to execution.[221] Execution may be by way of public auction in order to realise the value of the real estate and to discharge the creditor's claim with the proceeds.[222]

However, despite these legal provisions, such execution is difficult in reality. In many cases potential buyers (as well as those organising the auction) have been threatened physically by the debtor. To date, no criminal procedure against a debtor who illegally opposes the execution has been opened under the Criminal Code.[223] Since these criminal provisions are not being employed and owners often defend their property rights without fearing the criminal consequences, it is difficult for the bailiffs to enforce the execution procedure for immovable property.

[219] Albanian Constitution, art. 37.
[220] Art. 254, Criminal Code.
[221] Civil Procedure Code, art. 560.
[222] Ibid., art 567 *et seq*.
[223] *See* Criminal Code arts. 322-323.

On monetary claims



One alternative to execution by liquidation which might be a helpful compromise, execution by sequestration, is not foreseen by Albanian law. When the auction is not successful, it might be useful to be able to sequester. Upon motion of the creditor, the sequestration could be directed by court order depriving the debtor of his rights and authorities to administer the property and appointing a property trustee. The creditor could then receive all income from the current income and profits of the estate.

c. Execution on Salaries or Debts

Debts and salaries also can be subject to execution.[224] The bailiff has to examine whether the debt exists by consulting seized documents and other data.[225] The bailiff will then issue a garnishment order identifying the debt and forbidding the garnishee to pay the debtor.[226] The debtor-garnishee will be informed not to dispose of the debts in any way. The garnishment order becomes effective when served upon the garnishee. If a garnishee fails to respect the order a fine may be imposed.[227]

d. Execution on Non-Monetary Claims

Claims for delivery or recovery of goods are enforceable .[228] Chattel in the custody of the debtor can be taken away by the bailiff. In cases concerning claims for recovery for possession of real estate, the bailiff will restore the real property to the creditor's possession by ordering the debtor's eviction .[229] Nevertheless, there is no direct way of execution if personal or real property to be delivered to the creditor is in the custody of a third party, although the creditor may garnish the debtor's claim for return or restitution.

[224] Civil Procedure Code, art. 581.
[225] Ibid., art. 582.
[226] Ibid., art. 581.
[227] Ibid., arts. 588, 598.
[228] Ibid., art. 601.
[229] Ibid., art. 602.

If, according to the judgement, the debtor must perform a certain act or refrain from a certain act or acquiesce in an act of the plaintiff, this judgement is subject to execution .[230] Fungible acts that do not require personal performance by the debtor will also be enforced by a court .[231]

The execution of non-monetary claims is less than sufficient because the sanctions provided by the Civil Procedure Code and the corresponding provisions of the Criminal Code are not implemented properly. Especially in property cases, bailiffs do not regularly enforce the decisions. Property is one of the most controversial issues in Albania. It is estimated that between 40-60% of all court cases deal with property disputes. The discussions among ex- owners, new owners, and illegal owners of real estate are quite confused and each party defends its rights energetically.

C. Execution Against the State

Execution of judgments against the state presents some different challenges and obstacles which merit attention. The Albanian Constitution states that state organs must execute judicial decisions.[232] However, there are concerns that this constitutional provision is not being adequately respected in Albania.[233]

1. Civil Procedure Code Provisions

The Civil Procedure Code contains special provisions for executions against the state. According to the Code, "execution of obligations in money against budgetary institutions is made only into a relevant bank account or into the credit they have with third parties. Enforced execution on the movable or immovable property of a budgetary institution is not permitted."[234] When the budgetary institution does not have money in its bank account and does not have credit with third parties, the "relevant superior financial organ is required to designate the necessary funds and the budget chapter of the juridical person from which the obligation shall be met or the special financing from the state budget."[235]

Pursuant to the Constitution, the state should execute judicial decisions. To the extent possible, laws and sub-statutory acts should be interpreted to further the principles of the Constitution. Currently, the Civil Procedure Code provides that executions should be carried out only in bank accounts and the treasury. However, in cases where these are empty, specifying that a "superior financial organ" is supposed to provide the funds from somewhere else may not be sufficient to ensure successful execution, especially with a cash-poor government. Consideration should be given to alternative measures to improve executions against the state.

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[230] Ibid., art. 606.
[231] Ibid., art 605.
[232] Albanian Constitution, art. 142 sec. 3.
[233] In addition to the information contained in this study, we have information that there are currently pending before the European Court of Human Rights in Strasbourg a case or cases alleging the failure of the state to pay judgments.
[234] Civil Procedure Code, art. 589
[235] Ibid.

2. Order from the Ministry of Finance

Apart from these regulations in the Civil Procedure Code, a crucial order from the Minister of Finance exists. This order of the Ministry of Finance[236] provides that before an institution authorizes payment the "hierarchic higher body" must approve the payment. According to the order "this is done in order to make known to the Central Institutions the damages or the liabilities caused by their employees and, if the case warrants, to establish the obligations."

While this order may be perfectly justifiable from an accounting and budgeting point of view, the order may infringe upon the Constitution if it is applied in such a manner as to hinder executions. The justification for the of the Ministry of Finance is included in the order itself: the main aim is to take inappropriate pressure off state treasury employees. An employee of the Ministry of Finance explained in more detail the reason for the Order of the Ministry. Whenever a sub-unit of a particular state institution is subject to an execution, it is necessary that the officials check 1) if the judgement is correct or 2) if it is based on an inappropriate agreement among a private person, a state official and the court. If such an inappropriate agreement was found to exist, the higher authority would not respect the judgement itself and would be able to refuse payment.

Nevertheless such an order conflicts with the constitutional requirement given in article 142 specifying that the state should execute court decisions and also may violate the principle of the separation of powers between the executive and the judiciary as specified in article 7. In this situation and under these constitutional requirements, the state authority does not have the discretion to refuse to implement a court decision. A court decision is binding on executive organs unless appealed to higher courts. If there are concerns about corruption or other criminal offences concerning the court decision, these should be reported to the appropriate authorities, such as the Prosecutor General or High Council of Justice, for investigation.

3. Implementation of Executions against the State

The above-mentioned theoretical legal concerns are often confirmed in practice: *de facto*, an execution against the state is generally difficult. There are no accurate statistics regarding failed executions against state bodies. Nevertheless, all bailiffs interviewed pointed out that executions against the state were a substantial problem. Every bailiff has several files of pending executions against the state (some of them have even up to fifty files, some dating back several years). Such unpaid debts not only include large judgements which the state might not be able to pay, but also smaller judgements, which should be within the financial means of the state. According to the information we have concerning the cases in Strasbourg, these unsatisfied execution cases may involve an amount as high as six million euros.

[236] Prot. No. 4670, Protocol to the Ministry of Justice, the Bailiff's Office and the Treasure Department.

Of course, in a transition country such as Albania, there are budgetary restraints and a need for institutional training and development. Nevertheless, a State that does not pay its judgements sends a negative signal to its citizens concerning respect for the rule of law. To add insult to injury, in the execution situation, the creditor is paying the state for the execution fees for an execution that the state will not pay. To the extent that there are legislative and institutional obstacles which hinder the State in fulfilling its Constitutional obligations, these should be addressed and eliminated as soon as possible.

D. Remedies in Unlawful Execution Proceedings

It there is an unlawful execution, the aggrieved party has specific remedies. Those remedies apply only as long as the execution proceedings continue, which means that the execution must have commenced and not be finished.

Objections may be raised by the aggrieved party if the bailiff does not comply with the formal requirements of the execution.[237] The court competent for enforcement matters will examine whether procedural rules have been violated. The debtor may also file an action to challenge enforcement of a judgement, but the action may be based only on circumstances arising after the close of the trial. In this case the court will then suspend execution. In third party executions, the third party has the right to prove that his property was unlawfully attached by the bailiff.[238]

Lawyers and bailiffs pointed out that debtors often misuse their rights under articles 609-611 of the Civil Procedure Code to take legal actions against the bailiff in order to delay the execution until the creditor gives up. The same is valid for recourses to the High Court. They are also often resorted to simply to gain time. Appealing to the High Court does not stop the execution automatically; the lower court must suspend the execution.[239] . Nevertheless, several lawyers and judges to whom we spoke estimate that 75-80% of all cases that go to the High Court are brought for the purpose of postponing the execution. Half of these cases are closed without the required court hearing,[240] which means that the recourses have been initiated for reasons other than those permitted by the law. This figure is just an estimate as no reliable statistics exist. But if the figure is generally correct, it shows how the debtors misuse their rights and that reform in this area may be necessary.

E. Statistics Concerning Execution

Although there are statistics, no clear figures could be given and it could thus not be determined, how many cases are executed successfully. Officially from the Albanian government, there are figures only from the year 1999. In April 1999 on the occasion of parliamentary questioning, the Minister of Justice reported that 19,264 final civil judgments were entered in 1998. Of these, 5,201 decisions were executed entirely, while 11,239 decisions were being executed periodically, as they consisted mainly of recurrent

[237] Civil Procedure Code, art. 610.
[238] Ibid., art 612.
[239] *See* ibid., art. 479.
[240] Ibid., art. 480.

pension and food obligations in the family law area. By contrast, 2,864 judicial decisions had not been executed.

An estimation based on calculating roughly on the basis of the various three-month reports leads to a much less favourable figure. Such estimation indicates that fewer than half of the judgements are executed, of which roughly 5% are carried out during the period of voluntary execution, and roughly 30% right at the beginning of the forced execution when the seriousness of the procedures is realised by the debtors. These current estimates are roughly confirmed by statistics reported by international organisations. For example, according to the report of the EU/Albania High Level Steering Group, only 11,099 of 18,976 court judgements were enforced in 2000, a rate of 58 %.[241] The European Commission Delegation reports that in 2001, out of a total of 12,182 rulings, 5,835 were executed and 6,347 were carried over into 2002.[242]

III. STRUCTURE AND OPERATIONS OF THE BAILIFF'S OFFICE

The Structure and operations of the Bailiff's office are governed by a Law No. 8730.[243] Although passed in January of 2001, the organic law on the Bailiff's Office began to be implemented in 2002.

A. Supervision by the Ministry of Justice

The Bailiff's Office is under the responsibility of the Bailiff's Department, which has been under the supervision of the Ministry of Justice since this Ministry was re-created in 1990.[244]

The new Bailiff Law and the new law on the Ministry of Justice[245], reiterate that the Ministry is responsible for the Bailiff's Office.[246] The Ministry has always had the legal responsibility for regulating the operation of the Bailiff's Office. Nevertheless, previously the Bailiff's Office was *de facto* administered by the courts. In connection with the new law, the Ministry has expressed a renewed commitment to meeting and carrying out its duties in connection with bailiffs. The bailiff service is organised on a central level with the General Directorate and on a local level with the Bailiff's offices .

B. The General Directorate

The General Directorate of Court Execution Offices is composed of 11 members as shown in the table below:

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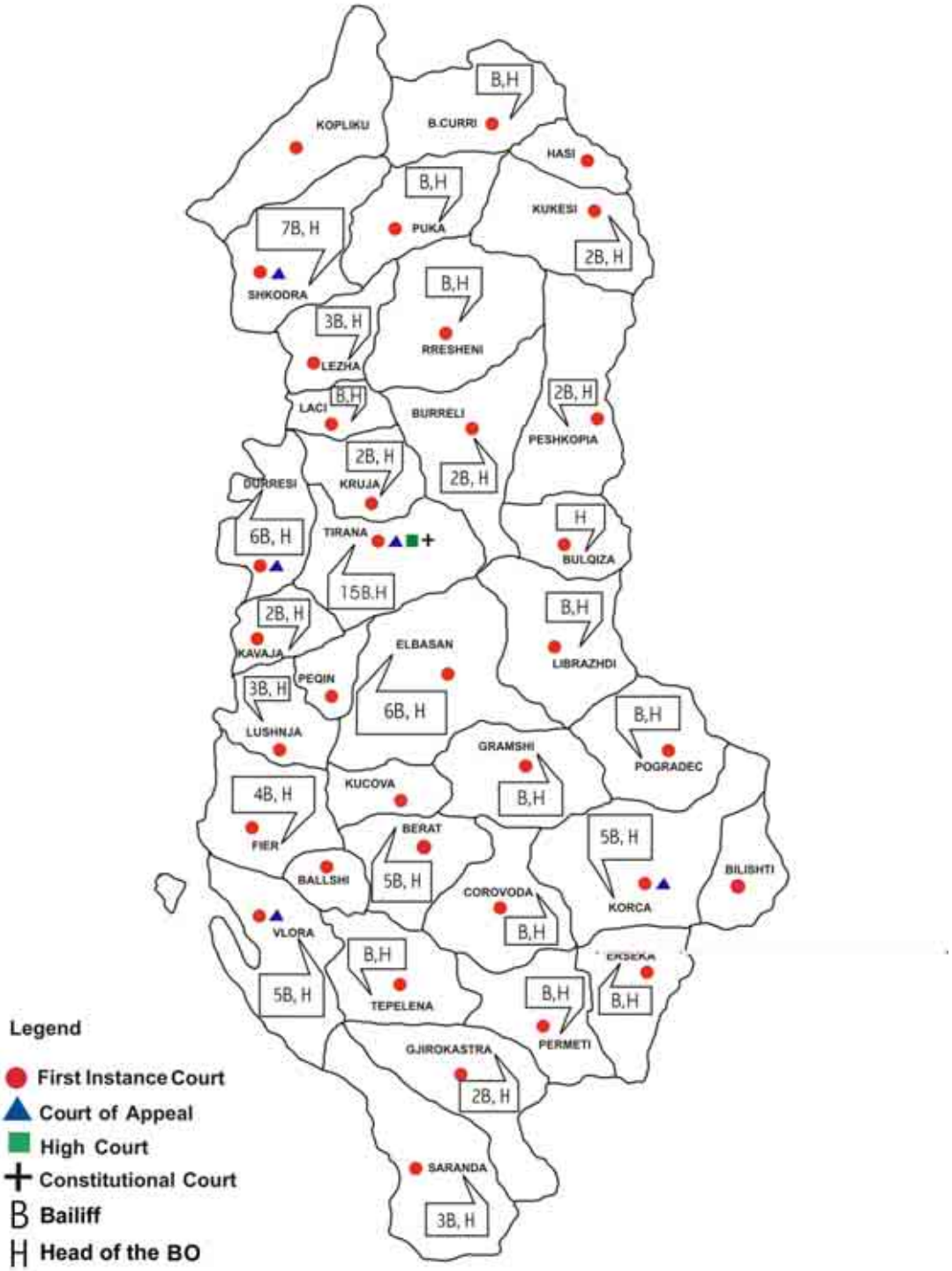
[241] European Commission, *EU/Albania High Level Steering Group Report* (May 2001).
[242] European Commission, *Albania Stabilisation and Association Report,* (March 2002).
[243] Dated 18 January 2001, "On the Organisation and Functioning of the Bailiff Service" [hereinafter Bailiff Law].
[244] Law No. 7381, dated 09 May 1990, "On the Establishment of the Ministry of Justice."
[245] Law No. 9678, dated 14 May 2001, "On the Organisation and Functioning of the Ministry of Justice"
[246] See ibid., art. 17, which states: "The General Directorate of Court Execution Offices is a dependant institution of the Ministry of Justice that, according to the law, supervises and realizes the organization and functioning of the executive system of the civil decisions and executive titles."

Position	Number of personnel
1. General Director	1
2. Organisational Sector	
Head of Sector	1
Specialist	2
3. Inspection Sector	
Head of Sector	1
Specialist	2
4. Specialist (finance + budget)	1
5. Driver	2
6. Secretary	1

The General Directorate is responsible for the management, co-ordination and inspection of the Bailiff Service.

C. The Bailiff's Offices

The levy of execution is done by the bailiffs. The total number of bailiffs is 114, including 11 women. As the map below shows, they work in 29 bailiff's offices in those cities where the District Courts are located.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PUKA
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3B, H
LEZHA
LACI
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BURRELI
2B, H
PESHKOPIA
2B, H
2B, H
KRUJA
2B, H
DURRESI
6B, H
TIRANA
15B.H
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BULQIZA
2B, H
KAVAJA
ELBASAN
6B, H
B,H
LIBRAZHDI
PEQIN
3B, H
LUSHNJA
B,H
POGRADEC
GRAMSHI
B,H
KUCOVA
4B, H
FIER
BERAT
5B, H
BALLSHI
5B, H
KORCA
BILISHTI
COROVODA
B,H
VLORA
B,H
5B, H
TEPELENA
B,H
B,H
PERMETI
GJIROKASTRA
2B, H
SARANDA
3B, H
Legend
First Instance Court
Court of Appeal
High Court
Constitutional Court
B Bailiff
H Head of the BO

Each Bailiff's office has a chairman. The chairman is responsible for the internal regulations of the office and for the management of cases. Each chairman has a different approach in distributing cases. Some chairmen refer to the difficulties of the case, take into consideration the work load of each employee and check if the personality fits the case.[247]

As shown on the map, there are 29 Bailiff's offices throughout the territory of Albania. Some have to cover several communes (e.g., Bajram Curri has to cover 7 communes and one municipality). This means for every office that there are long distances to cover and several hours of travel. However, most bailiff's do not have cars at their disposal. For most of the villages in the north, no public means of transport are available and other means are difficult to arrange. Some consideration should be given to ensure greater coverage and for equipping bailiffs with cars in order to alleviate these problems.

D. The Council of Bailiffs

According to Art. 13 of the Bailiff's Law, the Council of Bailiffs consists of the General Secretary of the Minister of Justice, the General Director of the Bailiff Service, the Director of the Directorate of Personnel, Organisation and Services at the Ministry, the Chairman of the Tirana Bailiff's Office and a Counselor of the Minister of Justice. The Bailiff's Council holds a competition for the appointment of bailiffs and investigates disciplinary violations committed by them and evaluates their professional skills every year.

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E. Working Conditions

1. Salaries

The monthly salary is fixed by a Decision of the Council of Ministers. [248]

This decision sets the following salaries:

- the General Director ALL 58.800
- a Chairman of Bailiff's Office and Inspector ALL 33.980
- a bailiff officer ALL 30.050
- a driver ALL 10.169

It is under discussion if bailiffs should receive a commission or a bonus for a successful execution. Such a regulation has been criticised by the bailiffs and has not been issued to date. Besides the structure of remuneration, the actual level of salaries has also been criticised. Some bailiffs state that their income should at least be as high as the judges' income . Whether the Bailiff's incomes should be set with regard to the judges' income is

[247] For example, the chairman in Durrës developed a system that ensures that all the bailiffs have the same number of cases in each area. He wanted to avoid situations where a bailiff deals with only one type of case. The chairman gave two reasons for such a system. First, such a system helps to avoid corruption because if a bailiff is always in charge of the same party, an inappropriate agreement between this party and the bailiff might develop. It would be much more difficult to develop such an agreement between a specific party and all the bailiffs. The second reason is to avoid an over-specialisation and to ensure that the bailiffs do not become irreplaceable in their area.

[248] Council of Ministers Decision No. 424 ,dated 11.06.2001.

a political question, but better pay may encourage further development and professionalism of the Bailiff's service.

2. Physical Conditions and Support Staff

The physical locations of all the bailiff's offices (except Tirana) are still within courthouse buildings. Bailiffs still use some of the resources of the courts, such as automobiles. Prior to May 2001, the accounting of the Bailiff's Office and the court were kept together because of an agreement between the courts and the Ministry of Justice. The low number of administrative personnel and Bailiff's Office assistants must therefore be seen against the background of this situation.

As the bailiff move to new premises, it must be assured that the offices are equipped with the basic equipment and computer management systems. Such efforts should help to improve the functioning of the bailiffs.

F. The Hiring Process

Only those with the following qualifications can be appointed as bailiffs:

- have the full capacity to act,
- have an university degree in law
- enjoy a good reputation
- have not been convicted of a criminal act by a final court decision
- have not been dismissed from the public administration for disciplinary violations within a time period of three years from the date of submission of application; when the disciplinary violation was committed while exercising the function of a judge, prosecutor, judicial police officer, notary or lawyer, the time period is five years.[249]

The third point is somewhat vague. It should be made more concrete, especially since those who have committed a disciplinary violation can become a bailiff after a certain period of time.

Besides these minimum requirements the bailiffs have to participate in a competition. The Council of Bailiffs specifies the procedures of selection and evaluation of the candidates.

G. Education

1. Basic Education

As stated above, bailiffs must be graduates from a law faculty. Most of them have done so. Still, there are some bailiffs who were employed prior to the new law and who do not have a legal education or who have only a minimal legal education. Nevertheless, those bailiffs have a number of years of experience now and the study of law by correspondence has been eliminated now.

[249] Bailiff Law, art. 15.

In general, it could be pointed out that the legal level of the interviewed bailiffs was more or less satisfactory. Most of them obviously work with the law and are able to refer to concrete legal provisions/articles, as well as able to discuss the bailiffs' problems in a clear manner.

An issue raised by the bailiffs is whether they really need a complete legal education. Some are of the opinion that their legal education does not need to be so extensive. Nonethless, the problem is that the bailiffs are confronted with many different legal issues and even today with their legal education are exposed to new legal topics. It should be noted that some lawyers did complain that the bailiffs lack a general legal knowledge.

For example, an execution order was issued against a legal entity without assets. The bailiff wanted to execute against a second company which held a shareholder interest in the first company - although there was no execution title against this second company. This example shows that knowledge of the provisions on execution is not enough. The requirement to graduate from law school can only be abolished if very special and intensive training on all legal issues which are of any interest for bailiffs can be provided. At present, this training does not exist.

2 Continual Training

No continual training is provided, either for the bailiffs or for the staff of the General Directorate. Most of the bailiffs ask for such training. Some legal fields that should be covered according to the interviewed bailiffs are company law, bankruptcy law, international law, civil procedure regulations, and administrative regulations. A training is especially needed when these laws are changed.

Some Chairmen of the Bailiff's Office suggested that a general training in all relevant legal fields related to their work should be provided for all bailiffs throughout the country. Regular training is especially useful to guarantee an identical application of the law throughout Albania. If such training is not provided it may result in differing application of the laws in different regions.

H. Relationships with Other State Entities

It was pointed out by most of the interviewees that the bailiffs do not have sufficient authority or power. For a compulsory execution, the bailiffs need support on a regular basis from the state police. According to the Bailiff Law, state bodies should support the Bailiff's work.[250] In the past the bailiffs mentioned problems with co-operation. There is no regulation that the police are obliged within a certain deadline to support the Bailiff's Office. The Civil Procedure Code states merely that the bailiffs must ask for police assistance[251] but does not specify a right of the bailiffs to obtain this support. In daily life, work with the police is hampered by the fact that Bailiff's Office cannot issue orders to

[250] Bailiff Law, art. 30.
[251] Code of Civil Procedure, art. 523.

the police, but can only request their help. This regulation causes conflicts, as the police are not always as supportive as they should be. One suggestion was that two to three policemen should be assigned to work only for the Bailiff's Office. The General Director pointed out that the problem is known and that a solution should be found by discussing this issue at a high level.

Failure to comply with civil execution orders is a criminal offense. Therefore, bailiffs should be expected to co-operate with prosecutors in cases when they are unable to compel execution. Yet it is rarely the case that failed executions lead to criminal prosecutions.

IV. CONCLUSIONS AND RECOMMENDATIONS

Execution of judgements is crucial to the legal process –without execution, a victory in the courts is only a pyrrhic victory. Accordingly, a reform of the judicial system is incomplete without development of the functioning of the Bailiff's Office, the institution charged with the execution of court decisions. Of particular importance are concerns that the Bailiff's Office may lack the appropriate structures and competencies to enforce judgements especially against the state itself.

