Court Organisation and Court Administrators' capacities in Albania: A first exploratory study

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TABLE OF CONTENTS

Executive summary

Within the framework of the joint European Union and the Council of Europe project "Support to Efficiency of Justice – SEJ" the Council of Europe has assigned the task of assess the current situation with regards to Court organisation and administrators' capacities (judicial and non-judicial staff), their functions and responsibilities to a team of experts. The focus in particular is to first instance and appeal courts.

This is an exploratory study. The time constraints and the complexity of the topic did not allow us to analyse more in depth the interesting issues at stake. However, the study offers a quite rich overview of the Court Organisation and Court Administrators' capacities in Albania and provides a number of insights and observation which can be useful to stimulate actions, discussions and further investigation by the stakeholders but also within the courts. While this report can be read independently by other works, it builds on and is intended to be part of the broader work carried out by the SEJ team and other national and international experts involved in its activities. It therefore integrates with the work carried out by Bühler and Johnsen in the "In-depth Assessment Report of the Justice System in Albania" (2015), by Bushati (Gugu), Johnsen and Kokona on "Time management in Albanian Courts", (2015), by Johnsen on "CEPEJ issues at the School of Magistrates", (2015), and with Bühler and Bushati (Gugu) in the "Analysis of the court coaching reports on the District Courts of Albania", 2016, and in the "Analysis of the court coaching reports on the Appeal Courts of Albania", 2016 and with the many other initiatives carried out by SEJ.

The assessment is based on documentation already collected by the SEJ, a preliminary questionnaire developed to guide the data collection, a fact-finding mission carried out by the experts team (Marco Velicogna, Davide Carnevali and Anduena Gjevori) in October 2015 with the support of the SEJ staff, additional visits carried out by the team national expert (Anduena Gjevori) in November 2015, and additional material and documentations collected by the team both during the visits both afterwards.

In February 2016 a first draft of the report was provided to the representatives of courts, Ministry of Justice, High Council of Justice, and other stakeholders involved in the fact-finding mission. A round table was then organized for the beginning of March to discuss the report and collect their inputs. In addition, suggestions were also collected from SEJ experts Jacques Bühler and Jon Johnsen, who shared their long-term experience on the Albanian Judiciary. The report was then finalized taking into account the various feedbacks and additional documents and analysis which had become available in the February-March period.

The analysis of the Albanian situation shows that there are several areas for possible improvement. At the same time, organizational and administrators capacity-building initiatives must be balanced with the respect of key judicial values. An overview of court organization and management principle and judicial values has been introduced in Chapter 2. These values must be declined with the specific needs and requirement of the Albanian Justice System. This concluding chapter provides therefore some indications on how to address the main challenges in light of 1) present organization, legal framework and working practices, 2) international principles and 3) other justice systems examples which could be adapted in this specific context.

<u>Recommendation 1:</u> Clarification of the court governance structure, including a redefinition of roles such as head of the court and court manager with their specific responsibilities linked to competences, capabilities and training.

Two different models can be considered:

- **A Chairman that not only represent the court, supervise and coordinate the work of judges, but also has crucial managerial responsibilities. This corresponds to the present situation in Albania. In this case, adequate selection mechanisms, training (see**

Rec. 2) and possibly reduction of caseload (in light also of Rec. 5) to perform properly such demanding duties are required. The necessary staff structure to offer adequate managerial support in the court should also be provided. Proper accountability mechanisms should also be put in place. In this perspective the Chancellor position should be radically changed (including status (ensure independence from the Ministry of Justice at least after the appointment) and (court) management background) to provide support to the Chair in the management of the court.

- **A Chairman that represent the court, supervise and coordinate the work of judges, and has supervision and directive responsibilities for the management of the court supported by a Court Manager who is responsible for the implementation of the Chairman guidelines and organize the day by day activities of the court administration. The responsibility of the Chairman in this case does not necessarily require strong managerial skills, which must be possessed by the Court Manager (see Rec.2). In any case, it is necessary to have a strict link between the two positions in term of formal (hierarchical) dependence of the Court Manager from the Chairman and high level of trust and confidence. Proper accountability mechanisms for the Chairman supervision role should be put in place. Also in this case, the Chancellor position should be radically changed in terms of prerequisites for the selection, independence from external influence after the appointment, role and functions, in order for it to become that of a Court Manager.**

Recommendation 2: Taking in consideration the specificities of the two models of court governance proposed (Rec.1), it must be ensured that the people that cover roles that require managerial competences possess them. This can be achieved through:

- **An appropriate system for the selection of judges for managerial roles, that gives an adequate weight in the specific skills and capabilities required, should be designed and introduced.**
- **The problem of the selection, status and capabilities of the Court Manager, especially in case the choice is for a Chairman with organizational responsibilities limited to the management supervision, should be addressed.**
- **The improvement of the curriculum of the School of Magistrates to adequately cover management and administrators' capacity building should be supported. Existing initiatives in this direction should be supported and extended**

Recommendation 3: The status, selection and training of the administrative personnel must be improved through:

- **A law providing for standard selection procedures and status of administrative personnel should be introduced as soon as possible. Such law should ensure the judicial independence of the court.**
- **Interim measures to standardize court selection and retention practices should be introduced (see Rec. 4).**
- **The creation of a training centre, possibly at the School of Magistrates should be supported.**
- **Cross training in other courts for cross learning and sharing of best practices should be supported**

Recommendation 4: Strategies to reinforce the coordination and standardization of practices between courts must be pursued. This can be done through:

- **Soft law measures (e.g. Guidelines from the HJC).**
- **Discussion and exchange of best practices between all Chairmen.**
- **Training initiatives.**

Recommendation 5: Continuing a process of aggregation of smaller courts, the minimum court size should be increased to support efficient and impartial allocation of cases, efficient use of resources, provide ground for at least a minimum of judicial specialization, which should help to increase the quality of justice. This should be done taking in consideration element such as access to justice, judicial proximity, justice demand and socio-economic context.
The Ministry of Justice is carrying out a study on the judicial map topic. Its results should be considered and discussed with the other key stakeholders in order to devise a long-term strategy.

Recommendation 6: The main limitation of the existing automated court management systems must be addressed. A system satisfying the minimum technical, procedural and organizational standards should be implemented in all Albanian Courts and replace the manual registration. In particular:

- **Functionalities required to keep track of the needed case data for statistical purposes and to perform a case management function should be implemented.**
- **The system should make it possible to distinguish between the different case typologies and to keep track of the various steps of the case procedure that at present are not recorded in the court records but just in the case file.**
- **The system should be able to support all the statistical data extraction and analysis requirements of the court without the need of additional activities from the court. In this perspective, data collections and statistical production required to the court should be aligned with the ones produced by such system.**
- **The full implementation (full use) of the system and data quality should be ensured and no paper duplication should be required for administrative purposes.**
- **The system should be able to provide the printing of required information such as the paper docket cover with all the case key data so that manual activities are reduced.**
- **The use of the system to support active case management at individual and court level should be supported, including the support for the judge to visualize key information on their case management situation.**

A prerequisite for the successful implementation of a fully-fledged automated case management system is the standardization of court procedures and practices. This topic should be addressed as it poses a serious risk (see also Rec. 4)

Recommendation 7: Establish a working group for the development of differentiated case management and the investigation of the judicial specialization question. The working group should investigate case management related issues, including case management practices, the case-load distribution between and within courts taking into consideration inter-temporal variation and main case typologies, weighting of cases and possibilities to have case management initiative at court level to devise solutions that do not threat or being perceived as threating the judicial independence and impartiality. Implications, requirements and possible spaces for the growth of judicial specialization in the Albanian context should also be investigated.

Recommendation 8: The question of the organization of the court office and of the judicial secretary service provision to the judges should be the focus of a specific analysis. Planning a change without such preliminary activity is not recommended. The analysis should include a detailed investigation of the working practices of the Judge-judicial secretary micro working units, in order to assess the various activities carried out, their level of predictability, and assess the advantages and disadvantages of this model compared to a more centralized one, taking into account the Albanian courts specific features, procedural standardization requirements, interfaces standardization requirements and coordination requirements.
In parallel to the analysis of existing and possible modalities to organize the administrative and procedural assistance to the Judge, the possibility to introduce more widely the figure of 'law

school graduate judicial assistant' should also be investigated. The tasks that could be assigned to such personnel units (e.g. preparing of summaries of the facts of the cases, preparing drafts of the reasoning of a judicial decision etc.) and of the specific training that should be provided by the School of Magistrates should be part of such investigation. Existing experiences in other European States could provide a good starting point.

1. Background to the report

Within the framework of the joint European Union and the Council of Europe project "Support to Efficiency of Justice – SEJ" the Council of Europe has assigned the task of assess the current situation with regards to Court organisation and administrators' capacities (judicial and non-judicial staff), their functions and responsibilities to a team of experts. The focus in particular is to first instance and appeal courts.

This is an exploratory study. The time constraints and the complexity of the topic did not allow us to analyse more in depth the interesting issues at stake. However, the study offers a quite rich overview of the Court Organisation and Court Administrators' capacities in Albania and provides a number of insights and observation which can be useful to stimulate actions, discussions and further investigation by the stakeholders but also within the courts. While this report can be read independently by other works, it builds on and is intended to be part of the broader work carried out by the SEJ team and other national and international experts involved in its activities. It therefore integrates with the work carried out by Bühler and Johnsen in the "In-depth Assessment Report of the Justice System in Albania" (2015), by Bushati (Gugu), Johnsen and Kokona on "Time management in Albanian Courts", (2015), by Johnsen on "CEPEJ issues at the School of Magistrates", (2015), and with Bühler and Bushati (Gugu) in the "Analysis of the court coaching reports on the District Courts of Albania", 2016, and in the "Analysis of the court coaching reports on the Appeal Courts of Albania", 2016, and with the many other initiatives carried out by SEJ.

The assessment is based on documentation already collected by the SEJ, a preliminary questionnaire developed to guide the data collection (Annex 1), a fact-finding mission carried out by the experts team (Marco Velicogna, Davide Carnevali and Anduena Gjevori) with the support of the SEJ staff, additional visits carried out by the team national expert (Anduena Gjevori), and additional material and documentations collected by the team both during the visits both afterwards.
The fact-finding mission was carried out on 20-23 October 2015 in Tirana, Albania. During the mission the Team had the opportunity to coordinate face to face and meet with the representatives of courts, Ministry of Justice, High Council of Justice, and other stakeholders in order to discuss the current situation in the courts and identifying issues where assistance is needed. [1] The representative of all organizations involved that were met by the experts were extremely cooperative and supportive of the fact-finding mission investigation. Annex 2 provides the list of meetings. It should be noted that the main contacts with the courts has been with the Court Chairmen, with very limited contact with other court personnel.
After the fact-finding mission, which was limited to Tirana courts, the preliminary questionnaire was revised according to the information collected (Annex 3), and follow-up visits and meetings took place in various courts situated in different cities of Albania. The follow-up visits were carried out by Anduena Gjevori at Durres District Court, Durres First Instance Administrative Court, Durres Appeal Court, Lushnje District Court, Vlora Appeal Court, Elbasan District Court, in the 12-20 November 2015 period. The visits included a limited direct observation of the premises and court activities and meetings with the chairmen, chancellors and chief judicial secretaries in order to discuss issues of

[1] In particular, as representatives of courts, Ministry of Justice, High Council of Justice, the team took part to: working meeting with representatives of Courts Judicial administration (chancellors of the 6 piloting courts the SEJ project is working with; based on a suggestion by Mr. Fatri Islamaj, Head of Tirana District Court, all the chairpersons of the relevant courts were also invited to attend this meeting, along with chancellors and chief/secretaries); meeting with the advisor of the Chairman of the High Court Mr Miran Kopani; meeting with the Chairman of Serious Crimes Court, Mr Sander Simoni; meeting with the Chairman of Tirana District Court, Mr Fatri Islamaj; meeting with the Chairman of Tirana Court of Appeal, Mr Alaudin Malaj; meeting with the Chairman Tirana Administrative Court Mr Eriol Roshi; meeting with the High Council of Justice, Ms Marsida Xhaferllari, Chief Inspector; meeting with Mr Sokol Pasho – General Director, General Directory of Strategic Planning and Justice Affairs Inspection and other relevant staff of the Ministry of Justice; meeting with the Director of the the Office for Judicial Budget Administration Ms Luljeta Laze. As representatives of stakeholders, the team took part to Meeting with representatives of Euralius (including Ms Agnes Bernhardt, Deputy Head) and of the EU Delegation.

organisation and functioning of the courts with a special focus on judicial administration. Visits were prepared and followed by discussions on the findings with the other team members.
A first draft of the report was then drafted between January and mid February 2016. The draft was then provided to the representatives of courts, Ministry of Justice, High Council of Justice, and other stakeholders involved in the fact-finding mission. A round table was then organized for the beginning of March to discuss the report and collect their inputs. Annex 4 provides the meeting agenda. In addition, suggestions were also collected from SEJ experts Jacques Bühler and Jon Johnsen, who shared their long-term experience on the Albanian Judiciary. The report was then finalized taking into account the various feedbacks and additional documents and analysis which had become available in the February-March period.
Investigating the Court Organisation and Court Administrators' capacities, three key topics need to be addressed: 1) the way in which the court is organized and the tasks they perform and are asked to perform, 2) the characteristics of the court administrators and of the personnel working within the courts and of the position they cover -including selection/appointment requirements, roles, functions and responsibilities, forms of coordination of the working activity (e.g. direct supervision, codification of procedures, self-organization), training, performance evaluation, forms of accountability (e.g. removal, salary increase or decrease etc.) and, as the court does not exist in a vacuum, 3) the broader context of the judicial system in which the court operates, which includes the judicial system general setting and its governance structure. Furthermore, the investigation needs to be carried out on at least two different layers, as they both contribute to defining the court features and performance: 1) the legal framework, providing the formal structure, functions and organization of the court and 2) the actual organization of the court and concrete practices which are carried out by the people working in the court in their everyday activities.

Within the Albanian discourse on court organization and management, a **tri-partition between judicial, procedural and administrative activities** is used. To ensure coherence and reduce misunderstandings, this tri-partition is also adopted by this report. In this context therefore, "Judicial activity" is the activity undertaken by the courts and judges while accomplishing the activities (tasks and duties) for the delivery of justice, assigned to them by the Constitution and the law. "Procedural activity" is the activity conducted by the court office in relation to civil, criminal or other cases handled by the court, in conformity with the judicial procedural legislation in force. It includes tasks like maintaining and updating the court registers, creating and keeping the open case files, recording and executing orders issued by the judges, notifications activities provided for by the procedural codes etc. "Administrative activity" is the judicial administration activity conducted by the administrative office in support of courts and judges, for the organisation and management, including the support services of maintenance, transportation, cleaning and security guards.

1.1. Report structure

The report begins with a general overview of the principles of justice, court and case management standards and best practices and public service provision recommendations that need to be considered when assessing the court organisation and court administrators' capacities. Next, the report describe the current situation in Albania, providing 1) an overview of the current legal framework on the organisation of the judiciary in light of recent judicial reforms, 2) a description of the Justice Administration governance structure, including key Institutional stakeholders and courts organization and 3) and analysis of court organization, management and court administrators capacities at court level. Then the report analyses the main challenges of the court management and court administrators' capacities in Albania with respect to the general principles, standards, best practices and recommendations that are proposed by the international community and emerge from other countries current practices and trends. Finally, the report provides some recommendations of possible that could be implemented both at justice administration and at court level to improve the current situation.

2. Justice administration, court organization and case management: International standards and principles

This chapter provides a general overview of the principles of justice, court organisation and case management that needs to be considered when discussing court system functioning. They are based on the broad institutional literature available on the topic and developed in particular by international organizations supporting judicial reform.

From a **jurisdictional perspective**, particular attention has been given to European Convention of Human Rights principles protected and promoted by the Court (ECHR). These principles are a part of the so-called judicial requirements, ethics, and disciplines: including impartiality, independence, integrity, and responsibility of judges. They are strictly connected to consistency, coherence, equality in judicial decision–making, and depend on other factors such as judicial recruitment, training, and evaluation mechanism. The ECHR has faced the topic through its judgements on the question of "fair trial" (art.6 of the Convention) providing general standards regarding the protection of human rights that should be considered in every judicial reform process. Therefore, art.6 and ECHR guidelines are used as a backbone for the discussion on this topic.

When looking at the **organizational perspective**, the report pays attention to the work done by the Council of Europe, in particular by the CEPEJ, regarding the definition of standards, guidelines, and collection of best practices. Furthermore to the work done by the UN and, in particular, the UNODC 'Resource Guide on Strengthening Judicial Integrity and Capacity' has been considered. The principles on this topic include effectiveness and efficiency and consequently court organization and case management, judicial resources and management of court personnel, and the assessment and evaluation of court performance.

Finally, from a **public service perspective**, particular attention has been given again to the work well summarized by the UNODC 'Resource Guide on Strengthening Judicial Integrity and Capacity' regarding the access to justice and the promotion of public trust in the judiciary.

The principles of justice mentioned above can be in tension or conflict. Therefore, judicial systems need to find a proper balance, and this can be very difficult.

In the following pages, the above-mentioned judicial principles will be illustrated with direct or indirect quotes of the following sources: SATURN Guidelines for Judicial Time Management (CEPEJ, 2015); Guide on Article 6. Right to a Fair Trial – civil limb (ECHR, 2013); Guide on Article 6. Right to a Fair Trial – criminal limb (ECHR, 2014), Resource Guide on Strengthening Judicial Integrity and Capacity (UNODC, 2011); CEPEJ Guidelines (CEPEJ, 2010); Checklist for promoting the quality of justice and the courts (CEPEJ, 2008); Compendium of "best practices" on time management of judicial proceedings (CEPEJ, 2006) and some other specific CEPEJ Studies and Reports.

2.1. Judicial requirements, ethics and disciplines

2.1.1. Right to a court

The right to a court refers to the obligation to guarantee to the litigants an effective judicial remedy, enabling them to assert their civil rights. According to Article 6 of the European Convention on Human Rights, everyone has the right to have any claim relating to his "civil rights and obligations"[2] brought before a court or tribunal. One of the aspects of the "right to a court" is the right of access, which is the right to institute proceedings before civil courts in civil matters. The States can impose restrictions to the "right to a court" and the right of access, as they are not absolute. However, like all limitations on the rights guaranteed by the Convention they must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (ECHR, 2013, p.12). The right of access should not only exist in theory, but it should also be effective. For the right of access to be effective, an individual must have a clear, practical opportunity to start proceedings before a court. The rules governing the formal steps to be taken and the time-limits to be

[2] Article 6(1) of the European Convention on Human Rights

complied with in lodging an appeal or an application for judicial review are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty (ECHR, 2013, p.13). Furthermore, the "right to a court" includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court and the right to execution of decisions (ECHR, 2013, p.14). The right to effective court proceedings is linked to the principle of access to court and requires that, once the judgement civil or criminal has become final and binding, there should not be any possibility of changing it. With regard to the effectiveness of the right to access to court, Article 6(1) does not imply that the State must provide free legal aid for every dispute relating to a "civil right". Providing legal aid will depend *inter alia* on the following factors: the importance of what is at stake for the applicant; the complexity of the relevant law or procedure; the applicant's capacity to represent him or herself effectively; the existence of a statutory requirement to have legal representation; the financial situation of the litigant; his or her prospects of success in the proceedings (ECHR, 2013, p.17)

2.1.2. Court and tribunal established by law

Article 6(1) ECHR guarantees the right to a fair trial before "a tribunal established by law". A court or tribunal is characterised in the substantive sense of the term by its "judicial function", that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. The "power to give a binding decision", which may not be altered by a non-judicial authority to the detriment of an individual party is inherent in the very notion of a "tribunal" (ECHR, 2013, p.18-19). One of the fundamental aspects of the rule of law is the principle of "legal certainty", which requires, *inter alia*, that where the courts have finally determined an issue their ruling should not be called into question. A "tribunal" must also satisfy a series of further requirements: "independence and impartiality" are key components of the concept of a "tribunal" (ECHR, 2013, p.19). Only an institution that has full jurisdiction merits the designation "tribunal". The "tribunal" in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it. If a ground of appeal is upheld, the reviewing court must have the power to quash the impugned decision and to either take a fresh decision itself or remit the case for decision by the same or a different body (ECHR, 2013, p.20-21). In the light of the principle of the rule of law, inherent in the Convention system, the Court of Human Rights considers that a "tribunal" must always be "established by law", as it would otherwise lack the legitimacy required in a democratic society to hear individual cases. The phrase "established by law" covers not only the legal basis for the very existence of a "tribunal", but also compliance by the tribunal with the particular rules that govern it (ECHR, 2013, p.25).