As stated in the previous section, failure to comply with civil execution orders is *a criminal offence*. Still there are few or no known cases of these failures being prosecuted as crimes. There must be better co-operation with prosecutors in order that failure to comply with civil execution orders be treated as a criminal offense. Dialogues should be developed between the bailiffs' offices and the prosecution, which are often located in the same building but which have little contact. It would probably be useful for the Prosecutor General's Office to issue instructions to prosecutors on co-operation with bailiffs and the Ministry of Justice to issue similar instructions to bailiffs.

One of the leading complaints from bailiffs is that they cannot do their work properly because court decisions are not sufficiently precise regarding the objects on which the bailiffs can execute a judgement. Bailiffs must work with the court system to make clear where there are problems with *imprecise court decisions*. There must be communication in order to prevent this from being an issue in execution. To a large extent, this problem must be addressed by training judges to write clearer decisions where bailiff work could be involved. In addition, bailiffs must be given instructions on how to communicate with courts when decisions are not sufficiently clear – and courts must be instructed to communicate with bailiffs when necessary.

There must be a *clearer fee structure*. Fees should be paid only in case of successful executions. At the same time, fees should probably be higher. Under the current fee structures, it could cost more to photocopy a court decision than to execute it.

Bailiffs often cannot execute decisions because they have difficulty getting *information on debtor assets* that can be seized. There is a need for legislation providing for a clear system for gathering information on debtor assets. This system then must also be funded.

In addition, it would be helpful if postal addresses were regulated, so that once bailiffs do secure the necessary information, they can communicate with the parties by mail.

Finally, it has been noted that often people believe that bailiffs are neglecting their duties, but they have nowhere to take their complaints. In order to make bailiffs more accountable, there must be a *clear complaint structure*. Each bailiff office should be required to post complaints procedures. Moreover, the oversight personnel in the Ministry of Justice must be trained in the methods of receiving, investigating, and processing complaints.

ADVOCATES

KEY RECOMMENDATIONS

1. ***Advocacy chambers should improve the quality and quantity of training offered to advocates.***
2. ***The licensing process of advocates should be improved, in particular by creating better examinations.***
3. ***Advocates engaged in attempts to influence court decisions in an illegal manner must be prosecuted.***
4. ***Sub-statutory acts should be adopted promptly to bring Albania into full compliance with Council of Europe Recommendations on the legal profession.***

I. INTRODUCTION

A. General Overview of the Profession since Re-establishment in 1990

After having prohibited the private practice of law in 1967, Albania re-established the profession of lawyer only in 1990.[252] During the period without private lawyers, students who graduated in law were all employed in state bodies. In the last fourteen years, however, lawyers have been playing an increasingly important role in the development of the country's institutions, especially the free-market economy.

According to statistics collected by the Registry of Lawyers at the Directory of Free Professions in the Ministry of Justice, the total number of licensed advocates in Albania is 1862. Advocates in Tirana are 60% of the total. Nevertheless, the number of licensed advocates who actually work as advocates is lower; an estimated 1200 are using their advocacy licence throughout the country. The number of advocates has increased with the passing of years; 100 persons were licensed in 2001, 130 in 2002, and 148 in 2003.[253] During the same years almost no advocates have left the profession.

In Albania, during the last decade, most legal assistance or reform projects have focused on the judiciary and on the education of judges. The need to build a functioning legal advising market has been continuously neglected. More emphasis ought to be given to the

[252] Law no. 7382, dated 8 May 1990, "On advocacy in the People's Socialist Republic of Albania". This law was soon replaced by Law no.7541, dated 25 December 1991, "On Advocacy in the Republic of Albania", in accordance with the changes in Albania's political system.
[253] In 2003 only one advocacy examination was organized (in spring), whereas usually two are held each year.

latter, because lawyers are important not only in penal cases, in order to guarantee the right of a fair trial, but also due to their role in civil, commercial and administrative cases. Defence lawyers and the National Chamber of Advocates state that little training has been offered to advocates in order to address their need for higher standards of services in a changing legal environment.

B. Access to courts and legal advice

Albanian civil and commercial proceedings are governed by two very important principles: First, the parties, not the court, determine the beginning, the closure and the subject of proceedings, because at every step of the judiciary procedure each of the parties can withdraw its claim. Secondly, unlike proceedings in public law cases the parties themselves should present facts and evidence to the court, while the court decides only based on what parties present as evidence.

There are no inquiries by the courts on their own initiative in civil actions: the parties present their cases. Judges necessarily have to play a passive role in such procedures. They only can take decisions if a request/claim is brought before them. Without a claim, the judge can neither interfere nor judge, while the lawyer is responsible for:

- finding out the facts of the case,
- selecting and presenting these facts,
- formulating the contractual or other legal basis for the case,
- presenting the most convincing legal reasoning possible, and
- deciding (together with the client) whether to bring the case before the court.

The lawyer is the vehicle through which a citizen gets access to justice. The right of access to justice is a fundamental democratic right. The European Convention on Human Rights states that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".[254] The European Court of Human Rights has stated in many decisions that the concept of a "fair hearing" requires that a litigant have real and effective access to the court and a real opportunity to present his case. This implies the right to be represented by a competent lawyer in order to deal with the difficult questions of law.

The legal adviser's role is also important under another point of view: despite the different types of contracts being regulated in the Albanian Civil Code,[255] these regulations can only be considered as being the skeleton of a contract. The Civil Code sets forth guidelines to which one must pay attention when drafting a contract. A lawyer must work out the regulations, which are required in a concrete case. In other words he must know how to draft contracts.[256]

[254] European Convention on Human Rights, art. 6/1.
[255] Law no.7850, dated 12 November 1994, "On the Civil Code in the Republic of Albania".
[256] Notaries also have legal capacity to draft contracts when it is recommended by the Civil Code, i.e., real-estate related contracts, or when contracting parties so decide.

II. BASIC LEGAL FRAMEWORK FOR ADVOCATES

A. Historical Background

The Law "On Advocacy in the Republic of Albania"[257] regulated the practice of law until September 2003, when a new law replaced it.[258] This law determined the prerequisites for practising law as a free and independent profession, established the rights and duties of a lawyer and laid down the organisation of the national and the regional advocacy chambers. The law was revised only once before being replaced.[259]

The new law repealed prohibitions of participating directly or indirectly in commercial activities, representing religious groups, and being a member of the management body of religious groups. It also removed the requirement that lawyers have Albanian citizenship.

B. Law no. 9109, dated 17.07.2003, on the Legal Profession in the Republic of Albania

The law on the legal profession that was passed in September 2003 was designed in accordance with the Council of Europe Recommendations on the Freedom of Exercise of the Profession of Lawyers[260] and the assistance of European lawyers who collaborated with the Albanian National Chamber of Advocates. Although they are not binding, these recommendations set standards that all members of the Council of Europe should aim to realise. The European standards taken into account during drafting concerned freedom of exercise of the profession, legal education, entry into the profession, access to lawyers, the establishment and function of professional associations of lawyers, the role and duty of lawyers, and disciplinary proceedings.

1. General Provisions

The regulations set forth in the new law are more detailed than those in the Advocacy Law of 1994 and address several problematic aspects of the latter. According to the Legal Profession Law, "the legal profession is free, independent, self-regulated and self-governed." [261] These are considered to be the four pillars on which advocacy is based in Albania. The provisions of the new law diminish the role that the Ministry of Justice plays with regard to the control over advocates, while more competence is given to the National Chamber of Advocates and its executive bodies.

2. Lawyer-Client Relations

[257] Law no. 7827, dated 31 May 1994 [hereinafter Advocacy Law of 1994].
[258] Law no. 9109, dated 17 July 2003, "On the Legal Profession in the Republic of Albania" [hereinafter Legal Profession Law].
[259] The only amendment was made with Law no.8428, dated 24 December 1998, "On an addition of Law no.7827, dated 31.05.1994, On Advocacy in the Republic of Albania".
[260] Council of Europe, Recommendation Rec(2000)21 of the Committee of Ministers to members states on the freedom of exercise of the profession of lawyer, dated 25 October 2000.
[261] Legal Profession Law, art. 1.

The new law sets out in more detail than the previous law what must be done for an advocate to terminate his relationship with a client. An advocate under the new Legal Profession Law is obliged to notify his client fifteen days before termination of representation when he decides for various reasons not to represent his client any longer.[262] In addition, the advocate should return not only any prepayment for his services, but also all of the client's files, such as draft pleadings, contracts, research and any other documents.[263]

In compliance with the standard documentation approved by the Governing Council of the National Chamber of Advocates, advocates should keep records of all legal services in a notebook, and of written contracts using ordinal numbers to register each contract.[264] If a client decides to end the contract before the end of the judicial case or the legal service, the advocate has the right to require compensation for the services provided.

The new law recognises that professional communications and consultations between a lawyer and his client are confidential.[265]

3. Practising Law Without a License

The Albanian legislation still does not explicitly make it unlawful for a person to practice law without a license or a law degree. The only explicit restriction for "non advocates" from giving legal advice is the Civil Procedure Code. It states that representatives of the parties with a proxy can be:

- attorneys;
- spouses, predecessors, descendants, brothers and sisters;
- lawyers and other authorised employees of state institutions or of legal persons;
- the persons permitted by the court to be representatives of a case;
- other persons provided by law to be representatives of the parties.[266]

Thus, Albanian law provides lawyers with a *monopoly* only in the field of representing clients before court, not in giving legal advice. There are also two relevant penal code articles in this context: 246 and 190.[267] The first prohibits using a title without authorisation to do so. If someone calls himself "avokat" without being licensed, this could be considered an infringement of article 246. Article 190 deals with the use of falsified documents. If evidence is given to prove that a person is using a falsified document to act as a lawyer, this person can be sentenced according to the Penal Code. If someone gives legal advice without using falsified documents and without calling himself "avokat", but simply legal adviser or adviser, there is no criminal violation.

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[262] *Compare* Advocacy of 1994, art.10 *with* Legal Profession Law, art.13 sec. 1.
[263] Legal Profession Law, article 13, section 3.
[264] The documentation should also include the name of the lawyer and the name of the law office.
[265] Ibid., art. 7 section 1.
[266] Law no.8116, dated 18 April 1996, "On the Code of Civil Procedure of the Republic of Albania", art. 96.
[267] Law no. 7895, dated 27 January 1995, "On the Criminal Code of the Republic of Albania".

4. Foreign Attorneys

The Legal Profession Law rectifies a problem with the old law in that it now provides for foreign advocates exercising their profession in Albania.[268] A foreign citizen can exercise the profession of advocacy in Albania if he meets the requirements compulsory for Albanian citizens. In addition, he must have adequate knowledge of the Albanian language. The National Chamber of Advocates is the body responsible for determining the regulations for issuing advocacy licences to foreign advocates.

5. Differentiation in Levels of Attorneys

Unlike the Advocacy Law of 1994, the new Legal Profession Law provides for differentiation of attorneys based on seniority, skills and education.[269] The purpose is to create a separate class of attorneys who can represent clients at all courts, including the High Court and Constitutional Court. Other attorneys would still be able to represent clients at the district and appellate levels.

III. REQUIREMENTS FOR BECOMING AN ATTORNEY

A. Legal pre-requisites

A well-trained and competent legal professional is an essential element in establishing and sustaining the rule of law. All legal professionals should have a formal, university-level legal education from accredited academic institutions.[270]

The basic requirements to be met in order to become an attorney are sent in article 25 of the Legal Profession Law. This article requires:

- graduation from a domestic law school or a foreign one,[271]
- registration in an advocacy chamber and in the Ministry of Justice as an assistant of a legal office,
- fulfilment of one calendar year of practice and positive written opinion of a supervisor for the work done in the one year period,
- passing the advocacy exam (50 points or more),
- moral integrity in order duly to protect human rights and fundamental freedoms, as well as fulfilment of ethics requirements for the exercise of advocacy,
- good conduct, in particular not having committed criminal acts,
- not participating in such private or public activities that are incompatible with exercise of advocacy,[272]
- membership in the Regional Advocacy Chamber under the jurisdiction of which one's office falls.

[268] Ibid., art. 36.
[269] Legal Profession Law, art.19 (c).
[270] UN Basic Principles on the Role of Lawyers, 1990, Principle no. 9, http://www.unhchr.ch/html/menu3/b/h_comp44.htm [accessed on 18 January 2004].
[271] In the latter case the diploma must be recognised by Albanian Ministry of Education.
[272] An advocate cannot be at the same time a judge, prosecutor, notary, civil servant, or employee in the public administration. Legal Profession Law, art. 4.

These requirements meet the Council of Europe Recommendations regarding the profession of lawyers.[273] According to these recommendations, all states should take all necessary measures in order to ensure a high standard of legal training and morality as a pre-requisite for entry into the profession and provide for the continuing education of lawyers.

The academic training of lawyers is treated in chapter 10 (Law Faculties) of this report. Other than a university degree in law, the only training requirement for advocates is that they must complete a one-year internship in a law office, which means working as the assistant of an advocate. A parallel system exists for those who wish to become notaries. The internship year is intended to introduce the applicants to the legal profession of an advocate without giving them full responsibility for their work.

After this year, the trainee takes a written examination, discussed below, which until spring 2003 was marked and supervised by an examining board, established by the Ministry of Justice. Now the National Chamber of Advocates is to administer these examinations. Having passed this examination, a trainee is able to receive a license to become an advocate and is allowed to join a law firm or open his or her own office as a private practitioner. In case the trainee fails the examination, he can attempt a second one only after having completed another six-month practice with an advocate or a law office, in effect during the next administration of the examination.

The license must be renewed every year, although there is no time of validity fixed by the law. The purpose of license renewal is the payment of taxes. Lawyers also must pay for their membership in the regional chamber, which is entitled to fix the fees.[274] When renewing their licenses, the lawyers are not required to pass more examinations

It should be noted that in general judges and prosecutors who complete the Magistrates' School have approximately six months more apprenticeship/internship experience than lawyers and eighteen months more formal legal education. This is one reason for the lawyers often being the weakest link in the trial system. In order to combat this problem, continuous legal education through the Chamber of Advocates or through the Law Faculties must be strengthened.

B. The Advocacy Examination

The National Chamber of Advocates is responsible for administering the examination. The General Council of this Chamber is responsible for approving by a two-thirds majority the general rules of the qualifying examination. It is expected that the first advocacy exam organised by this body will take place in spring 2004 and will be administered in a different manner from that used by the Ministry of Justice. In addition, it is expected to be a two-phase examination: written and oral. This was made known

[273] Council of Europe Recommendations on the Freedom of Exercise of the Profession of Lawyers, October 2000, Principle II, (points 2 and 3) http://cm.coe.int/ta/rec/2000/2000r21.htm [accessed on 5 January 2004].
[274] Legal Profession Law, art. 19, sec. 3 (d).

during an interview with the Head of the National Chamber of Advocates on December 18, 2003. The commission will have the possibility to interview the applicants who pass the written phase of the examination. If this oral examination is based on memorization rather than analysis, it will not be in any way an improvement over the previous format. Oral examinations also compromise the anonymity of the written examinations.

IV. THE FUNCTIONING OF THE NATIONAL AND REGIONAL ADVOCACY CHAMBERS

A. National Chamber of Advocates

The National Chamber of Advocates is the main and highest organisational body that represents advocates at a national level and is composed of representatives from the advocacy chambers. It is a public legal entity that conducts its activity independently of state institutions.[275] Since individual lawyers are obligated to become members of a regional chamber, the National Chamber of Advocates represents the professional interests of all Albanian lawyers at a national level.

The law is silent about the internal regulations and organisation of the National Chamber of Advocates, giving responsibility to the latter to draft, decide and apply its own statutes. In addition, the National Chamber of Advocates is permitted to decide on the number of regional chambers of advocates, and the minimum number of advocates required establishing such a chamber. There are two other bodies that perform duties and responsibilities in accordance with the law, the members of which are elected by the regional chambers.[276]

The highest representative body of the National Chamber of Advocates, the General Council has many responsibilities,[277] which are:

- to approve the Ethics Code for advocates,
- to approve the statutes of the National Chamber of Advocates,
- to establish fees to be paid by each regional chamber to the National Chamber of Advocates,
- to elect no fewer than five representatives from among its members to the Governing Council of the National Chamber of Advocates,
- to examine and approve the annual calculations and the budget of the National Chamber of Advocates,
- to review the activity of each regional chamber and assess whether it is in compliance with this law as well as with the statutes of the National Chamber of Advocates,
- to co-ordinate the activities of regional chambers in order to guarantee the protection of their rights and interests,
- to approve the rules and conditions to be met by lawyers their year as assistants to an advocate or a law firm.

[275] Legal Profession Law, art. 17, sec. 2.
[276] Ibid, arts. 19 and 20.
[277] Ibid., art. 18.

The Legal Profession Law establishes another body of the National Chamber of Advocates, the Governing Council.[278] According to the law it carries out the following responsibilities:

- convenes the General Council of the National Chamber of Advocates,
- drafts the statutes of the National Chamber of Advocates,
- drafts the Ethics Code,
- represents the National Chamber of Advocates in relations with third parties,
- prepares the annual expense report to be examined and approved by the General council,
- reviews and approves requests for practising the legal profession,
- revokes temporarily or permanently the advocates' license in accordance with legal provisions,
- takes all necessary measures for the implementation of General Council decisions.

Interviews with advocates reveal a general sense that the Chamber is not very active or sufficiently powerful. Advocates often do not feel represented and few participate actively in meetings.[279] Albanian lawyers criticise not being informed about the activities of the National Advocacy Chamber and the Regional Advocacy Chambers. There is no journal or newsletter published by the chambers in order to inform the advocates about activities of interest to the advocates.

It is possible that the new structure will solve some obstacles such as the lack of funds and lack of initiative to raise funds. Also the regional and national chambers ought to collaborate better with donors in the field of advocacy who can finance their publications, activities and training. Eventually, membership dues should be used for this purpose. As the new law has been operational only for a short period of time, it is too early to provide an assessment of its impact in these areas.

B. Regional Chambers of Advocates

After the new law entered into force, the regional chambers of advocates had a period of elections that lasted until the end of 2003. Elections for the Tirana Chamber of Advocates are expected in February 2004 and afterwards the elections for the National Chamber of Advocates can take place. The regional chambers must have their own statutes which must approved by the National Chamber of Advocates. The regional chambers have the same bodies as the National Chamber of Advocates, which carry out the duties and responsibilities of the chamber on a regional level.

V. THE CODE OF ETHICS

A. European Union Standards

The Council of the Bars and Law Societies of the European Union (CCBE) has elaborated a Code of Conduct, which was adopted by the eighteen national delegations representing the Bars and Law Societies of the European Union at the CCBE plenary

[278] Ibid., art. 20, sec. 2.
[279] OSCE interviews of advocates in December 2003.

session on 28 November 1998.[280] This Code governs the conduct of lawyers concerning international activities. Additionally, the CCBE Code is to be taken into account in all revisions of national rules with a view to the progressive harmonisation of codes and regulations governing lawyers within the European Union.

The CCBE already has granted thirteen countries from Eastern Europe the status of Observer Member to the CCBE. Upon adhering to the CCBE, the candidates for observer status must adopt the new CCBE Common Code of Ethics.

Everywhere advocates are expected by both the public opinion and colleagues to respect certain standards of professional conduct in order to establish essential relationship of confidence between the advocate and the client, the advocate and the court and between the advocate and other members of the legal profession. These standards are based on certain human values and principles, which constitute the foundation of their profession.

B. The Current Code of Ethics in Albania

The National Chamber of Advocates adopted a Code of Ethics for Albania in 1996. According to information given by the current National Chamber of Advocates, it is expected that a new one will be drafted after the elections for the National Chamber of Advocates early in 2004.

The current code is divided into sixteen sections:

- definitions,
- purpose of the Ethics Code,
- the function of the advocate in society,
- the independence of the advocate,
- the interests of the client,
- professional secrets,
- incompatibilities with the profession of advocate,
- representation and defence, their boundaries,
- conflicts of interest,
- interruption of representation, and defence,
- secrecy of information,
- regulation of fees,
- property and client funds,
- relationship among advocates,
- relationships with the other party and its advocates,
- ethics in front of the court.

It is not always clear whether any systematic organisation was planned for this code. For example articles 9 to 12 deal with professional secrets and articles 31 to 32 with the secrecy of information. Both chapters should be together as they regulate the same issue, which is *confidentiality*. Regarding the issue of confidentiality, it is of particular concern that some lawyers do not have their own offices and have no space to keep files. Often

[280] Directive 98/5/EC of the European Parliament and of the Council, 1998 http://elixir.bham.ac.uk/menu/FreeMovement/framest.htm [accessed on 9 January 2004].

they keep files at home. Confidentiality means that no one, not even family members, should have access to the files.

Some regulations merely repeat the text of the Advocacy Law of 1994, which partly is the same text of the new Legal Profession Law as well; others restate the law in slightly different words. Article 9 of the new law provides for certain regulations that an advocate should fulfil in order to guarantee the quality of his services for the client. The rules set forth in this article are the same as many of the provisions of the Code of Ethics.

The Code of Ethics sets up rights and duties but does not specify the concrete legal consequences of violations. The Legal Profession Law has provides for disciplinary mechanisms in cases of Code violations; these are described in section VII below. The law does not state which misconduct will be sanctioned by which measure. These regulations thus are exceedingly vague.

VI. REGULATION OF FEES

The regulation of fees is a sensitive issue both for advocates and for their clients. For advocates fees are a means of living earned by providing services to their clients. Clients, on the other hand, often worry about the costs of using the services of a legal adviser. The law does not provide a specific fee scale. The only regulation of fees enacted until now by the Ministry of Justice dates to 21 March 1996. This regulation was prepared taking into account the opinion of the Ministry of Finance and consists of seven articles divided into two parts; the first part dealing with fees for legal service in civil cases and the second with fees in penal cases. The fees for the first group vary according to the concrete case and the court where it is presented. Consequently, cases presented in front of the High Court are better paid than cases brought in to lower courts. The second group is then divided into two sub-groups: fees regarding felonies and fees regarding misdemeanours.

Lawyers and clients can agree on the fee to be paid.[281] In fact, there are two kinds of lawyers in Albania: first there are state-appointed lawyers. In this case the regulation issued by the Ministry of Justice has fixed their fees to be no more than 60% of the fees established for advocates selected by clients themselves. Secondly, there are advocates selected by clients themselves. This category does not have a fixed price for the services provided.

Lawyers work for a wide range of fees. A few have set up well-appointed law firms, which hire well-educated young lawyers to help with their practice. The larger firms are the only ones with the resources to provide adequate legal advice in complex cases. They also can guarantee that their lawyers actually spend the time needed to prepare for cases. Smaller firms can be effective for less complex cases, when the lawyer is paid a fee that motivates him or her to work.

[281] Legal Profession Law, art. 11.

Often clients think that they can use their advocates as a channel through which they can agree with the judge, or a panel of judges, for a suitable court decision on their claim. This group of clients is not interested on how capable and competent an advocate is to best defend their interests. Rather, they expect their advocate to convince the judge in any way possible, including offering money so that the decision goes in their favour. Of course, a successful advocate also gets his share of these funds. While it is certain that not all clients reason this way, this is a phenomenon that should be brought to an end. Advocates themselves should respect their Code of Ethics and the legal framework. In addition, any advocate attempting to bribe a judge should be prosecuted rigorously according to articles 244 or 245 of the Albanian Criminal Code.[282] Such prosecutions would go a long way toward restoring the confidence of the Albanian public in its judicial system.

VII. DISCIPLINE OF LAWYER

The new Legal Profession Law provides for the disciplinary measures in Chapter 7.[283] The law states that an advocate has the right to bring a disciplinary case regarding a colleague to a disciplinary commission. The Minister of Justice no longer has the right to begin a disciplinary process. He can only suggest to the Governing Council of the National Chamber of Advocates to take such a step.[284]

The disciplinary committee consists of a chair, a deputy chair, a secretary and not more than five senior advocates who are elected by the General Council of a regional chamber. A panel of three or five members of this disciplinary committee judges each disciplinary case.

An advocate is subject to disciplinary proceedings when he acts in a manner contrary to laws regulating the advocacy field, rules of professional ethics, and the Statutes of the National Chamber of Advocates.[285] Article 43 of the Legal Profession Law provides for different sanctions in the following order:

- written warning,
- payment of a fine (5.000 - 50.000 ALL),
- suspension of working licence from three months to two years,
- withdrawal of the license.

The law also sets out basic procedural rules for disciplinary cases and allows appeals to the Tirana Court of Appeals.

[282] These provisions are respectively for offering rewards and giving rewards to a state official carrying out his or her duties. They provide criminal sanctions of up to three years of imprisonment for offering rewards and five years for actually giving them. Naturally, in case the award is actually accepted a judge should be prosecuted under article 260 of the same code.
[283] This treatment of disciplinary measures is more complete than the discussion in the Advocacy Law of 1994. *Compare* Legal Professions Law, arts. 37-46 *with* arts. 39-43 of the Advocacy Law of 1994.
[284] Legal Professions Law, art. 38, sec. 2.
[285] Ibid., art. 38.

The new law provides that the National Chamber of Advocates must keep a register of disciplinary measures, while previously this was a duty of the Ministry of Justice. The National Chamber of Advocates must notify the Ministry of Justice on decisions taken on disciplinary matters. The register is not classified as secret so every advocate has the right to know its content.[286]

VIII. CONCLUSIONS AND RECOMMENDATIONS

Difficulties in the profession of lawyers arise because of the needs of a rapidly evolving profession that for many years did not exist and now must face the realities of a twenty-first century market economy. There is still a need to complete the legal framework through a new Statute of the National Chamber of Advocacy and a new Code of Ethics. This should be done while assessing the present state of compatibility with the main European standards. The new Legal Profession Law has been operational only since September 2003 and because of this short implementation period, difficulties with it have not yet become clear.

There are many national and international projects concentrating on improving the judiciary. It would be important to spend some resources on advocates as well, as these may now be the weakest link in the legal system. Lawyers need training not only in questions of law, but also in skills needed for drafting documents and for representing their clients in court.

The integrity of the legal profession is a major issue. It is often judges and prosecutors who are blamed for dishonest practices, but the root cause is often with the Free Professions of lawyers and notaries. In order for the public to regain its confidence in the system, it is urgent that those lawyers who attempt to influence judges in illegal manners be brought to justice.

On its way to European integration, it would be useful for Albania to strive for observer status in the CCBE and to change its Code of Ethics in order to make progressive steps for its integration into the European family.

Finally, the fact that the administration of the advocacy examination has been passed to the National Chamber of Advocates should be seen as an opportunity to improve the quality of young advocates. This necessarily means improving the organisation of this examination so that memorisation is not tested so much as professional skills that are of importance in serving clients.

[286] Ibid., art. 46.

II. THE PUBLIC NOTARY

KEY RECOMMENDATIONS

1. Control over the documents produced and certified by notaries must be improved.

2. Training and continuing education for notaries should be strengthened.

3. Testing for notaries should be improved and must concentrate on essential skills.

4. The national distribution of notaries should be re-examined.

I. INTRODUCTION

A notary public is a public official who, depending on the state, has the power to acknowledge signatures, administer oaths and affirmations, take depositions and issue subpoenas in lawsuits. A notary is a person authorized by the state to notarize certain documents.[287] Notaries are a key element in the legal sector. In Albania, the notary exercises juridical activity in the service of physical and juridical persons. As in most other countries in Europe, even in Albania, notaries must have a full legal education and are subject to special regulations. In order to exercise their profession they must receive a special license.

Notaries provide the essential service of drafting legal documents as well as certifying the authenticity of documents. Documents prepared and certified by notaries include purchase and sales documents, business contracts, and wills, the quality and authenticity of which is crucial to relationships among citizens especially in this time of transition to a market economy. The work of notaries has been especially significant in relation to property issues due to the restitution and compensation of property belonging to former owners, which has been ongoing in Albania over the last 13 years.[288] In Albania, notaries, like lawyers, are a "free" profession, meaning that they are not part of the state administration and are not considered civil servants but rather private actors with private salaries.

The important role of the notarial profession combined with its independent status makes it all the more important that the profession exercise its duties with the highest degree of professionalism and ethics. Concerns over these considerations led the Albanian Anti Corruption Monitoring Group (ACMG), established by the Prime Minister's Order "On

287. *See:* http://www.lectlaw.com/def2/n023.htm

[288] Their work will most probably be very important in relation to the same property issues considering that the restitution and compensation is being regulated once more now with a new draft law.

the Organisation and functioning of the Anti Corruption Monitoring Group,"[289] to target notaries as the first group to investigate.

II. LEGAL FRAMEWORK

The public notary profession in Albania is regulated by Law No. 7829 [the Notary Law], dated 1 June 1994, "On the Public Notary."[290] The law has been amended twice, in 1995 and in 2001, with the purpose of improving the procedures and criteria to become a notary as well as providing better rules for the proper functioning of this profession.[291] The most recent amendment came out of a co-operative effort by the Ministry of Justice and the National Chamber of Notaries, and was identified as one of the anti-corruption measures taken by the Albanian government in 2001.

The Notary Law regulates several issues related to the notary profession. It sets the requirements for becoming a notary, which, as explained below, were improved and made stricter by the recent amendment. In addition, the law regulates the licensing, rights, obligations, activity, and manner of performing duties of notaries. The Notary Law also regulates the organisation of notaries and the control of their activity.

The Notary Law provides that the Minister of Justice is in charge of issuing sub-statutory acts to supplement the law. The Minister has issued several of these sub-statutory acts,[292] such as the order setting the fees to be paid for notaries services,[293] the order on the distribution of notaries in the country and the time-period of keeping notarial documents.[294] Other required sub-statutory acts, such as the one regulating the procedure for testing candidates for notary licenses are issued every time a test is organised.[295] In addition, a Code of Professional Ethics for Notaries was approved in June 2002 hereinafter Notary Code of Ethics].[296] The Notary Code of Ethics provides for rules

[289] Prime Minister's Order No. 252, dated 23.9.2002. The Albanian Anti Corruption Monitoring Group was first established with Decision no. 238, dated 13.11.2000, amended by Order No. 39, dated 11 April 2001, now repealed by Order 252..The work of this group is discussed below in this chapter.

[290] Published in the Official Journal No. 7, dated 21.07.1994, and entered into force on 5.08.1994 (hereinafter "The Notary Law").

[291] Law No. 7920, dated 19.4.1995 "On an addition in law no. 7829, dated 1 June 1994 'On the Public Notary'," [hereinafter Amendment 1).and Law No. 8790, dated 10 May 2001 "On some additions and changes to law no. 7829, dated 1 June 1994 'On the Public Notary'" [hereinafter Amendment 2].

[292] Articles 2 and 3 of the Notary Law, as amended, require that an act be passed to regulate the manner in which the competition for licensing is organized. Article 3 of the same law requires that the Minister of Justice provides for the periodical continuing professional education of notaries. In addition, Article 71 requires that a specific sub-statutory act be issued for regulating the maintenance of notary archives. Article 16 requires that the Minister of Justice set the number of notaries and their distribution throughout the country.

[293] Order of Minister of Justice, Prot. No. 5719, dated 24 June 2002.

[294] Order of Minister of Justice Prot. No. 5719/2, dated 24 June 2002.

[295] In a meeting with the Director of Free Professions of the Ministry of Justice we were told that it has been almost three years since such a test last took place. One should note that the procedure for testing is similar to that for lawyers. This means, there is a syllabus based on which the test takes place, the questions are based on the fields related to the notary profession and the test papers are marked blindly.

[296] Code of Professional Ethics of Notaries, dated 24 June 2002, approved by the Minister of Justice, Prot. No. 5719/1.

notaries must respect in exercising their profession. It addresses issues such as the role of notaries in society explaining that they are in the service of the public; the professional and ethical behavior of notaries, highlighting that a notary must be guided by principles such as legality, propriety, solidarity, honesty, impartiality, and transparency; incompatibilities with the profession of the notaries; relations with the National Chamber of Notaries, clients and assistants; the organization of a notary's office; advertisements; illegal competition; as well as the types of documents prepared and used by notaries and the procedures for each type.

Certain recent proposals have been made by the Council of Ministers as part of the reform matrix prepared by the government of Albania to amend the Notary Law by May 2003 [these efforts will be referred to as Draft Notary Law].[297] The process has been taking a considerable amount of time as the draft has been discussed by the government, the parliament and notaries themselves[298] as well as commented on by the Council of Europe[299]. The draft-proposal was a consequence of studies of the Anti-corruption Plan Monitoring Group and of the Albanian Coalition Against Corruption, as well as Ministry of Justice inspections exercised at notary offices. The proposals aimed at improving the work of notaries in the country. It proposes changes related to the conditions for issuing a license, as the current law is considered to have conditions even more stringent than those for becoming a judge.[300]

It is proposed in the draft notary law that the working conditions of notaries be established by the Minister of Justice after having received the opinion of the National Chamber of Notaries. The draft notary law also requires that notaries enter into an insurance contract in case of professional liability. In addition, clearer rules and procedures related to disciplinary decisions or transfer of notaries are proposed. The draft notary law is still pending in the parliamentary committees.[301] The Ministry of Justice is eagerly waiting for this draft to be passed[302] as it considers these changes important for regulating problematic issues related to notaries.

III. ORGANISATION AND FUNCTIONING OF PUBLIC NOTARIES

A. Requirements for becoming a public notary

[297] Report prepared by the Council of Ministers attached to the draft law on the notary presented to the Assembly of the Republic of Albania.

[298] A roundtable where the Draft Notary Law was discussed at length was organized by the Assembly of the Republic of Albania with the support of the Council of Europe on 26-27 March 2003 with notaries and several national institutions such as Ministry of Justice, People's Advocate, Prosecutor General's Office..

[299] Council of Europe Co-operation Programme to strengthen the Rule of Law "Draft law on some additions and amendments to Law no. 7829, dated 1 June 1994 'On Notaries'", Tirana, 26-27 March 2003.

[300] It also introduces a higher age limit of 65 years for receiving the license, both for women and for men. It would also prohibit notaries and advocates whose licenses have been revoked in the last three years from receiving new licenses. The draft notary law also proposes that vacant positions be made public and offered first to the notaries who have applied for a transfer and then opened to applicants who are to be tested.

[301] Information received from the Legal Department of the Assembly of the Republic of Albania.

[302] In a meeting with the Director of Free Professions at the Ministry of Justice, it was specifically mentioned that the Ministry of Justice is eager to have a finalization of the draft law because it regulates many issues that have been reported several times as problematic in the notary profession.

1. General Legal Requirements

The legislation in force provides that any Albanian citizen can become a notary when she or he meets the legal requirements. The amended article 2 of the Notary Law stipulates as the first condition that the applicants must have a degree in law. Candidates should be aged between 25 and 55 (for women) or 60 (for men) years old when they are appointed as notaries. Though based on the Albanian standard retirement age, such gender differences are probably in violation of Constitutional requirements of equality.[303] It also is not in compliance with European Union Directives.[304] There is, however, no mandatory retirement age for notaries. The Draft Notary Law provides an age limit of 75 years. Once this age has been reached the license of the notary is automatically removed by an order of the Minister of Justice. Such a proposal is in line with Italian legislation and French practice.[305]

Notaries are required to have a record of good conduct, no criminal record, and no dismissals for disciplinary reasons from the profession of the notary, judge, prosecutor, advocate or civil servant during the three years prior to appointment. The same article requires that candidates have completed an internship in the notary profession prior to licensing. Amendment 2 to the Notary Law has increased the internship requirement from one year to two years. The legislation in force also requires that the notary evaluate the assistant at the end of the internship. There is, however, no indication in the law about the value of such an evaluation. Because there has been no testing during the last three years, this requirement has not yet been applied.[306]

The Notary Law provides for exemption from certain requirements for experienced professionals in the justice system, such as judges, law faculty lecturers, lawyers from institutions of the central administration or licensed advocates. Applicants within these categories are required to work as assistants of a notary for a reduced period of six months.[307] After the preliminary selection of applicants based on the mentioned legal criteria, an examination organised by the Ministry of Justice takes place.

2. Testing to become a notary and issuing of the license

Applicants for notary licenses are required to pass a qualification examination. They must score at least 80% on this test, a requirement added by amendment 2 to increase the professional level of notaries, even though the Ministry of Justice and the National Chamber of Notaries may decide to decrease the minimum percentage of points required.[308] The law does not provide for any regulation or procedure for such decisions

[303] *See* Albanian Constitution, art. 18, sec. 2.
[304] European Union Council Directive 76/207/EEC, dated 9 February 1976. *See also* Treaty Establishing the European Economic Community, art. 235.
[305] This proposal has been supported by the Council of Europe as well, with the reasoning that this practice that already exists in other countries.
[306] Information received from the Director of the Free Professions Department
[307] Article 2 of the Notary Law.
[308] Article 1 of Amendment 2.

and there are no sub-statutory acts for this purpose. Because there has been no testing in recent years, this provision has not yet been applied.

The test includes questions on the notary law and other related laws, as well as questions related to the implementation of the notary law. It seems that tests mostly require memorization of the legislation and do not focus on the practice of the profession.

A committee convened by the Minister of Justice and National Chamber of Notaries organizes the examination. This committee ensures that all legal requirements for a candidate to become a notary have been met. The functioning of this committee is also regulated by a common decision of both the Minister of Justice and National Chamber of Notaries.[309] There is a general regulation on the organization of the test for advocates[310] and the rules of this regulation apply for notary examinations as well.[311] It appears that such decisions are issued each time a competition is organised.

Applicants who meet all the above-mentioned criteria must receive the approval of both the Minister of Justice and the National Chamber of Notaries to receive a license. In addition, the applicant must become a member of the respective District Notary Chamber after having received a license. Within three months after membership is granted, a new notary must begin work; otherwise the license is revoked and can be reissued only by a reasoned decision of the the Minister.[312] The license also can be withdrawn in cases of inactivity of a notary for more than one month without permission from the National Chamber of Notaries.[313]

B. Distribution and transfer of notaries

Notaries, after receiving their licences begin to exercise the profession in the territory under the jurisdiction of the chamber where they are registered. There are 298 notaries altogether in Albania currently. The largest number of notaries, 135, are members of Tirana Chamber of Notaries,[314] while 120 of these 135 work in Tirana District.[315] Thus, out of 298 notaries in total, only 163 notaries are members of the other five Chambers of Notaries around the country. This is disproportionate and the situation is exacerbated by several requests either by notaries to be transferred to Tirana or assistants to become notaries in Tirana.[316]

[309] Article 3 the Notary Law as amended by article 3 of Amendment 2.
[310] Regulation Prot. No. 5178/1, dated 1 October 2001.
[311] Information received from the Director of the Free Professions. This regulation is Prot. No. 5178/1, dated 1 October 2001.
[312] Article 6 of the Notary Law as amended by article 5 of amendment 2.
[313] Ibid.
[314] There are six chambers of notaries in the country: Tirana, Durrës, Shkodra, Korça, Vlora, and Gjirokastra. The Tirana Chamber includes several districts: Tirana, Kruja, Fushë-Kruja, Dibra, Bulqiza, Kurbin, and Mirdita.
[315] These statistics were received at the Ministry of Justice, Department of Free Professions, on 3 December 2003. The number of the notaries in the country is approved by an order of the Ministry of Justice, based on a study done by Ministry specialists.
[316] In a meeting with the Director of the Free Professions of the Ministry of Justice, on December 2003, the OSCE was informed that the Council of Europe has criticized the high number of notaries in Albania as

There have been cases of notaries being transferred based on their requests because there is insufficient work in the region they serve. One such case is that of a notary in Himara who was transferred to Vlora.[317] This case and the existence of many other requests indicate a need to re-examine the distribution of notaries in the country.[318] Such an examination requires balancing the needs to provide geographic coverage with notary services with the needs of notaries to earn a living with their profession.

C. Organization of the National Council, the National Chamber of Notaries and the District Chambers of Notaries

Notaries are organised in chambers of notaries at two levels: district and national.[319] All chambers of notaries are juridical persons. The district chambers of notaries and National Chamber of Notaries, are considered to be public entities, thus part of the public administration.[320] This means that these chambers are subject to all the principles and regulations provided in the Administrative Procedure Code as well as all other relevant laws, such as the Law "On the organisation and functioning of collegial organs of the state organs and public entities."[321] All these chambers have as their steering organs, the general meeting of notaries member and the council of the chamber. Thus, every district chamber has its own chamber council, and the National Chamber of Notaries has its National Council of Notaries.

Chambers of notaries, both district and national, represent and protect the interests of notaries and control their performance. The six district chambers in the country are organised according to Appellate Court territorial jurisdictions.[322] District chambers are composed of all the notaries working in the territorial jurisdiction of the chamber, which may cover one or several districts in the country.[323]

The general conference of notaries elects the chamber council as well as the members of the National Chamber of Notaries. It also decides on the membership dues.[324] In

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well. We were also told that the fact that the number of notaries is enough for the country is supported from the fact that there is no compliant about lack of notaries around Albania.

[317] Information received from the Director of the Free Professions Department, Ministry of Justice. Such transfers are based on separate orders of the Minister of Justice upon the proposal of the National Council of Notaries. Article 5 of Amendment 2 provides detailed rules about the management of the transfers.

[318] This is a legal requirement based on article 10 of Amendment 2, which requires that the number of notaries be revised every two years by the Minister of Justice with the consent of the National Chamber of Notaries. Nevertheless, OSCE discussions with the Ministry of Justice did not make possible insight into such a study or evidence that such a revisions is conducted as the law requires.

[319] Article 29 of the Notary Law.

[320] This is based on the administrative law of Albania (*See* Administrative Procedure Code, art. 3; Law No. 8480, dated 27.5.1999 "On functioning of the collegial organs of the state and administration and public entities;" and Ermir Dobjani, *E drejta administrative*, Tirana: Libri Universitar, 2003), as well as on the regulation provided in the notary law, specifying that the exercise of the profession of a notary is an activity in the service of juridical and physical persons. Notary Law, art. 1.

[321] Law No. 8480, dated 27 May 1999.

[322] The appellate courts are located in Tirana, Durrës, Korça, Gjirokastra, Shkodra and Vlora. This is an administrative decision; nothing in the Notary Law requires such a division.

[323] Notary Law, art. 30.

[324] Ibid., art. 33.

addition to deciding on internal administrative issues and electing the members of the National Council of Notaries, it deals with the continuing education of notaries and supports the normal activity of notary offices. It should be noted, however, that there is rather little activity in the field of continuing education and that the chambers exercise little real control over notaries. Meanwhile, the chamber council performs several duties, some of which are similar to those of the chamber of notaries and general conference of notaries. Thus, the chamber council deals with the nomination and removal of notaries, control of the activity of notaries, and organisation of the continuing education of notaries.[325] Regardless of these important competencies, these councils are not active. This might need a review of the legislation and strengthening of these structures.

The National Chamber of Notaries is composed of notaries representing the district chambers of notaries, in compliance with the statute. This Chamber functions as a co-ordinating organ of all the chambers of notaries and represents the interest of the notaries in the state institutions and other organisms.[326] It also takes care of the qualification of the notaries and assistants. The National Council of Notaries is member of the International Union of Latin Notaries (IULN), a non-governmental organization established in Buenos Aires in 1948 during the first international conference of Latin Notaryship as the only international organization existing for the Mediterranean region.[327] It is a positive fact that the Albanian National Council of Notaries is member of this organization. Nevertheless, this membership could be better exploited as a means of increasing the level of professionalism and organisation according to relevant contemporary international norms. This means more consistent and sustainable participation of the Albanian National Council of Notaries in the activities of the IULN.

D. The Functioning of Notaries

Notaries exercise juridical activities by drafting documents and performing notarial services. Notaries draft wills and other juridical acts and documents, such as contracts, or keep minutes and inventories based on client or court requests. The second part of the Notary Law regulates in detail what kinds of documents notaries can prepare. By law, notaries can draft notarial acts, legalize clients' signatures, certify copies of documents as equal to the original, and draft contracts, wills, declarations and other documents.[328] Notaries are required to obtain supporting documentation from clients in order to ensure the accuracy of the acts they draft.[329] Regardless of the different activities mentioned in the law, it should be noted that not all competencies are exercised in an equal volume.

[325] Ibid., art 35.
[326] Ibid., art. 37. Nonetheless, this Chamber is also not very active in exercising several of its own competencies. Thus, even though it should deal with the further education of notaries, it has organised only a few seminars, such as one in Shkodra in co-operation with the Ministry of Justice.
[327] IULN includes sixty-seven notary institutes from various nations. The IUNL carries out a valuable role in facilitating legal and economic relations among national and international notary professionals. *See* http://www.uinl.org/.
[328] Notary Law, art. 39.
[329] Ibid., art. 22.

The Notary Law also stipulates that notaries are not obligated to draft every act demanded by clients. All acts drafted must be in compliance with the law and any act that is openly in violation of the law should be refused by the notary.[330] Article 42 of the Notary Law prohibits conflicts of interest by specifying that a notary cannot prepare a notarial act when he or she is a party or is interested in the case, or when relatives such as a spouse, children including adopted ones, or other relatives up to the third rank are parties to the case. In addition to prohibiting conflicts of interest, the Notary Law also declares the exercise of professions such as judge, prosecutor, advocate, investigator, and arbiter or as well as other private business activity to be incompatible with the exercise of the profession of notary, as such activities might negatively influence the activity or the reputation of the notary.[331]

The Notary Law stipulates that the language in which acts should be drafted is Albanian, and these acts must be signed by parties to the act in the presence of the notary. The service offered by the notary is paid by both parties, unless these parties decide otherwise. It also provides for certain disciplinary measures that encourage notaries to follow the established rules. Moreover, the activity of notaries is also subject to several articles of the Criminal Code.[332]

Despite legal provisions aimed at improving the quality of notaries, there is concern among clients and lawyers about the professionalism of notaries in the country. This is one of the conclusions of the Final Report on Consumer Opinion on Notary Services prepared by several organisations supported by USAID, MSI and the Council of Europe in 2002. One other report that very much criticizes the work of the notaries is the World Bank report on the registration of property. This report highlights that:

> The Albanian National Chamber of Notaries is a powerful private association with a monopoly in the land market; they have the sole authority to create and legitimize contracts relating to immovable property, including verification of ownership. Almost every document which is submitted to the IPRS offices must be notarized.[333]

The problem that arises from this is connected to the high fees of notary transactions.[334] Reports such as the World Bank report show that the problems existing in the notary sector come from legal provisions not being implemented, or from standards not being high enough to ensure an appropriate level of professionalism, or from ethical problems.

Cases of legal violations support the previously stated conclusions. Sometimes, laws are violated even with the consent of the client, who may benefit from a notary's illegal

[330] Ibid, art. 40-41.
[331] Ibid., art. 5.
[332] These provisions include the falsification of documents (art. 186 of the Criminal Code), abuse of power (art. 248), or exercise of a function after its termination (art. 249).
[333] World Bank Report: Review of Albanian Property Legislation by Kathrine Kelm, November, 2003.
[334] The World Bank reports that in setting these fees, the Ministry of Justice never discussed with the interested groups, and in several attempts to talk with this Ministry, there was no response. The World Bank proposes that these fees be reduced, or certain forms be prepared in advance for clients. This would be especially helpful to citizens when the compensation and restitution of property begins under a draft law currently pending in Parliament.

conduct. Such violations seriously undermine the reputation of the profession and therefore the trustworthiness of their work. The inability to trust notaries brings with it serious problems for the market economy. This is especially the case when infringements include authenticating false or forged documents, preparing and authenticating falsified ownership documents, preparing unfair wills and similar cases.