2.1.3. Impartiality and independence of judges

Article 6 (1) ECHR guarantees the right to a fair hearing only if the case is heard by "an independent and impartial tribunal". The court is concerned both with subjective and objective elements of independence and impartiality. There is a close inter-relationship between the guarantees of an "independent" and an "impartial" (judge as) tribunal. The principles established in the case-law concerning impartiality apply to lay judges as to professional judges (ECHR, 2013, p.26). The obligation to ensure a trial by an "independent and impartial tribunal" lies not only on the judiciary but it is also extended to the executive, to the legislature and other State authority, regardless of their level, which should respect and abide by the judgements an decisions of the courts. Consequently, the State's respecting the authority of the courts is an indispensable precondition for public confidence in the courts and, more broadly, for the rule of law. In order to achieve this, the constitutional safeguards of the independence and impartiality of the judiciary, should be incorporated into everyday administrative attitudes and practices (ECHR, 2013, p.26). The term "independent" refers to the independence vis-à-vis the other powers and also vis-à-vis the parties. Indeed, the notion of independence of a tribunal entails the existence of procedural safeguards to separate the judiciary from other powers (ECHR, 2013, p.27). The term impartiality normally denotes the absence of

prejudice or bias and its existence or otherwise can be tested in various ways[3] (ECHR, 2013, p.29). There are two criteria based on which can be decided the existence of impartiality: (i) a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; (ii) objective test that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (ECHR, 2013, p.29).

2.1.4. Fairness

The right of a fair trial is one of the fundamental principles of any democratic society (ECHR, 2013, p.32). The legal use of a fair trial incorporates the notion of a "regular procedure". Consequently, the right to a fair trial means to have a trial carried out according to certain procedural requirements. The "tribunal" has a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties. Proper participation of the appellant party in the proceedings requires the court, of its own motion, to communicate the documents at its disposal. Obligation incumbent on the administrative authorities: the appellant must have access to the relevant documents in the possession of the administrative authorities, if necessary via a procedure for the disclosure of documents. Assessment of the proceedings as a whole: whether or not proceedings are fair is determined by examining them in their entirety. Any shortcoming in the fairness of the proceedings may, under certain conditions, be remedied at a later stage, either at the same level or by a higher court. It is important to make sure the fairness of the proceedings is apparent. The State authorities cannot dispense with effective control by the courts on grounds of national security or terrorism: there are techniques that can be employed which accommodate both legitimate security concerns and the individual's procedural rights (ECHR, 2013, p.34). However, the requirement of legal certainty and the protection of legitimate expectations do not involve the right to an established jurisprudence. Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would prevent any reform or improvement. The importance of setting mechanisms in place ensures consistency in the practice of the courts and uniformity of case-law. However, achieving consistency of the law may take time, and periods of conflicting case-law may therefore be tolerated without undermining legal certainty (ECHR, 2013, p.35-36).

Requirements of a 'fair trial' established by the case-law of the Court of Human Rights are also the principle of the "equality of arms" and the right to have an adversarial trial. Consequently, in order to state if the specific requirements of a fair trial are met the conditions in which the proceedings took place must be examined, and in particular whether the proceedings were adversarial and complied with the "equality of arms" principle, in order to determine whether the problem was attributable to the litigant's conduct or to the attitude of the State or the applicable legislation (ECHR, 2013, p.37). The principle of "equality of arms" is inherent in the broader concept of a fair trial. The requirement of "equality of arms", in the sense of a "fair balance" between the parties, applies in principle to civil as well as to criminal cases. Equality of arms implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis the other party (ECHR, 2013, p.42). Whereas, the right to adversarial proceedings means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision (ECHR, 2013, p.41). To the question whether the right to a "fair trial' imposes certain standards regarding the admission of evidence, the Court of Human Rights has answered that the admissibility of evidence and the way it should be assessed are primarily matters for regulation by national law and the national courts. However, the admissibility of evidence and the way it should be assessed are primarily matters for regulation by national law and the national courts. The same applies to the

[3] There are two possible situations in which the question of a lack of judicial impartiality may arise. The first is functional in nature and concerns, for instance, the exercise of different functions within the judicial process by the same person, or hierarchical or other links with another actor in the proceedings. The second is of a personal character and derives from the conduct of the judges in a given case, [such as personal interests in cases]. (ECHR, 2013, p.30)

probative value of evidence and the burden of proof. It is also for the national courts to assess the relevance of proposed evidence (ECHR, 2013, p.44). The Court of Human Rights has established a number of implied requirements, guarantees or conditions, of a "fair trial" which are not expressly provided by the Convention. Such a requirement is the obligation for courts to give sufficient reasons for their decisions. The guarantees enshrined in Article 6 (1) ECHR include also the obligation for courts to give sufficient reasons for their decisions. A reasoned decision shows the parties that their case has truly been heard. Although a domestic court has a certain margin of appreciation when choosing arguments and admitting evidence, it is obliged to justify its activities by giving reasons for its decisions. The reasons given must be such as to enable the parties to make effective use of any existing right of appeal (ECHR, 2013, p.45). However, Article 6 (1) does not require an appellate court to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal on points of law as having no prospects of success, without further explanation (ECHR, 2013, p.46).

2.1.5. Public hearing

Publicity is considered as one guarantee of the fairness of trial. In principle litigants have the right to a public hearing, which protects them against administration of justice in secret with no public scrutiny. Rendering the administration of justice visible contributes to the achievement of the aim of Article 6(1) namely a fair trial (ECHR, 2013, p.46). In proceedings before a court of first and only instance the right to a "public hearing" under Article 6 (1) entails an entitlement to an "oral hearing". The exceptional character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court (i.e. special proceedings), not to the frequency of such situations (ECHR, 2013, p.47). In order to answer the question if there has been a public hearing the proceeding should be considered as a whole. Thus, the special features of the proceedings concerned may justify the absence of a public hearing before a second or third instance court, provided that the hearing was held at first instance. In many of the legal systems where the appeal court or the cassation court have a supervisory role involving only questions of law, as opposed to questions of fact, the absence of a public hearing does not raises any issue under Article 6 (ECHR, 2013, p.47).
In addition, Article 6(1) gives a right to the public pronouncement of the judgement. "Judgment shall be pronounced publicly", which would seem to suggest that reading out in open court, is required. The object pursued by Article 6 (1) in this context – namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial – must have been achieved during the course of the proceedings, which must be taken as a whole. Where judgment is not pronounced publicly it must be ascertained whether sufficient publicity was achieved by other means (ECHR, 2013, p.49). Whereas, the right for a public hearing may be subject to limitations, the right for a public pronouncement of judgements, pursuant to Article 6(1), is not expressly subject to any limitations.

2.1.6. Length of proceedings

The right under article 6 (1) to "a fair and public hearing within a reasonable time" underlines the importance of administering justice without delays, which might jeopardise its effectiveness and credibility (ECHR, 2013, p.50). The reasonableness of the length of proceedings coming within the scope of Article 6 (1) must be assessed in each case according to the particular circumstances, which may call for a global assessment. However, the whole of the proceedings must be taken into account (ECHR, 2013, p.51-52). Pursuant to this right the judicial system needs to have sufficient resources to cope with its regular workload in due time. The resources have to be distributed according to the needs and have to be used efficiently (SATURN, 2015, p.43). In addition, the judicial bodies should be organised in the way that encourages effective time management (SATURN, 2015, p.44). Within the organisation, the responsibility for the time management or judicial processes has to be clearly determined. There should be a unit that permanently analyses the length of proceedings with a view to identify trends, anticipate changes and prevent problems related to the length of proceedings (SATURN, 2015, p.45). With regard, to the procedure in the first instance it should be concentrated, while at the same time affording to the users their right to a fair and public hearing (SATURN, 2015, p.46). With regard to appeal, it can be limited in appropriate cases. In certain small cases (e.g. small

claims) it may be excluded, or a leave to appeal may be requested. In addition, the manifestly ill-founded appeals may be declared inadmissible or rejected in a summary way (SATURN, 2015, p.46). Lastly, recourse to the highest instances has to be limited to the cases that deserve their attention and review (SATURN, 2015, p.47).

2.1.7. Recruitment, professional evaluation and training of judges

The professional qualifications now required for the proper exercise of the judicial role go far beyond the basic legal knowledge and skills of legal interpretation that once were sufficient. The evolution of the judicial role has led to its increased importance in political, social and economic spheres. It has spurred reforms in many countries that are intended to meet these new challenges through innovations in areas of the judicial system that are crucial for the quality and efficiency of its performance such as: recruitment, initial and continuing education, professional evaluations and discipline of judges, as well as in other areas that are functionally connected to the proper and expeditious performance of the judicial function, such as the managing and monitoring of court work by means of organizational and technological innovations (UNODC, 2011, p.5).

2.1.7.1. Codes of conduct and disciplinary mechanism

The role of judges is inextricably tied to a set of characteristics and values that are essential for the very legitimacy of the judicial function. Prominent among those are that judges should perform their functions with integrity, impartiality and independence as well as diligence (insofar as justice delayed is justice denied). Judges are expected to perform their work with competence and treat the litigants, witnesses and attorneys with courtesy and respect. They are furthermore expected to behave with honesty and propriety both on the bench and in their private lives so as to inspire trust and confidence in the community, avoiding with care behaviour that demeans their high office. (UNODC, 2011, p.127)
Judicial discipline has long existed in various forms. However, the increasing political, social and economic relevance of the judicial function has prompted initiatives, both at the international and state levels, intended to articulate in detail the specific behavioural implications of those values and promote their actual implementation. (UNODC, 2011, p.127)
Further information on international standards on the topic of the evaluation of judges can be fount in the CCJE Opinion 17 (2014) “On the evaluation of judges’ work, the quality of justice and respect for judicial independence”, while a contextualization of these and other international standards on the evaluation of judges can be found in Sanders (2015) “Report on the Individual Evaluation of Judges in Albania”.

2.2. Court organization, case management and performance evaluation

2.2.1. Court organization

The institutional framework within which courts historically operated placed little emphasis on the organizational dimension and on sound management and administration. Focus was on the single case and on ensuring the respect of procedural requirements that needed to be followed upkeep the core judicial values in the adjudication process (i.e. the respect of fair trial, equality of arms and effective remedy). For a number of reasons, the past three decades have witnessed the introduction into court systems of a variety of management principles and practices oriented toward achieving increased productivity, improved case processing and reduced costs. Justice systems may gain an important advantage by adopting such approaches (UNODC, 2011, p.39).
In court offices, two basic tools have traditionally supported information management: paper dockets and case folders. Typically, paper dockets are books containing the basic information of all the cases handled by a court. Case folders, instead, are usually paper folders collecting all documents related to a specific case, including records of hearings and transcripts. Such tools provide key information for both judicial and managerial decision-making. These tools also provide basic data required to enable court operations and parties’ actions; they help ensure accountability, appropriate documentation, compliance with the law, and fairness of proceedings and of court decisions. Such judicial information systems, whether electronic or paper-based, are organizational and institutional tools that are critical

to make the basic principles of due process of law effective. They must, therefore, be well organized and adequately secured by court officials to preserve and ensure their accessibility. The organization, resources and efforts that are required to keep all this material up-to-date, complete, consistent, secure and swiftly accessible to those who are entitled to it cannot be discounted. Judicial information management entails also the publication of judgments assessment and evaluation of court performance, judicial resources and management of court personnel (UNODC, 2011, p.39).

The growing deployment of information and communication technologies (ICT) in justice systems has had a strong impact on information management. As a consequence, information management is becoming more and more technologically supported and enabled. Nevertheless, the availability of such technologies is not a prerequisite for an effective management of cases and courts. Indeed, the main rules and guidelines for case and court management are the same with both traditional and electronic enhanced systems (UNODC, 2011, p.39-40).

One of the consequences of an increased resort to the formal judicial system is the corresponding change to the role of the judge as well as the head of judicial administration, often called a "court manager" or "registrar." Case management, performance evaluation and technological developments increase the organizational complexity of courts and require new professional skills and abilities that do not necessarily fit the traditional professional profile or job description of judges. This led to the increased prominence of the position of court administrator that in many jurisdictions has authority over all non-judicial court management and administration functions. More specifically, functions that are typically assigned to such court executives or managers include long-range administrative planning, finance, budget, procurement, human resources, facilities management, court security, emergency preparedness planning, and employee discipline in addition to the ministerial and judicial support functions. These new court professionals liberate the chief judges of the courts from having to invest considerable time and energy on non-judicial functions for which they have not been trained. As a consequence, chief judges of the courts can focus on the judicial functions for which they have been trained and can work to implement more far-reaching strategies aimed at guaranteeing a high quality of judicial decisions and dispute resolution. Finally, since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of building a shared responsibility between the head of the court and the court administrator for the overall management of the office (UNODC, 2011, p.40).

2.2.1.1. Courts Geography and size

Dimension and distribution of courts have a strong relevance to the court organization and court organization discourse[4]. According to CEPEJ-GT-QUAL Guidelines on judicial maps,[5] the question of court size should be looked in judicial geography perspective, seeking a balance between different factors including: 1) access to justice in terms of proximity of citizens to courts; 2) the size of the courts which should ensure the presence of the required competences and functions and allow an efficient use of resources; 3) ensure the quality of the service provided.[6]

The organization of justice has often ancient roots. In the past the long distances together with the limited means of communication made it necessary capillary distribution of judicial offices, often self-sufficient and self-managed, but this is not necessarily true anymore. As a result, judicial maps have in many cases become obsolete and inefficient, with courts size and competences not adequate for the realities of the evolved territories and society. "This results in evident anomalies in the geographical distribution of courts as well as a suboptimal distribution of human resources leading to large differences between courts' activity level and effectiveness". [7] As an effect of these inefficiencies, many judicial systems show increasing of backlog and lengths of judicial proceedings. [8] Furthermore

[4] Carnevali (2014), L'inadeguatezza dei criteri utilizzati nella revisione delle circoscrizioni giudiziarie. In "Archivio Penale", Fascicolo n.1 Gennaio-Aprile 2014.

[5] CEPEJ-GT-QUAL (2013) Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System CEPEJ(2013)7Rev1

[6] Ibidem p.3

[7] Ibidem pp.4-5

[8] Ibidem pp.4-5

the justice administration is faced by a "growing demand for very specific knowledge due to the growing complexity of law and business. This aspect reinforces the need for judiciary reforms that would seek to provide higher legal expertise. Here we witness another trade-off between the need for specialisation which imposes a certain minimum size of courts".[9]

An action that can be taken to improve the effectiveness and efficiency of the whole judicial system is the suppression of the smallest and less efficient structures (a large number of small courts expose to the risk of under-use of judicial capacity, suboptimal distribution of cases and limited specialization) in order to merge them with larger courts to 'optimise' the case management while taking into account access to court and citizen proximity requirements. [10] Moving in this direction, a number of "European countries are consolidating judicial functions geographically, reducing the number of courts. Indeed, these reorganization processes are not only driven by financial reasons. Some countries like Denmark, Norway and the Netherlands implemented such projects in order to enhance the quality of justice. Besides economic savings and quality improvements in general, the specialization of courts by ensuring the minimum necessary number of judges, or introducing new technology and improving timeliness are mentioned as motives for upscaling[11]."[12]

Geography redesign, courts number reduction and courts minimum size increase are complex and resource intensive tasks. During this Transition phase the CEPEJ-GT-QUAL Guidelines on judicial maps, suggest to: [13]

- Effectively start-up the judicial services, ensuring continuity.
- Take care of the transfer of staff from the suppressed offices to the merged ones and, if necessary, to recruit additional human resources for the new offices.
- Organize the logistics of the new offices (space, equipment, IT, supplies, etc.). The Transition activity should be broken down in distinct phases and managed according to a well-defined project plan. From this point of view, it would seem appropriate to set up special work-teams dedicated to this activity within each court concerned. The achievement of the objectives set for the Transition phase shall be pursued while:
- Minimizing the risks related to the judicial activity being discontinued.
- Minimizing the impact on service-users.
- Ensuring that all activities are conducted within a reasonable timeframe, according to satisfactory levels of performance.

2.2.2. Case management

2.2.2.1. Case assignment

Court systems vary in the procedures they utilize to assign cases to judges. Some countries task the court president or the head of the court section with the responsibility for determining the distribution of cases. In other courts, case assignment is a function managed by court administrators or court clerks rather than judges. Another option is the random assignment of cases. Random systems may be either manual or automated. Finally, case assignment can be based on informal criteria, such as long-established court practices or more formal rules and laws governing the court. Whichever method is chosen, the procedure to assign cases to judges is strictly related to key values such as independence and impartiality, transparency, efficiency, flexibility, equal distribution of the caseload, and quality in judicial decision-making (UNODC, 2011, p.40).

The use of a model based on judicial specialization may result in efficiencies, but may also result in an unbalanced caseload among judges or reduce the flexibility of the court. A random case assignment procedure can fulfil transparency and avoid the risk of "judge shopping" and therefore increase the integrity of the system. It is therefore advisable in judiciaries that are affected by problems of

[9] Ibidem p.5
[10] Ibidem p.4
[11] European Network of the Councils of Justice (ENCJ), Judicial Reform in Europe Report 2011-2012.
[12] CEPEJ-GT-QUAL (2013) Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System CEPEJ(2013)7Rev1 p.5
[13] Ibidem p.14

corruption and a low level of public trust. At the same time, it may imply a low degree of specialization of judges, resulting in a reduction of efficiency. As a consequence, the tensions among these values must be balanced in the light of the specific features (and problems) of each judicial system (UNODC, 2011, p.41).
Other design criteria to be considered are the specialization of judges in various subject matters, and mechanisms to guarantee adaptations and flexibility to deal with changes in court caseload. In any case, it is of paramount importance to achieve a high degree of internal and external transparency. This is the baseline to identify and correct possible wrongdoing and sustain the legitimacy of the courts. The involvement of lawyers, bar associations and public prosecutor offices can help in the design and monitoring of such critical systems (UNODC, 2011, p.41).

2.2.2.2. Calendar system

Another key element strictly linked with case assignment is the "calendar system". In court parlance, a calendar system refers to the manner in which responsibility for processing the case is handled. The rationale for an *individual calendar system* is that where a judge is singularly responsible for adjudicating the case from start to finish, that judge will assume a more proactive role in ensuring that it does not languish, resulting in delays for which he or she will be held accountable. The *master calendar system* is based on the assumption that, because of functional specialization and the increasing complexity of the law, it is necessary to have judges specialized in a portion of the proceeding. At the same time, coordination costs and organizational complexity increases compared to the individual system. Some empirical research has shown that an individual calendar results in faster handling of proceedings, especially for civil cases. A *hybrid calendar system* relies on elements of both the individual and master calendar systems in various combinations applied during one or more steps of the proceeding (UNODC, 2011, p.43).

2.2.2.3. Case processing

Case management has been defined as "the entire set of actions that a court takes to monitor and control the progress of cases, from initiation through trial or other initial disposition to the completion of all post-disposition court work, to make sure that justice is done promptly". In sum, it requires the control and active management by the court of the case progress. Therefore, it is a means to pursue the institutional mission of resolving disputes with due process and in a due time. Case management is relevant also for those courts that are not currently experiencing delays or backlogs. The effective use of case management techniques and practices improves the efficiency in the use of justice system resources, hence reducing the costs of justice operation. By reducing the time required for resolving disputes, the appropriate use of case management may also help build public confidence in the effectiveness of the courts and the accountability of judges (UNODC, 2011, p.43-44).
The burden of continuous monitoring can be eased where courts have in place effective case information management systems, either manual or electronic, and where judges can rely on the assistance of key staff. An effective case information system, for example, will provide details on the status of the case, including deadlines imposed by the court and whether the litigants are complying with them. Having qualified staff to assist the judge in the case administration and monitoring process relieves judges of those administrative responsibilities and enables them to focus on their judicial functions (UNODC, 2011, p.44).
ICT can certainly help with the automated controls handled by case management systems. In this way, it is the same filing that triggers control procedures such as the identification of the next procedural steps and sends messages if the expected action is not undertaken. However, active court control can also be performed with more traditional instruments. The implementation of these principles has been shown to speed up litigation, to increase the number of cases resolved before trial, and to reduce the number of inactive pending cases (UNODC, 2011, p.44).

2.2.2.4. Differentiated Case Management (DCM)

DCM changes the chronological concept of handling the cases in the courts. The traditional system of handling cases is based on one procedural track and "first-in, first-out." Judges would deploy the same general processing tools and protocols for all cases, regardless of their relative complexity and the amount of judicial time required to attend to them. More recently, a new approach has been developed to have different procedural tracks based on the complexity of the case and the amount of judicial attention required. This led to the creation of alternative procedural tracks. Each track is organized in different events and timeframes to reflect the range of case processing characteristics and requirements presented by the caseload. In this way, a small claim and a more complex civil case follow different procedures suitable to their different complexities (UNODC, 2011, p.46).