Unfortunately, it seems that many clients do not have basic knowledge about the work of notaries. Often, clients appear in front of a notary without any identification documents, which means that their work cannot be performed legally. There have been suggestions from notaries that some basic rules of notaries' work be explained through the media to improve public awareness.

E. Working Conditions

The Notary Law contains several provisions relating to the normal working conditions for notaries. Notaries are required to have only one office. They must have fixed working hours, a safe where all the prepared notarial acts are to be kept, and a computer in the office.[335] There are many cases of notaries with very good working conditions; however, this is not always the case. There are cases when notaries work in offices or kiosks with a chair and a table and an old typewriter. Working under such conditions does not appear professional nowadays and tends to slow down work.

The district chambers of notaries are legally required to help notaries perform their activities well and according to the law.[336] The National Council of Notaries has a special solidarity fund for the notaries who do not earn a minimum level of the income. It appears that there is a problem with the tariffs used, which influence the earnings of notaries. There are cases when notaries issue bills for lesser services in order to attract clients with lower fees.[337] These cases are known by the National Council of Notaries and are considered illegal; however, no measures have been taken as a result of such cases.

F. Ongoing training of notaries

Notaries do not receive special training to become notaries. They are only required to have an internship prior to becoming notaries.[338] According to the law, however, notaries should receive continuing education by the National Council of Notaries[339] and National Chamber of Notaries.[340] In practice this does not function well. There has been some such training by the National Chamber of Notaries. The amount of such training, however, does not correspond to the needs. Further involvement by the district chamber

[335] Shpresa Kurti, Head of the National Chamber of Notaries, "*Koment i përgjithshëm mbi Kodin e Etikës Profesionale të Noterit*," Shkodra, 2002.
[336] Notary Law, art. 33.
[337] Kurti, *supra* note 47.
[338] In different discussions with notaries, the need for a special school for notaries was mentioned as one of idea. Thus, the example of Belgium, where a 2 years school for notaries exists, was mentioned as a good example that could be helpful in Albania.
[339] Article 35 of the Notary Law.
[340] Article 37 of the Notary Law.

of notaries in training needs assessment and organisation of such training would be helpful. This problem is directly related to a lack of financial means and staff. Regarding this problem, there should be more accountability on the part of notaries in paying membership dues and better financial management by the steering groups. Also, the Ministry of Justice and Chamber of Notaries do more to support and develop notaries.

The duty to support the training of the notaries also belongs to the Ministry of Justice. Other than the above-mentioned training organised in Shkodra, *there have been not many recent cases of training* organised by the Ministry of Justice either.

G. Notary Discipline

As already mentioned, there are frequent cases when notaries violate the law. If the notary violates the provisions that regulate the functioning of notaries, there are several options of disciplinary measures that can be taken. These include reprimands, warnings of suspension, fines of 5000 to 50000 lekë (€ 380 to 3800) or the suspension of the notary from the profession for five years. Warnings and fines are issued by the district chamber of notaries, while a dismissal from the profession requires action by the Minister of Justice. A disciplinary case can be instituted by the person damaged or by the Minister of Justice.

The law guarantees due process in disciplinary cases, required that notaries be heard and that they can appeal to the district court where they exercise the profession. If the violations are repetitive and grave, the license can be removed. There have not been many cases of disciplinary measures taken against notaries,[341] even though different reports indicate that there have been many violations of the notary law by notaries.

One case, mentioned in the print media as well, was that of a notary in Elbasan. In May 1999, the license of this notary was revoked upon an order of the Minister of Justice.[342] Regardless, the ex-notary continued to exercise his profession. According to the information reported in the press, the notary did not use an office of his own as the law requires; he certified translations from languages he personally did not know and which were not translated by a translator as required by law, and he certified the signature of a dead person. Even though the Ministry Spokesperson confirmed the revocation of the license in this case,[343] he advised the author of the article to file a charge with the Prosecution Office in case he or she had evidence that the ex-notary was still exercising the profession. In such cases, the oversight bodies at the Ministry of Justice responsible for notaries should ordinarily take a more active role.

Notaries are subject not only to disciplinary measures, but also to criminal charges. Thus, eleven cases of prosecutorial action against notaries have been reported. As a

[341] In a meeting with the Director of the Free Professions of the Ministry of Justice, in December 2003, the OSCE was told that during 2003 there had been no disciplinary measures taken against notaries.
[342] "Si po mashtrohet Ministria e Drejtësisë", *Shekulli*, 24 April 2002, p. 14.
[343] On 2 May 2002, the Ministry of Justice Spokesperson replied to the information printed on 24 April about the notary from Elbasan, in the same newspaper(*Shekulli*), certifying that the license of the notary had been revoked on 14 May 1999.

result of investigations into complaints against notaries, six notaries out of these eleven have had their licenses revoked. The other five cases currently are on trial.[344] One example of notary abuse is a case currently on trial in Tirana where a notary has been accused of falsifying two powers of attorney. These proxies, as the law requires, were prepared and certified by a notary in accordance with legal formalities, but were not based on the request of the person in whose name they were issued. In the charge filed by the Tirana Prosecution Office with the Tirana District Court, the violation was proved by the presentation of two proxies with the same date and number, but different content, and by the handwriting analysis performed by an expert. The notary was charged with falsifying documents under article 186 of the Criminal Code.[345]

Another recent case is that of two notaries from Durrës who have been charged by the Durrës Prosecution Office with falsification of documents.[346] It is claimed that these two notaries, in co-operation with three citizens, have falsified the documents necessary for the purchase of a vehicle. The real owner of the vehicle reportedly has not been paid. This case is still being processed in the Durrës Prosecution Office.

IV. RELATION BETWEEN STATE INSTITUTIONS AND NOTARIES

Several state institutions perform duties or functions related to the notary sector. Among these institutions, the most important ones are the Ministry of Justice, the Ministry of Foreign Affairs, and the Ministry of Finance.

A. Ministry of Justice

The Ministry of Justice Law provides that the Ministry of Justice "cares for and supports the activity for the professional preparation, ability and specialisation of. . . public notaries . . .." [347] Article 11 of the Ministry of Justice Law creates a special General Department on Legal Issues within the Ministry of Justice. The Directorate of Free Professions is one of the structures created within this General Department. Point 4 of article 11 provides that the Free Professions Directorate "follows, in accordance with the respective legal provisions, the functioning and organisation of the . . . notaries, chambers and offices of the . . . notaries". This Directorate includes a special sector composed of two persons dealing with notaries.[348]

[344] These figures were received at the Ministry of Justice, Department of Free Professions, on 3 December 2003.
[345] Information obtained at Tirana District Court in May 2002. This case refers to a true case tried in Tirana District Court. [Is it *still* not final?]
[346] See Karolina Risto, "Mashtrimi, shitën tre herë një benz – Nën hetim dy noterë, falsifikuan dokumentat", *Gazeta Shqiptare*, 26 August 2003, p. 17, and information received at the Department of Free Professions, Ministry of Justice.
[347] Law No. 8678, dated 14.5.2001, "On the Organisation and Functioning of the Ministry of Justice", art. 6, sec. 25.
[348] For the moment the sector has no specialist. It seems that lack of personnel makes it difficult for the Minister of Justice to exercise its legal functions in the notarial field.

As mentioned above, the Notary Law provides for several duties of the Minster of Justice with regard to notaries. These include the test notaries should pass to receive the notary license; the control of notaries, [349] disciplinary measures or revocation of the license. It is the sector on notaries that organises and prepares all the work needed to exercise these competencies of the Minister are exercised. Having so many functions in the field of the notary, it is very difficulty for the Ministry of Justice to exercise them all or to exercise them well with its current staff. It would be necessary to increase the personnel of the Notary sector of the Free Professions Department.[350]

B. Ministry of Foreign Affairs[351]

The Ministry of Foreign Affairs certifies the use of Albanian notarial acts abroad. For this purpose, there is the Consular Sector in the Juridical, Consular and Treaties Department of this Ministry, to verify the signatures and seals of the notaries in documents prepared for use in foreign countries. This sector is composed of 8 persons, all experienced civil servants.

To perform its duties, this sector co-operates closely with the Ministry of Justice. The Ministry of Justice delivers on a regular basis an updated list with the names and seals of the notaries in the Republic of Albania, each time a change occurs in the notary sector. The Consular Sector can function well and seriously only if it always has updated information. Therefore, close co-operation between these two ministries in this regard is essential.

C. Ministry of Finance: Tax Department

Based on Albanian fiscal legislation, public notaries are subject to several fees and taxes. The Albanian law on the fee system was amended in December 2001 to increase such obligations. The OSCE has requested official information to determine the level of satisfaction of these obligations, but the Head of the Small Business Department General Tax Department, Tirana Branch, refused to provide information. Nevertheless, in 2001, the Anti-Corruption Monitoring Group reported that during 2000 and 2001 the number of notaries registered with the Tax Department was less than the number of notaries reported by the Ministry of Justice and Chamber of Notaries. Regardless of the reasons for such a discrepancy, the Ministry of Justice and the National Chamber of Notaries should continuously co-operate with these authorities to ensure receipt of updated and accurate information.

Besides the registration of notaries, other concerns on fiscal matters have also been expressed by notaries. One of these problems arises from article 28 of the Notary Law, which gives notaries or the district chambers of notaries the competence to exempt physical persons who cannot pay for notary services, partially or totally from payments.

[349] The Director of the Free Professions mentioned that they did not exercise any control in certain areas due to a very small number of specialists in the department.
[350] This was also supported by the Director of the Free Professions Department during a meeting held with him in December 2003.
[351] Information received at the Consular Sector of the Juridical, Consular and Treaties Department, Ministry of Foreign Affairs.

Notaries are not clear about the cases in which they may use clause, fearing that their decisions may be considered abusive. Relevant fiscal institutions should clarify what is meant by the incapability to afford payments for notary services, probably with guidance from the Ministry of Finance. In addition, notaries mention that they need training with regard to tax issues and how to apply fiscal requirements in their daily work.[352].

V. GOVERNMENTAL AND OTHER INSTITUTIONAL REPORTS AND PLANS CONCERNING THE NOTARY

Currently, there is no project or program being implemented by any national or international organisation to support the public notary sector. While it is true that the notarial profession is private and thus may be considered by such organisations as being able to provide for itself, experience has shown otherwise. Further involvement through support or training programs should be considered due to the myriad problems that have been identified in the reports described below as well as the importance of the role notaries play in a market economy.

In the framework of the Stabilisation and Association Agreement, as well as the fight against corruption, the Government has prepared or supported and welcomed several documents referring to the functioning of the notary service. One of these is the draft notary law. It is not sufficient, however, that the law be amended. Measures responding to problems that have been identified should be taken by respective institutions.

A. Action Plan of the Albanian Government for the negotiation period of the Stabilization and Association Agreement for the year 2002[353] and Action Plan for the Prevention of and Fight against Corruption[354]

This document adopted in December 2001 recognizes that in the context of progress in the sector of Justice and Home Affairs the Notary Law should be amended. As already mentioned, some changes to the Notary Law have been proposed. According to this Action Plan, one of the measures to be taken during this year is the "strengthening of control and development of inspection on the judiciary, attorney's office and other legal services", which will be carried out by the Ministry of Justice and other relevant institutions.[355] The document states that the public notary, as one of the legal services, will be better controlled and inspected. It also states that training for notaries, among other judiciary professions, will be organized to improve their professional level in the framework of the reform. The Ministry of Justice will cooperate with the Magistrate School and other concerned institutions to perform such training.[356] Given these goals, it

[352] Some notaries mention that they need interpretation of the application of the notary fee stamp. There is also uncertainty among the notaries as to what "xhiro" (turnover) means. Guidance about such issues are needed.
[353] Document prepared by the State Minister for European Integration, December 2001, Tirana. Received from the Ministry of Foreign Affairs.
[354] Annual document prepared by the Anti-corruption Unit of the ACMG and approved by the Council of Ministers.
[355] Ibid., p. 23.
[356] Ibid., p. 24.

is very important that the Ministry of Justice be accorded the necessary resources to conduct the improved inspections. Current levels of staffing are insufficient for making great improvements in this field.

In addition, the Anti Corruption Unit of the ACMG, began in 2001 to prepare an annual Action Plan to Prevent and Fight Corruption in Albania. This Action Plan is a summary of the strategies of the government against corruption. The first one, prepared for the year 2002-2003,[357] mentions as one of the strategies of the government the effective organisation and functioning of the free legal professions, including notary and advocacy.[358] The purpose is to approve legal rules that comply with international standards on this subject, as well as to improve the ethical rules in these two professions. Interestingly, no measure regarding free legal professions is part of the Action Plan to Prevent and Fight Corruption in Albania for the year 2003-2004.[359]

B. Report on Notaries of the Permanent Anti-Corruption Unit of the ACMG[360]

In October 2001, the Permanent Anti-Corruption Unit of the ACMG prepared a report about the notary to identify corrupt elements or possibilities of corruption in this sector, and to propose concrete measures to combat such elements. After reviewing the functioning and organisation of the notary and providing conclusions on every item reviewed, several recommendations were made. These include:

1. Orders, guidelines and regulations must be issued to regulate issues such as determining the number of notaries and their distribution; keeping notary documents; defining the procedures for the notary licensing competitions; the continuing education of notaries, calculation of tariffs; and the organisation of a notary offices;
2. The number of notaries registered must be identified;
3. Inspection of notaries must be organised according to a plan;
4. The number of civil servants at the Ministry of Justice dealing with the notary profession must be increased;
5. The legal framework must be changed regarding the self-disciplinatory competencies of the National Chamber of Notaries;
6. An office should be established at the Ministry of Justice to receive citizen complaints about notaries;
7. An office should be established at the Ministry of Justice for the National Chamber of Notaries;
8. There should be better co-operation between the Ministry of Justice and the Tax Departments;
9. There should be better co-ordination between the Ministry of Justice and notary chambers.

C. Final report on consumer opinions of notary services[361]

[357] Decision No. 339, dated 11 July 2002.
[358] *See* Government of the Republic of Albania, *Action Plan to Prevent and Fight Corruption in Albania, for the year 2002-2003*, Tirana, July 2002, p. 33.
[359] Approved with Decision No. 580, of the Council of Ministers, dated 21.08.2003.
[360] "Mbi Dhënien dhe Administrimin e Licensave të Noterëve nga Ministria e Drejtësisë dhe Mënyrat e Funksionimit të Sistemeve të Kontrollit Shtetëror dhe të Publikut mbi Aktivitetin e Noterëve" ["On the granting and administration of notary licenses by the Ministry of Justice and the manner of the system of state inspection and public control functions over notary activity"], Tirana, October 2001, received from the Permanent Anti Corruption Unit of the Anti Corruption Monitoring Group.
[361] Report of 2001 received from the Albanian Coalition Against Corruption – ACAC.

As a continuation of the ACMG work, the Albanian Coalition against Corruption[362] supported by international organisations such as USAID, MSI, and Council of Europe, conducted a consumer survey concerning notaries. The goal of the study was to provide input into the work of the Anti-Corruption Unit concerning corruption in the notarial profession.

The report was prepared based on questionnaires distributed to consumers. The questions were about the professional competence, abusive of duty and its causes, possible legal instruments against corruption in the notary profession, and the conditions under which the notaries exercise their profession, as well as institutional control over the notary.

The consumer survey reported that there is corruption in the notary service and identified many problems, including the following:

- Tests prepared for the candidates must include more problematic and practical issues and should not include mainly questions related to superficial theoretical legal issues;
- There is a definite need for an ongoing education of notaries;
- Notaries should be periodically tested and not only initially;
- Notaries should demonstrate a higher degree of professionalism. This requires more effective control by the relevant supervising institutions;
- Number of notaries must be decreased;
- Clearer sanctions on notaries who draft irregular acts must be enforced;
- Notaries need better working conditions.

The Anti-Corruption Unit report relied heavily on this study in reaching its conclusions. The preparation of this report and the co-operation between the Albanian Coalition Against Corruption and the Anti-corruption Unit represents a positive step in the development of Albanian civil society.

VI. CONCLUSIONS AND RECOMMENDATIONS

Given the attention the Anti-Corruption Monitoring Group paid to the notarial sector as well as the concrete recommendations for improvement, it is unfortunate that those reforms have not yet begun. The important role of the notary in the legal sector and in the development of a market economy requires that a high degree of professionalism and trustworthiness be developed. The interconnected nature of this sector with the other legal organs such as the courts whose improved functioning is at least partially dependent on the quality of notarial work makes it important that its development no longer be ignored.

It is therefore reocmmended that the Ministry of Justice and the various chambers of notaries at a district and national level exercise a higher degree of control over notaries. There is a need for a higher degree of inspection particularly of the substantive work of

[362] This Coalition was composed of the Woman's Lawyer Center, TLAS-Cafod Albania, Individual and Law Association, Society for a Democratic Culture, Committee for Democracy and Peace, and the Institute for Contemporary Studies.

notaries, i.e., the contents of the documents they certify or draft. This would necessitate an increase in the number of persons working for the Ministry of Justice in the Department of Free Professions.

The training provided for notaries, especially in the form of continuing education, must be improved. Again, this requires the allocation of additional resources. To some extent, it would be advisable for the international community also to increase the resources it devotes to notaries.

Testing of notaries must be regulated separately from the testing of lawyers, now that the latter are being tested primarily through the Chamber of Advocates. It is important that notaries be examined on their analytic and practical skills, not only on their memorization of legal provisions.

Finally, it is important that the number and distribution of notaries in the country be reviewed with the aim of providing efficient services to all Albanian people while permitting notaries to earn a satisfactory income in their profession. Considering the likely workload that will arise from the need to meet demands for restitution and compensation of property, the number of notaries should not be decreased in the short term.

KEY RECOMMENDATIONS

1. ***Ensure wider public participation in the legislative drafting process.***
2. ***Complete the transfer of pre-trial detention centres from the Ministry of Public Order.***
3. ***Issue standard certificates, such as Criminal Records Certificates, promptly and in a transparent manner.***
4. ***Clarify the division of duties between Ministry of Justice judicial inspectors and those at the High Council of Justice.***

I. INTRODUCTION

The Ministry of Justice is one of the most important actors in the Albanian system of justice. Through its Directorate of Codification it has a major role in the preparation of Albanian legislation and legislative reform. Among its other major duties is basic supervision of the legal system, giving due regard to the independence of the non-executive branch institutions such as the judiciary and the Prosecutor's Office.

II. DESCRIPTION OF LEGAL FRAMEWORK

A. Historical Background

The Ministry of Justice was first established under the first independent Albanian government right after the proclamation of independence of Albania on 28 November 1912 (the so-called "Government of Vlora", 1912 – 1914). It was abolished by the communist regime in 1966 and was re-established in 1990[363] in the framework of democratic changes that took place in Albania after the collapse of the communism. Thus, the Ministry has been in existence only for thirteen years.

B. Current Legal Framework

In the framework of legal reform in the justice system, the Assembly enacted a new law on the Ministry of Justice in May 2001, Law no. 8678, dated 14 May 2001 "On the organization and functioning of the Ministry of Justice" (hereinafter referred to as "the

[363] Law no. 7381, dated 9 May 1990, "On the establishment of the Ministry of Justice."

Ministry of Justice Law").[364] This is the main law that regulates the organization, functioning, structure and fields of activity of the Ministry of Justice.

Other laws and sub-statutory acts that contain legal provisions relating to specific aspects of the functioning of the Ministry of Justice are:

- the law "On the organization of the judicial power in the Republic of Albania,"[365]
- the law "On the organization and functioning of the High Council of Justice,"[366]
- the regulation "On the organization and functioning of judicial administration,"[367]
- the law "On the organization and functioning of the Council of Ministers"[368] and the Council of Ministers decision "On the approval of the rules of functioning of the Council of Ministers,"[369]
- the law "On the status of civil servant,"[370]
- the law "On the organization and functioning of the Prosecution Office in the Republic of Albania,"[371]
- the provisions of the Constitution[372] and other legal acts that deal with the Minister as a member of the Council of Ministers, and
- orders and instructions issued by the Minister of Justice.

C. Competencies of the Ministry of Justice Under the Law

Under its organic law, the Ministry of Justice constitutes the principal state institution responsible for the implementation of general government policy in the field of justice and is generally responsible for justice and legislative reform. In the exercise of its activity, the Ministry of Justice is required to follow and guarantee respect for the Constitution, laws and other normative acts, to protect human dignity, human rights and fundamental freedoms, and contribute to the prevention of violations of the law. Moreover, its activities are undertaken in the context of the requirements of the integration process of Albania into the European Union structures.[373]

Pursuant to Articles 5 and 6 of the Ministry of Justice Law, the Ministry drafts and implements policies, prepares laws and sub-statutory acts and oversees the necessary services in relation to the judicial system in general, i.e. the system of execution of

[364] This law abrogated Law no. 7381. The Ministry of Justice Law has been amended by Law no. 9112, dated 24 July 2003 "On some changes and additions to Law no. 8678, dated 14 May 2001 "On the organization and functioning of the Ministry of Justice"'.
[365] Law no. 8436, dated 28 December 1998, as amended by Law no. 8546, dated 5 November 1999, and Law no. 8656, dated 31 July 2000 [Judicial Power Law].
[366] Law no. 8811, dated 17 May 2001 [High Council of Justice Law].
[367] Approved with the Order of the Minister of Justice no. 1830, dated 3 April 2001 [Judicial Administration Regulation].
[368] Law no. 9000, dated 30 January 2003 [Council of Ministers Law].
[369] Decision no. 584, dated 28 August 2003 [Council of Ministers' Rules].
[370] Law no. 8549, dated 11 November 1999 [Civil Servant Law] and its implementing sub-statutory acts.
[371] Law no. 8737, dated 12 February 2001 ["Prosecutor's Law].
[372] Arts.. 95(1), 97, 98(1), 99, 100(2) and (4), 102(2) and (4), 103 and 106.
[373] Ministry of Justice Law, arts. 5(2) and 6(6).

criminal and civil decisions and free legal-professional services, as well as the international cooperation in all fields of justice. The Ministry also performs and important coordinating function within the Albanian state especially in the context of preparation of legislation. The Ministry also plays a role in balancing the power of the independent institutions of the judiciary and the prosecutor. In this role, it initiates investigations and disciplinary proceedings against district and appellate court judges and participates in the professional training, qualification and specialization of judges and prosecutors.

D. Composition of the Ministry of Justice

The Ministry of Justice Law provides for three categories of officials: political officials, civil servants and the remaining personnel whose status is governed by the Labor Code. The first category consists of the Minister, his or her Cabinet[374] and the Deputy Minister, who are appointed based on political grounds.[375] Civil service functions in the Ministry are exercised by the Secretary General and officials who work in General Departments, Departments, Sectors and Offices.[376] While there are regulations governing who is a general director, department director, director, head of a sector, or head of an office,[377] there are no general definitions of what constitutes any of these entities.

The political officials enjoy rights and fulfill obligations that are provided by various legal provisions, whereas civil servants are subject to the provisions of the Civil Servant Law. The third category of employees - consisting of those who are not political officials or civil servants, including the staff of the institutions under the Ministry of Justice - are subject to provisions of the Labor Code.[378]

1. The Minister of Justice

According to Article 98 of the Constitution, the Minister, like all other ministers, is appointed and dismissed by the President of the Republic, on the proposal of the Prime Minister. Anyone who is eligible to be elected a deputy may be appointed as Minister; accordingly, he or she enjoys the immunity of a deputy. With the sole exception of being a member of the Assembly, the Minister may not exercise any other state activity or be a director or member of the structures of profit-making companies.[379] The Minister is member of the Council of Ministers and responsible there for the activity of the Ministry of Justice.

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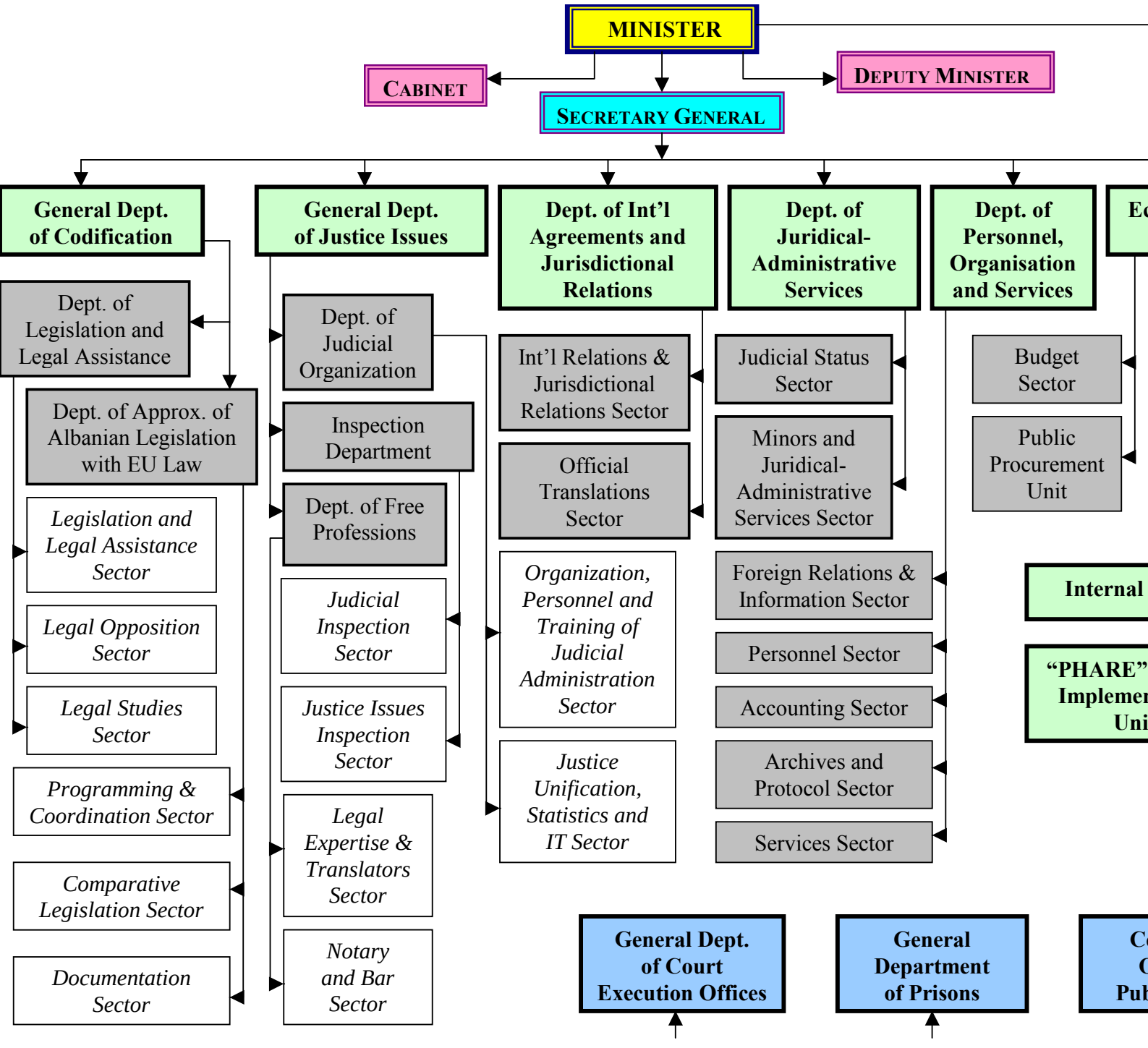
[374] The Cabinet of the Minister is composed of the Chief of Cabinet, advisors, the spokesperson and the secretary.
[375] Ministry of Justice Law, art. 7.
[376] Ministry of Justice Law, art. 8.
[377] Council of Ministers Instruction No. 1, dated 13 June 2000 "Structures of Work Organisation in the Civil Service, Respective Methodology and General Description of the General Secretary in this Service".
[378] Ministry of Justice Law, arts.. 4(1) and (2). The law refers to other legal provisions and normative acts related to the organization and functioning of the Council of Ministers, civil service, Labor Code, etc., in regulating relations among the Minister of Justice, his or her Cabinet, Deputy Minister, Secretary General and other structures of Ministry of Justice.
[379] Constitution, arts.. 70(2) and 103.

With the assistance of the Deputy Minister and Cabinet, the Minister of Justice directs, in compliance with the general principles of the government program and under his or her direct responsibility, all fields of activity of the Ministry of Justice.[380] In the exercise of his or her competencies, the Minister of Justice issues orders and instructions, which have an internal character and are binding only on the Ministry of Justice and its subordinate institutions,[381] including rules on the organization, functioning, structure, division and implementation of duties, staffing, and internal disciplinary procedures of the Ministry.[382] In addition to his or her competencies and duties as set forth in the Constitution and specific laws, the Minister also exercises other duties as tasked by the Council of Ministers or the Prime Minister.[383]

2. Internal Structure of the Ministry

The Ministry of Justice is composed of the following main divisions: General Department of Codification, General Department of Justice Issues, Department of International Agreements and Jurisdictional Relations, Department of Juridical-Administrative Services, Department of Personnel, Organization and Services and the Economic Department. The General Directorate of Prisons, General Directorate of Court Execution Offices, Albanian Adoption Committee and the Center of Official Publications are also institutions under the Ministry of Justice. A description of the practical structure of the Ministry of Justice is given below in its organizational chart.[384]

[380] The number of staff for each Department and sector are set by Decision of the Prime Minister no. 4082/1 dated 30 October 2000 "On the approval of structure and staffing of the Ministry of Justice."
[381] Constitution, arts.. 102(4), 116(3) and 119, and Ministry of Justice Law, art. 7/2.
[382] Ministry of Justice Law, art. 9 sec. 2. A more detailed regulation of these issues will be provided in the Regulation of the Ministry of Justice, which is expected to be enacted soon. At present, an internal August 2000 regulation that provides rules of work discipline as well as entrance and circulation issues inside the premises of the Ministry of Justice is applicable.
[383] Council of Ministers' Law, art. 6 sec. 1.
[384] This chart was prepared based on the official Ministry of Justice organizational chart that is till in force. a new chart reflecting the changes made by Law no. 9112, dated 24 July 2003 "On some changes and additions to Law no. 8678, dated 14 May 2001 On the organisation and functioning of the Ministry of Justice, still pending the approval of the Council of Ministers when this Report was sent for publication. Therefore, the chart above does not reflect these changes.



a. General Department of Codification

The General Department of Codification[385] is composed of the Department of Legislation and Legal Assistance, the Department of Integration and International Relations Development and the Department of Juvenile Justice and Juridical-Administrative Services, each of them consisting of specialized sectors.[386] It currently has a staff of 24.[387]

This Department constitutes one of the most important divisions of the Ministry and is responsible for the preparation of draft laws and sub-statutory acts and issuing of specialized opinions on various legal matters. Thus, according to the law, all drafts of codes, laws, Council of Ministers' decisions and orders and other normative acts prepared by members of the Council of Ministers or heads of central institutions (through the relevant working groups) should sent to the Ministry of Justice for review. The law provides that within 10 days after receiving them, the Ministry of Justice, mainly through the General Department of Codification as well as other relevant divisions, should give its legal opinion in writing on their lawfulness and compatibility with the Albanian legislation in general and legal terminology unification requirements. According an order of the Prime Minister, the receiving institution should take this opinion into account prior to sending the final draft act to the Council of Ministers.[388]

The Department of Legislation and Legal Assistance has among its main activities the preparation of draft laws and sub-statutory acts "in the field of justice or under the competence of the Ministry of Justice,"[389] the organisation and co-ordination of activities of working groups for the preparation of draft acts and the supervision of the process of review, approval and publication of laws and sub-statutory acts. In addition, the Department prepares legal opinions on draft laws and other normative draft acts of the Council of Ministers, ministries and other central institutions as well as on the international agreements to which Albania is a party, to ensure compliance with the law. Furthermore, the Department organizes and conducts studies in areas such as justice and legislation, strategies of legislative reforms, methodologies of drafting acts, unified legal terminology and the implementation of legislation.[390] The Department has a staff of 12.

The Integration and International Relations Development is responsible for the preparation and following up of work for the implementation of the policies, programs and reports concerning the integration of the justice system with international initiatives and structures, as well as for the development of international relations in the area of justice. The Department co-ordinates its work with other ministries (Ministry of Foreign

[385] Ministry of Justice Law, art. 10, as amended by art. 3 of Law no. 9112, dated 24 July 2003.
[386] See the organizational chart.
[387] This report reflects the actual staffing levels and not those authorized under the law which in some cases may be different than the actual staffing levels.
[388] *See* points 5, 7, 9 and 10 of the Order of the Prime Minister no. 53, dated 21 June 1999, "On the drafting, preparation and time limits of submitting for examination of the normative draft acts to the Council of Ministers."
[389] Ministry of Justice Law, art. 10(2), point a.
[390] Ministry of Justice Law, art. 10(2), point e.

Affairs, Ministry of Integration, Ministry of Local Government and Decentralization, etc.), interested institutions, and European Union (EU) structures responsible for the bringing Albanian legislation into compliance with EU legislative standards.[391] For this purpose, the Department:

- keeps track of and prepares materials and comparative studies about the newest developments in both international and Albanian law ;
- follows and realizes the study, negotiation, signature, approval, and implementation of international agreements that fall under the competency of the Minister of Justice;
- takes care of the development of international relations and Ministry of Justice contacts with international institutions, corresponding institutions of other states, foreign judiciary authorities, as well as other foreign public or private organisations;
- takes care of and takes measures for the organization, participation, and accomplishment of the necessary services for international activities in the justice field, within the country or abroad.

The Department is expected to move soon under the Ministry of Integration. It has a staff of 10.

Department of Juvenile Justice and Juridical-Administrative Services prepares, follows, and co-ordinates the accomplishment of policies, programs and activities that are related to the field of juvenile justice, through legal education and prevention of criminality among minors. The Department also co-ordinates its work with relevant institutions responsible for the protection of the rights and interests of minors in the field of justice, especially concerning their adoption and custody. Moreover, the Department takes care of the development and implementation of the legislation as tasked by the Ministry of Justice and other justice bodies with respect to the accomplishment of different juridical-administrative services. The Department has a staff of 9.

The procedure of issuing certificates appears to be carried out at a normal speed, and there seems to be no major difficulty in obtaining them. The question about the payment of bribes is however a delicate one. Sources from within the Ministry and outside it, which do not want to be identified or even cited, have said indirectly that there have been instances when paying bribes was used as a way to speed up the process (when people needed those certificates urgently and could not wait to go through the normal procedure), but these sources believe that such practices are the exception rather than ordinary methods of operation.

b. General Department of Justice Issues

[391] In this context, *ad hoc* work groups are working in the fields of intellectual and industrial property rights, free movement of capital, competition and consumer protection, public procurement, work relations and social policies, etc. *See* State Minister for European Integration's "Action plan of the Albanian Government for the negotiation period of the Stabilization and Association Agreement," p. 8.

The General Department of Justice Issues[392] is composed of three Departments - the Department of Judicial Organization, the Department of Inspection and the Department of Free Professions - with the corresponding sectors. It has a staff of 28.

The Department of Judicial Organization prepares recommendations on the legal and organizational measures for the functioning of the judiciary, such as the number of courts, their location, territorial competency, and number of judges, as well as those measures relating to the functioning and staffing of the judicial administration. The Department also supervises the collection, processing and maintaining of unified procedural, administrative, investigative and legislative statistical data. It also provides information technology support concerning Ministry of Justice data. The Department has a staff of 11.

The Inspection Department, consisting of Judicial Inspection and Justice Issues Inspection sectors, conducts inspections on district and appellate courts, individual judges, prosecution offices, institutions of the execution of criminal and civil decisions and other institutions subordinated to the Ministry of Justice (listed below in section "E") regarding the organization and functioning of the judicial services and juridical administration in general.

Thus, concerning the prosecution office, the *Justice Issues Inspection sector* aims to ensure compliance with the legal obligations of the prosecution office to begin a criminal prosecution, the time limits for pre-trial detention and respect for the fundamental human rights and freedoms of subjects of criminal proceedings, particularly of those who have been detained or arrested.

The *Judicial Inspection sector*, in co-operation with the Inspectorate of the High Council of Justice (HCJ), conducts inspections on district and appellate courts exclusively on issues related to procedural matters in cases dealt with, without examining the facts of the case or its outcome. Following these inspections, the Department drafts reports that are sent to the relevant local prosecution office, Prosecutor General's Office, HCJ and the President of the Republic, and prepares recommendations for the Minister of Justice and HCJ concerning necessary measures for the resolution of observed problems. From 2000 through July 2002, the HCJ has dealt with 36 cases where disciplinary proceedings against judges were requested. After the procedures were completed, 21 judges were dismissed (4 of them being Appellate Court judges) and 15 were issued warnings about their performance in work. The Department has a staff of 10.

The High Council of Justice Law provides for an inspectorate under the High Council of Justice as well as for the inspectorate under the Ministry of Justice. However, the relationships and division of duties between these inspectorates has not been clearly delineated which may provide an obstacle to the efficient functioning of the High Council of Justice.[393]

[392] Ministry of Justice Law, art. 11, as amended by art. 4 of Law no. 9112, dated 24 July 2003.
[393] This issue was one of the issues of concern during the debate over the High Council of Justice Law. See discussion in chapter 2 on the High Council of Justice.

The Department of Free Professions follows and supports the organization and functioning of the profession of lawyer, notary, arbitrator, mediator, bankruptcy administrator and other free professions related to the justice system. In exercising its duties, the Department is responsible for compiling, processing and storing the files and the registry of judicial status, as well as issuing the relevant certificates based on this registry. The most important field of activity of this Department is the organization and functioning of the notary, a process that is explained in detail in chapter 8 of this report, which discusses the Notary. The Department has a staff of 7.

c. Department of International Judicial Co-operation

This Department's *International Relations and Jurisdictional Relations Sector* is responsible for relations of the Ministry of Justice with other bodies in the justice system in order to fulfill the obligations that derive from international judiciary co-operation instruments.[394] This sector handles the development and realization of jurisdictional relations and other procedures of international co-operation in the fields of criminal and civil law. Furthermore, it frequently deals with problems relating to the extradition of Albanian citizens from foreign countries. It has a staff of 3.

The *Official Translations Sector* performs the official translation - from Albanian into foreign languages and vice versa - of Albanian legislation, legislation of other states, acts of international law and different official documents. Upon their request, such official translations are sent to Albanian and foreign state institutions and international organizations. This sector has a staff of 3.

d. Other Structures

The Department of Personnel, Organization and Services[395] manages the Ministry's human resources and the selection and professional qualification of specialists and staff of the Ministry.[396] The Department also administers and maintains the movable and immovable property of the Ministry, plans and implements the annual investment program, and ensures the Ministry is supplied with relevant equipment. The Department handles the correspondence to and from the Ministry, the archives, protocol services, public and media relations, as well as accounting and bookkeeping procedures. The Department has a staff of 36.

The Economic Department[397] assesses the economic situation and follows and co-ordinates the study and completion of drafting procedures of the budgetary requirements of the Ministry and the institutions under its authority. It is also responsible for planning, providing and implementing the approved budget, as well as for securing the financial

[394] Ministry of Justice Law, art. 12, as amended by art. 5 of Law no. 9112, dated 24 July 2003.
[395] Ministry of Justice Law, art. 14, as amended by art. 7 of Law no. 9112, dated 24 July 2003.
[396] The Department is responsible for the proper implementation of the internal regulation on the work discipline and entrance and circulation requirements inside the premises of the Ministry of Justice.
[397] Ministry of Justice Law, art. 15, as amended by art. 8 of Law no. 9112, dated 24 July 2003.

funds and investments in the fields of activity of the Ministry and its subordinate institutions. The Department has a staff of 10.

The 2003 budget for the Ministry of Justice was 1,696,600,000 Albanian lekë (approximately 12,000,000 Euro).[398]

In compliance with the relevant legal and sub-statutory provisions,[399] *the Economic and Financial Audit Department*[400] carries out the economic and financial audit of the structures of the Ministry and institutions under its authority, and recommends legal and institutional measures to improve the economic and financial condition and practices of the activity of these structures. In exercising its duties, the Department performs inspections on the activity of the judicial administration. At the end of such inspections, it proposes disciplinary measures against persons responsible for violations of legal provisions related to economic and financial discipline.

For achieving better results in its work, the Department co-ordinates its activity with other governmental structures that are specialised in the field of internal administrative and economic or financial audits. So far, according to internal official sources, the majority of disciplinary measures by the Department have been taken against staff of the General Directorate of Prisons whose activity was found in violation of the relevant provisions on bids and procurement procedures. The Department has a staff of 3.

The "PHARE" Project Implementation Unit (PIU)[401] was established in 1997 by a decision of the Council of Ministers and is subordinated to the Secretary General of the Ministry of Justice. It implements projects financed by the European Commission (EC) and managed by the Project Management Unit (PMU) that functions at the Ministry of Economy.[402] The general objectives of the projects to which the PIU gives its assistance

[398] Law no. 8983, dated 20 December 2002, and Council of Ministers' Decision no. 327, dated May 2003 "On the transfer of the pre-trial detention system to the Ministry of Justice".
[399] Law no. 8270, dated 23 December 1997, "On the High State Audit Commission" and Council of Ministers' decision no. 217, dated 5 May 2000, "On financial control."
[400] Law no. 9112, dated 24 July 2003 "On some changes and additions to Law no. 8678, dated 14 May 2001 'On the organization and functioning of the Ministry of Justice'", art. 6.
[401] While there is also a PIU which handles day-to-day implementation activity, as well as overall financial management on the World Bank Legal and Juridical Reform Project, this unit is not indicated on the organization chart of the Ministry. The World Bank PIU handles the $9 million World Bank credit which funds the following components: improvements in the legal education at the Law Faculty of the University of Tirana, strengthening of the judiciary, mediation and arbitration of commercial disputes, and dissemination of legal information.
[402] Since 1993 and particularly after 1995 the European Commission has been continuously assisting the Albanian judicial sector and it has considerably supported, through its PIU, several *programmes* such as practical support to the Ministry of Justice, rehabilitation of five District Courts, the Court of Appeal of Tirana, etc. (3.6 million Euros); the Executive Design and Works supervision of Tirana District Court and Executive Design of Fushë-Kruja prison (1.5 million Euros); the construction of Tirana District Court and the completion of the Construction of Lezha Prison (3.9 million Euros). As to the assistance provided through the European Commission and Council of Europe *Joint Programmes* for the support of Albanian legal reforms, the most important ones have been the *Second Joint Programme* 1995-1997 which aimed, among other things, at providing assistance to the Ministry of Justice through training of judges and

are to strengthen the institutions established with the support of the previous projects, with a continued emphasis on legal reforms and human rights, and the more effective implementation of the existing legal framework. The PIU has a staff of 2.

E. Institutions under the Ministry of Justice

According to the Ministry of Justice Law, there are five institutions that function under direct supervision and control of the Ministry: the General Directorate of Prisons, the Center of Official Publications, the General Department of Court Execution Offices,[403] the Institute of Forensic Medicine and the Albanian Adoption Committee.

1. The General Department of Prisons[404]

This department implements the organization, functioning and control of the system of preventive custody, execution of criminal decisions, the imposition of punishment, and the treatment of the detainees, arrested and other persons sentenced to prison.[405] There are six permanent sectors that function within the General Department of Prisons: the Educational service, the Security service, the Health service, the Legal service, the Economic service and the Financial service,[406] whose duties are regulated by specific provisions in the General Regulation of Prisons. In the exercise of its competencies, the General Department of Prisons is assisted by its special police force, the Prisons' Police, which is responsible for the security service within and outside of the prison premises in cases and manner provided by law.[407]

The Director of the Prison Police is appointed by the Minister of Justice upon the proposal of the Director of the General Department of Prisons.[408] The law provides that the status of officers of the Prison Police force is subject to provisions of the law "On the State Police,"[409] whereas the status of staff of the Prison Police administration is governed by the Labor Code provisions.[410] The Minister of Justice also approves the internal regulations on the functioning and disciplinary rules for execution of criminal punishments.[411]

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lawyers and the *Third Joint Programme* finished on July 2001, which assisted Albania with the development of the legal system and the rebuilding of institutions.

[403] It should be noted that the General Department of Court Execution Offices is not found at all in the official organizational chart of the Ministry.

[404] The organization, functioning, competencies and structure of this institution are regulated by Law no. 8321 dated 2 April 1998, "On prison police" [Prison Police Law], Law no. 8328 dated 16 April 1998, "On the rights and treatment of prisoners", Law no. 8331 dated 21 April 1998, "On the execution of criminal decisions" and Council of Ministers Decision no. 63 dated 9 March 2000, "On the approval of the General Regulation of Prisons" [General Regulation of Prisons Decision].

[405] Ministry of Justice Law, art. 16. *See also* General Regulation of Prisons Decision, art. 4.

[406] General Regulation of Prisons Decision, art/ 68.

[407] General Regulation of Prisons Decision, art. 70 and Prison Police Law, arts.. 1 and 3.

[408] Prison Police Law, art. 15, amended by art. 8 of Law no. 8757 dated 26 March 2001 "On some additions and changes to the law on prison police."

[409] Law no. 8553 dated 25 November 1999.

[410] Prison Police Law, art. 20, as amended by art. 14 of Law no. 8757, dated 26 March 2001 "On some additions and changes to the law on prison police."

[411] *See* Law no. 8328 dated 16 April 1998 "On the rights and treatment of prisoners", arts.. 12, 18, 76.

An important task that has recently passed to the Ministry is the responsibility for pre-trial detention sites from the Ministry of Public Order.[412] The pre-trial detention sites are located near or inside the local police commissariats, and continue to function under the Ministry of Public Order. The Ministry of Public Order and the Ministry of Justice have signed an agreement for an incremental process of handing over the pre-trial detention sites and which will continue through 2004. This process began in September 2003, when the first pre-trial detention site located in Vlora was passed to the Prison Police. For the time being, the process appears to have been suspended due to misunderstandings between the State Police and the Prison Police.[413]

2. The Center of Official Publications[414]

The Center of Official Publications (the "Center"), opened in December 1999, has the vital responsibility for official publications and the printing of legal-professional textbooks.[415] Publication of laws and other normative acts and their availability to the public are important pillars of the rule of law. Articles 117(1) and 132(2) of the Constitution provide that laws and other normative acts as well as Constitutional Court decisions are effective only after publication in the Official Journal of the Republic of Albania; that means that by their publication in the Official Journal (or from a certain date after publication provided for in the respective act) these acts bring legal consequences for the parties subject to them.

The Center's main responsibility is publishing the *Official Journal* which contains international agreements ratified or adhered to by Albania, laws enacted by the Assembly, decrees of the President of the Republic, normative acts of the Council of Ministers, ministries and other central institutions, Constitutional Court decisions, High Court decisions on the unification of the judicial practice and other acts for which law compels publication. The Center does not publish sub-statutory normative acts qualified as "secret" by the relevant institution.[416]

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[412] Council of Ministers Decision no. 27, dated 15 May 2003, "On the transfer of the pre-trial detention system under the Ministry of Justice"

[413] For further details, please refer to OSCE report "On pre-trial detention situation".