A typical DCM system comprises three processing tracks: small claims, fast track, and complex or multi-track. Each case is classified on the bases of its complexity (amount of attention it needs from judges and lawyers, value of the case, characteristics of the procedure, legal issues involved), and assigned to one of the tracks. In this way, simple cases following the small claims or the fast track can be disposed of quickly, with minimal judicial attention. Complex cases with multiple legal issues, complex fact situations and multiple parties are instead processed via the complex track where they receive the more intensive and sustained judicial review their adjudication requires (UNODC, 2011, p.46).

2.2.2.5. Trial management

The manner in which courts manage the scheduling of formal case events (of trial procedure) may differ between and even within judicial systems. From a very general perspective, trials can be clustered in two types: *Concentrated*, with a continuous sequence of hearings. This type of trial tends to be more oral than paper-based. *Piecemeal*, based on a sequence of separate hearings, each of which may deal with one or more elements. This second kind tends to be more paper-based than oral (UNODC, 2011, p.46).

Both models can be improved through the use of pre-trial and trial management techniques. The trial process, whether concentrated or piecemeal, absorbs significant quantities of judicial and court staff time. To the extent that management techniques and practices are introduced into the trial process, a variety of efficiencies can be achieved. The American Bar Association adopted trial management standards in 1992, which advise judges "to be prepared to preside and take appropriate actions to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have a fair opportunity to present evidence and the trial proceeds to conclusions without unnecessary interruptions". Since then, a number of judiciaries around the world have adopted similar guidelines (UNODC, 2011, p.46-47).

2.2.2.6. Management of timeframe

The management of timeframes (are) inter-organizational and operational tools, established to set measurable targets and practices for timely case proceedings (CEPEJ, 2006). Inter-organizational means that since the length of judicial proceedings and the actual management of cases are the result of the interplay between different stakeholders in information chain: (judges, administrative personnel, lawyers, expert witnesses, prosecutors, police, etc.); timeframes have to be goals shared and pursued by all of them. Operational tools mean that there are targets to measure to what extent each court, and more generally the administration of justice, meets the timeliness of case processing, fulfilling the principle of fair trial within a reasonable time as stated by the European Convention on Human Rights. Therefore, the setting of timeframes is a necessary condition to start measuring and comparing case processing delays, which will be the difference between the actual situation and the expected timeframes, and to assess the policies implemented to reduce the lengths of case processing[14] (UNODC, 2011, p.48).

[14] Policies and practices are then classified into five main groups:

1. Setting realistic and measurable timeframes

The duty to contribute to appropriate time management is shared by all the authorities responsible for the administration of justice (courts, judges, administrators), and all persons involved professionally in the judicial proceedings (e.g. experts and lawyers), each within his competences. All authorities responsible for the administration of justice have to cooperate in the process of setting standards and targets. In the elaboration of these standards and targets the other stakeholders and the users of the justice system should also be consulted (SATURN, 2015, p.47-48). The timeframes of judicial proceedings have to be scrutinised through statistics. There should be sufficient information with respect to the length of particular types of cases, and the length of the all stages of judicial proceedings. The body in charge of individual proceedings has to monitor the compliance with the time limits that are being set or agreed with the other participants in the proceedings (SATURN, 2015, p.48). Everyone who, by his act or omission, causes delays and adversely affects the observance of set standards and targets in the time management should be held accountable. In addition to the individual accountability for the ineffective time management, the state may be held jointly and severally accountable for the consequences caused to the users by the unreasonable length of proceedings (SATURN, 2015, p.49).

2.2.2.7. Management of court personnel

The Court administrative personnel are one of the key components for the justice service provision. It is therefore fundamental that adequate resources be allocated to the recruitment, training and retention of qualified professional staff to support the judicial institutions (UNODC, 2011, p.37).
The UNODC (2011, p.37) provides a number of useful recommendations in relation to the management of the court personnel:

- Efforts to strengthen judicial integrity and capacity should include measures to ensure and sustain the quality, motivation and continuity of skilled court personnel.
- Personnel management initiatives should be adopted to address issues such as transparent and merit-based selection and appointment systems, remuneration, career development and continuing training programmes, routine staff performance evaluations, merit systems and codes of conduct.
- Ensure that training programmes are developed in the context of the conduct of a training needs assessment and an operational analysis of the infrastructure of the court system.
- It is important that training programmes are not only relevant to court personnel, but can also be adjusted to fit the learning style of the trainees.
- A judicial reform programme that will result in new personnel or increased professionalization of court personnel needs to be supported by budgetary allocations that provide adequate salaries, benefits and workplace resources.
- In order to be credible, any incentives system for judicial personnel and court employees must be governed by a clear and transparent set of rules.
- Developing a specific code of conduct for court personnel can help to reinforce ethical standards and to create a culture of integrity in the court system.
- Any code of conduct for court personnel should reflect the needs of the judiciary, and not consist simply of a set of new rules, but rather the fostering and development of an ethical, efficient and impartial court staff.
- Developing a system where court personnel can be held accountable for violation of court rules, policies, and codes of conduct or general unprofessional behaviour is an important element in creating accountability and encouraging professionalism.
- The creation of national professional associations of court administrators or court clerks can be one means of building collegiality among court staff.

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2. Enforcing timeframes
3. Monitoring and dissemination of data
4. Procedural case management policies
5. Caseload and workload policies

2.3. Evaluation of court performance

A comprehensive evaluation of judicial systems is becoming a new strategic challenge for judiciaries around the world. Budget constraints, new managerial techniques, competition for resources with other public bodies, international pressures and sometimes erosion of legitimacy are pushing judiciaries to innovate the practices of judicial evaluation. In the last thirty years, a growing number of policies have been implemented to evaluate court performance from a managerial perspective. Considering values such as efficiency, productivity and timeliness, indicators such as cost per case and time to disposition, and supporting systems of management by objective, managerial performance evaluation has gained growing popularity. Sometimes, the popularity of this new approach to performance evaluation has even eclipsed the fact that judicial systems have a long and well-established tradition of performance evaluation from a legal perspective. Indeed, the landscape of court performance evaluation includes mechanisms such as appeal and Supreme Court decisions, inspections, and disciplinary judgments. These mechanisms have been developed to evaluate what can be considered as the legal performance of a court and of relevant judicial actors (judges, clerks, etc.) (UNODC, 2011, p.101).

More generally, justice systems are a hybrid of judicial and administrative operations, with a key public dimension. Consequently, performance evaluation must be assessed not only with legal and managerial methods, but also by creating channels to listen to court users and more generally public expectations. Even though this chapter will focus mainly on managerial methods to assess performance, there will be some discussion of the other two perspectives as well (UNODC, 2011, p.101).

Performance is usually understood as the difference between a goal (or a standard) and the actual result reached by an individual (judge, clerk, court administrator), an organization (a court) or by the justice system as a whole. Its evaluation (or measure or assessment) is based on techniques, methods and indicators capable of measuring the various goals. In general, at the beginning of the evaluation process, goals are set up by some authority: parliament, ministry, judicial council, etc. Then a list of performance indicators is identified. Following this, the data is collected and used to confront the actual results against the goals. Finally, the evaluation must have consequence or it will be just a ritual without practical implications. This process is typically created as a part of a system of management by objective (MBO). The functioning of court inspectorates and audit offices is dealt with the role of court evaluation in judicial reform. Performance evaluation systems, inspectorate and audit may have effects on judicial independence. Such effects must be carefully assessed when systems are developed and put in place (UNODC, 2011, p.101).

As discussed above, the traditional way of evaluating court performance is essentially based on the control of legality in the processing of single cases. In this framework, a court is performing well if it follows the prescribed rules. The new managerial approaches to performance evaluation introduced a radically different mechanism for performance evaluation. Such approaches, as we have seen, are mainly based on statistical, economic or financial methods and the evaluation is conceived as the measure of the gap between the measured results and the goals. As clearly shown by the cases we have considered, consequences are relevant at the organizational level (budget, human resource allocation, etc.) or at the policy level (implementation of new projects, etc.). The process of analysis is based on aggregate data, often of a quantitative nature and hence based on statistical and mathematical elaborations (UNODC, 2011, p.101).

The legitimacy and the usefulness of managerial methods for the evaluation of court performance are recognized, it becomes appropriate to open a forum in which to discuss the results of the performance evaluation. What is clear, indeed, is that court performance should be assessed and improved from multiple perspectives, and that the legitimacy of courts will take advantage of these assessments. This approach also offers opportunities of avoiding the risk that a given value (whether of a managerial or legal nature) may prevail to the neglect of the other values, which must be protected in the judicial process. In addition, it must be emphasized that while a lot can be learned from other jurisdictions, it is important for each jurisdiction to determine its own goals and appropriate mechanisms for performance evaluation also adopting participatory processes (UNODC, 2011, p.124).

2.4. Access to justice and the promotion of public trust in the judiciary

2.4.1. Access to justice

Access to justice concerns the realization of legal and human rights by those who are unable to do this on their own and cannot afford it. The access to justice approach opens the discussion about reforming the judicial mechanisms for providing legal aid and support to the citizens, especially the poor and the underprivileged, so that all persons might be treated according to the law and receives legal protection. Access to justice is linked to the increasing importance of the human rights-based approach to international development assistance. The focus shifts from the traditional state system, with its often over-loaded judiciary, to the various institutions of civil society. In fact, their services often represent the only accessible active support for the poor. With regard to the problems of states to provide for a capable state system of the judiciary, the new approaches involve the participation of both lawyers and non-lawyers, professionals and non-professionals alike, on a local or national level, financed by the state, by the local communities or by private means (UNODC, 2011, p.82).

There is a great variety of solutions and instruments to support in one way or the other the access of the poor to justice. Their feasibility often depends on financial aspects. Most of them can work alongside the formal judiciary, and therefore the state should support their formation and existence: traditional, community-based courts of the people; alternative dispute resolution (ADR) centres, paralegal programmes with non-jurists, or “one-stop shop” legal aid centres, university-based legal clinics or legal clinics sponsored by the advocacy; pro-bono legal assistance by private lawyers or law firms (UNODC, 2011, p.82). A comprehensive approach to justice and the rule of law should not overlook the possible forms of complementarity to the existing judiciaries of the states. It should also not allow state courts and ministries of justice to impede the creation of new institutions of civil society or hinder the development of the private sector offering services to the poor and underprivileged (UNODC, 2011, p.82).

2.4.2. Court transparency

The transparency of the courts is a precondition for the growing acceptance of their work among the population, and therefore contributes to their authority. Transparent court procedures are also a precondition for the access to justice. Transparency serves the legal protection of the citizens. It is necessary to know the legal remedies for defence and recovery, to know about the right to appeal against a judgment, to be familiar with the basic procedural rights of the par-ties. Taking into account the frequent absence of lawyers and attorneys, the court system should be accessible and understandable to the common people (UNODC, 2011, p.99). Furthermore, transparent decision-making is a precondition for the development of the legal system and the judiciary itself. Be it in a country of common law or civil law, be it a binding precedent or an example for the legal practice and the point of view of the higher courts, the judgments are as important as the law they apply, since they substantiate the law in the books. Therefore, a reasonable number of judgments should regularly be published. They can be published anonymously in order to make sure that the privacy of the parties will not be violated. But they should be commented and collected in a way that they can be searched for in similar cases (UNODC, 2011, p.99).

Transparency of the courts means for the system to be accessible and comprehensible, open to the legal professions working on behalf of the citizens, to the parties and to the general public wishing to assist to justice being done, and open to the broader public by accommodating journalists, offering press releases and informing about on-going trials in a professional way (UNODC, 2011, p.99-100).

Transparency of the courts arises from a set of preconditions, traditions and customs which, if absent, can only be developed step by step. In particular, the following elements of publicity are identified by UNODC Guidelines (UNODC, 2011, p.100) as crucial for the development of transparency of the courts:

- Granting physical access to court sessions;
- Offering full and understandable information about court procedures and their availability and distribution to all citizens;

- Assistance in starting proceedings, standard forms and blanks which are easy to use, booklets and brochures, etc.;
- Communication with the lawyers and attorneys, granting the inspection of the records, protocols of court sessions, etc.;
- Regular publication of court decisions for the legal professions and for the public (newspaper articles, court bulletins, websites, databases, volumes with collections of judgments, legal commentaries, etc.);
- Inviting journalists to press conferences and press releases, preparing press speakers of the courts; and
- Organizing conferences and seminars of judges, inviting representatives of society, of the business community, journalists and experts on the discussed subjects.

3. Legal Framework on the organisation of the judiciary in Albania

3.1. The Constitutional framework

The overall organisational structure of the governance system in Albania is defined in the Albanian Constitution.[15] The current Constitution was adopted in November 1998 by referendum. It provides for a governance system based on the division and balance of powers among the legislative, executive and judiciary. This principle of the division and balancing of powers is provided by Article 7 of the Constitution. Within the framework of the analysis of the organisational structure of the governance system in Albania, Article 6 of the Constitution provides that the organization and functioning of the constitutional institutions is regulated by their respective laws. Consequently, authorising the Assembly to regulate issues of structural organization, however the laws on the organisation and functioning of the Constitutional institutions should be approved by a qualified majority.[16]

On the other hand, the Constitution dedicates to the organisation of the judicial system Albania, Part Nine which deals with the courts (Articles 135-147). This part provides for the main principles and most important institutions with regard to the organization and functioning of the judicial power in Albania. Article 135 of the Constitution provides the issue of the organisational structure of the courts' system in Albania. According to it the judicial power is exercised by the High Court and courts of appeal and courts of first instance, which are established by law. The Assembly has the right to establish special courts but in "no case extraordinary courts". The Constitution considers the High Court as the highest power of the judicial system in Albania. In addition, it provides for the procedure of the appointment of the members of the High Court, the duration of the term of the judge of the High Court, discharge of a High Court judge, jurisdiction of the High Court, obligation to publish its decisions. While, in relation to the courts of first and second instance the Constitution mentions them as instances of adjudication whereas their organisational structure is regulated by law. Consequently, based on Article 6 of the Constitution the organisation of the courts of first instance and courts of appeal is done by a law approved by a qualified majority.

The Constitution provides for High Council of Justice, which according to the Constitutional Court has the duty to "govern" the judiciary and is placed at the top of the organisational pyramid of the judiciary.[17] Whereas, the National Judicial Conference established by Article 147/1 of the Constitution has its main competence to elect nine members of the High Council of Justice who are judges of all levels.

Different Articles of the Constitution provide for the principle of independence of the judiciary. Consequently according to Article 145/1 judges are independent and subject only to the Constitution and the laws. Judges should be independent and objective while adjudicating different cases. In addition the Constitution prohibits interference into the activity of the courts and judges. Thus, other institutions should respect the independence of the courts. The principle of the independence of the judiciary is also necessary for the protection of fundamental rights and freedoms as the Constitution provides for the right of everyone to a fair and public trial within reasonable time by an independent court specified by law. However, legislative, executive and judiciary powers should be exercised not only independently but also in a balanced way.

In addition, constitutional guarantees are provided with regard to the status of the judges. The time a judge stays on duty cannot be limited, they cannot be removed from their duty without legal reasons. Moreover, judges enjoy immunity for opinions expressed and decisions taken in the exercise of their duty. A judge cannot be arrested or deprived of his liberty in any form without the authorisation of the High Council of Justice. They enjoy also financial guarantees.

The following paragraphs describe the general legal framework referring the organization and functioning of first second and highest instance courts, and the status and functions of the

[15] Law no. 8417, dated 21.10.1998 "The Constitution of the Republic of Albania".
[16] Article 81 of the Constitution.
[17] Decision of the Constitutional Court No. 11 dated 02.04.2008.

administrative personnel. Attention is also given to the decisions of the Constitutional Court concerning judicial administration. For economy of scope and readability purposes, the specific laws introduced to regulate more in detail the key judicial institutions (High Council of Justice, the Ministry of justice, the National Judicial Conference, the School of Magistrates, the Judicial Budget Administration Office etc.) are described in the next Chapter when presenting the specific institutions.

3.2. Courts organization

According to the Constitution, the **High Court** is the highest power of the judicial system in Albania.[18] The President of the Republic, with the consent of the Parliament, appoints the members of the High Court.[19] The High Court is organized and functions based on its own organic law (No. 8588, 15/03/2000). The organic law provides for the number of the judges of the High Court, criteria and procedure to be appointed a judge of the High Court. In addition, it defines the competences of the Chairman of the High Court. It provides for the composition and functions of the colleges and the united colleges. This is the first law providing for the position of the legal assistants. The law was amended in 2013,[20] introducing among others the establishment of an administrative college. The changes aimed to increase the transparency of the selection process of candidates for the members of the High Court and to strengthen the role of the added objective criteria, avoiding political influences. However, other amendments having the same aim were introduced in 2014.[21]

Law No. 8436, 28/12/1998 'On the Organization of the Judicial Power in the Republic of Albania, as amended was approved after the current Constitution, regulated the functioning and organisation of the **courts of appeal and courts of first instance**. Whereas, the activity of the High Court, which according to the law was part of the judicial system, was organised based on its own organic law. [22] According to the law the judicial power was exercised by the courts of first instance, courts of appeal and High Court. The courts of first instance were organised in judicial districts and adjudicated based on the rules provided by the code of procedures. The courts of appeal adjudicated in second instance. The law provided also for the existence of a first instance military court and an appeal court, which were organised and functioned within the judicial system. In addition, the law regulated the criteria to become a judge of the first instance court and court of appeal, status of the judges, and disciplinary responsibility of the judges. The law has been amended in 1999.[23] The amendments introduced among others the position of the Chancellor of the court. The amendments of 2000[24] provided, *inter alia*, that first instance courts were judicial district courts, serious crimes courts and military courts. Whereas, appeal courts adjudicated in second instance appeals against decisions of the district courts and first instance serious crimes court.

Law No. 9877, 18/02/2008 'On the Organization of the Judicial Power in the Republic of Albania', as amended provides for the creation, organization and competences of the courts of first instance and courts of appeal. According to article 6, the territorial competences of the courts of first instance and appeal are set by degree by the President of the Republic on the proposal of the Minister of Justice. The Minister makes the proposal after having received the opinion of the High Council of Justice. While Law No. 9877 establish that no extraordinary courts can be created, specialized courts can be created by law for particular fields (Article 3). In addition, it defines the conditions and procedures for the appointment of judges of the courts of first instance and of appeal, the rights and obligations of

[18] Article 135

[19] Article 136 of the Constitution.

[20] Law no. 151/2013, "On some amendments to the law no. 8588, date 15.3.2000 "On the organization and functioning of the High Court of the Republic of Albania".

[21] Explanatory note on the draft "On some amendments to the law no. 8588, date 15.3.2000 "On the organization and functioning of the High Court of the Republic of Albania" as amended.

[22] See article 13 of the law no. 8436 dated 28.12.1998 'On the organization of the judicial power in the Republic of Albania.

[23] Law no. 8646 dated 5.11. 1999, "On some amendments to the law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania".

[24] Law no. 8556, dated 31.7.2000, "On some amendments to the law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania" as amended.

judges, disciplinary measures and their discharge. In particular, according to the Article 12 (4) and Article 14 promotions should be based on the score achieved in the permanent ranking list. The law regulates also the administration of the services in the court providing for the procedure for the appointment and the competences of the chancellors of the court, judicial administration and budget of the judiciary. Furthermore, the law establishes that the division of judicial cases is done by lot, according to procedures set by decision of the High Council of Justice.

The **serious crimes courts** was established by law *No. 9110, 24/7/2003 with the* aim to increase the efficiency of the fight against organised and serious crimes as well as the improvement of the quality of their adjudication. The law provides for the organisation and the functioning of the serious crimes courts. *Law No. 49, 3/05/2012 'Organization and Functioning of the Administrative Courts and Adjudication of Administrative Disputes', as amended*, establishes for the first time the **administrative courts** in Albania. The establishment of the administrative courts aims to guarantee an effective protection of the subjective rights and legal interests of individuals through due process and within reasonable deadlines.[25] The law provides for the criteria of the appointment and of the career of the judges, their status, and responsibility for disciplinary violations. The law has been amended in 2014[26] aiming to balance the workload of the judges of the administrative courts by introducing the position of legal assistants.[27]

3.3. Status and functions of the administrative personnel

The role of non-judicial personnel is very important in supporting the work of the courts. Pursuant to the law on the organisation of the judiciary the auxiliary services in the courts of first instance and courts of appeal are performed by the judicial secretariat and other sectors (law No. 9877, 18/02/2008). The judicial administration performs procedural and administrative activities. However, the Albanian legal framework on the organisation of the judiciary does not provide for a clear legal status of non-judicial personnel working at the courts of first instance and court of appeals. On the other hand, law no. 8549, 11/11/1999 'On the status of civil servants' defined "civil servants" as employees of institutions of central or local public administration who exercised public authority. The law explicitly defined institutions of central or local public administration leaving no room for a wide interpretation to include also the civil judicial administration. In addition, law no.152, 30/05/2013 "On Civil Servants", repealing law 8549/1999 mentioned-above, explicitly excludes from its application the civil judicial administration. Whereas, the Constitutional Court in its decision no. 10 dated 06.03.2014 has declared that regardless of the specifics and a typical nature that judicial administration presents in relation to "civil servant" who exercises a public classical function in a state administration institution, independent institution or local government unit, the functions performed by the judicial administration, especially in the public service are included in the meaning of public function.