[414] The organization, functioning, competencies and structure of this institution are regulated by Law no. 8502, dated 30 June 1999 "On the establishment of the Center of official publications" [the COP Law] as amended by Law no. 9091, dated 26 June 2003 "On some changes and additions on Law no. 8502, dated 30 June 1999 "On the establishment of the Center of official publications"' and Council of Ministers' decision no. 158, dated 22 March 200,1 "On the structure, staffing and salary level of the Center of official publications".

[415] Ministry of Justice Law, art. 18.

[416] See COP Law, arts. 1, 2, 5 and 6. As to the periodicity of publication of the Official Journal, there seems to be an inconsistency between two provisions of the law: according to art. 6 section 3, the Center should publish the most important legal documents (international agreements ratified or adhered to by Albania, laws, decrees of the President of Republic, normative acts of the Council of Ministers, ministries and other central institutions, Constitutional Court decisions, etc.) *within 30 days* after such documents have been submitted for publication to the Center, whereas art. 7 section 1 provides that the Official Journal is normally published twice a month, every 15 days, but *not later that 15 days* after a legal document has been submitted for publication to the Center. The highest decision making body of the Center is the Center's Commission, which is headed by the Minister of Justice and supervises the general activity of the Center.

The law is very clear about the procedure to be followed in publishing legal and sub-statutory acts, and this procedure has been generally complied with. Nevertheless, there are cases when laws and decisions have been published in the Official Journal before the date they were passed by the Assembly or decreed by the President of the Republic.[417] Such examples indicate irregularities in the work of the Center and/or respective institution(s).

The seriousness of these problems cannot be underestimated as the date of publication of legal and sub-statutory acts is the date when they enter into force or serve to calculate the time for their entry into force. For example, with tax laws or decisions, such an irregularity could have large economic consequences for the State and its subjects. The opposite problem also exists – some Council of Ministers decisions, for example, have been published years after being passed.

3. The General Department of Court Execution Offices

This office follows and implements organization and functioning of the execution system of civil decisions and executive titles.[418] Further information on court execution can be found in chapter 6 on Bailiffs.

4. The Institute of Forensic Medicine[419]

The Institute of Forensic Medicine is a central institution that carries out scientific research activity in order to apply advanced methods in forensic medicine. The Institute organises and conducts forensic medical services throughout Albania, performs pathological, toxicological, biological, and psychiatric examinations following the

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Ibid., arts. 19-22. The day-to-day activity is handled by the Director of the Center who submits a report on the Center's activity to the Commission annually or pursuant to a Commission request The Director of the Center is appointed by the Prime Minister upon the proposal of the Minister of Justice, whereas other personnel of the Center are appointed by the Minister of Justice. Ibid., arts.. 23 and 24. The internal structure of the Center consists of three main sectors - the Editorial Office, the Technical Sector and the Financial Branch – and the relevant sub-divisions. The Center has 28 staff (*see for details* the Council of Ministers' decision no. 158 dated 22 March 2001 "On the structure, staffing and salary level of the Center of Official Publications").

[417] See, e.g., Constitutional Court Decision no. 6, dated 18 January 2002 which was published in the Official Journal dated 15 January 2002; Law no. 8836, dated 22 November 2001, "On the adherence of the Republic of Albania to 'The Convention for prohibiting the terrorists bombing," proclaimed with Decree no. 3171 of the President of the Republic, dated 10 December 2001, published in Official Journal no. 57, dated 21 November 2001; Law no. 8837, dated 22 November 2001, "For adhering of the Republic of Albania to 'The International Convention against hijacking,'" proclaimed with Decree no. 3172 of the President of the Republic, dated 10 December 2001, published in Official Journal No. 57, dated 21 November 2001; and all the acts (no. 8690, dated 16 November 2000; no. 8692, dated 16 November 2000; no. 8697, dated 23 November 2000; no. 9698, dated 23 November 2000; no. 8703, dated 1 December 2000; no. 8705, dated 1 December 2000; no. 8706, dated 1 December 2000; Decree no. 2831, dated 11 December 2000) published in Official Journal no. 43, dated 13 November 2000.

[418] Ministry of Justice Law art. 17.

[419] Added as an institution under the Ministry of Justice by Council of Ministers Decision no. 120, dated 27 February 2003 "On the establishment of the Forensic Medicine Institute".

procedures set by the Code of Civil Procedure, Code of Criminal Procedure and other laws. It co-ordinates its activity with health care institutions in order to prevent criminal acts that put in danger the life and health of patients, and undertakes the training and continuous professional education of forensic medicine specialists. The Institute performs medical examinations at the request of the parties in a civil or criminal court case, or of interested juridical persons. Tariffs for such services are set by a joint order issued by the Minister of Justice and Minister of Finance.

5. Albanian Adoption Committee[420]

The Albanian Adoption Committee is the newest institution subordinated to the Ministry of Justice. The Committee is responsible for the organization and functioning of activities that are related to adoptions, with a view to protecting rights of minors.

F. Competencies in relation to other institutions

The Ministry of Justice cooperates, supports and coordinates its work with many state institutions, the Faculty of Law, Magistrates' School, and other domestic and international organizations in relation to the administration and development of the legislative system in general and the professional training, qualification and specialization of judges, prosecutors, notaries and lawyers.

The Minister of Justice also serves on a variety of inter-ministerial committees, including the National Security Policy Committee and the Inter-Ministerial Committee for the Fight Against Human Trafficking.

The Ministry of Justice functions in co-operation with the judiciary, the Prosecutor General's Office and the High Council of Justice. Judges and prosecutors may be accepted and serve in leading or executive levels of juridical-professional structures of the Ministry of Justice, subject to the consent given by the High Council of Justice or the Prosecutor General respectively after the request of the Minister of Justice, without taking the relevant exam.[421]

The law also provides that each May 10 on the occasion of the inauguration of the new judicial year, the Minister of Justice together with High Court Chief Justice and the Prosecutor General, issue a Joint Resolution. The Resolution addresses matters of

[420] Added as an institution under the Ministry of Justice by Law no. 9112, dated 24 July 2003 "On some changes and additions to Law no. 8678, dated 14 May 2001 "On the organization and functioning of the Ministry of Justice"", art. 9.

[421] Ministry of Justice Law, art. 4 sec. 3, 4 and 6. According to paragraph 5 of the same article "the period of the exercise of political function or the civil service in the structures mentioned in point 3 above is recognized as working experience as judge or prosecutor for the purpose of the requirements of professional career, provided for in the legal provisions for the organization of the judicial power, High Court, Constitutional Court and Prosecutor's Office" *See also* Judicial Power Law, art. 30 (a) and Prosecutor's Law art. 44 sec. 2.

administration and raises problems to be resolved in the field of justice by giving recommendations for the activity of the judiciary in the upcoming judicial year.[422]

1. Major competencies concerning relationships with the judicial administration

Upon the proposal of the Minister of Justice, the President of the Republic establishes the overall number of judges in all the structures of the court system, the judicial districts, the territorial competencies and seats of the courts of first instance and courts of serious crimes, as well as the areas where the courts of appeal will be established, following the consultations with or approval of the High Council of Justice respectively.[423] For each court, the Minister of Justice also establishes the sectors and staffing, as well as appointing or dismissing the chancellor and the director of the budget sector.[424] Based on the organizational structure approved by the Minister of Justice and upon the proposal of the chancellor of the court, the chairman of the court defines the number of staff for each unit of the judicial administration structure under its competence.

The chairman of the court informs the Minister of Justice of alleged violations of discipline committed by judges. On the other hand, the inspection teams of the Ministry of Justice establish contacts with the chairman of the court subject to inspection, and inform him/her about the aim and extent of the inspection, in order for the chairman to create the proper conditions for the inspection teams to exercise their duty.[425]

The Ministry of Justice is periodically informed by the chancellor of the court of certain statistics, e.g., the number of lawsuits per judge, the number of cases resolved, sent to the Court of Appeals and to the High Court and remanded for a retrial, suspended, or reversed. Accordingly, the chancellor, in co-operation with the chairman of the court and on his or her behalf, develops the relevant statistical information that is sent on a quarterly basis to the Minister of Justice.[426] Furthermore, the financial office of the court, under the supervision of the chancellor, prepares the annual financial statement of accounts, and submits the results of the inventory to the Economic Department of the Ministry of Justice.[427]

2. Major competencies in relationships with the Prosecutor General's Office

The Minister of Justice exercises control of the legality of the prosecutors' activity in the manner and according to the procedures provided for by law through the Inspection Department (see above for details *the Inspection Department* section, under "General Department of Justice Issues"). Through such control, the Ministry of Justice also reviews the performance of investigative actions, respect for the principles of justice and equality, and legality of activity of the prosecutors in relations with other subjects of the criminal proceeding. The Ministry also follows the progress of issues that are contained

[422] Judicial Power Law, art. 4 sec. a (3).
[423] Ibid., arts.. 11-12.
[424] Ibid., art. 14.
[425] See Judicial Administration Regulation, art. 8 sec. 11, 15, and 19..
[426] Some of these statistics for 2001 are summarized in chapter 1 on the Judiciary.
[427] Judicial Administration Regulation, art. 10 sec. 6, 8; art. 25 sec. 5, 10.

in the annual recommendation given by the Prosecutor General to the Council of Ministers for the fight against criminality.[428]

No later than March 31 of every year the Minister of Justice submits in the name of the Council of Ministers the relevant recommendations to the Prosecutor General that should be taken into account by the latter in the fight against criminality program for the year in progress.[429]

On the other hand, the Prosecutor General proposes the total number of prosecutors to the President of the Republic after having taken the opinion of the Minister of Justice. He or she also sends statistical data about criminal prosecution to the Ministry of Justice for the compilation of unified statistics in the field of justice.[430]

3. Major competencies in relationships with the High Council of Justice

As described more fully in a separate section of this report, the High Council of Justice is the body competent for appointing, disciplining and dismissing judges of the district courts and of the courts of appeal. The role of the Minister of Justice in relation to the High Council of Justice, especially with regard to the initiation of disciplinary proceedings, is controversial and has been the subject of much discussion. In fact, this issue was one of the main reasons that passage of the new High Council of Justice Law, which was finally passed in May of 2002, was delayed.[431]

According to the Constitution, the Minister of Justice is a member of the High Council of Justice, and the only representative of the Council of Ministers in this body.[432] The Minister of Justice makes available specialists of the Ministry of Justice to the inspectors of the High Council of Justice to help them carry out their duties.[433]

Under the High Council of Justice Law as well as the Judicial Power Law, the Minister of Justice has authority to initiate a disciplinary proceeding against first level and appellate judges.[434] The Minister can base his decision on complaints submitted to the Ministry directly or from the High Council of Justice. It appears that a preliminary screening process can be performed by the respective inspectorate of the institution to which the complaint is submitted.[435] Where the Minister decides legal cause exists to initiate the proceeding, the case is submitted to the High Council of Justice. In such cases, it seems that further verification may be made by either the Ministry of Justice inspectors or the

[428] Prosecutor Law art. 56.
[429] *Ibid.*, art. 54 sec. 1.
[430] *Ibid.*, art. 8 sec. 2 (a) and 4.
[431] See full discussion in chapter 1 on the Judiciary.
[432] Constitution, art. 147 and High Council of Justice Law art. 3.
[433] Judicial Power Law, art. 17.
[434] Judicial Power Law, art. 44 and High Council of Justice Law, art. 31.
[435] Ministry of Justice Law, art. 11 and High Council of Justice Law, art. 16. As described more fully in the section on the Judiciary the lack of clarity in the competencies of the High Council of Justice inspectorate and the Ministry of Justice inspectorate is an issue needing attention.

High Council of Justice inspectors.[436] If a case has originated from the High Council of Justice and the Minister recommends against the initiation of a disciplinary proceeding, he informs the High Council of Justice of the reasons for that finding.[437] The Minister of Justice does not vote where disciplinary proceedings were initiated by him.[438]

The Minister of Justice also supervises the inspection of judges of district and appellate courts on matters of proper functioning of judicial services

> on the basis of special thematic or territorial programs, drawn up on his own initiative or in implementation of duties set by the High Council of Justice, as a continuation of the process of verification of complaints of citizens and juridical subjects, as well as according to data of which he is made aware on his own initiative or through the Inspectorate of the High Council of Justice.[439]

III. THE FUNCTIONING OF THE MINISTRY OF JUSTICE

A. Review of internal structure

Preparation of this Report has shed light on some challenges confronting the Ministry of Justice. Since the law on the Ministry of Justice is relatively new, it seems that certain issues related to its organization and functioning need more time to be properly regulated in practice. Thus, as to the structuring and staffing of the Ministry, there are several opinions on how they could be better set in order to assure greater flexibility of the Ministry's activity. The Ministry of Justice currently has a total staff of 126.[440] Direct contacts with some officials in the Ministry have revealed that they would like some internal divisions to be reconsidered.

As to the status of some personnel of the Ministry, there have been continuous concerns related to the application of Labor Code provisions to staff of institutions under the Ministry of Justice. There is a general view of several high officials of the Ministry that a review of their legal position is needed, proposing to grant them civil servant status which will provide them better protection than the Labor Code in terms of conditions and procedures for entering the job, establishment and termination of work relations, career advancement, etc. The granting of the civil servant status to this part of personnel will thus put them in a position of equal treatment with other staff of the Ministry of Justice already subject to the civil service law provisions.

In certain cases, the working process efficiency of the staff is hindered because of limitations in equipment and network facilities (for instance, the insufficient number of computers, faxes, photocopying machines, etc. or their poor condition). This often leads

[436] Ministry of Justice Law, art. 11 and High Council of Justice Law, art. 16..
[437] Ministry of Justice Law, art. 31(3) and (6).
[438] High Council of Justice Law, art. 25(3).
[439] *Ibid.*, art. 31(2).
[440] The organizational structure and staffing of the Ministry of Justice is set by act of the Prime Minister no. 4082/1 dated 30.10.2000 "On the approval of structure and staffing of the Ministry of Justice."

to work being done manually rather than making use of contemporary electronic devices, thus contributing sometimes to non-compliance with pre-set time limits.

B. Public participation in the legislative drafting process

The more transparent participation of the public in the drafting of legislation is of considerable importance and constitutes one of the most significant features of the rule of law, and it also serves as a significant tool in having a more open and transparent decision making process and more responsible officials. The legislative process in Albania in the last 13 years has often been chaotic and hurried, and very little opportunity has been given to the public to get it involved in the drafting of new laws. From a purely legal point of view, it should be noted that there is no law guaranteeing citizens the opportunity to become part of the process of drafting laws, and this affects all ministries. As there is no legal provision that would require the Ministry of Justice to regulate public participation in drafting laws or sub-statutory acts, the Ministry of Justice sees itself under no legal obligation to do so. This legislative loophole has contributed to minimal initiatives to have the public participate in the legislative drafting process throughout the years, and has also led to inadequate publicizing of draft laws and poorly developed media contacts that would allow the process to be open to the public. With the exception of some isolated cases[441], the public generally has not played an active part in the process of legislative drafting, and this has sometimes led to allegations that enacted laws have lacked sufficient transparency and were predestined to lack proper implementation.

In order to open this process and ensure that the public has a voice in the process of drafting legislation, the Ministry of Justice should work to provide proper conditions to achieve participation. The lack of a clear obligation set by law cannot constitute an excuse for not having not-for-profit organizations and other interested groups play an active role in drafting of legislation. Developing the necessary legal standards for determining when public participation is required and educating the public about the importance of public participation in legislative drafting are of primary importance because it would improve the quality of the laws eventually adopted. It would also encourage citizens to participate in the various associations that would be involved in the process of commenting on legislation, thereby instilling important civic virtues.

The numerous ways in which the public can have a voice in the drafting of legislation process might include organizing of hearings on the draft with interested actors, participation in working groups which comment on the draft, providing of written comments on drafts, and citizen initiatives. In order to make these methods work efficiently in practice, there must be proper mechanisms guaranteeing sufficient and real participation. The most important ones are the dissemination of information (public notice of and access to the latest drafts, either through the production and publication of

[441] For example, public participation in discussions related to legislation package on NFO-s, draft laws on environmental issues (which reflects the obligation required by the "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters", signed in Aarhus, Denmark on 25 June 1998 and entered into force on 30 October 2001, ratified by Albania on 27 June 2001), etc.

information leaflets or through media and internet coverage), the creation of concrete possibility of organizations and interested parties to comment on existing draft laws at various stages, and ensuring that hearings are held at a time and in a manner that it is truly possible for comments to be evaluated and the final decisions to be influenced.

It should be stressed that these are not simply matters of ensuring citizen rights, though they do enhance democratic principles. By allowing sufficient participation in the drafting process, the Ministry of Justice can avoid considerable amounts of criticism after laws have been passed. Participation also ensures that a wider range of potential problems with laws are anticipated, thus lessening the need to amend legislation at a later stage.

IV. CONCLUSIONS AND RECOMMENDATIONS

The progress of justice reform has received increasing attention over the past years and has heightened with the opening of the Stabilization and Associations negotiations on 31 January 2003. The commitment and cooperation to progress in the area of Justice and Home Affairs called for by President Prodi in his speech commemorating the opening of negotiations could be demonstrated by the development of a national strategy on judicial reform, as recommended in the conclusions from the Sixth International Friends of Albania Conference in April 2002.[442] The Ministry of Justice has a vital role to play in the development and implementation of such a strategy and leading the Albanian commitment to this goal.

As the main center for the formulation of the government's judicial policies, Ministry of Justice has constantly improved its activities since its establishment in 1990. It continues to undergo institutional and policy-making reforms aimed at strengthening its role in the maintenance and development of the basic guarantees of the rule of law. Nevertheless, some areas of activity have encountered specific problems and need close attention in the future in order to assure an improved quality of services.

Thus, the procedure of issuing certificates by competent services of the Ministry of Justice should guarantee sufficient transparency and promptness so that there be no more claims of paying bribes from the citizens, even for isolated cases. This would restore the deformed public image of the relevant sector of the Ministry and the trust of the citizens in institutions in the justice sector.

The relationships and division of duties between the Judicial Inspection sector at the General Department of Justice Issues of the Ministry of Justice and the Inspectorate of the High Council of Justice should be clearly delineated. There is a need that the inspectorates be streamlined.

The misunderstandings between the State Police and the Prison Police over the transfer of the pre-trial detention sites from the Ministry of Public Order to the Ministry of Justice

[442] See *Final Conclusions of the 6th International Friends of Albania Group Conference,* Vienna, 17 April 2002.

should be overcome. The suspension of the process of handing over of these sites should come to an end and the process should be continued expeditiously.

There is room for improvement also in the publication of the *Official Journal* by the Center of Official Publications. Inaccuracies related to the publication of legal and sub-statutory acts with a printed date prior to their real publication, as well as inconsistencies provided by the law concerning the periodicity of publication of the *Official Journal* should be corrected.

Finally, the Ministry of Justice ought to work to ensure that laws are not passed without being properly examined by the public. This means inviting various organisations to comment on draft laws before they reach a final stage. It would also be helpful if these organisations were provided some encouragement or training to enable them to participate effectively, though such measures could also be taken by bodies other than the Ministry.

THE PEOPLE'S ADVOCATE

KEY RECOMMENDATIONS

1. ***Legislation should provide means for the People's Advocate to compel timely compliance with requests.***

2. ***The People's Advocate needs more substantial office space.***

I. THE LEGAL FRAMEWORK

A. General Provisions

1. Organic Laws

The People's Advocate Office (Ombudsman) is a new institution in Albania. Such a concept was anticipated for the first time in the 1998 Albanian Constitution. Chapter VI, second part of the Constitution defines the tasks, status and competencies of the People's Advocate. On this basis, the Assembly approved Law no. 8454, "On the People's Advocate" on 4 February 1999. This Law draws on the legislation of other countries that have established the institution of Ombudsman. The current (and first) Albanian People's Advocate was elected on 16 February 2000.

The Constitution states that "the People's Advocate defends the rights, freedoms and legitimate interests of individuals from unlawful or improper action or failure to act of the organs of public administration."[443] The Albanian law does not grant executive power to the People's Advocate dealing with complaints against public authorities, but rather permits him to make recommendations to other state institutions on these complaints. The People's Advocate is independent in exercising his duties. Article 2 of the Law "On the People's Advocate", provides that the People's Advocate is guided by principles of impartiality, confidentiality and independence.

2. Election of the People's Advocate

The law and the Constitution provide for the election of the People's Advocate by three-fifths of the members of the Assembly. He remains in office for a five-year period and can be re-elected.[444] The current People's Advocate was elected by a vote of two-thirds of all members of the Assembly.

3. Privileges and Immunities

[443] Constitution, art. 60
[444] Constitution, art. 60, Law No. 8454 "On the People's Advocate" [hereinafter People's Advocate Law], dated 4 February 1999, arts.4-5

According to the provisions of the law, the People's Advocate enjoys the same immunity as a High Court judge.[445] He can be removed from office only when convicted of a crime, when he becomes mentally or physically incapacitated to the degree of being unable to perform his duties, or when he is absent from work for a period of more than three months. The motion for his removal from office must be presented by at least one-third of the members of the Assembly.[446]

The office of the People's Advocate is fully independent. The People's Advocate decides the organization, number of personnel and matters related to the office structure. The People's Advocate appoints and dismisses his advisors, assistant commissioners and other staff members as appropriate in his opinion.[447]

B. Mechanism of Action on Complaints

1. Jurisdiction and Right to Information

Complaints submitted to the People's Advocate must relate to unlawful or improper actions or failures to act of the organs of the public administration.[448] The People's Advocate does not have jurisdiction over "the President of the Republic, the Prime Minister, laws and other legal acts, military orders to the armed forces, and court decisions.[449]" Nevertheless, without prejudice to court decisions, People's Advocate accepts complaints, requests or notifications of human right violations arising from the administration of the judiciary and judicial procedures. In this way, the investigations of the People's Advocate do not infringe the independence of the judiciary in deciding cases.

Individuals who have suffered violations of their rights may request the intervention of the People's Advocate, who should maintain confidentiality when this is required by the case. Confidentiality is maintained also when requested by the concerned individual himself. The investigation may also be started on the initiative of the People's Advocate if it "is in the public domain", but in such a case the consent of the interested or injured party should be obtained.[450] The People's Advocate has the right to request that organs of public administration provide information or documents that will help in carrying out

[445] People's Advocate Law, art. 6
[446] People's Advocate Law, art. 8 Note that the cases under which the People's Advocate can be removed from office are provided for in the law and not in the Constitution. Article 8 is similar to Article 14 of Law No. 8270, dated 23.12.1997, "On the High State Audit" amended by Law No. 8599, dated 10.04.2000 "On some additions and changes to Law no. 8270, dated 23.12.1997, "On the High State Audit", which provides for the removal from office of the Chairman of the High State Audit. In the aftermath of Constitutional Court Decision no. 212, dated 29.10.2002, which invalidated article 14 as unconstitutional because it was ultra vires the Constitution, there is a possibility that constitutionality of article 8 of the Law "On People's Advocate" could be questioned for the same reason. This is because the People's Advocate and the Chairman of the High State Audit share some similarities, in particular they are both central bodies of public administration established by the Albanian Constitution.
[447] For more details, see section 2: Description of Organizational Structure.
[448] People's Advocate Law, art.12
[449] Ibid., art. 25
[450] Ibid., art. 13.

the investigation.[451] In case the information or documents requested by the People's Advocate are classified as state secrets, he should comply with the rules for the protection of state secrets. Such documents are made available to the People's Advocate only if they are relevant to the case under investigation.[452]

> *Gazmend Tahirllari died on 4 January 2003 because of violence exercised against him by policemen of the Korça Commissariat. The first statements delivered by police and the prosecutor in Korça were that he had died because of the high level of alcohol in his blood. After intervention initiated by People's Advocate with the consent of the Tahirllari's family, the corpse was exhumed and another autopsy was performed. The autopsy showed that the cause of death was the police mistreatment. After these results, criminal proceedings were instituted against the policemen who had committed these acts of violence.*

2. Responses to Complaints

According to the People's Advocate Law "the organs to whom the People's Advocate submits any recommendation, request or proposal for dismissal have to review it and reply *within 30 days* from the date such document has been delivered.[453] The reply shall include reasoned explanations on the specific case and explanation on the actions omissions and measures undertaken by that organ." [454] People who are called by the People's Advocate as witnesses or as experts to give explanations about cases under investigations should respond to his request. Nevertheless, the law does not provide for any sanction if the a member of the public administration does not respond to such a request.

After ending his inquiry into a particular case, the People's Advocate prepares a report on his conclusions and submits it to the parties involved in the case. The People's Advocate *may recommend a remedy for an infringement*. He may recommend to the Prosecutor's Office to initiate investigations, in case he believes that a criminal offence has been committed, or may recommend the dismissal of the person that has done a serious violation. [455] He may also *suggest the payment of compensation* to the individual for the damage suffered from this infringement according to Law No. 8510, dated 15.07.1999, "On tort liability of state administrative bodies".

[451] Ibid., art. 19.
[452] Ibid., art. 20.
[453] Ibid., art. 22
[454] *Ibid.*, art. 19/c and ç.
[455] *Ibid.*, art. 21

The People's Advocate has the right to *refer a case to a higher organ* in a hierarchy in case no response or measure is taken by an administrative organ. In case no response is made to his recommendations and a violation continues, the People's Advocate may present a *report to the People's Assembly*. The report should "include proposals for specific measures to remedy the violations."[456]

> If the People's Advocate finds that it is the content of a statute or other legal act and not its application that leads to the violation of human rights recognised by the Constitution or other laws, he has the right to: recommend to the organs vested with legislative initiative to propose amendments and improvement to the statute; propose to the Administration to amend and improve substatutory acts; or recommend that the Constitutional Court invalidate those acts.[457]

*After the People's Advocate's request for access without authorization from the Ministry of Justice to institutions like prisons, detention centers and prison hospitals, the Assembly approved a provision stating that "all institutions where final verdicts for imprisonment are executed, including institutions for sick or incapacitated people, may be visited without authorization at any time by the People's Advocate or commissioners authorised by him."**

**Law No. 9071, dated 22 May 2003, "On an Amendment to Law No. 8328, dated 16 April 1998, 'On the Rights and Treatment of Prisoners'".*

3. The People's Advocate and the Constitutional Court

According to Article 134 of the Albanian Constitution, the People's Advocate falls into the second group that can bring proceedings to the Constitutional Court. As a member of the second group, he can submit a request only on the condition that the case is related to the interests of his office.

Since the definition of the issues that constitute "interests of the People's Advocate" was significant to the functioning of the Office of the People's Advocate, this office addressed the Constitutional Court in June 2000 with a request to interpret the meaning of "issues related to the interests of the People's Advocate". Therefore the Constitutional Court issued a decision stating that:

> "the Office of the People's Advocate enjoys the right to submit its request to the Constitutional Court concerning the compatibility of legislation, or other normative acts with the Constitution, or international agreements; concerning the compatibility of international agreements with the Constitution, as well as to interpret the Constitution, provided the issue concerned is associated with its interest. In addition, the People's Advocate is entitled to submit requests with regard to issues related to its function of protecting the individual's legitimate rights, freedoms and interests, provided they have been violated by illegitimate and incorrect actions or omissions committed by the public administration bodies and identified by the People's Advocate, as well as when the

[456] *Ibid.*, art. 23.
[457] *Ibid.*, art. 24.

constitutional rules related to the organisation and functioning of its institution have been violated.[458]"

An ex-owner complained in a letter addressed to the People's Advocate that a 2000 Decision of the Council of Ministers violated his and other ex-owners fundamental human right to legitimate property. The People's Advocate addressed this issue to the Constitutional Court. Having examined the case, the Constitutional Court issued a decision** that invalidated as unconstitutional item 1, clause 'c' of the above mentioned Council of Ministers Decision, as well as item no. 4 of a 1995 Council of Ministers Decision.*** The provision in the 2000 Council of Ministers Decision stated: "Ex-owners of the land have the right to take shares of the company that is being privatized, based on the surface of the land within the limits of the company and the price of the land as decided by the decision of the Council of Ministers no. 312, dated 30.06.1994." Based on the request of the People's Advocate, the Constitutional Court decided to invalidate the last part of the clause related to the prize of the land, because that part led to a reduction in ex-owners' right to be compensated, since the value of the land was given in the form of shares in the company, which had a very much lower value than the price decided by the Commission for Restitution and Compensation of Property.*

This decision has been significant not only for the ex-owners, but also because it constitutes a constitutional basis for the adoption of legislation under article 181 of the Albanian Constitution.

_____

** Decision no. 119, dated 18 March 2000, of the Council of Ministers "On the privatization procedures through bidding of the state-owned packets of shares for commercial companies operating in non-strategic sectors"*

*** Decision of the Constitutional Court no. 26, dated 24 April 2001*

****Decision no. 438, dated 14 August 1995 "On Privatization of the State-owned Enterprises transformed into commercial companies"*

C. Reporting

The People's Advocate submits annual reports on his activity to the Assembly.[459] A copy of the report is submitted to the President of the Republic and the Prime Minister. The report contains a description of violations of human rights and freedoms and the ways those violations have been addressed. The People's Advocate may report to the Assembly on his own initiative or upon the written request of the Speaker of the Assembly or a group of Assembly Members. The annual reports and reports on specific issues are made available to the public and are published not later than one month after the date of the discussion by the Assembly. The Office of the People's Advocate also publishes the report in English and distributes it to counterpart offices in other countries as well as to relevant international institutions. The last report on the activity of the People's Advocate office for the year 2002 was delivered on 28 February 2003.

[458] Constitutional Court Decision No. 49, 31 July 2000
[459] People's Advocate Law, art. 26

The activity of the People's Advocate Office is supervised by the Parliamentary Commissions on Legal and Constitutional Issues, on Human Rights and on Finance and Budgeting. The contact of the Office of the People's Advocate with the three Commissions usually consists in the preparation and delivery of reports on various issues.

D. Code of Ethics

The Code of Ethics of the People's Advocate Office entered into force on 15 June 2000, the day that the office started its activity. According to the Code of Ethics, staff members of the Office of the People's Advocate in their professional conduct should be guided by the principles of the independence of the Institution; act impartially and professionally as well as keep confidentiality during their activity in the defense of the rights and freedoms of persons who have either requested or need the assistance of the Institution. While performing their duties the staff members should not be influenced by political and religious convictions, race, social and state position, nationality or citizenship or economic conditions of the people with whom they enter into a relationship because of work requirements.[460] A staff member of the People's Advocate must comply with all duties deriving from the Status of a Civil Servant.[461]

II. THE ORGANISATIONAL STRUCTURE OF THE OFFICE OF THE PEOPLE'S ADVOCATE

A. General Principles

One of the basic principles of the Institution of the People's Advocate is its independence. According to the practices of such institutions all over the world, one of the expressions of the principle of independence is the right of the People's Advocate to define the structure, the number of the staff, their specific qualities and their remuneration within the limits of the budget approved by the People's Assembly. In order not to infringe the independence of this institution, the Albanian Assembly has found a compromise. Article 31 of Law 8454 "On the People's Advocate" provides for the establishment of three specialized sections, while according to Law 8600[462], dated 10.04.2000, "the People's Advocate defines the other parts of the organizational structure and the number of employees of his Institution."

B. The Commissioners

Each of the specialised sections in the People's Advocate Office is headed by a Commissioner. The sections conduct investigations into all complaints, which are divided on basis of the topics covered by each section. The sections are: [463]

[460] Ibid., art. 2.
[461] Law no. 8549 dated 11.11.1999 "On the Status of Civil Servants", art. 19.
[462] Law 8600 is an amendment to the People's Advocate Law.
[463] People's Advocate Law, art. 31.

a) for the organs of central administration, local government and third parties acting on their behalf;

b) for the police, the secret service, prisons, armed forces and the judiciary;

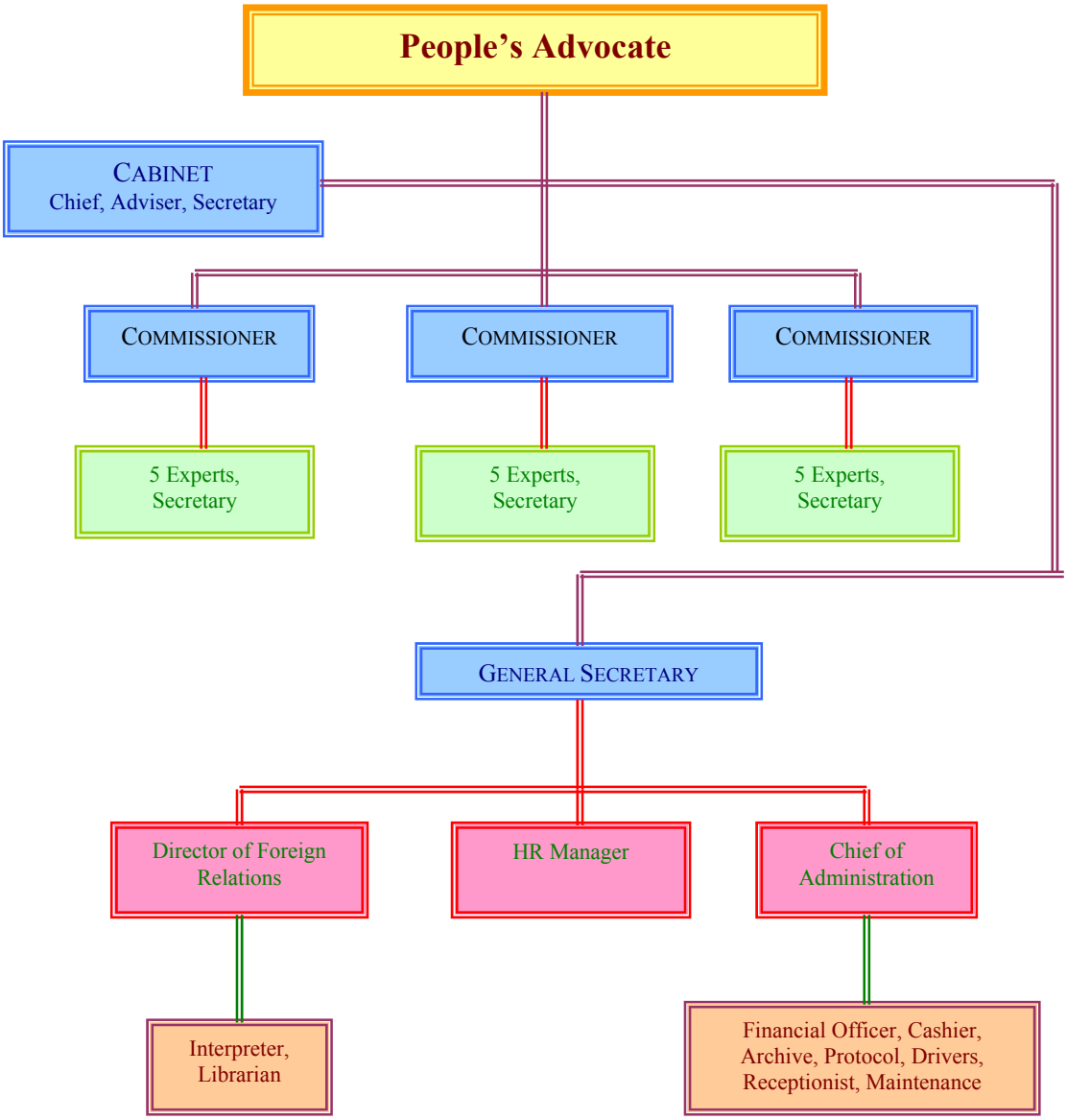
c) for all issues falling outside the scope of the first two sections, co-operation with non-governmental organisations as well as studies and activities in the area of human rights and freedoms.

According to Article 33 of the Law "On the People's Advocate", "the commissioners shall be selected from among the most outstanding lawyers for a three-year term, with the right to re-election." Upon the proposal of the People's Advocate, the Assembly selects the commissioner according to the same requirements as those for the election of the People's Advocate, which derive from articles 3 and 10 of the People's Advocate Law.[464]

The Office of the People's Advocate has 47 employees.[465] Five lawyers work with every commissioner. Each lawyer is specialized in one field of the matter the section covers. Apart from the three specialized sections, other divisions of the Office of the People's Advocate are: the Cabinet composed of the advisors to the People's Advocate, the section that registers complaints, the department of finance, the department of personnel, the department of International Relations, as well as the administration.[466] With the exception of the Cabinet, all departments, a total of 23 people, are under the supervision of the General Secretary of the Institution.[467]

[464] People's Advocate Law, art.33
[465] Annual Report of the People's Advocate 2002.
[466] *Ibid.*
[467] *Ibid.*

Chart I



III. PRACTICAL FUNCTIONING

The Office of the People's Advocate has worked to increase the efficiency of its activity by setting up, among other things, a comprehensive statistics system. This system is designed to remove obstacles for citizens who present their requests and complaints. In addition, the Office for the Reception of People started functioning in June 2001. Citizens may present their complaints or requests and receive necessary explanations from an office expert any time of the day during working hours. Such work has made possible a reduction in the number of complaints that are outside the jurisdiction and competency of the People's Advocate, since people may be informed immediately if the complaint or request should be taken elsewhere.

After receiving complaints, the Reception Officer passes them to the General Secretary. It is the General Secretary who directs these complaints, as well as those received by mail, to the appropriate section. The commissioner then assigns the case to one of the experts working in his or her office. The Office of the People's Advocate has a database network, where everyone can see the status of every case. The current People's Advocate chooses some cases with which to deal directly.

Last year the Office of the People's Advocate organized "open days" in co-operation with local government offices. During these days, the People's Advocate, together with one or more commissioner and other office staff, has gone to cities and towns across the country to meet with people and give them a chance to complain about violations they have endured. The "open days" were successful in that a large number of people approached the People's Advocate Office.

The People's Advocate Office has addressed the public in different ways. A documentary film, as well as five television spots that promote the activity of the Office, have been transmitted by many national and local television stations. The Office has also published leaflets, posters and handouts on this activity. A toll-free number that may be used by people in detention, or people who do not have sufficient income, has also been operational.

IV. STATISTICAL SUMMARY OF THE FUNCTIONING OF THE PEOPLE'S ADVOCATE

The statistics of the Office of the People's Advocate show an increase in numbers of complaints examined by that Office from the beginning of its activity. From January to December 2002, the Office of the People's Advocate has examined 3263 complaints, requests and notifications, of which 767, or 24 percent, were still under examination when the People's Advocate published his last report. This reflects increase of about 60 percent from 2001 and 400 percent over 2000.[468] Table I shows the increase in the number of complaints examined by the People's Advocate during its activity.

[468] People's Advocate Annual Report, 2002.

Table I

Year	Number of complaints
2000	833[469]
2001	2439[470]
2002	3263[471]
2003 (the first six months)	2014[472]

Because 1100 (45 percent) of the complaints treated were found to be beyond the jurisdiction of the People's Advocate, the complainants were advised about other institutions and possible paths to a solution of their problems. Of those requests that were within the People's Advocate's jurisdiction, 759 (30 percent) were determined to be unfounded, whereas 556 (22 percent) were considered well-grounded. Regarding this, recommendations have been given to public authorities in order to increase the quality of public administration. Table II of this Section contains the cases considered by the Office of the People's Advocate, listed according to state organs and structures, against whom a complaint was filed. There has been a slight fluctuation in cases resolved in favour of the complainant, but the figure is not great enough to be of statistical significance.

The achievements of the Office of the People's Advocate are largely due to the independence of this institution guaranteed by Constitution. An increase in public credibility may be seen in the increasing of numbers of people who file complaints or requests with this institution. The People's Advocate staff members have been acquiring a reputation for being communicative and professional in dealing with citizens.[473]

[469] People's Advocate Annual Report 2000.
[470] People's Advocate Annual Report 2001.
[471] People's Advocate Annual Report 2002.
[472] Information given by the Office of the People's Advocate.
[473] Talks with citizens who have filed complaints or requests to the People's Advocate alone or through contacting the OSCE Presence in Albania Human Rights Officer.

Table II

1. Council of Ministers	**198**
a- Supervisory Group for the Pyramid Schemes	15
b- Tangible Properties Registration Offices	88
c- Commissions for Ownership Restoration and Compensation	59
d- Institute of Integration for the Former Politically Persecuted Individuals	8
e- National Privatization Agency	28
2. Ministry of Justice	**358**
a- Prisons	220
b- Bailiff's Office	138
3. Judiciary	
a- Courts	405
4. Prosecutor's Office	**196**
5. Ministry of Public Order	**283**
6. Ministry of Defense	**236**
7. Ministry of Local Government and Decentralization	**457**
Ministry Itself	21
Local Governmental Bodies	
a. Commune	22
b. Municipality	367
c. Prefecture	44
Other	3
8. Ministry of Labor and Social Affairs	**290**
a- Institute of Social Insurance	174
b- Administration of Social Benefits	116
9. Ministry of Territory Regulation and Tourism	**157**
a. Ministry itself	26
b. Illegal Construction	126
c. Water pipeline, canalization	5
10. Ministry of Economy	9
11. Ministry of Agriculture and Food	79
12. Ministry of Finance	35
13. Ministry of Education and Science	78
14. Ministry of Health	25
15. Ministry of Foreign Affairs	21
16. Ministry of Transports and Telecommunications	50
a. Ministry itself	10
b. Telecom	40
17. Ministry of Culture, Youth and Sports	12
18. Ministry of Environment	15
19. Ministry of Industry and Energy	80
a. Ministry itself	16
b. Electric Power Corporation	64
20. Secret Services	11
Others	268
TOTAL	3,263

VI. CONCLUSIONS AND RECOMMENDATIONS

There have been some problems encountered during the work of People's Advocate, which, according to the People's Advocate Office, makes it necessary to amend the People's Advocate Law. *Even if the People's Advocate Law makes it clear that the organs of the public administration should respond to the People's Advocate, as well as to his recommendations, this law does not provide for any tools that this office could use.* Setting deadlines regarding the responses that should be given to the People's Advocate, or suspension of acts if his recommendations are not taken into consideration, may strengthen the People's Advocate position and make clear the obligation that administrative organs have towards the recommendations of People's Advocate.[474] Moreover it is necessary to provide for sanctions for persons from the public administration who do not respond to the People's Advocate. The also should provide deadlines, or permit the People's Advocate to set deadlines, for responses from organs of public administration.

Another problem that hinders the work of the Office of the People's Advocate is the lack of premises and offices. There are 11 experts sharing a large office in the already existing premises and there is only one meeting room used for meetings of the experts with citizens, as well as meetings of the commissions, which may create delay in the procedures.

[474] People's Advocate Annual Report, 2002

LAW FACULTIES

KEY RECOMMENDATIONS

1. ***Entrance examinations must be administered in such a way as to eliminate suspicions of corruption in the process.***
2. ***Law faculties should move away from knowledge-based toward skills-based teaching.***
3. ***The law faculties should seek more lecturers with significant academic experience abroad.***
4. ***Lecturers must be encouraged to do more research work and academic plagiarism at all levels should be punished severely.***
5. ***Permanent positions for lecturers without doctorates should be phased out.***
6. ***There is a need for additional classroom space for most law faculties in Albania.***

I. INTRODUCTION

At present there are four institutions in Albania that provide undergraduate education to aspiring jurists. The University of Tirana has the oldest law faculty in Albania. It was established in 1954 as the "High Institute of Law". In 1957, the University of Tirana was founded as the first Albanian University and the Law Faculty was part of it. The second law programme in the country was founded at Luigj Gurakuqi University in Shkodra in the early 1990s. In the autumn of 2003, two other programmes in law were established in Albania, one at Ismail Qemali University in Vlora and one private law faculty established in Tirana under the name Luarasi Faculty. Aleksandër Xhuvani University in Elbasan briefly had a law department, but the process of closing it began in 1998 and was completed soon thereafter. The faculty at the University of Tirana is the largest law faculty in the country and for this reason has received special emphasis in this report. All faculties graduate general lawyers, who might continue further studies at the Magistrates' School (see chapter 11), work toward higher degrees at the faculty or abroad, work toward obtaining licenses as attorneys or notaries, or enter public and private sector employment in a number of positions.

II. LEGAL FRAMEWORK

The functioning and organization of the school is regulated by the Law "On Higher Education in the Republic of Albania".[475] The Statute and the Regulations of University of Tirana approved in 2000 detail further such organization and functioning. Based on this Statute and Regulation, an Internal Regulation[476] of the Law Faculty was approved in June 2001.

III. THE ORGANIZATION AND FUNCTIONING OF THE FACULTY

A. Autonomy

Based on Law 8461, the law faculties enjoy autonomy in a number of areas. This autonomy is expressed in relation to: the election of faculty steering organs by faculty members; approval of regulations and academic curricula by the faculty units and institutions; freedom of the faculty to co-operate with third parties; ability to generate and use income according to the relevant legislation; entitlement to use the land, building and other properties transferred by the state or given by different donors in accordance with relevant legislation. Regardless of such legal regulations, there are many cases when the rector's office or the Ministry of Education exercises much control over faculties, including Law Faculty. This control focuses particularly on financial concerns. There are also cases when such control is related to the dismissal of academic staff. This creates many problems in managing the faculty. This is a problem for all universities in general and it is not related with the Tirana Law Faculty alone.

It is crucial for the improvement of the faculty that it enjoy real autonomy in administrative and financial issues. Autonomy or independence in administering these assets must be accompanied by an increase in the faculty's responsibility for achieving its objectives, which would permit it to function at a higher level.[477] Higher levels of responsibility will not be reached without such autonomy.

B. Admission to the Faculty

Students are admitted to law faculties by competition. The organisation of the competition has been problematic every year in recent memory. There have been cases of legal exceptions being made for admission, with the government giving the right to persons who have not been among the winners in the competition to attend university studies.

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[475] Law No. 8461, dated 25 February 1999 [hereinafter Higher Education Law].

[476] A guide for law students, supported by Danida Project, was prepared in 2001 and reprinted in 2002. This guide, entitled "Studying Law at the University of Tirana", provides general and detailed information about the organization and functioning of Tirana Law Faculty. It includes the Internal Regulation of this Faculty. The guide is available both in Albanian and English.

[477] In order for such change to take place, a revision of the Law on Higher Education is necessary for those provisions concerning the autonomy of the Faculty's property. This requires action of the Faculties themselves, the Ministry of Education, or the legislator.

C. The education program

The law faculties aim to give students a general background in law. The only institution that seeks to prepare specialists is the Magistrates' School, which prepares specialists to work in courts and prosecution offices. There is no other structure for further training for lawyers working in other areas and the law faculties have not developed such training programs so far, except for some spontaneous projects supported by international organisations or NGOs. Studies are normally completed in four academic years for full-time students and five years for part-time students. One academic year lasts eight calendar months. In order to graduate from the Law Faculty, a student must take 33 exams and complete 4 weeks of internship in the last year of studies. In late 2002, there were 1,030 full-time students and 2,336 part-time (correspondence) students in the Law Faculty.