On the other hand, the High Court, as mentioned above, is organized and functions based on its own organic law. The later gives the right to the Chairman of the High Court to approve an internal regulation for the court. The current regulation of the High Court[28] provides that the employees of the High Court in accordance with the law on civil servant are categorised in civil employees and administrative employees.

In 2013, a law "On the Judicial Administration in the Republic of Albania" (law No. 109, 1/04/2013) was approved. The law aimed at regulating the organization, functioning and the status of the judicial administration. In detail, it regulated the organizational structure, functional powers, rights and obligations and responsibility of the employees of the judicial administration. In addition the law provided for the recruitment procedures disciplinary procedures, training of the judicial administration.

[25] Explanatory note on the draft law "On the organization and functioning of the administrative courts and adjudication of administrative disputes'

[26] Law no.100/2014, "On some amendments to the law no. 49/2012 "On the organization and functioning of the administrative courts and adjudication of administrative disputes"

[27] Explanatory note on the draft law "On some amendments to the law no. 49/2012 "On the organization and functioning of the administrative courts and adjudication of administrative disputes"

[28] Article 29.

The law created for the first time the judicial civil servant system. However, the law was abolished by a decision of the Constitutional Court, leaving unclear the status of the employees of the judicial administration at the courts of first instance and courts of appeal.

3.4. Decisions of the Constitutional Court concerning judicial administration

The Law no. 9877, dated 17.2.2008 "On the organization of the judicial power in the Republic of Albania" in chapter VI "Administration of the services in the court" regulates the procedure for the appointment and the competences of the chancellors of the court, judicial administration and budget of the judiciary. According to law the chancellor of the court directs and is responsible for the auxiliary services in the court. The judicial administration performs the auxiliary services in the court. The transitional provisions of the above mentioned law provide that the status, organization and functioning of the judicial administration are part of the law on judicial power.[29]The law on judicial power extended the competences of the chancellor, which included, *inter alia,* appointment and discharge of the personnel at the court.

The National Association of Judges submitted a complaint to the Constitutional Court asking for the repeal of some Articles part of the law on judicial power claiming that these legal provisions violated the Constitution. They asked for the repeal of Article 37/2[30], Article 38/a[31] and Article 38/b[32]. According to their claims the changes introduced by Law no. 9877, dated 17.2.2008 "On the organization of the judicial power in the Republic of Albania" violated the independence of the judicial power by reinforcing the control of the executive power towards the judicial administration.

The Constitutional Court by decision no. 20 dated 9.7.2009 declared anti-constitutional Article 38/a of the judicial power law, which had been into power since March 2008.[33] According to CC collaboration and interaction between judicial and executive power on matters of judicial administration should be arranged in such way as not to interfere with the independence of judges. According to the challenged law the chancellor was the highest function in the judicial administration. He directed and was responsible for the auxiliary services in the court. In this regard there should be clear transparent legal criteria for his appointment and discharge. Especially failure of the law on judicial power to provide clear criteria and grounds for dismissal of the Chancellor did not guarantee the exercise of his/her duty and subordinated him/her to the Minister of Justice. In relation to the role provided to Chairman of the Court by the law on judicial power, the Constitutional Court held that the law did not provide a direct and clear authority in organizational and operational matters of judicial administration. In addition it did not guarantee the appropriate legal instruments to the Chairman of the Court for the direction and control of the auxiliary services in the court. The CC concluded that in terms of organizational independence of the courts, as an expression of judicial independence, avoidance of the chairmen of the courts from matters related to the organization, management and controlling of the accountability of judicial administration as well as appointment and dismissal of personnel, would create premises for an improper influence on the exclusive function of the judiciary to deliver justice. The decision of the CC created a legal vacuum with regard to the appointment of the judicial administration.[34]

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[29]Law, no. 9877 dated 18 February 2008, "On the organisation of the judicial power in the republic of Albania" as amended Article 43/6.

[30]The chancellor is appointed and discharged by the Minister of Justice.

[31]The chancellor of a court has these principal competences: a) he appoints and discharges the personnel of the judicial secretariat and the administrative-technical personnel of the services of the court.

[32]The chancellor of a court has these principal competences: b)he oversees the process of organising and documenting the division of judicial cases by lot, as well as signing the document accompanying the practice of the judicial case to the designated judge.

[33]Law, no. 9877 dated 18 February 2008, "On the organisation of the judicial power in the republic of Albania" as amended Article 46 provides that the law enters into force 15 after its publication in the Official Gazette. The law has been published in the Official Gazette no. 27 dated 29.2.2008.

[34] The previous Law No. 8546, date 5.11.1999, "On some amendments to the law No.8436, date 28.12.1998 "On the organization of the judicial power in Albania". Article 14/b/3 provided: "Appointment and dismissal of the personnel of the judicial secretariat and the administrative-technical personnel of the services of the court is done by the Chairman of the Court upon the proposal of the Chancellor".

A law on judicial administration was approved in 2013 (herein after Law 109/2013).[35] Law 109/2013 provided detailed rules on the organization and functioning of the judicial administration. The power of the Minster of Justice with regard to organization of the courts and appointment of judicial administration was provided. In addition functions of the judicial administration were determined including also the roles of Chairman of courts and Chancellors. The Law 109/2013 created the judicial civil servant system.

The Union of the Albanian Judges submitted a claim to the CC asking for the abrogation of the Law No 109/2013 as being anti-constitutional. Their claims were both connected to the procedure for the adoption of Law No 109/2013 and also to its content. From a procedural point of view they claimed that Law No 109/2013 should have been approved by a qualified majority vote instead of a simple majority vote of the Assembly. According to the Constitution the organization and function of constitutional organs should be regulated by their respective laws. The latter must be adopted by qualified majority vote in the Assembly. Consequently, as Law No 109/2013 regulated issues concerning organization, functioning and status of the judicial administration the same procedure should have been followed. Whereas in relation to the content of the law the Union of the Albanian Judges claimed that it violated the principle of the separation of powers, in particular the organizational, functional and financial independence of the judiciary. Law 109/2013 provided for the power of the Minister of Justice to decide on important aspects the judicial activity, by issuing implementing legislation. In addition the Minster of Justice had also the right to propose courts' budget for the investments. This interfered in the functional independence of the judiciary.

The CC with regard to the procedure for the approval of Law No. 109/2013 held that Law No.9877, dated 18.02.2008 "On the organization and functioning of the judiciary" considered the status, organisation and functioning of judicial administration as an integral part of it. Whereas, Law No. 109/2013 did not only introduce changes of organisational and functional character but it also interfered in the organic law of the judicial power, in particular with regard to the judicial administration, budget or specific functions of the Chairman of the Court or of the Chancellor. Moreover it confirmed its jurisprudence in relation to the role and functioning of the judicial administration, which cannot be separated from the function of delivering justice and represented an important element of organisational independence of the judiciary. Consequently, Law No. 109/2013 should have been approved by a qualified majority. In relation to the content of the Law No. 109/2013 the CC confirms its jurisprudence established by decision no. 20, dated 09.07.2009 analysed above.

[35] Law no. 109/2013 "On Judicial Administration".

4. Institutional Framework: Justice Administration governance structure, key Institutional stakeholders and courts organization

4.1. Justice Administration governance structure and key Institutional actors and stakeholders

The **governance structure** which surrounds the courts and is key to understand the courts organization, their external environment, the flow of resources (economic and human) and the mechanisms in place to ensure proper resources allocation and use. In particular, the **key actors** to be considered are the High Council of Justice (and its Inspectorate), the Minister of Justice, the Ministry of Justice (and its Inspectorate), the High Court (as governance player), the Constitutional Court, the Judicial Budget Administration Office, the National Judicial Conference and the School of Magistrates. In addition, other relevant Institutional players are the President of Republic, the Parliament, but also international organizations and projects with a role in monitoring and supporting the work of the justice system such as the EU, the CoE and Euralius.

4.1.1. High Council of Justice

Part Nine of the Constitution provides also for the establishment of the **High Council of Justice**. It is a mixed executive-judicial body, which observes and controls the judges of first instance court and appeal court. The High Council of Justice (HCJ) is composed of the President of the Republic, Chairman of the High Court, Minister of Justice, three members elected by the Parliament of the Republic of Albania, and nine judges of all levels elected by the National Judicial Conference. The President of the Republic is the Chairman of the HCJ. The organization and functioning of the High Council of Justice is provided by law no 8811 dated 17.05.2011 "On the organization and functioning of the High Council of Justice". The law provides, *inter alia,* for the composition and status of the members of the High Council of Justice, its organisation and functioning and also appointments and transfer of judges. Law 8811/2011 was amended in 2005. [36] According to the amendments the members of the High Council of Justice, except for the *ex-officio* members were going to assume their office full time. The Constitutional Court abrogated this amendment in 2005.[37] In addition, the changes of 2005 provided that the members elected by the Assembly, could not be judges. Whereas, the latest changes of 2014 aimed to increase the accountability of the members and of the High Council of Justice itself.[38]

The HCJ makes proposals to the President of the Republic for the appointment of judges of the court of the first instance and the courts of appeal, in addition it decides on the dismissal of judges of the courts of first instance and courts of appeal, transfer, evaluation and disciplinary measures of the judges. It also appoints and dismisses the chairman of the courts of first instance and courts of appeal. The settlement of the criteria for the evaluation of judges is under the competence of the HJC, which also controls and guarantees the process. The inspectorate of the High Council of Justice verifies complaints of citizens and of other subjects about actions of judges considered to be in conflict with the proper accomplishment of their duty. If the inspectorate verifies that there are the legal reasons for disciplinary proceedings, it submits to the Minister of Justice an explanatory report accompanied by the appropriate documents. The Minister of Justice assesses the disciplinary procedure. In addition the inspectorate examines disciplinary proceedings proposed by the Minister of Justice in cases when it is deemed and requested by the High Council of Justice. The report prepared in this case is submitted to a meeting of the Council. In relation to the process of the evaluation of the professional

[36] Law no. 9488, dated 5.12.2005, "On some amendments to the law no. 9488 dated 5.12.2005 on the organization and functioning of the High Council of Justice".

[37] Decision of the Constitutional Court No. 29, dated 9.11.2005.

[38] Explanatory note accompanying the draft law, "On some amendments to the law no. 9488 dated 5.12.2005 on the organization and functioning of the High Council of Justice" as amended.

skills of judges the inspectorate collects and processes the appropriate data and prepares the evaluation.

4.1.2. Ministry of Justice

The Ministry of Justice was re-established[39] in the framework of the democratic changes of Albania after the fall of communism in 1990. [40] In 2001 law no. 8671 was approved and it provides for the organization and functioning and the fields of activity of the Ministry of Justice. The Ministry of Justice exercises a number of powers connected with the judicial system. These powers include, *inter alia*: drafting and implementation of policies, preparation of legal and by legal acts about organization and functioning of the services related to the judicial system; follow up and supervision of the services of judicial administration; performing inspections and disciplinary proceedings against judges of the courts of the first instance and courts of appeal. The law on organization of the judicial power provides for the right of the Minister of Justice to start disciplinary proceedings against judges in the HJC. In addition the law on the organization and functioning of the High Council of Justice provides for the right of the Minister of Justice to carry out the inspection of courts of the first instance and courts of appeal with regard to the organization and work of the judicial services and judicial administration as well he conducts and decides on disciplinary proceedings against the judges of these courts. The competences of the inspectorate of the Ministry of Justice[41] include *inter alia* the preparation of the recommendations on legal and organizational measures for the functioning of the judiciary and the controlling of courts of first instance and appeal based on thematic inspections and submission of recommendations to the Minister of Justice.
A memorandum on the cooperation between Ministry of Justice and High Council of Justice has been signed in September 2012. The memorandum aimed to harmonise practices and procedures of the inspection of the judiciary by the High Council of Justice and Ministry of Justice.

4.1.3. High Court (as governance player)

As mentioned in the previous chapter, Article 135 of the Constitution establishes that the High Court is the highest power of the judicial system in Albania. Apart from the general framework provided by the Constitution, the High Court is organized and functions based on its own organic law (No. 8588, 15/03/2000). The High Court plays an important role in justice administration through the unification of the judicial practice. Article 141/2 of the Constitution provides for the power of the High Court to unify or change judicial practice. This competence of the HC is exercised in the context of particular judicial issues if the High Court observes that the lower courts are interpreting legal provisions differently or the interpretations of the lower courts with regard legal provision are in conflict. The United Colleges of the High Court through their decisions to unify judicial practice decide on the same interpretation of the legal provisions on which they observe different previous practices of the simple colleges of the High Court. The High Court can also decide to change a unified interpretation that had previously given. Unifying decisions of the United Colleges of the High Court have the role of a binding precedent for lower courts.

4.1.4. Constitutional Court

The Constitutional Court scope is to guarantee the respect of the Constitution and makes its final interpretations. It is composed of nine members who are appointed by the President with the consent of the Parliament. The competences of the Constitutional Court are provided by Article 131 of the Constitution. With regards to acts the Court decides on: the compatibility of the laws with the constitution or with the international agreements and compatibility of international agreements with the

[39] The Ministry of Justice was abolished during the communist regime in Albania in 1966.
[40] Law no. 7381, dated 9.5.1990 "On the establishment of the Ministry of Justice".
[41] The internal regulation on the organization and functioning of the Ministry of Justice, adopted with order No. 5745, dated 13/08/2008 amended with Order No. 5588, dated 06/07/2009 of the Minister of Justice, provides for the General Directorate of Justice Affair. In the website of the Ministry of Justice it is named "The General Directorate of Strategic Planning, Inspection of Justice Affairs". http://www.drejtesia.gov.al/al/struktura/drejtorite (last assessed on 7 November 2015).

constitution before their ratification; compatibility of normative acts of the central and local institutions with the Constitution and international agreements. The Constitutional Court decides on conflicts of competences between powers, as well between central government and local government. The Court decides on the dismissal from duty of the President of the Republic and it verifies his inability to exercise his functions. It also decides on issues related with the election and incompatibility in exercising functions of the President and of the deputies, as well as the verification of their election. The constitutionality of the referendum and verification of its results can be examined by the Constitutional Court. Access to individuals is limited. The individuals can put into motion Constitutional Court only when their constitutional rights under due process are violated after the exhaustion of all legal means for the protection of those rights.

4.1.5. Office of Administration of Judicial Budget

Article 144 of the Constitution provides that the courts have a special budget, which they administer themselves. Law No. 8363 dated 01.07.1998 establishes the Office of Administration of Judicial Budget. The law aims to guarantee the independence of the judiciary in Albania. Accordingly, the Office of Administration of Judicial Budget (OAJB) is an independent legal person. The OAJB administers the budget funds designated for the courts. The Office of Administration of Judicial Budget studies and determines the needs for the budget of courts of all levels in collaboration with the budget sectors within these courts. It processes the financial indicators that are related to the requirements and activity of the courts. It also audits the use of funds given to the courts.

4.1.6. National Judicial Conference

The National Judicial Conference (NJC) is the meeting of all the judges of the courts of first instance, the judges of the courts of appeal and the judges of the High Court of the Republic of Albania. The main competence of the National Judicial Conference is the election of nine members of the High Council of Justice among the judges of all levels as provided by Article 147/1 of the Constitution. In 2005, a law on the organization and functioning of the National Judicial Conference was approved. In 2008, the Constitutional Court abrogated the above-mentioned law, as it was not in compliance with the Constitution. Currently the National Judicial Conference is organized and functions based on law 77/2012. In addition to the competence to elect nine members of the High Council of Justice, the law establishes that the scope of the National Judicial Conference is to protect and promote the independence of the judicial power and to perform continuous activities to increase and consolidate the standards of the justice system. It discusses the main directions of the activity of the courts and submits recommendations to the competent authorities for a fair and efficient administration of the courts. It also submits recommendations for the improvement of the legal and institutional framework of the judicial power.

4.1.7. School of Magistrates

The School of Magistrates was established by law No. 8136, 31/07/1996, to provide professional training of judges and prosecutors. Amendments were introduced by law in 2005[42] as the law needed to be modified in line with the constitutional changes introduced in 1998. Consequently, changes were introduced with regard to the organisational aspect of the School of Magistrates but also with regard to the composition and main functions of its leading and academic organs. Further amendments were introduced in 2014 aimed to maintain and further strengthen the high professional level of the School of Magistrates.[43] Professional formation includes the program of initial formation of candidates for magistrate and of continuous formation of judges and prosecutors in office. The Magistrates' School

[42] Law no. 9414, date 20.05.2005 "On some amendments to the law no. 8136, date 31.7.1996 "On the school of magistrates".

[43] Explanatory note on the draft law "On some amendments to the law no. 8136, date 31.7.1996 "On the school of magistrates" as amended.

also realizes activities of the professional formation of employees of the judicial administration as well as other legal professions related to the system of justice.

4.1.8. Other Institutional players

4.1.8.1. President of Republic

According to the Constitution the President of the Republic of Albania is the Head of the State and represents the unity of the people. The President appoints the members of the CC and the members of the HC with the consent of the Parliament. He is the Chairman of the HCJ and has the right to propose the Vice Chairman of the HCJ. He appoints the judges of the courts of first instance and courts of appeal on the proposal of the High Council of Justice. Based on the law on the organization of the judicial power and procedural law the President appoints the territorial competences, the central headquarters of the courts of first instance and courts of appeal by decree. He also sets by decree the number of judges for each court of first instance and court of appeal.

4.1.8.2. Assembly

The Assembly, based on the Constitution, has the right to give its consent with regard to the appointment of the members and of the Chairmen of Constitutional Court and High Court. In addition a judge of the Constitutional Court and High Court can be dismissed from duty by the Assembly. The Constitution provides also for the right of the Assembly to establish courts for particular fields, but in no case extraordinary courts.

4.1.8.3. European Union

The Copenhagen European Council, agreed on some conditions regarding the accession in the EU of the associated East European countries. The so-called "Copenhagen criteria" required the candidate countries to satisfy the political and economic criteria[44]. The Stabilisation and Association Agreement (SAA) between Albania and the EU has entered into force on 1 April 2009. The main aims of the SAA are to support the efforts of Albania to strengthen its democracy and the rule of law, to contribute to political, economic and institutional stability in Albania, to support transition into a functioning market economy which is integrated into EU's internal market.[45] The European Commission through its annual reports evaluates among others also the progress made by the judiciary in Albania.
In June 2014 Albania was granted the EU candidate status. Negotiations can be started once the country successfully implements 5 key priorities, justice reform being one of them (the others relating to the reform of the public administration, the fight against organised crime, the fight against corruption, and the protection of human rights).

4.1.8.4. Council of Europe

Albania joined the Council of Europe (CoE) on 13 July 1995. Article 3 of the statute of the CoE provides that members of the Council of Europe must accept the principles of democracy and the rule of law as well as respect for human rights and fundamental freedoms. The Parliamentary Assembly Monitoring Committee verifies the fulfilment of obligations under the terms of the Statute of the Council of Europe, the European Convention on Human Rights (ECHR) and all other Council of Europe conventions, as well as fulfilment of commitments entered into by Albania upon accession to the Council of Europe. The Parliamentary Assembly Opinion No. 189 (1995) on application for

[44] The European Council stated: "Membership requires that the candidate country has achieved the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for the protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces with the Union. Membership presupposes the candidates' ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union."
[45] Article 1 of the SAA. The SAA with Albania is published in the Official Journal of the EU, OJ 2009 L 107/166.

membership to the Council of Europe provides for a number of specific commitments, which Albania has agreed to respect within the set deadlines.
Albania is subject to a number of monitoring mechanisms. The European Court of Human Rights (ECtHR) delivers judgments, the execution of which are being supervised by the Committee of Ministers. In addition different institutions promote or monitor compliance of Albania with commitments, such as the European Commission for Democracy through Law (Venice Commission).