A school for post-graduate studies recently was re-introduced into the faculty at the University of Tirana after a period of not functioning. The only other opportunity for post-graduate studies in law in Albania is through the Magistrates' School (see chapter 11).

D. Academic Organisation

At present, the Faculty of Law at the University of Tirana consists of three departments: Civil Law, Public Law and Criminal Law. Departments are the basic educational and academic units of all faculties in Albania. Each of them is divided into sections according to subjects included in the department. The Dean is the head of the Faculty. Other structures such as Head of Departments, Deputy Dean, the Chancellor and the Faculty Council function within the Faculty as well.

The faculty is divided into departments of Civil Law, Public Law and Criminal Law.

E. Academic Staff and the Teaching Process

There are 30 full-time lecturers teaching at the University of Tirana Faculty of Law. Their levels of experience vary considerably. There are only two persons with the rank of professor and 3 others that have the rank of associate professor. Only four others have the degree of Doctor of Science. There is a small number of young faculty who has finished a Master's degree studies abroad and who are now in the process of beginning their doctoral studies, often in Albania. The rest of the academic staff began Master's degree studies last year at the University of Tirana and soon will pursue with their doctoral studies. This formally will increase the academic level of the Law School, though it is unclear to what extent these new Master's students are being trained in solid research and analytical skills.

1. Teacher Training

In general, the academic staff at all of Albania's law faculties receive very little training in teaching methodologies. There are, however, several programs that make it possible for teachers to receive further training. Many of such training have been offered through the Hermes and Tempus program. USAID through its project "World Learning" has provided training courses for many of the lecturers at the faculty. It would be important now for the faculties to develop their own training programmes for faculty members.

2. The Teaching Process

Most of the academic staff are relatively young; however, most of them has been teaching for several years already. The teaching methods usually require only passive participation by the students. Students are encouraged too rarely to actively participate in the learning process. Methods like papers or group work are not often used. Not every subject has a textbook and there are many cases when lectures are simply dictations. This makes it difficult for both students and teachers to advance with the teaching process. In addition, many of the young teachers have had full responsibility for their courses from the first or the second year of their teaching experience. There are many cases when these lecturers have not had the benefit of working first with more experienced colleagues. In addition to teaching materials that are insufficient, spaces and facilities for teaching are also limited.

The examination process in the law faculties, as in most other faculties in Albanian higher education, tests knowledge of specific details of the law rather than skills in using and analysing legal provisions. The credibility of the system is undermined by constant reports from students who claim that they must pay bribes either to receive passing marks or to receive high marks. There are also reports of nepotism in marking. Whether or not these reports reflect reality, it is clear that universities must undertake more serious efforts to combat this perception.

One other problem that influences the teaching process is the low salary received by lecturers. This latter factor has certainly contributed to the other problems. Lecturers have not been motivated to produce high quality lectures and have been satisfied with complaining about a lack of teaching materials rather than producing their own resources.

3. Teaching Materials

Recently departments and sections have been engaged in preparing books or publications of lectures for the courses offered. Often these are published by the university publishing house. This has improved the education process in the Law Faculty, where previously students simply took notes based on lectures. Nevertheless, there are some subjects where it is difficult to find materials for the students. Moreover, there is a serious problem with the quality of teaching materials. Many books are poorly organised. They are often not written with the pedagogic process in mind. More seriously, books frequently include sections that are plagiarized. When there is no plagiarism, there is often a tendency simply to restate the law in other words without delving into problems

of interpretation that may arise from the law. In other words, the level of scholarship at the law faculties must improve so that the teaching process can also improve.

F. Academic Life

Students receive the title "Jurist" upon completion of studies in law faculties. Afterwards, there is a possibility for those pursuing an academic career to continue postgraduate studies at the University of Tirana.[478]

Three years ago, supported by the Open Society Foundation, a journal called "Juridical Studies" began publication at the faculty. The journal is open both to faculty academics and foreign authors who can write in their native languages. This is the first magazine to be issued by the faculty after a hiatus of several years. Nevertheless, even this journal is issued only twice a year. There are no student publications in the Law Faculty, though there has been at least one unsuccessful attempt to begin one. In general, this is testimony to the low level of student organisation in the faculty.

IV. THE MANAGEMENT AND ADMINISTRATION OF LAW FACULTIES

A. The Dean of the Faculty

The faculty is directed and managed by the Dean of the Faculty. The Dean is elected from the Academic Council of the Faculty. The duties of the Dean include leading the entire educational and academic work in the faculty, organising entrance competitions for new students, approving internal regulations of the units of the faculty, proposing the deputy dean and chancellor of the faculty to the rector, and approving other faculty personnel.

B. The Academic Council

The Academic Council is the highest collegial organ in any Albanian faculty. It decides on the most important issues of the Faculty related to the education, academic research and finance and administration. The competencies of the Academic Council include the election the Dean of Faculty; approval of new courses, departments, or other units of the Faculty; and the granting of academic titles. It is composed of representatives elected every four years by the Departments, non-academic personnel of the faculty and student representatives. As a collegial body, its procedures are governed by the Collegial Bodies Law.[479]

[478] See Decision of the Council of Ministers No. 588, date 2. 11. 2000 "On the establishment of the graduate programs in the universities" issued according to Law No. 8461, "On High Education in the Republic of Albania", dated 25. 2. 1999.
[479] Law No. 8480, dated 27 May 1999, "On the Functioning of Collegial Organs of the State Administration and Public Institutions".

There is a widespread belief among university lecturers that the election of representatives to academic councils throughout Albania has been marred since the establishment of these institutions by a tendency to elect members who do not challenge the status quo. In other words, instead of electing people who would struggle to improve Albanian education, faculty members whose academic qualifications are not really sufficient for their positions tend to vote for people who will not seriously seek to impose higher standards. These academic council members then either elect non-threatening deans or prevent deans from bringing about significant reforms in their institutions.

C. The Heads of the Departments

The Head of Department is the highest authority in a Department, the main educational and academic unit of the faculty. He or she is elected for a term of four years by the academic personnel of the Department. The Head of the Department exercises several competencies such as monitoring teaching activity and academic research, as well as directing the work of postgraduate programs within the Department.

D. Administrative structure and premises of the Law Faculty in Tirana

The Administrative staff consists of 13 persons, including the Chancellor, Dean's secretary, , laboratory technician of the forensics laboratory, and various administrative or clerical employees. There is a small number of maintenance personnel as well.

There is a job description for each member of the administration in the regulation of the faculty. Nevertheless, the work is not always well organized. Sometimes the administrative staff is overloaded with work. There are computers in every office; however, the documentation system is not computerized. Most of the data are hand written in the old registers. There is a rather *urgent need for further computerising*, which would ease the everyday work of the academic and administrative staff. There is no e-mail system installed although computers have Internet access. Such e-mail would be helpful in permitting lecturers and students to maintain international contacts, which are becoming increasingly important in academic life throughout Europe.

There are only a few practical facilities in the faculty. There is no foreign language or computer laboratory. There is no space for mock trial work. The Faculty has a criminology laboratory; however, its equipment is dated. A *Legal Clinic* was set up recently in the Faculty. It was the result of a project that aimed at involving law students in real legal cases. Thus, students now have some possibilities to intertwine their theoretical knowledge with practical skills.

The library premises are located inside the law faculty. There are four small compartments, two of which serve as a study hall for students. The literature is not continuously updated, due to financial obstacles. There is no computerized system for student research and students are not allowed open access to books. Indeed students complain regularly about their lack of access to those books that are present.

E. Premises and physical conditions of the University of Tirana Law Faculty

The building of the Law Faculty is an old one.[480] This building only partially meets the needs of the Faculty. Each Department, where teachers are supposed to perform a good part of their academic work, is located in one room of nine square metres. There is no separate room for academic staff. The teaching space in this Faculty is also insufficient. At present, there are 16 classrooms in the faculty, where some 1,030 students have lessons. The administration works under considerably nicer conditions.

There is no central heating system and there are only some air conditioners (none in the classrooms), and the electrical system is damaged. There is a generator to cover electricity problems, however it cannot cover all the necessities. The same conditions apply to the hydro-sanitary system.

F. Foreign Relations Office at the University of Tirana

This office began to function in 2000. It is a link between the Faculty and other institutions, both national and international. Its establishment and management were assisted by "DANIDA" and World Bank projects to reform the University of Tirana Law Faculty.

V. CONCLUSIONS AND RECOMMENDATIONS

The Faculty of Law at the University of Tirana remains the largest and most important law school in the country, though the establishment of new programmes elsewhere in the country over the past years, and especially the founding of private faculties, may eventually challenge this supremacy. It graduates the largest number of professionals in law in Albania. Although the Faculty is quite old by Albanian standards, it still faces many problems. The Law Faculties suffer from difficulties that are common to all Albanian universities, though they are often more acute in the area of law.

As elsewhere in the university system, there is constant doubt about whether the examinations are fairly administered. Universities must work to ensure that corruption in this process is reduced. In the past this has been done primarily by creating testing rules designed to ensure secrecy in testing. In fact, those inclined to cheat have been more ingenious than those trying to stop the cheating. It now appears that there must be more efforts to investigate those involved in corruption – including criminal prosecutions where evidence is found.

Corruption is also a problem during the examination processes throughout the years of study. Students frequently report that certain courses can be passed only when bribes are paid. Even if not true, this perception is damaging to the integrity of the faculties. Again, more serious investigations are necessary.

[480] It is a 30-year-old building. It was established as an elementary school. Later it hosted a part of the Economics Faculty. In 1991 the Law Faculty moved from the third floor of the building of the central corpus of the University of Tirana to this building.

The curriculum of the law faculty must be developed in several ways. First, there must be an *increased emphasis on skills* – writing, reasoning, research, argumentation, presentation – than there currently is. This does not mean simply introducing courses using traditional methods to provide "new information", but setting goals about skills students must develop, designing some new courses, and structuring existing courses so that these skills are emphasised. This involves working with lecturers willing to develop more interactive teaching techniques and skilful enough to distinguish between memorisation and analytical learning. Secondly, more elective courses must be included in the curriculum and required courses reduced to those that are really important for every good general jurist. At the moment, the employment needs of faculty members are often more important than the learning needs of students.

Lecturers with outside experience must be brought into the faculty. In this area, universities in Albania are hindered by faculty employment practices, whereby people who do not yet have academic degrees obtain full-time teaching positions and then keep them even when more qualified people are available. This requires legislative changes making it clear that people holding master's degrees are higher in the academic hierarchy than those without them, that doctors have a higher rank than masters, and that tenure is granted only to professors and (perhaps) associate professors.

Lecturers must be encouraged to do *more research work* and must be rewarded for good research. Similarly, the plagiarism that is common in the writing of academic texts should be combated, using the Albanian criminal code's plagiarism provision (article 148) if necessary. The practice of granting doctorates for plagiarised work must be ended. Those whose degrees or academic progress have been based largely on plagiarised work must be relieved of their duties. The process of encouraging research also means encouraging international contacts by providing internet and e-mail resources on a wide scale.

Finally it should be stressed that while the law faculties can only reach desired standards by working with other faculties to set reform goals and adhere to them, the law faculties must not use the lack of progress in other faculties as an excuse for inaction.

KEY RECOMMENDATIONS

1. ***Differentiate first-year curriculum more from Law Faculty curriculum.***
2. ***Increase and improve course offerings related to daily work of judges and prosecutors.***

I. INTRODUCTION

The Magistrates' School (hereinafter referred to as "the School") is the most important institution of Albanian judicial and prosecutorial training. Its goal is to ensure the professional training of judges and prosecutors in order to have a highly professional body of magistrates. It does this by providing more advanced training in law than is provided in the country's law faculties and by teaching students about professional ethics. In addition, the school requires students to complete an internship component before being named judges or prosecutors. The School is located in Tirana and was opened in October 1997.[481]

II. LEGAL FRAMEWORK

In the framework of legislative institutional reform and establishment of a competent judiciary, the Assembly in 1996 enacted Law no. 8136 "On the Magistrates' School of the Republic of Albania" [Magistrates' School Law] that regulates the establishment and functioning of the School.[482] The other legal act that regulates in detail the practical functioning and administrative structure of the School is "The Internal Regulation of the Magistrates' School of the Republic of Albania" [School Regulation], which was enacted in 1998.

III. THE ORGANISATION AND FUNCTIONING OF THE SCHOOL

The professional training program of the School consists of two types of activities:

- *the initial education* of the candidates for magistrate (students who complete the three years of the program);

[481] It is to be noted that the Magistrates' School was first established as the *High School of Magistrates* in 1995 by Council of Ministers Decision no. 624, dated 13 November 1995 "On the establishment of the High School of Magistrates" (not published in the Official Journal) as an institution under the Ministry of Justice which aimed at "the post-graduate qualification of employees of the institutions of justice" (art. 1 of the Decision).

[482] Dated 14 September 1996.

- *the complementary training program* for magistrates with less than 5 years of experience, and the *continuous training programme* for all the other magistrates throughout the entire period of their career.

A. Admission to the School

Each year the High Council of Justice compiles a vacancy list of magistrates' positions that is submitted to the School. Based on the number of vacancies mentioned in the list, the Director of the School publishes the announcement on the starting date and the deadline for submission of the applications from the candidates, the list of subjects on which the test will be based and the documents that the candidates should submit.[483] On the dates set, the candidates have to pass first through a written and then oral exam in front of a commission appointed by the Management Board of the School. After the exams are completed, the commission issues the list of admitted candidates, which is then approved by the Management Board. The academic year begins on 1 October and ends on 30 June of the following year, and is divided into two semesters of 16 weeks each.[484] As in all areas of higher education, there are constantly rumours that the examinations are not run fairly, though lecturers at the School report that students are indeed of a high quality and deserve to be studying there.

B. The Initial Education Programme

The initial education of the candidates consists of a three-year mandatory programme. The first year focuses on an academic study of law, whereas in the last two years the candidates deal with professional issues that are specific to the judicial or prosecutorial profile they have chosen to pursue.

The programme of the first year is the same for all students and consists of various subjects of law.[485] In general, these are the same as the basic subjects taught in the law faculty. Indeed, frequently they are taught by the same lecturers who have taught the students at the University of Tirana, leading some to complain that the course contents are more or less the same as those at the university. Before the start of the second year, the Director of the School posts lists of courts and prosecution offices where the internship will take place, the supervisor magistrates and the students allocated to each court and prosecution office.

[483] The documents required are: a copy of the law diploma, a faculty transcript (the candidates must have an average mark above 8), a request expressing their choice to follow either the judicial or prosecutorial programme of the school, as well as a medical certificate and a criminal history record issued by the competent authorities. *See* Magistrates' School Law, art. 16 and School Regulation, art. 5.

[484] For details on the admission procedures see Magistrates' School Law, arts. 16 and 17, and School Regulation, arts. 5-12.

[485] For the 2002-2003 academic year, the Managing Board of the School has approved a Teaching Plan schedule of 1440 hours of classes divided for 20 subjects (the most important ones according to the number of class hours being: the civil law, civil procedure law, criminal law, criminal procedure law, constitutional law, commercial law, human rights and European law)

In the second year, students perform a practice training combined with a more theoretical programme in a so-called *pre-professional internship period* under the supervision of a well-qualified judge or prosecutor who serves as a tutor. Students spend some days of the week following closely the daily activities of local district and appeal courts or prosecution offices, attend sessions of the Assembly and hearings at the Constitutional Court and High Court. During the rest of the week, they come to the School to discuss and comment on the practical experiences and get additional information on several topics (e.g., on the functioning of the People's Advocate, environmental law, social security issues). At the end of the second year, the students submit a diploma thesis, which is a research paper on both practical and theoretical issues dealt with during the year.

In their third year, students get a provisional appointment by the High Council of Justice (which takes into consideration the year-end evaluations from the Academic Council for the first two years) to a court or prosecution office and perform an intensive internship. During this *professional internship period* the students deal with cases of minor importance under the supervision of a judge or prosecutor. At the end of each month they return to the School and discuss, individually or in groups, with the faculty about different issues encountered in their practice. Their activity is followed throughout the entire year by the lecturers of the School who contact them periodically in their places of appointment and assess their progress. During the professional internship period, the candidates enjoy the same rights and have the same duties as sitting magistrates.

At the end of each year, students are given marks for their performance. The final evaluation of the candidates is made by the Academic Council, which ranks the students according to the results achieved during the three years of the program. The Director of the School sends the list of graduates to the High Council of Justice, which then makes their final appointment to vacant positions.[486]

In 2000 there were 19 graduates from the School, all of them opting to become judges. In 2001 the School graduated 20 students, 19 of them as judges and one as a prosecutor. In 2002 the number increased to 23 graduates, 11 of them judges and 12 prosecutors. In 2003, there were 25 graduates, 13 judges and 12 prosecutors.

C. Complementary Training

The complementary training consists of a mandatory program for magistrates who have less than five years of work experience and have not graduated from the School. Based on the proposals received by the chair of the district court or chief district prosecutor, the Chief Judge of the High Court and the Prosecutor General respectively forward their proposals to the High Council of Justice, which is the competent body for determining the final number and names of magistrates who will attend the complementary training

[486] For details see Magistrates' School Law, arts. 14, 19, 20 and 21. When there are no vacancies, those who await appointment receive the salary and enjoy all the rights of a magistrate. The graduate can be assigned, however, to the position of assistant judge or to the judicial administration with his or her consent, until a vacancy occurs.

activities. The travel and living expenses of the participants in these courses are covered by the School. The period of complementary training cannot exceed one month in a year and a maximum of three months during the five years of work experience.[487]

D. Continuing Legal Education

The School, in co-operation with several domestic institutions and with the support of donors, periodically organizes academic sessions, institutional courses, conferences, workshops and other training activities for sitting magistrates in order to provide them with updated information for the improvement of quality in their job. The period and the area of training are decided by the magistrates themselves. The selection procedure for the participants is the same as that for complementary training; however, participation in these activities is optional, and the travel and living expenses are covered by the courts and prosecution offices where the magistrates are employed. Since the 2001-2002 academic year the continuous education courses have been held according to a calendar which is drafted and approved by the School.[488]

At the end of the complementary and continuous education activities, the participants are provided with a certificate issued by the Director of the School, which is recorded in the magistrate's personnel file and is taken into consideration for future promotions and assignments of responsibilities.

IV. THE MANAGEMENT AND ADMINISTRATION OF THE SCHOOL

The managing bodies of the School are the Management Board, the Director, the Academic Council and the Disciplinary Council.

A. The Management Board

The activity of the School is managed by the Management Board, which is directed by the Chief Judge of the High Court. The most important of its duties include the implementation of admissions requirements for candidates to the initial education programme, selection of candidates and their admission to the professional program, appointment of faculty, approval of internal regulations, and an annual report to the High Council of Justice on the progress and attendance of the courses by the students and magistrates and on the future policy of the School. In addition to the Chief Judge, the Management Board consists of the Prosecutor General, the Director of the School, two experienced judges and two experienced prosecutors appointed by the High Council of Justice, two well-qualified specialists appointed by the Minister of Justice who have previously served as judges, prosecutors or advocates, the Dean of the Law Faculty, an internship supervisor appointed by the Director of the School, and two representatives of

[487] For details see Magistrates' School Law, art. 23 and School Regulation, art. 25. Note that the law does not provide for a minimum period of time to participate in the complementary training activities.

[488] Magistrates' School Law, art. 24. In 2001-2002, the School conducted 56 continuous training courses, where approximately 2000 judges and prosecutors were trained. The training fields include comparative international law, civil law, civil procedure, criminal law, criminal procedure, constitutional law, family law, business and commercial law, and the rights of minors.

initial education programme students elected by secret ballot by the Assembly of Candidates for Magistrate.[489]

B. The Director

The day-to-day activity of the School is conducted by the Director of the School, who is appointed by the High Council of Justice on the proposal of the Management Board from among well-qualified judges and prosecutors for a four-year term with the right to be re-appointed only once. The Director has, among others, the duty to represent the School in relations with other parties, to compile the internal regulations of the School and the annual plan of its activity; to implement the obligations deriving from the laws, decisions of the Management Board and recommendations of the High Council of Justice; to request funds from the state, donations from associations and individuals, and to administer them properly in an independent way according to the policies defined by the Management Board. The Director enjoys the status of a judge and reports regularly to the Management Board.[490]

C. The Academic Council

The Academic Council is chaired by the Director of the School and directs its academic activity. Its main duties include the drafting of the annual teaching plan for the initial education, complementary and continuous training activities and the final evaluation of the students upon the completion of the initial education programme. The Academic Council consists of the Director of the School (who is its president), the faculty, and one judge and one prosecutor from among those appointed to the Management Board and who are not members of the Disciplinary Council.[491]

D. Budget of the School

The School is a government-subsidized institution, which for the purpose of accomplishing its goals enjoys the status of a juridical entity as well as administrative and financial autonomy. The budget of the School is allocated by the Assembly upon the proposal of the Council of Ministers. Its income and property consist also of donations from domestic or foreign donors, income from publications or service activities

[489] For details see ibid., art. 6.
[490] *See* ibid., arts. 7 and 8 and School Regulation, art. 30.
[491] They are elected by decision of the Management Board. *See* Magistrates' School Law, arts. 9 and 10 and School Regulation, art. 27. The Disciplinary Council is also chaired by the Director of the School and serves as both a disciplinary and appeals body in cases defined by the law. It takes disciplinary measures in writing against students of the initial education programme in cases when they violate the discipline and attendance rules of the School. No disciplinary measure can be taken without first giving the concerned person the opportunity to be heard. In addition to the Director of the School, the Disciplinary Council consists of a judge and a prosecutor from among those appointed to the Management Board and who are not members of the Academic Council, two faculty members appointed by the Academic Council, and two candidates for magistrate elected every year by secret ballot by the Assembly of Candidates for Magistrate. See Magistrates' School Law, arts. 11 and 12; School Regulation, art. 28.

performed by the School, movable and immovable property under its administration. It can raise funds in any legal manner.[492]

D. Donors

Since the establishment of the School, the school has largely depended on contributions from many international donors, also called "Friends of the Magistrates' School", particularly in the area of continuing legal education. This informal group includes, among others, the Council of Europe, the European Commission, ABA-CEELI, DANIDA, East West Management Institute, USAID, GTZ, IRZ, World Bank, OSCE, the Open Society Foundation. The Friends convene in regular meetings where co-ordination of financial and technical assistance to the School is discussed and decided upon. Since 2001, a representative of the leadership of the School has been present at and gives his or her input to the meetings and decision-making process of the Friends.

V. CONCLUSIONS AND RECOMMENDATIONS

The establishment of the School was of a particular importance as it changed the way of recruitment of new magistrates in the Albanian judicial system, namely by avoiding subjectivity and replacing it with objective criteria based on performance and personal skills. Although relatively new, the School constitutes the most important educational institution that provides training and expertise to future or sitting magistrates. The leadership of the School appears to be working hard to improve its standards and has been successful in co-operating with various national authorities and international organisations to reach its goals.

The difficulties faced by the Magistrates' School are largely those faced by all institutions of higher education in Albania. For this reason, many of the recommendations made in this report for the Law Faculty would also be applicable for the Magistrates' School. Nonetheless, it would also be worth emphasising that the similarity of curricula between the first year of the Magistrates' School and that at the Law Faculty should be examined to determine the extent to which the contents and teaching methods in the individual courses can be improved to meet the needs of future magistrates. Moreover, while the practical experience the School offers its students is invaluable, and courses in areas such as legal writing and reasoning are stronger than those in the Law Faculty, these courses need to be improved even further. Finally, there is a need for very practical courses dealing with subjects like managing oral arguments in a courtroom and the preparation of cases for trial.

[492] Magistrates' School Law, arts. 1 and 3.