4.1.8.5. Euralius

Euralius IV project, "Consolidation of the Justice System in Albania" funded by European Commission under IPA 2013 has started its implementation in Albania in September 2014 and will last until the end 2017. The project is organized into the following main five activity areas: justice reform and organization of the Ministry of Justice; High Council of Justice and High Court; criminal justice and prosecution office; judicial administration and efficiency; legal professions and school of magistrates.[46]

4.2. Courts Organization

As mentioned in Chapter 3.3., at present, the main law regulation the organisation of the judicial power in Albania is law no. 9877/2008 "On the organisation of the judicial power in the Republic of Albania". According to the law, judicial power in Albania is exercised by the courts of first instance, the courts of appeal and the High Court. Special courts can be established by law but in no case extraordinary courts. Courts of first instance are the courts of judicial districts and courts for serious crimes. The courts of second instance are the courts of appeal and the courts of appeal for serious crimes. In fact, the organisation of the serious crimes courts was first provided by law no. 9110/2003 "On the organisation and functioning of the serious crimes courts in the Republic of Albania", before the approval of the law 9877/2008. While, in relation to the administrative courts the law provides that the organisation and functioning of the administrative courts is based on a special law. The law 9877/2008 provides for the participation of different institutions in process of the organisation of the courts of first instance and courts of appeal such as: the President of the Republic, the High Council of Justice and the Minister of Justice. They according to their roles and responsibilities define the judicial districts, territorial competences, centres of activity of the courts as well as the number of the judges. Consequently, law 9877/2008, in Article 6 provides that the territorial competence of the courts and their centre of activity and the numbers of judges of the courts of first instance and courts of appeal are set by a decree of the President of the Republic on proposal of the Minister of Justice. The Minister of Justice makes proposals after having first received the opinion of the High Council of Justice. **Courts number, competence and dimensions** and their **evolution** over the last 15 years are also to be considered when reflecting on the management capacity and organization of the work within the courts. At present there are 29 courts of first instance: 22 district courts of ordinary jurisdiction; 1 court of serious crimes; 6 administrative courts. There are eight courts of appeal in the territory of the Republic of Albania: six are Courts of Appeal of Ordinary Jurisdiction, one is the Administrative Court of Appeal and one is the Serious Crimes Court of Appeal. For 2015 the number of posts approved by the law on budget for the judicial power is 1339 employees - 402 judges and 937 administrative staff (907 in 2014).[47] The total number of judges at first and second instance in Albania is 383. "This number is determined by a Decree of the President of 2012 (no. 7818, dated 16.11.2012)".[48] The High Court consists of 19 judges (17 in office 2014) organized in three sections, civil, criminal and administrative.

[46] For more information see the website of Euralius IV http://www.euralius.eu/en/ (last assessed 7 November, 2015).
[47] Ibidem, p.87
[48] Ibidem, p. 74

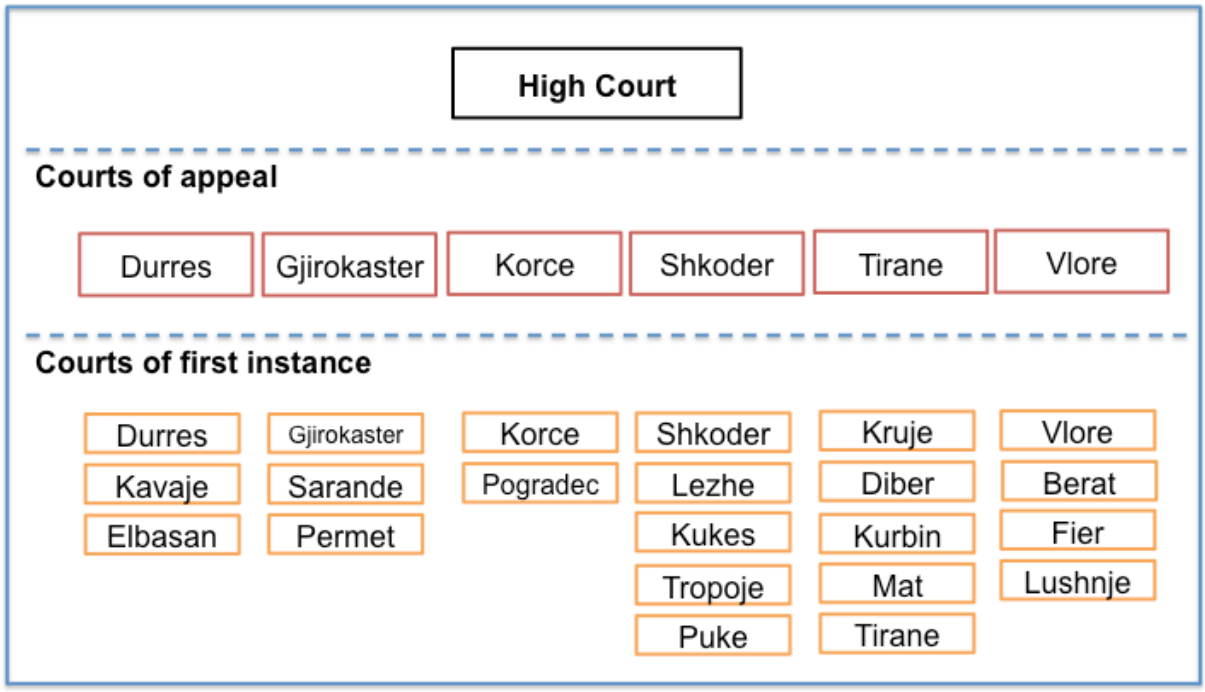

Figure 1 – Organization of the courts of general jurisdiction by instance

Looking with an inter-temporal perspective, recent years have been characterized by the reduction in the number of first instance courts from 29 to 22. In the same period the number of appeal courts, 6, has not changed even if their territorial competence in some cases has. At the same time, there has been the introduction of a specialized first instance and one appeal court for serious crimes (2003) and six first instance and one appeal administrative courts (2013). Two trends that can be identified are:

- Toward larger courts, even though there is a large number of very small courts (e.g., 5 out of six first instance administrative courts have 4 judges and 11-13 units of non judge staff, while 10 out of 22 first instance courts of general jurisdiction have 4 judges and 12-13 units of non judge staff). [49] While there are historical reasons for the capillarity of the diffusion of courts, this has a strong impact on the possibilities of organizing the work of the courts. The question of dimension and its organizational implications should be further investigated
- Toward a **functional specialization** through the creation of **specialized courts** (serious crimes and administrative courts) which in one way allowed to create a minimum amount of judges given their broader geographical competence. While this can provide a solution toward the problem of specialization and division of the work that affects the large number of very small courts, the extendibility of this approach may pose its own problems.

4.2.1. First Instance Courts

First instance courts of general jurisdiction are organised and function in judicial districts. The district courts in Albania are organised into 22 judicial districts.[50] They adjudicate civil and criminal disputes which are in the territorial jurisdiction of the district where these courts exercise their functions. Adjudications are performed by a single judge. However there are cases that are adjudicated by a panel composed of three judges.

[49] Data source: Special Parliamentary Committee on Justice Reform, 'Analysis of the Justice System in Albania', 15/05/2015, p.141-143

[50] Decree no. 6201, dated 08.06.2009 "On determination of territorial jurisdiction of the judicial district courts and the centre of activity of each of them".

By decree of the President[51] near the district courts are established sections to review administrative, commercial and family disputes. The sections to review family disagreements are created in all district courts whereas sections to review administrative and commercial disagreements are established in 17 district courts. The function of the administrative sections near the judicial district courts ended with the establishment of the administrative courts. In the meantime, criminal sections for juvenile justice are established in 7 the district courts.[52]

The First Instance Court for Serious Crimes has under its jurisdiction the entire territory of the Republic of Albania and its headquarters are situated in Tirana.[53] The number of the judges at the Serious Crimes Court of the First Instance is 16.[54] They adjudicate in panels of five judges. The substantial competence of the First Instance Court for Serious Crimes is provided for in Article 75/a, of the Code of Criminal Procedures.[55] The court mainly adjudicates crimes against the constitutional order, traffic, organized crime and special forms of criminal collaboration. In 2014 with the changes of the Code of Criminal Procedures[56] the substantial competence of the court was extended. Consequently, the First Instance Court for Serious Crimes adjudicates also active and passive corruption of the high state and local officials, corruption of judges and prosecutors and of other justice officials and corruption of Members of the Foreign Court Juries. The court reviews also the requests submitted for seizure and confiscation of property according to law no. 10192 dated 03.12.2009 “On the prevention and fight against organized crime and trafficking through preventive measures against property”.

The Administrative Courts of First Instance are competent for the adjudication of the disputes that might occur from individual administrative acts, normative subordinate legal acts and public administrative contracts issued during the exercise of administrative activity by the public organ. Disputes that arise because of unlawful interference or failure to act by the public organ. Disputes of competences between different administrative organs in the cases provided in the cases provided the Code of Administrative Procedures. Labour disputes, are also under the jurisdiction of the Administrative Courts of First Instance when the employer is an organ of the public administration. The number of the judges assigned to the Administrative Courts of First Instance is 36.[57]

4.2.2. Courts of Appeal

The Courts of Appeal review in the second instance decisions of the first instance courts, which are appealed by the parties. However according to the Code of Civil Procedure the Courts of Appeal have original jurisdiction in relation to the requests for the recognition of civil decisions of foreign courts.[58]The appeal courts of ordinary jurisdiction are organised in six zones. A decree of the President of the Republic has set their centre of activity and the territorial jurisdiction under the judicial

[51] Decree no.1501, dated 29.05.1996, “On creation of sections for administrative, commercial and family disputes in the district courts ".

[52] Decree No. 6218, dated 07.07.2009, “On the creation of the sections for juvenile justice near district courts”.

[53] Decree no. 3993, dated 29.10.2003 "On the determination of the territorial jurisdiction of the centre of activity and the number of judges of the Court of First Instance and the Court of Appeal for Serious Crimes".

[54] Decree No. 7818, dated 16.11.2012 “On the assignment of the number of the judges for each first instance court, appeal court, and administrative court and on the assignment of the territorial competences and centres of activities for the administrative courts”.

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

[56] Law no. 21/ 2014 dated 10.03.2014, “On some amendments to the Criminal Procedure Code of the Republic of Albania”, as amended.

[57] Decree No. 7818, dated 16.11.2012 “On the assignment of the number of the judges for each first instance court, appeal court, and administrative court and on the assignment of the territorial competences and centres of activities for the administrative courts”.

[58] Article 395 of the Civil Procedure Code of the Republic of Albania approved by law no. 8116, date 29.3.1996, as amended.

district.[59] Consequently, in the territory of the Republic of Albania perform their activity six courts of appeal of ordinary jurisdiction.[60]
The territorial jurisdiction of the Serious Crimes Court of Appeal is the entire territory of the Republic of Albania, with headquarters in Tirana. The number of the judges at the Serious Crimes Court of Appeal is eleven.[61] The Serious Crimes Court of Appeal adjudicates at second instance cases, which have been adjudicated by First Instance Serious Crimes Court. The Serious Crimes Court of Appeal adjudicates with a panel composed of five judges according to the rules of procedure provided for in the Code of Criminal Procedures apart from cases where otherwise provided by the law no. 9110, dated 24.7.200 "On the organization and functioning of the courts for serious crimes".
The Administrative Court of Appeal has its territorial jurisdiction in the entire territory of the country, it's headquarter is in Tirana.[62] Its substantial competence is provided by law on administrative courts it examines in second instance the appeals against the decisions of the administrative courts of the first instance. In addition, it reviews in the first instance disputes about normative legal acts, as well as other cases provide by the Law no. 49/2012 "On the organization and functioning of administrative courts and adjudication of administrative disputes", as amended.

4.2.3. Highest Instance Court

According to Article 135 of the Constitution High Court (HC) is the highest power of the judicial system in Albania. The High Court has original and reviewing jurisdiction. With regard to the reviewing jurisdiction recourses to the HC may be submitted against decisions of the Court of Appeal and the First Instance Court in cases when the law has not been respected or correctly applied by them and when the legal procedural provisions are seriously violated by lower courts.[63] Consequently, the review jurisdiction has to do with the interpretation of the law. The facts determined by the lower court are not reviewed by the HC. The decisions of the HC cannot be appealed, except for issues that fall under the jurisdiction of the Constitutional Court. The HC reviews as appellate jurisdiction recourses or specific complaints against criminal, administrative and civil decisions of the courts of lower level (including resolution of disagreements over definition of jurisdiction and competence). The High Court is also competent to examine requests for review of final decisions. The HC has original jurisdiction when adjudicating criminal charges against the President of the Republic, Prime Minister and Members of Council of Ministers, Members of Parliament, judges of the High Court and judges of the Constitutional Court.[64] The HC functions as an appellate jurisdiction when adjudicating complaints of the judges of the court of first instance and court of appeal against the decision of the High Council of Justice to discharge the judge. Consequently, it excludes lower levels courts.
The HC is organized and functions based on the Constitution and its organic law.[65] The High Court is composed of 19 judges. It is organized into three colleges: the civil college, the administrative college and the criminal college. The judges of the HC are assisted by legal assistants.
The Chairman of the HC is appointed by the President with the consent of the Parliament.[66] The Chairman of the HC represents the HC with the third parties. He chairs the Joint Colleges and divides the judges into colleges in compliance with the law on the organization and functioning of the HC. In

[59] Decree no. 6217, dated. 07.07.2009 " For the determination of territorial and centre competences of activity of the courts of appeal".
[60] Tirana Court of Appeal, Shkodra Court of Appeal, Durres Court of Appeal, Korca Court of Appeal, Gjirokastra Court of Appeal and Vlora Court of Appeal.
[61] Decree no. 3993, dated 10.29.2013 "For the determination of territorial competences, the centre of activity and the number of judges of courts of first instance and the courts of appeal for serious crimes ".
[62] The Decree no. 7818, dated 16.11.2012 "For determining the number of judges for each court of first instance and courts of appeal and administrative courts, as well as determination of territorial jurisdiction, and the headquarters of the administrative courts".
[63] Article 472 of the Civil Code of the Republic of Albania approved by law no. 8116, date 29.3.1996 as amended. Serious violations of procedural norms are provided for in Article 467 of the Civil Procedure Code.
[64] Article 141 of the Constitution of the Republic of Albania.
[65] Law no. 8588, dated 03.15.2000 "On the organization and functioning of the High Court of the Republic of Albania" as amended.
[66] Article 136/2 of the Constitution of the Republic of Albania.

addition he directs and supervises the activities of the court and approves the internal rules of the HC. The Chairman approves the organizational structure of the court and appoints and dismisses the legal assistants and personnel for auxiliary services. He also makes requests for the annual budget of the HC and supervises its implementation. In performing his duties the Chairman of the HC is assisted by advisers.

The organic law of the HC provides that the Chairman of the court consults other judges with respect to: infrastructure of the HC; internal rules for the functioning of the HC; budget requests of the HC; the assignment and transfer of judges into colleges. The Chairman of the HC is *ex officio* also the Chairman of the National Judicial Conference, a member of the HCJ, Chairman of the Board of the School of Magistrates, Chairman of the Board of the Judicial Budget Administration Office and the Chairman of the Council for Appointments to the High Court which advices the President of the Republic.

5. Court organization, management and court administrators capacities

The topic of court organization has been previously introduced looking at the broader organization of the courts from a justice system level of analysis. In this chapter the level of analysis moves to the court level. The three topics of Court organization, management and court administrators' capacities are strictly intertwined. In particular, court management style, possibilities, and skill requirements and court administrators' capacities requirements are strictly related to the organizational structure and with the nature and organization of the activities carried out within the court.
As already emerged in the legal framework and institutional framework sections, a strong distinction exists between the High Court and first and second instance courts. This distinction involves not only the legal basis that regulates their general organization and functioning, but includes also the budgeting, the judges and administrative personnel selection and management, the case management mechanisms in place and the coordination mechanisms that are in place. Given the scope of the report, while inputs taken from the investigation of the role, organization and functioning of the High Court are considered, this section focuses on the first and second instance courts.

5.1. Court internal organization

A representation of the **court internal organization structure** can provide a reflective tool when discussing the courts management and the administrators' capacities. The basic structure of the Albanian courts is composed of three main units: Judges, Court office and Administrative office. These units correspond to the tri-partition between judicial, procedural and administrative functions. Coordination mechanisms within and between these units and with the head of the court vary, depending on several elements, including the independence guarantees over the Judges activities, and the functional requirements of the current organization of the work on the cases.

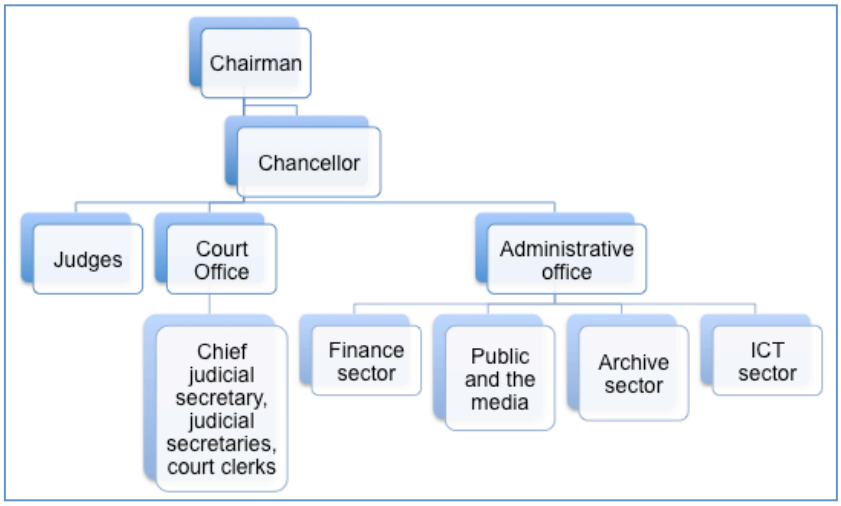

Figure 2 Albanian Courts basic organizational chart

An important element to consider and which does not emerge from the graphical representation is the independent working units constituted by a judge and its judicial secretary dealing with the judicial and procedural activities of the cases assigned to the judge. In organizational study terms, these independent working units can be defined as loosely coupled to the larger court organization.[67] The assistance to the judge is based on a personalized model, in which each judge is assigned to a unit of administrative personnel who carries out all the administrative and procedural tasks related to assistance of the judge during the various phases of the judicial procedure. This model is distinguished from a centralized secretary model, in which a more centralized office with specialized

[67] On the concept see for example: Orton, J. D., & Weick, K. E. (1990). Loosely coupled systems: A reconceptualization. *Academy of management review*, *15*(2), 203-223.

staff functions provides the support services to a plurality of judges. In other words, the present organization follows an '*artisanal*' approach, where the craftsman chooses his tools, his methods, and deals with the processing of the product in its entirety. Within these micro units, the definition of internal administrative procedures is typically left to the agreement between judge and secretary. There is, therefore, a high personalization in the practices, which develop in time. This personalization is primarily the result of the preferences of the judge and, residually, of those of the secretary. A typical effect of this organization is a high differentiation and compartmentalization of activities between different units.

The individual secretary model provides a number of advantages and disadvantages compared to larger scale secretary service provision approaches. As an example, this model easy the establishment of a tacit coordination mechanisms and the internalisation of expectations and routines shared between the judge and the assistant; it supports the establishment of a relationship of trust based on personal knowledge between Judge and assistant; it can be generative of innovation: the ability of each assistant to independently organize (albeit within the limits of the magistrate preferences and of the interpretation of normative procedures) their work can encourage the testing of procedures, instruments and alternative techniques; the workload allocation mechanism of the assistants depends on the random allocation of cases to the judge and therefore is formally fair. Furthermore, within this model, the assistant typically plays a role of an "interface" that integrates the activity of the judicial work of the judge with the administrative rules and procedures of the Court. The assistant, that is, acts as a buffer (liaison) between the specific manner in which each individual judge carries out his work, generally less interested in the organization and administration of the schemes, and the need for standardization that characterize the overall organization and administration of the court. The personal assistant thus becomes an element of integration and coordination can reduce friction and opportunities for conflict between the judicial component and the administrative component of the court. Between the results of this organization is also that the judicial secretary in time learn to do and carry out all needed activities. The variety of tasks reduces the monotony of the work of the assistant who enjoys a relative autonomy with respect to the chain of command of the administrative staff.

Some critical aspects include the time required for the training of a new secretary, even if already socialized with another judge, as the micro-practices are different. Also, this organization greatly limit the flexibility of the allocation of the personnel, as for example the possibility of substitution of a secretary in case of absence (illness, vacation, etc.), which requires the presence of a slack of resources to be managed (i.e. a free personnel unit to be allocated); furthermore, the substitutes will not have the competences in the specific practices developed by the regular judicial secretary and the judge. There is no functional specialization of the secretaries of the judge and specific dispositions and capabilities cannot be beneficed outside the micro-unit; the separation between micro-units reduces the transfer of any positive innovative practice developed by an judicial secretary or a judge. Sudden workload spikes due for example to cases with particularly heavy requirements (e.g. large number of notifications etc.) typically fall on the single secretary, disrupting the activities already in place. During opening hours to the public all the secretaries can be required to stop their activities in order to receive the public whose problems need direct interaction with the judge secretary as they are related for example to specific case procedural steps or case procedural information. Finally, the relationship and the close bond that is established between judicial secretary and the judge result in a reduced control power within administrative hierarchy, with the result that the working needs of the judge-secretary micro unit typically come first compared to those of the whole court.

As previously mentioned, an alternative to the individual judicial secretary model is a more centralized organization of the service, with a functional organization of the personnel. According to the functional organization, each operator, using standardized tools and methods, deals with specific parts of the processing that contribute to the realization of the product. Standardization does not really matter from a production perspective, as long as the judge and its judicial secretary are the only one involved in the specific variations of the procedural steps and how these steps fit together to create the final result, while it becomes much more relevant when the service is provided in a more centralized fashion. It can be argued that specialization, division of the work and refinement of specific portion of

procedures, which cannot be easily achieved through an individual secretary approach, allows to increase the productivity and generate efficiencies of scale.

An additional element worth mentioning is that First Instance and Appeal Courts of general jurisdiction do not have judicial assistants (law school graduates). The only exception is the Tirana Court of Appeal that has hired two judicial assistants. [68] In the High Court of Albania there are judicial assistants, but they are lower instance courts judges and not law graduated specifically selected for the task and specifically trained for it, following a separated career. One of the negative effects of this practice is a reduction in the effective number of judges working within the first instance courts.
According to the data collected by Bühler and Bushati (Gugu),[69] presidents of the courts appear to be in favour of the idea of having judicial assistance and believe that it will help to increase their efficiency and to improve the quality of judgements. At the same time, a clear view of the tasks that could be assigned to such personnel (e.g. preparing of summaries of the facts of the cases, preparing drafts of the reasoning of a judicial decision etc.) seems to be still missing.

The table below provides an example of the quantitative distribution of the personnel working in a District court of medium size. As this representation clearly show, half of the non-judge personnel of this court (14 judicial secretaries) work within the 'independent judge and its judicial secretary units', consistently reducing the number of non-judge staff working to support the court as a whole and being organized accordingly.

Table 1 Example of court personnel working in a medium size District court

Type of staff	Number (FTE)
Magistrates	
Professional judges	14
Other magistrates	
Total magistrates	**14**
Court employees	
Chancellor	1
Chief secretaries	2
Judicial assistants (high school law graduate)	0
Judicial secretaries (administrative staff)	14
Other administrative staff	9
Judicial clerks	2
Total court employees	**28**

5.1.1. Courts size

The **dimensional factor** is a key element of the organizational analysis and should be carefully considered when reflecting on the organizational structure of the Albanian courts and on the organization of the work within them. As an example, District courts have from a minimum of four judges to a maximum of 76, with an average of 11 judges and a median of five. The number of administrative personnel is strictly linked to that of the judges, decreasing from three per judge in the smaller courts to 1.6 per judge in the district court of Tirana. In other words, there is a large number of small courts (14 courts with 4-6 judges and 12-16 judicial administration employees per court); medium courts (7 courts with 10-17 judges and 19-30 judicial administration employees per court), large court (Tirana District Court with 76 judges and 124 judicial administration employees).
For a broader description of the courts size and its implications, please refer to Bühler and Bushati (Gugu) (2016) "Analysis of the court coaching reports on the District Courts of Albania", and Bühler and Bushati (Gugu) (2016) "Analysis of the court coaching reports on the Appeal Courts of Albania", 2016.

[68] Bühler and Bushati (Gugu) (2016) "Analysis of the court coaching reports on the District Courts of Albania", and Bühler and Bushati (Gugu) (2016) "Analysis of the court coaching reports on the Appeal Courts of Albania", 2016.
[69] Bühler and Bushati (Gugu) (2016) "Analysis of the court coaching reports on the District Courts of Albania".

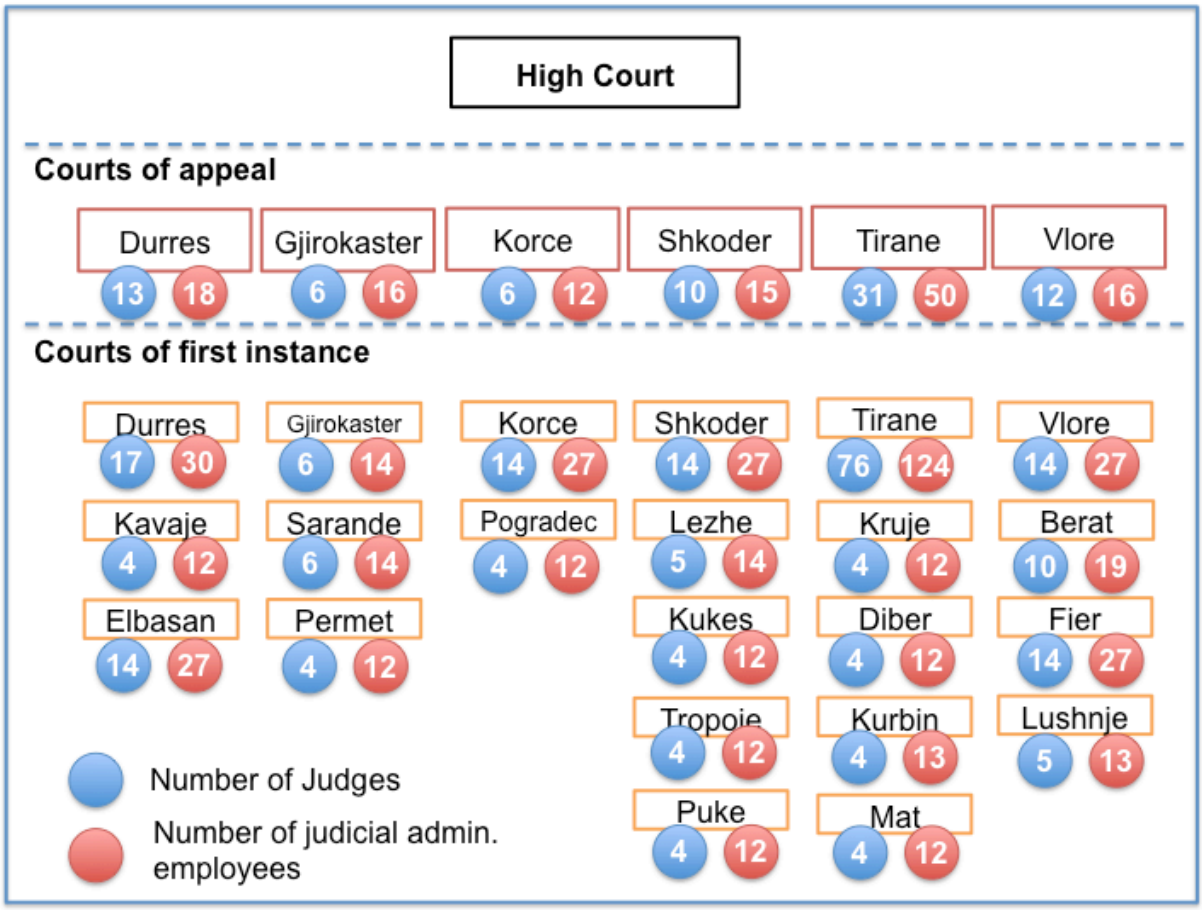

Figure 3 - District and appeal courts with number of judges and judicial administration employees

5.1.2. Courts case-flow and caseload

The analysis of the case-flow provides an important element for the assessment of the functioning of the court. The table below provides an overview on the main data at District court level in 2014. Courts show a consistent variation in the caseload per judge. Considering the number of incoming cases per judge the value ranges between 112 Përmet and 839 of Lezhë, with an average of about 380 incoming cases per judge. It should be noted though that this value is a very rough indication of the workload of the court as it does not differentiate between different type of cases (e.g. Criminal, civil, family etc.), neither provide an indication of the work (hours of judge and non-judge staff time) needed as an average to deal with the various type of cases. The table does not therefore differentiate between 'heavy' and light cases, which may be present in different percentage in the various courts. Also, the number of judges does not refer to the FTE of judges working on cases as, for example, chairmen count as 1. While quantitative data is provided in this paragraph and in the table below, its purpose is to provide the grounds for a qualitative reflection on the courts organization and administration. For a quantitative analysis and discussion, please refer to Bühler and Johnsen in the "In-depth Assessment Report of the Justice System in Albania" (2015), to Bühler and Bushati (Gugu) (2016) "Analysis of the court coaching reports on the District Courts of Albania", and Bühler and Bushati (Gugu) (2016) "Analysis of the court coaching reports on the Appeal Courts of Albania", 2016.

Table 2 Data on case-flow in District courts in 2014[70]

District Court	Number of Judges	Incoming 2014	Resolved 2014	Accumulated	Cases per judge (nr)	Incoming / nr of judges (calculated)	Resolved / nr of judges (calculated)
Berat	10	3461	3318	591	488	346.1	331.8
Dibër	4	n/a	n/a	n/a	n/a		
Durrës	17	3123	3113	861	233.7	183.7	183.1
Elbasan	14	6758	7929	899	n/a	482.7	566.4
Fier	14	5020	4773	247	358.6	358.6	340.9
Gjirokastër	6	2236	2188	350	507.6	372.7	364.7
Kavajë	4	2121	1630	491	n/a	530.3	407.5
Korçë	14	5651	4863	788	452	403.6	347.4
Krujë	4	2045	2124	269	598	511.3	531.0
Kukës	4	1560	1412	148	390	390.0	353.0
Kurbin	4	1329	1251	78	332	332.3	312.8
Lezhë	5	4193	3703	490	838.6	838.6	740.6
Lushnje	5	2252	2048	454	292	450.4	409.6
Mat	4	1244	1078	164	311	311.0	269.5
Përmet	4	448	414	100	128.5	112.0	103.5
Pogradec	4	1454	1394	247	468.8	363.5	348.5
Pukë	4	474	453	77	176.6	118.5	113.3
Sarandë	6	2151	2161	407	378	358.5	360.2
Shkodër	14	5086	4874	940	554	363.3	348.1
Tiranë	76	n/a	n/a	n/a	n/a		
Tropojë	4	n/a	n/a	n/a	n/a		
Vlorë	14	5379	5235	1246	463	384.2	373.9
Average	11	2947	2840	466	410	379.5	358.2
Median	5	2236	2161	407	390	363.5	348.5
Minimum	4	448	414	77	128.5	112	103.5
Maximum	76	6758	7929	1246	838.6	838.6	740.6

5.2. Key coordination roles

The key coordination roles within the court are three: the Chairman, the Chancellor and the Chief Judicial Secretary. The **Chairman** is a judge appointed at such position for a 4 years term (with the right to reappointment) by the High Council of Justice, on the basis of a competition. The Chairman is the head of the court, represents the court in relations with third parties and is responsible for the internal organization, management of the resources and for the non-judge staff of the court and has some limited powers of coordination and supervision in relation to the work of the judges. The role of Chairman is part time. The Chairman has to deal with at least 50% of the number of cases of a normal judge. The **Chancellor** is a jurist appointed by the Minister of Justice. The now repealed part of the 2008 law 'On the Organization of the Judicial Power in the Republic of Albania' gave the Chancellor the management of the administrative personnel. At the same time, being selected from jurists with at least five years of experience, typically does not have specific capabilities or previous training in the management and organization field. Furthermore, as the Minister of Justice can replace the Chancellor at any time, and frequently does it after short periods, it is perceived in various offices as a sort of "ministerial controller" in the court. The **Chief Judicial Secretary** is the head of the court office, which carries out and supervises procedural activity, and other tasks of an administrative nature supporting it. In other words, the Chief Judicial Secretary supervises and coordinates the work of the

[70] Data source: Special Parliamentary Committee on Justice Reform, 'Analysis of the Justice System in Albania', 15/05/2015, p.127-142

judicial secretaries and court clerks assisting the judges through their procedural (e.g. court registers keeping, notifications, case files creation and keeping), and administrative activities (e.g. court statistics, checking of court materials and devices conditions and functioning etc.). The Chief Judicial Secretary, as all other employees of the court (with the exclusion of Judges and Chancellor), since 2013 is hired and dismissed by the Chairman according to private law rules. In the various courts, Chairmen have regulated such practices in different ways, ranging from direct call to public call with exam commissions assessing titles and competences (with rules taken from the civil servant rules and practices), and trial periods.

5.3. Courts internal regulations

Apart from the basic organization of the court and key roles, the descriptions provided during the fact finding mission and follow up visits allowed to reconstruct a picture characterized by **great fragmentation of practices between the courts** which seems to depend on the 'court tradition' on the separation between the personnel of the courts,[71] and on the power of the Chairmen to manage the court budget and regulate the court organization through internal regulations.
Here are some examples from internal court regulation:

> ***Regulation of the Court of Appeal Tirana[72]***
> The object of the regulation is to lay down rules of organization and functioning of the judicial administration at the Court of Appeal Tirana. It defines the organizational structure, functional competences as well as rights, obligations and responsibilities of the employees of the judicial administration at the court. The regulation provides for the job descriptions and procedures. Each position at the Court of Appeal has its own description containing duties and responsibilities of each employee. Consequently, the regulation provides, among others, for duties and responsibilities of: chairman; chancellor; chief judicial secretary; judicial secretaries; head of the finance office; employee in charge of the personnel at the court; judicial clerk; information and technology specialist; archive and support services employee. In addition, it regulates the organization and functioning of the public relations office. With regard to human resources management the regulation provides that the chancellor is the direct supervisor of the "judicial civil servant". Although the regulation uses the term "judicial civil servant", it does not define it. The chancellor has the right to conduct disciplinary procedures against employees of judicial administration and submit the appropriate proposal to the chairman of court. The chancellor is also entitled to conduct each year a performance evaluation of the employees of the judicial administration based on the criteria established the Minister of Justice. However, the regulation does not contain any rules about the employment procedures at the court. In addition, the regulation contains a code of ethics, which, *inter alia,* regulates the principles of ethics and standards of professional conduct, conflict of interest, gifts and favours, employment in other institutions and external activities, external appearance, violations in performing their duty and misconduct, disciplinary measures.

> ***Regulation of the First Instance Serious Crimes Court[73]***
> The objective of the regulation is to provide detailed rules about the procedural and administrative duties of the judicial administration of the First Instance Serious Crimes Court. The regulation defines "judicial administration" as units that perform auxiliary services at the Court. In particular, it provides for the rights and duties of the employees of the judicial administration. It provides for the competences of the chairman; structure of the judicial administration; competences of the chancellor; duties of the budget office; judicial secretary; chief secretary; hearing secretary; archive; protocol books. It regulates the management of paper registers,[74] electronic communication and public relations. Pursuant to the regulation the chairman of the court has the right to appoint and dismiss employees of the judicial

[71] For example there is no school providing a common preparation on how to perform specific procedural or administrative activities or to train the Chief judicial secretaries, and the career path does not foresee mobility between courts and therefore cross fertilization of practices.
[72] "Internal Regulation on the organization and functioning of the judicial administration at the Court of Appeal Tirana", approved by order No. 72, dated 28/06/2012 of the Chairman of the Court of Appeal Tirana

[73] "Regulation on the organisation and functioning of the judicial administration of the First Instance Serious Crimes Court", approved by order no. 115 dated 20.05.2015 of the Chairman of the Court.
[74] Basic criminal register; alphabetical index of criminal cases; register of criminal decisions; register of appealed cases; etc;

administration. Employment procedures at the court are based on competition. Announcement of the vacant positions at the court is done by an order of the chairman. The chancellor does the preliminary verification of candidates by compiling two lists. A commission set up by order of the Chairman, prepares the tests for the candidates and compiles a list according to their result. The Chairman declares the winner who is the first candidate on the above-mentioned list. In addition, the regulation contains rules on performance evaluation of the employees of judicial administration which is a process conducted by the chancellor. Rules on disciplinary procedures are also part of the regulation. Whereas, the Code of Ethics[75] which is an integral part of the regulation of the First Instance Serious Crimes Court aims to establish general rules of conduct of the judicial administration of the court. The Code of Ethics provides among others: the ethical principles and basic standards of judicial administration employees, rules on conduct and ethics in the premises of the court, ethics during the trial.

Regulation of the district court Lushnje[76]

The purpose of the regulation is to coordinate in a single act and to update all the orders of the chairman of the court and also to standardize, harmonize and unify the administrative activity of the court. The regulation applies to all administrative and procedural activities of the District Court Lushnje. First it regulates distribution of judges into chambers and into panels. Then, the process of the case assignment by electronic lottery is regulated in detail, providing among others also for the time and days of the drawing of the lottery. Pursuant to the regulation, the chairman has the right to appoint and dismiss personnel at the court. To this aim the chairman establishes an *ad hoc* commission, which compiles the criteria of the competition. The duties of the commission are to publish the notification and collect documents, to conduct interviews and propose to the chairman three candidates. The chairman chooses one of them. The chairman is entitled to compile the main directions of the activity of the court administration, which are pursued and implemented by the chancellor. The regulation provides for the competences of the chancellor, duties of the chief secretary, duties of the hearing secretary, duties of the judicial clerk, duties of the information technology employee, duties of budget office. In addition, the regulation establishes a public relations unit composed of the IT employee, chancellor and the judicial secretary working near the Chairman.

5.4. Judges management

It is one of the tasks of the Chairmen of the courts of first instance and appeal to distribute of the judges into chambers and sections, once every two years. While Law No. 9877/2008 imposes the fulfilment of these tasks, it does not provide any criteria or principles describing how the distribution or division of judges should be performed. In some cases, issues such as division and frequency of the rotation of judges between chambers may affect the distribution of the caseload and the continuity of work. According to the data provided on District courts by the Inspectorate of the HCJ,[77] in 2015 only 9 courts (typically the larger ones) judges are organized into chambers or sections, while in 20 courts they are not. Also, the Serious Crimes Court of first instance and the Serious Crimes Court of Appeal are, due to their function, lacking organisation into chambers and sections.

Furthermore, Chairmen of the courts of first instance and appeal have the task to divide the judges into judicial panels.

In addition, at the beginning of each month the Chairmen plan the judges for trials whose object is evaluating flagrant arrest or detention, the setting of security measures and every other request during the phase of investigation. In this case the law provides that the plan should be arranged by alphabetical order on the basis of surnames of the judges. The Inspectorate of the HCJ Investigation the orders on planning the judges on duty, "has ascertained that they are not standardized from the formal point of view. In some cases, they failed to meet the legal criteria for issuing it in the beginning of each month, for including there all the judges and listing the judges according to the alphabetic order of their last name".[78] Issues have been identified also in the practical application of the list of duty, ranging from a shift in the time between the planned judges and those who have examined the

[75] "The Code of Ethics of the Judicial Administration, First Instance Serious Crimes Court" approved by joint order of the chancellor and chairman no. 116 dated 20.05.2016.

[76] "Regulation on the administrative activity of the Lushnje District Court" approved by order of the Chairman of the Court dated 19/12/2013.

[77] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ

[78] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ

case, security measures not considered by the judge on duty or cases where the of verifying and imposing security measures were considered by a judge outside of the plan of the judges on duty. [79] As a result, the Inspectorate of the HCJ suggested that a "recommendation should be sent to all chair of courts to uniform orders of having the judges ready for security measures". [80]

5.5. Case management

Initial allocation of a case to a judge takes place through a lottery. The lottery is the main coordination mechanisms operating at court level dealing with the management of the case. After the allocation of the case and registration of a new case in the court registers, follows an **independent management** of the case and case tracking by the **judge and its judicial secretary** till sentence, when some key data on the procedure and on the sentence is registered in the Decisions registers. The perception is that much of the same data is registered various paper registers at different steps of the procedure (e.g. Basic Civil Register; Alphabetical Index Register; Register of the Civil Decisions), on the cover of the case file and in parallel on the electronic case management system. Which kind of data is recorded, when and for which purposes should be further investigated as it is one of the main sources of quantitative information for the management of the workload and work capacity of the court.

There seems to be a missing link between caseload and workload in the management of the cases. The focus is on equal allocation in terms of number of cases through lottery. There is no weight associated to the case. Every suggestion on the possibility of stronger coordination in the work was answered as not feasible as it would impact on the random allocation of cases. Only for health or similar reasons can a judge be exonerated by the lottery by the Chairman.

5.5.1. Focus on Case assignment

Given the relevance of the **assignment of judicial cases** within the court as one of the key components of the management of the cases to ensure efficiency and effectiveness of the justice service provision equality of the division of the workload between the judges and assistants, avoid possible risks of undue external influence, and the sensitivity which was shown during the field visit and by several stakeholders on the issue in the Albanian context, special attention needs to be given to the topic. The use of a lottery system for the allocation of cases is established by law. The current legal framework for the distribution of cases is provided by Law No. 9877 dated 18/02/2008 "On the Organization of the Judicial Power in the Republic of Albania", as amended, and by Decision of the High Council Justice No. 238/1/a, dated 24.12.2008 "On the procedures of distribution of court cases by lottery" as amended. More in detail, Law No. 9877/2008 mandates the assignment of cases by lottery and provides that the competent organ, which defines the procedures of the lottery, is the High Council of Justice. In compliance with this legal obligation the High Council of Justice has issued a decision on the procedures of the distribution of cases by lottery.[81] The decision regulates the assignment of judicial cases submitted in the courts of first instance and in the courts of appeal. .While the lottery is the general rule for the allocation of cases, there are specific cases such as criminal requests during preliminary investigations, civil request of an urgent nature. These requests are transferred by the chair of the court to a judge scheduled for the availability period.

According to the decision the assignment of cases is performed in electronic manner in all courts where the electronic system for drawing the lot is operational, while as a transitory solution, in the other courts the procedures have to be carried manually. The intent is to ensure "a random and transparent allocation of cases to judges".[82]

The distribution of the cases is random. According to the High Council of Justice decision, the Chairman groups the cases before the drawing of the lottery, according to their type by defining a random sequence of the registration of the case. The cases should be equally distributed among

[79] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ

[80] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ

[81] Decision No. 238/1/a, dated 24.12.2008 "On the procedures of distribution of court cases by lottery" as amended.

[82] European Commission (2014) "REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT on Albania's Progress in the Fight Against Corruption and Organised Crime and in the Judicial Reform" COM(2014) 331 final

judges of the respective chamber, or section within the civil chamber. Equality of the distribution of the cases is intended as the distribution of the cases received for lottery, in equal number between the judges, regardless of the individual workload of each judge at the time of the drawing of the lottery.
The Chairman should ensure that the process of the drawing of the lottery is accessible for all interested parties and carried out in a transparent manner. The frequency of the drawing of the lottery is decided by the chairmen on the basis of the number of the cases submitted to the court and a legal deadline of seven days from the submission of the case to the court to the drawing of the lottery provided by the High Council of Justice decision. The chairmen issue a court order on the frequency of the drawing of the lottery at the court. According to the High Council of Justice the above-mentioned order should contain the exact date and time on which the lottery is going to be drawn. In particular, the order should specify that the lottery is electronic and it should be published with appropriate means which might be also the website of the court.[83] In practice, several issues have been highlighted. In a number of courts for example, the court orders were missing key elements of violated the Decision of the HCJ no. 238/1/a provisions. In 15 courts, for example, it was found that the order was formal, as it was lacking the set date or time; or the electronic form of its conduct was missing. Furthermore, in some courts, some cases were allocated by a lot organized not according to the order of the chairman of the court.[84]
To avoid "Judge-shopping" practices, cases that are already assigned by lottery and for which the judge has decided to dismiss the case or to return the acts, should be excluded from the lottery and automatically assigned to the same judge.
A judge can be excluded from the lottery based on two legal reasons: (i) he/she has decided on the security measure of the criminal case (ii) he/she has previously adjudicated the case and has given a final decision. In addition, the chairmen of the court can exclude a judge from the participation in the lottery also when it deems it necessary and based justified reasons including: annual leave, maternity leave, leave to study abroad, leave due to health reasons.[85] Members of the adjudicating panel can be replaced in cases when they have ground for recusal or when they are not able to be present temporary. The Chairmen has the right to complete the adjudicating panel, taking into consideration equal treatment of judges, the workload for each of them and the respective section. However, there is no legal deadline within which such cases should go under lottery again after the replacement of the judge.

5.6. Courtrooms

Courtrooms use and management is also a key element to be considered. According to the EU Commission Albania 2015 Report (SWD(2015) 213 final), "Major investments have been made in court infrastructure but many court premises require further renovation". [86] Courtrooms considered a scarce resource, apart from modern court locations, typically built and equipped with the support of international donors.
No court booking system has been described. One system of coordination that has been described is the sharing of a courtroom between two judges, one using it in the morning, the other in the afternoon. Audio recording of the hearings where courtrooms are available seems to be a common practice. The problem of judges using their offices as courtrooms has been mentioned. Again, according to the EU Commission "some courts do not have enough courtrooms and hearings still take place in judges' offices, which increases the risk of corrupt practices". [87] The question of possible ways to improve the allocation of a scarce resource such as a courtroom should be addressed both at court and judicial administration level.

[83] High Council of Justice, "Thematic Report on the procedures of the distribution of judicial cases by lottery – November 2012 – April 2013", April 2015.
[84] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ
[85] *Ibid*.
[86] Commission (2015) COMMISSION STAFF WORKING DOCUMENT – ALBANIA 2015 REPORT, SWD(2015) 213 final p.14
[87] Commission (2015) COMMISSION STAFF WORKING DOCUMENT – ALBANIA 2015 REPORT, SWD(2015) 213 final p.14

5.7. Court budget allocation and management

Court budget allocation and management includes the allocation of resources and ways in which courts are accountable for their use. In the Albanian District and Appeal courts, the requests of court budget are prepared by the Chairman in cooperation with the finance/budget sector of the court (typically constituted by one budget officer). The budget request (including financial indicators that are related to the requirements and activity of the court) is then submitted to the Office for Administration of Judiciary Budget (OAJB) (an independent body) which is responsible to on the one hand aggregate the budget requests and submit the budget proposal (approved by the OAJB Board, which is composed mainly by Courts Chairmen and see the participation of one representative of the Ministry of Justice) to the Ministry of Finance. The Chairman of the board and the OAJB Director have then the opportunity to lobby for their budget before the relevant parliamentary commissions. After the budget is approved, the OAJB allocates the budget to the courts. In addition to ordinary funds, funds for large projects such as courts buildings are allocated to the courts that are deemed to need them. The OAJB also audits the use of funds given to the courts.

5.8. Non-judge staff (selection, training and management)

As mentioned before, since 2013 the non-judge staff with the exception of the Chancellor is hired and dismissed by the Chairman according to private law rules. Even before, the law of 1998 on the Organization of the Judicial Power gave the competence to hire and dismiss judicial secretaries and administrative technical staff to the Chairman of the Court under the proposal of the Chancellor. Afterwards, in 2008, the new law on the Organization of the Judicial Power, gave this competence to the Chancellor, until the law was repealed by the Constitutional Court. In the various courts, Chairmen have regulated such practices in different ways. There are no minimum educational requirements and no specific training. This results in much learning by doing and within the court, which may reinforce the trend toward diversification of practices between courts. It has been mentioned that there is a tendency of hiring people with higher level of education compared to the selection, which was done 15-20 years ago.

5.9. ICT

There are **two Case Management Systems** that have been deployed in Albanian Courts. **Neither system is used in place of paper registers, which are still kept in parallel**. **ICMIS**, "has been introduced into most of the courts of Albania during the period of 2005 – 2014"[88], but seems to present a number of issues, in terms of missing functionalities, user friendliness. While most of the identified issues are being addressed, new ones keep being discovered. [89] The system has 6 core functionalities (Registration, Lottery, Statistics, Publications, Minutes, Planning). The level of adoption in the courts in which it has been introduced varies.[90] The introduction of the ICMIS system, unfortunately, has not been successful in the Tirana District Court. **ARK-IT**, presently in use in the First instance court of Tirana, provides additional features compared to ICMIS (extraction of statistics and on-line publication of the sentences were mentioned). At the same time the reliability of the lottery system was mentioned as an issue and proper documentation of the source code may also pose a problem. Data migration from **ARK-IT** to **ICMIS** is being discussed but not presently possible in an automated way. At the same time, as the van Nigtevecht Report states, "Due to the high number of cases in the TDC (about 1/3th of the cases in Albania) it is not acceptable to have a significant amount of manual re-entry of open cases (in ARK-IT) in the ICMIS system". [91]

The Inspectorate of the HCJ[92] noted the need to improve ICMIS to cover specific typologies of cases (such as those not distributed by lot) and events (such as the replacement of the judges by exclusion or recusal) to keep track of these instances and facilitate generation of statistical data. Furthermore, it "recommended to the Ministry of Justice continuous monitoring of the quality of functioning of the

[88] Ernst Jan van Nigtevecht, Report on the ICMIS Assessment, April 30th, 2015 (Version 6)
[89] Ernst Jan van Nigtevecht, Report on the ICMIS Assessment, April 30th, 2015 (Version 6)
[90] EURALIUS, Future of ICMIS, Stakeholder's Round-Table meeting 9th March, 2016
[91] Ernst Jan van Nigtevecht, Report on the ICMIS Assessment, April 30th, 2015 (Version 6)
[92] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ

electronic system of case management in courts, in order to avoid cases of manual lottery development in the courts on grounds of technical defects". [93]
At the same time, a new trend seems to be emerging suggesting to stop trying to improve ICMIS to provide Ark-IT functionalities and to move on to a new system. In the SEJ report on Time Management in Albanian Courts (2015), Bushati (Gugu), Johnsen and Kokona recommended "that Albania scraps both existing case management systems and introduces a new one that can deliver precise, detailed and reliable statistics on the case load including the age of the cases both for the finished and the pending ones".[94] On March 2016, Euralius proposed "to move the focus from 'incorporating Tirana District Court and other courts into ICMIS' to 'planning and preparation for procurement of new Integrated Court Case Management System' " [95] stating that given the fact that fundamental changes are required in practically all aspects of functioning of the current system, that the current system is based on out-dated IT technologies, the current system is not documented, and practically all know-how is with the maintenance company, moving to centralised architecture is a strong requirement, "The only feasible approach is to build a new system capitalising on the know-how and experience accumulated during 10 years of usage of both ArkIT and ICMIS systems". [96]

5.10. Court data and statistics

Court statistics so far seems to be a tool to provide information on the court and negotiate budget, but, due to the restrictions to the possibility of management of the court caseload and workload (e.g. the only tool to manage the allocation of cases is the lottery and no weighting of cases or consideration for the caseload of the judges can be made), they have limited relevance for the day-by-day operation of the court. Furthermore, in many cases court statistics appear to be produced physically counting in the court registers or in the case files, and not automatically extracting the information from the Case Management System. This seems to support the EU Commission statement in the Albania 2015 Report (SWD(2015) 213 final) that "there is no effective monitoring mechanism and there is an overall lack of capacity to produce reliable statistical data." [97]

The result is that statistics may appear as a burden for the court, which needs to invest resources in producing them, and not as a tool to improve the work and the performance of the court.

[93] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ
[94] Bushati (Gugu), Johnsen and Kokona SEJ report on Time Management in Albanian Courts, Major Findings of the EU/CoE Support to Efficiency of Justice Project (SEJ), 2015.
[95] EURALIUS, Future of ICMIS, Stakeholder's Round-Table meeting 9th March, 2016
[96] EURALIUS, Future of ICMIS, Stakeholder's Round-Table meeting 9th March, 2016
[97] Commission (2015) COMMISSION STAFF WORKING DOCUMENT – ALBANIA 2015 REPORT, SWD(2015) 213 final p.15

6. The main challenges of court management and administration in Albania

Several elements contribute to the complexity that needs to be considered when addressing the topic of court management and administration in Albania.

6.1. Public trust

There is a low level of trust of the public in the Albanian judiciary and the negative image related to the **perception of corruption**[98]. Furthermore, according to the Commission "there is insufficient accountability of judges and prosecutors and corruption within the justice system is widespread."[99] Perceived and existing high levels of corruption constitute an important element to consider in relation to the possibility to organize and manage court. It limits, for example, the use that can be done of strategies that can increase efficiency and easy coordination but may negatively impact on the public perception and reduce the public trust.

6.2. A long-lasting period of legal reforms

The **long and far-reaching period of judicial reforms**, which has characterized the last twenty years of Albania is a key element, which needs to be considered. The present situation is characterized by an **unstable stratification of norms** regulating the courts and their organization, which results from subsequent attempts to regulate the organization of the judiciary, of the courts and of the courts administration. The prima facie understanding is that in many cases these changes have not had the time to settle before further changes were introduced.

It should be noted that, even in the cases in which the specific norms have been modified or repealed by the Constitutional Court, the effects they had in the period in which they were in force are often still present (e.g. administrative personnel hired in the last 15 years following at least 3 different rules is still in many cases working in the courts). As a result of the uncertainty created by this normative process, and waiting future regulations that should properly address specific topics, in some areas it is unclear which are the norms that should be applied. Furthermore, different interpretations can be found in the practice: the procedures to be followed for hiring administrative personnel, at least 3 different approaches have been described during the interviews, based on different interpretations of the existing regulation.

The **substantial constitutional and judicial organization reforms** that are presently under an advanced phase of discussion add complexity to the situation as they add uncertainty to the on-going discourse.

6.3. Critical aspects of the Chairman of the court selection, role and training

At present, the Chairmen represent the court, supervise and coordinate the work of judges, but have also the crucial managerial charges in the court. They are responsible for the internal organization, management of the resources and for the non-judge staff of the court, while missing the support of staff with management training. At the same time, the selection for chairman position is based on the score achieved in the permanent ranking list according to the Article 12 (4) and Article 14 of the Law No. 9877/2008 "On the Organisation of the Judicial Power in the Republic of Albania". The ranking is fixed independently from any position for which the selection takes place. At the same time the Chairman position require competences and experience which is quite different from that of a judge who has to judge cases at the court of appeal or at the serious crime court. This is particularly true as the seniority of a judge (and therefore his experience in dealing with cases) has a great weight in

[98] Sanders (2015) "Report on the Individual Evaluation of Judges in Albania" p.20, Justice Inter-Sector Strategy, p. 11; GRECO Fourth Evaluation Round Albania, 2014, para 4.

[99] Commission (2015) COMMISSION STAFF WORKING DOCUMENT – ALBANIA 2015 REPORT, SWD(2015) 213 final p.12

determining the ranking. At the same time, relying heavily on seniority can hamper the selection of judges with the right skills and attitudes.
Also, the small dimension majority of the courts and the absence of semi-directive positions, result in the not existence positions which may help 1) creating the required skills in judges, who by definition have a legal and not managerial background and 2) assessing their capability as managers before putting them in charge of a court.

6.4. Court manager role and competences are missing

Case management, performance evaluation, budgeting procedures, technological developments and external request for court administration change have increase the organizational complexity of managing courts and require new professional skills and abilities that do not fit professional profile of judges and legal practitioners. At the same time, the present selection criteria to fill court administrator position in Albania do not look for competences in long-range administrative planning, finance, budgeting, procurement, human resources management, facilities management, court security, emergency preparedness planning and many others. Even if Chairmen have shown in some cases a clear ability to adapt and overcome this limit learning the required skills on the job, this approach is not adequate from an organizational, judicial administration perspective.
Furthermore, the Chancellor, who in theory at present should direct, organize and manage the administrative component of the court (including the judicial support and the administrative sectors - budget/finance, public and media, archives and ICT) under the Chairmen supervision, is not a "court administrator or manager" in term of preparation or training. The Chancellor is a jurist appointed by the Minister of Justice without specific managerial experience. Relevant elements that have been frequently pointed out during the meetings are 1) the lack of needed competences required for the role of 'Court Manager' or 'head of the administrative personnel', which are managerial, while the prerequisite for the appointment is being a jurist with at least five years of experience, 2) the often short period in which they cover the position, as they are often changed by the (new) Minister which do not allow to develop the needed competences 'in the field' and 3) the appointment mechanism and perceived behaviour which result in the Chancellor to be perceived as a sort of external controller from the minister of justice, especially in light of the reduced administrative and managerial competences.

6.5. Case allocation, case management and lottery

Different practices have been devised in the various courts in relation to case assignment to courts and within courts, focussing on different "ways of ensuring the flexibility of the territorial and jurisdictional aspects of judicial organisations on a national scale."[100]

6.5.1. Court dimensions, cases allocation between courts and courts "productivity"

The data analysed does not show any clear positive or negative correlation between the number of judges and the number of resolved cases. At the same time, smaller courts have a consistently higher administrative personnel/judge ratio. Furthermore, courts show a consistent variation in the caseload per judge. Considering the number of incoming cases per judge in the District Courts in 2014, it ranges between 112 Përmet and 839 of Lezhë.

"From the data analysis, it is ascertained that the legal regulation on planning all the judges at the beginning of each month does not serve the efficiency in courts with a high number of judges, as it is

[100] Philip M. Langbroek and M. Fabri "THE RESEARCH PROJECT, DESIGN AND METHODOLOGY" in Langbroek, P. M., & Fabri, M. (2007). *The Right Judge for Each Case: A Study of Case Assignment and Impartialtiy in Six European Judiciaries*. Intersentia. p.3

the case of Tirana District Court. However, this issue should be regulated by the legal revision while in the current state it remains a duty of the presidents of the courts to implement the law." [101]

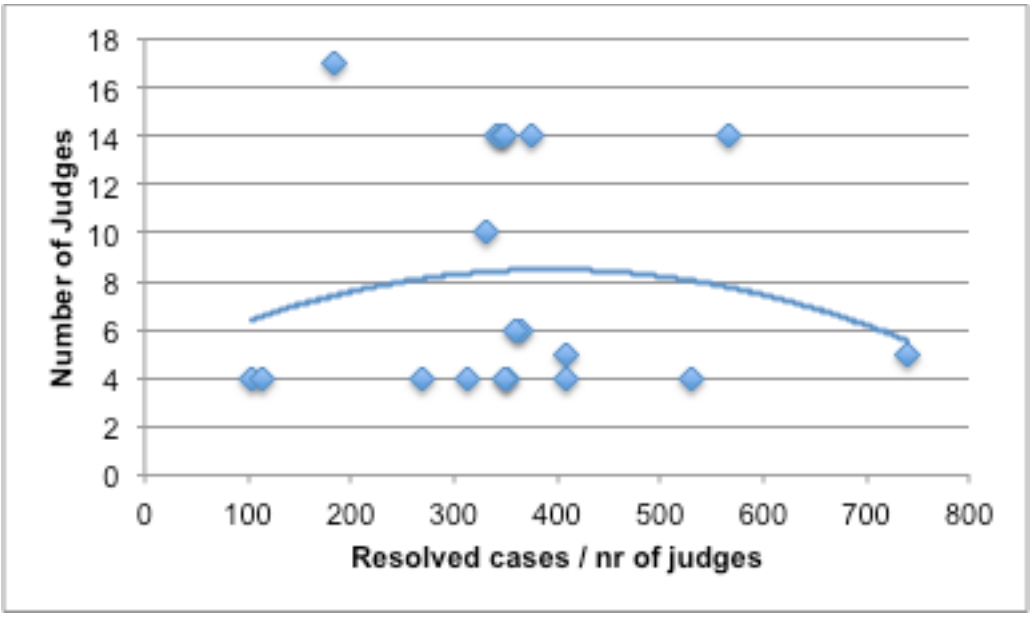

Figure 4 Number of judges per district court and number of resolved cases per judge in 2014

6.5.2. Case allocation and management within the court

EU Commission in the Albania 2015 Report SWD(2015) 213 final, notes that "The overall length of proceedings from initiation to final judgment remains a major concern". [102] This would call for more active case management policies directed at increase courts and justice administration efficiency and performance. Active case management is based on an efficient monitoring of the status of the cases; determining as early as possible the complexity of the case, estimated workload requirement, scope and duration; carry out the appropriate actions and apply the needed level of resources based on the case requirements. The idea is that simple repetitive cases can be carried out in a standardized fashion, taking advance of economies of scope and scale, while more complex cases can be provided ad-hoc attention.

Court allocation through lottery followed by management of the case by the single judge with the support of the judicial secretary limits the actions that can be taken at court level. At the same time, the low public trust result in possible negative perception of initiatives directed to increase the court efficiency influencing the allocation and management of cases and which may be seen as affecting the 'natural judge' principle. Furthermore, regardless of any other concern, the small dimension of most of the court results in a very limited possibility for specialization between judges.

6.5.3. Great limits of ICT and statistics as currently implemented for case management purposes

While consistent steps seem to have been done in recent years to improve and roll out ICMIS in all courts and to improve the available statistics, much need to be done. Just one system should be maintained, but at present ICMIS does not provide all functionalities ARK-IT does. Furthermore, data migration to ICMIS from ARK-IT seems to be problematic.

ICMIS is used in parallel with paper registers, present problems for the provisions of the statistics required to the court and seems to be missing the essential features that characterize a fully

[101] Resume - WG Documents on reviewing the decision on the lot procedures – HCJ

[102] Commission (2015) COMMISSION STAFF WORKING DOCUMENT – ALBANIA 2015 REPORT, SWD(2015) 213 final p.15

implemented CMS.[103] In practice, the system seems to have limited tracking capacity (data on the case is recorded at the beginning and end of the procedure) and not being able to provide the information required for an active management of cases. Furthermore, while efforts have been carried out by the Cepej experts team and by the Albanian piloting courts working on and in line with the indications and recommendations made in Bühler and Johnsen (2015) "In-Depth Assessment Report Of The Justice System In Albania", much still need to be done for the development of effective and efficient monitoring mechanism of case management based on reliable data.

6.6. Selection and status and training of the administrative personnel

At present there is not a legal framework defining selection procedures and legal status of non-judicial personnel working at the courts of first instance and court of appeals. The law "On the Judicial Administration in the Republic of Albania" (Law No. 109, 1/04/2013), aimed at regulating the organization, functioning and the status of the judicial administration has been abolished by a decision of the Constitutional Court, leaving unclear the status of the employees of the judicial administration at the courts of first instance and courts of appeal as the current "On Civil Servants" (Law no.152, 30/05/2013), explicitly excludes the civil judicial administration from its field of application. At present therefore there are no minimum educational requirements. There are reasonable practices that have been developed and implemented by the some Chairmen, as the one that was described at the Serious Crime Court where the employment procedures at the court are based on competition that begins with the Announcement of the vacant positions by an order of the chairman, followed by a preliminary verification of candidates made by chancellor and by an examination carried out by a commission. The Chairman then declares the winner the candidate resulting first. In others the choice is simply made by the Chairman without any further procedure.

Furthermore, the lack of a unified training program or requirements results in much learning by doing within the court once the person is hired. As there is limited if no mobility of the administrative personnel between the courts, this seriously limit the possibility of sharing of best practices or for seeking support outside the court to improve the management of procedures.

6.7. Fragmentation of practices between the courts

Several factors contribute to a **great fragmentation of practices between the courts.** In particular the stratification of norms which leaves voids and problems of interpretation, the separation between the administrative personnel of the courts,[104] the power of the Chairmen to manage the court budget and regulate the court organization and working methods through internal regulations, and the lack of places and moments where the different practices of the courts can be confronted and best practices shared through more or less formal mechanisms.

[103] For a description of such feature see: Velicogna, M. (2007). Use of information and communication technologies (ICT) in European judicial systems. CEPEJ Studies No. 7. Council of Europe.

[104] For example there is no school providing a common preparation on how to perform specific procedural or administrative activities or to train the Chief judicial secretaries, and the career path does not foresee mobility between courts and therefore cross fertilization of practices.

7. Conclusions and recommendations

Court Organisation and Court Administrators' capacities are key elements to provide judicial services of the highest possible quality. The analysis of the Albanian situation shows that there are several areas for possible improvement. At the same time, organizational and administrators capacity-building initiatives must be balanced with the respect of key judicial values. An overview of court organization and management principle and judicial values has been introduced in Chapter 2. These values must be enacted and balanced considering the specific needs and requirement of the Albanian Justice System. This concluding chapter provides therefore some indications on how to address the main challenges identified in the previous part of the report in light of 1) present organization, legal framework and working practices, 2) international principles and 3) other justice systems examples which could be adapted in this specific context.

It should be noted that several actions recommended can be implemented, or at least the first steps for their implementation can be made, at court level or from the cooperation of courts and other judicial administration organization without additional resources or higher level actions. Other actions require a high level involvement, especially in the cases where ICT and legal framework changes are required.

This is in line with the European Commission for Efficiency of Justice (CEPEJ) of the Council of Europe indications aimed at improving the organization, efficiency and functioning of justice suggest that all possible attempts to improve the functioning of the courts (even in the absence of more resources) should be done at this level. When needed, other measures can be taken on a higher level (generally without more resources for the courts or the prosecution offices) like changing the distribution of the current resources, introducing new ICT tools, modifying the judicial organisation or the procedural laws, improving the training, etc. Finally, if both categories of measures do not appear to be sufficient to solve the problems, it might be necessary to increase the resources.

Taking all these elements into consideration, the following recommendations can be made:

Recommendation 1: Clarification of the court governance structure, including a redefinition of roles such as head of the court and court manager with their specific responsibilities linked to competences, capabilities and training.

Roles, functions and responsibilities of the courts heading and management positions vary consistently around Europe, depending on several **factors** and in particular:[105]

1. The governance structure providing for a different allocation of powers and functions between the various bodies involved in the courts and courts resources administration (Ministry of Justice, Court Administration, Judicial Councils, Courts),
2. The level of centralization-decentralization of the governance of the judiciary (e.g. Ministry of Justice providing human resources, facilities and equipment to the courts Vs. provision of financial resources to the courts that decides how to allocate them),
3. The scale of the organizations involved (for example between States with a relatively low number of judges and courts (Finland, Lithuania), compared to States with a high number of judges and courts (France, Italy and Germany).

Taking this variation in mind, judicial and managerial **competences** that are needed to run the court may include: preparation and management of the court budget, management of the court space and layout, management of Information and Communication Technology (ICT) in the court, recruitment and layoff of administrative personnel and/or judges, allocating fringe benefits to the administrative personnel and/or other judges, disciplinary power against administrative personnel and/or judges, monitor automatic assignment, pre-establish allocation criteria or mechanisms assign cases to the judges (typically requiring the consent of the judge), influencing the composition of judge panels, set

[105] Francesco Contini "Report on the findings of the research conducted on the judicial functions of Court President and Court manager in selected Council of Europe member states" Strengthening the Court Management System in Turkey (JP COMASYT) project, 18 September 2013

timeframe for the pace of litigation, retrieve a case from a judge, set priorities in the cases to be handled by the judges, set up local rules of practice, play a role to guarantee the consistent interpretation of the law within the court, represent the court to the outside and in external institutional bodies. [106] So for example in the Netherlands, where each court is a separate organisation with its own budget and the duty to manage the entire business, the single court has the budget and the duty to select, hire and fire staff administrative staff, clerks and sometimes also judges, and has the freedom to use the financial resources made available to hire one more judge, or alternatively two or three law clerks and so for. At the same time, "the competences and the know how to be made available at court level is very high. While this model can work well in large courts, it can be inefficient to concentrate governance functions requiring highly qualified know how into small judicial offices". [107]

These roles, functions and responsibilities, when managed at court level, are assigned to the president of the court and are typically shared with a court manager (though the modality in which this takes place and the relationship between these two actors may also vary consistently). Furthermore, some judiciaries make use of collegial bodies to support the court president and the court manager, such as the Court plenum (in Finland), the Administrative commission (in Switzerland), or the Management board (in The Netherlands) while in other cases they are not supported by any collegial body. [108]

The different institutional frameworks, the different roles, functions and responsibilities managed at court level, and the different distribution between the key court actors (court president, court manager and other court administrators) deeply affects the **selection, appointment, performance evaluation and accountability mechanisms** that must be in place.

At present selection for basic directive and administrator roles (Chairmen, Chancellors etc.) is based on procedures are not oriented to the selection of people with organizational and managerial competences required to carry out the responsibilities of such positions. Requirements mainly related to legal studies and legal experience, and limited or none emphasis on the possession of managerial skills. If such selection criteria are kept, a number of strategies are available: 1) hire court managers to support the court administrators within the court; 2) create an ad-hoc court management support service to provide managerial support when needed (possibly at HCJ level), 3) improve the managerial competences of the administrators through initial training when selected for the position or as a prerequisite for the selection to administrators and management roles.

Given the present governance structure of the courts of first and second instance and their relation with the Minister and Ministry of justice, two different models can be considered, also in light of the recommendations provided in the Bushati (Gugu), Johnsen and Kokona SEJ report on Time Management in Albanian Courts, (2015), which suggests that strengthening "the monitoring the overall performance of the court, and in particular time management aspects, does not threaten the independence of the judges":

- **A Chairman that not only represent the court, supervise and coordinate the work of judges, but also has crucial managerial responsibilities.** This corresponds to the present situation in Albania. In this case, adequate selection mechanisms, training (see Rec. 2) and possibly reduction of caseload (in light also of Rec. 5) to perform properly such demanding duties are required. Proper accountability mechanisms should also be put in place. The necessary staff structure to offer adequate managerial support in the court should also be provided. In this perspective the Chancellor position should be radically changed (including status (ensure independence from the Ministry of Justice at least after the appointment) and

[106] Marco Fabri "Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States" Strengthening the Court Management System in Turkey (JP COMASYT) project, 18 September 2013

[107] Francesco Contini "Report on the findings of the research conducted on the judicial functions of Court President and Court manager in selected Council of Europe member states" Strengthening the Court Management System in Turkey (JP COMASYT) project, 18 September 2013

[108] Francesco Contini "Report on the findings of the research conducted on the judicial functions of Court President and Court manager in selected Council of Europe member states" Strengthening the Court Management System in Turkey (JP COMASYT) project, 18 September 2013

(court) management background) to provide support to the Chair in the management of the court.

- **A Chairman that represent the court, supervise and coordinate the work of judges, and has supervision and directive responsibilities for the management of the court supported by a Court Manager who is responsible for the implementation of the Chairman guidelines and organize the day by day activities of the court administration.** The responsibility of the Chairman in this case does not necessarily require strong managerial skills, which must be possessed by the Court Manager (see Rec.2). In any case, it is necessary to have a strict link between the two positions in term of formal (hierarchical) dependence of the Court Manager from the Chairman and high level of trust and confidence. Proper accountability mechanisms for the Chairman supervision role should be put in place. Also in this case, the Chancellor position should be radically changed in terms of prerequisites for the selection, independence from external influence after the appointment, role and functions, in order for it to become that of a Court Manager.

Recommendation 2: Taking in consideration the specificities of the two models of court governance proposed (Rec.1), it must be ensured that the people that cover roles that require managerial competences possess them. This can be achieved through:

- **An appropriate system for the selection of judges for managerial roles, that gives an adequate weight in the specific skills and capabilities required, should be designed and introduced.**
- **The problem of the selection, status and capabilities of the Court Manager, especially in case the choice is for a Chairman with organizational responsibilities limited to the management supervision, should be addressed.** If the Chancellor figure is kept to cover this role, the problem of the selection, status and capabilities of the Chancellor should be addressed, including court manager training requirements and clear criteria and grounds for dismissal. As it is now, the Chancellor position provide at best a link to the Minister of Justice and to the Ministry (when is not seen as an external controller) but, given the legal background typically add a limited amount of managerial and organizational competences that are needed to complement the Chairmen skills, training and career experiences. Also, clear criteria and grounds for dismissal of the Chancellor should be instituted in order to stabilize this figure.
- **The improvement of the curriculum of the School of Magistrates to adequately cover management and administrators' capacity building should be supported.** Training should focus on the concrete organization and administration needs of the courts and be based on the actual situations. Given the specific knowledge requirements, cooperation with the Inspectorate of the HCJ, court chairmen, Chancellors, Chief Judicial secretaries, and external court management experts for the development of the training courses is suggested. Some initiatives are already in place to support court management[109] and the use of CEPEJ-SATURN time management tools, improve judicial performance and quality.[110] Such initiatives should be supported and extended.

Recommendation 3: The status, selection and training of the administrative personnel must be improved through:

- **A law providing for standard selection procedures and status of administrative personnel should be introduced as soon as possible. Such law should ensure the judicial independence of the court.**
- **Interim measures to standardize court selection and retention practices should be introduced (see Rec. 4).** While the new law to regulate the selection and status of the administrative personnel has been suspended attending the results of the Constitutional

[109] E.g. The Albanian School of Magistrates "MANAGEMENT OF COURTS AND ITS CASES & ADMINISTRATION OF PROSECUTION" program

[110] Cfr. Jon T. Johnsen "CEPEJ ISSUES AT THE SCHOOL OF MAGISTRATES" SEJ Report, December 21, 2015

revision, concrete actions should be taken in the interim to harmonize the selection procedures adopted by the courts (for specific strategies see next paragraph on 'strategies reinforcing the coordination and standardization of practices between courts').

- **The creation of a training centre, possibly at the School of Magistrates should be supported.** A clear source of different practices within the courts is the training 'on the job' which characterizes most of the competences needed to carry out the tasks of the administrative personnel and which is typically limited to the court where the person has been hired. Additional training should be provided in a more coordinated way, possibly by the School of Magistrates or by the establishment of an ad-hoc administrative-personnel training centre. Given the specific knowledge requirements, cooperation with the Inspectorate of the MoJ, HCJ, court Chairmen, Chancellors, Chief Judicial secretaries, and external court management experts for the development of the curricula and training courses is suggested. Best practices should also be collected and practical examples should be provided. Training should be provided to newly hired personnel, but also be available to employees aspiring to more qualified positions or to prepare to the implementation of new laws and procedures when they are implemented.
- **Cross training in other courts for cross learning and sharing of best practices should be supported.** The possibility for the administrative personnel to cross-train in other courts in order to share best practices with a more bottom-up approach is an alternative tool to the administrative personnel training centre that can be used in the shorter period as a close gap measure and in the long run as an additional option is.

<u>Recommendation 4:</u> Strategies to reinforce the coordination and standardization of practices between courts must be pursued. This can be done through:

- **Soft law measures (e.g. Guidelines from the HJC).**
- **Discussion and exchange of best practices between all Chairmen.**
- **Training initiatives.**

Devise strategies reinforcing the coordination and standardization of practices between courts (at present there is a great fragmentation of practices between the courts). Several actions could be devised to support greater homogeneity of (best) practices. In particular, at least three viable mechanisms emerged during the fact-finding mission discussion:

- **Soft law measure** adopted by the High Council of Justice after the results of the inspection on case lottery practices. In particular, the HCJ inspectorate has shown to be a powerful tool to improve the organization of the court operating at several levels. The experience of the HCJ inspectorate should be used to improve the Albanian courts organization and their management. The reports and memo of the Inspectorate of the HCJ provide important insights in the concrete organization and administration practices of the courts. Such insights have been used as basis for recommendations with clear organizational impact. It has proven to be a powerful coordination and standardization of practices mechanism. At the same time, as of now, this function is performed following an incidental approach. It would be advisable to reinforce this 'organizational improvement tool' supporting a more systematic evaluation of the concrete organization and administration practices of the courts. Given the organizational and management focus of these activities, the inspectorate units should be reinforced with court administration experts.

- **Discussion and exchange of best practices between all Chairmen.** Examples were provided of instances in which Chairmen had helped each other sharing experiences and best practices in relation to court administration practices. This seems to be driven by personal relations while it could be worth investigating the possibility to create more structured occasions for the exchange of such practices and discuss them between all Chairmen.

- **Training initiatives.** Training courses at the school of the magistracy on Court management, if not too theoretical but practice driven and interactive may also an occasion for the standardization of competences and practices.

Recommendation 5: Continuing a process of aggregation of smaller courts, the minimum court size should be increased, to support efficient and impartial allocation of cases, efficient use of resources, provide ground for at least a minimum of judicial specialization, which should help to increase the quality of justice. This should be done taking in consideration element such as access to justice, judicial proximity, justice demand and socio-economic context. While there are historical reasons for having a large number of small courts, improved mobility and different organizational configurations suggest the possibility to decrease the number of District courts and possibly of appeal courts. The trend toward the court number reduction has been observed, and during the visit at the MoJ the intention to continue to move in that direction has been expressed. This path should be pursued. It would improve several organization aspects. It would increase the effect of random allocation of cases to ensure the choice of an impartial judge. It would allow for increased specialization without reducing the pool of judges below the present minimum level. It would reduce inefficiencies of the smallest court in terms of personnel allocation (the administrative personnel per judge ratio is much higher in smaller courts). It would reduce the under-use of judicial resources (e.g. courts with very low caseload) and support a more faire distribution of the caseload between judges. It would reduce the number of key organizational and managerial positions resulting in the possibility to select the better-suited peoples to do the job. Furthermore, it would provide the possibility to have semi-directive positions in addition to that of the Chairman of the Court, so that judges aspiring to become Chairman could develop the required skills and their disposition could be tested.
In case of clear need to maintain the level of proximity resulting from the present geographical dispersion, larger courts could be organized in a way to have judges moving to the various locations so that hearings can take place in hearing days in the 'local' hearing locations. Different judges may therefore use the same courtroom in different days. Differentiation between cases that need to be heard in central location and other that may be dealt in these 'local courtrooms' could be made. Some countries the public administration provide the place during one of more hearing days a week, while allocating it to other uses for the remaining days.
The Ministry of Justice is carrying out a study on the judicial map topic. Its results should be considered and discussed with the other key stakeholders in order to devise a long-term strategy.

Recommendation 6: The main limitation of the existing automated court management systems must be addressed. A system satisfying the minimum technical, procedural and organizational standards should be implemented in all Albanian Courts and replace the manual registration. In particular:

- **Functionalities required to keep track of the needed case data for statistical purposes and to perform a case management function should be implemented.**
- **The system should make it possible to distinguish between the different case typologies and to keep track of the various steps of the case procedure that at present are not recorded in the court records but just in the case file.**
- **The system should be able to support all the statistical data extraction and analysis requirements of the court without the need of additional activities from the court. In this perspective, data collections and statistical production required to the court should be aligned with the ones produced by such system.**
- **The full implementation (full use) of the system and data quality should be ensured and no paper duplication should be required for administrative purposes.**
- **The system should be able to provide the printing of required information such as the paper docket cover with all the case key data so that manual activities are reduced.**
- **The use of the system to support active case management at individual and court level should be supported, including the support for the judge to visualize key information on their case management situation.**

A prerequisite for the successful implementation of a fully-fledged automated case management system is the standardization of court procedures and practices. This topic should be addressed as it poses a serious risk (see also Rec. 4)

Recommendation 7: Establish a working group for the development of differentiated case management and the investigation of the judicial specialization question. The working group should investigate case management related issues, including case management practices, the case-load distribution between and within courts taking into consideration inter-temporal variation and main case typologies, weighting of cases and possibilities to have case management initiative at court level to devise solutions that do not threat or being perceived as threating the judicial independence and impartiality. Implications, requirements and possible spaces for the growth of judicial specialization in the Albanian context should also be investigated.

Recommendation 8: The question of the organization of the court office and of the judicial secretary service provision to the judges should be the focus of a specific analysis. Planning a change without such preliminary activity is not recommended. The analysis should include a detailed investigation of the working practices of the Judge-judicial secretary micro working units, in order to assess the various activities carried out, their level of predictability, and assess the advantages and disadvantages of this model compared to a more centralized one, taking into account the Albanian courts specific features, procedural standardization requirements, interfaces standardization requirements and coordination requirements.
In parallel to the analysis of existing and possible modalities to organize the administrative and procedural assistance to the Judge, the possibility to introduce more widely the figure of 'law school graduate judicial assistant' should also be investigated. The tasks that could be assigned to such personnel units (e.g. preparing of summaries of the facts of the cases, preparing drafts of the reasoning of a judicial decision etc.) and of the specific training that should be provided by the School of Magistrates should be part of such investigation. Existing experiences in other European States could provide a good starting point.

Annex 1: Preliminary questionnaire

EU / CoE Support to Efficiency of Justice – SEJ
A joint project between the European Union and the Council of Europe

"Analyses of Court Organisation and Court Administrators' capacities"

Draft

Marco Velicogna, 19-10-2015

Objective:

Assess the current situation with regards to court organisation and administrators' capacities (judicial and non-judicial staff), their functions and responsibilities

In particular, special attention needs to be given to the "appointment mechanisms of Court president and Court manager, the relationship between the two actors, the tasks associated with their roles, the mechanisms for allocation of human and financial resources, and their accountability and performance evaluation". This has to be considered in light of the court administration governance structure, which includes the allocation of powers and functions to the various governance bodies, but also the mechanisms for allocation of human and financial resources to the courts, for their accountability and for court performance evaluation.

Reference questions:

Institutional background

1. **Key justice administration players**
   - *1.1. List, composition, main functions*
     - *1.1.1. High Council of Justice*
       - *1.1.1.1. Inspectorate*
     - *1.1.2. Ministry of Justice*
       - *1.1.2.1. Inspectorate*
     - *1.1.3. National Judicial Conference*
     - *1.1.4. School of Magistrates*
   - *1.2. Roles in Court budget allocation/management*
   - *1.3. Roles in Court personnel (judicial and non judicial) allocation*
2. **Courts structure, key courts organization features and Court Administrators roles**
   - *1.1. First instance courts (general jurisdiction, administrative, serious crimes)*
     Size, competences & functions, number of judges and non-judges staff, Court Administrators roles, main organization features, budget
   - *1.2. Courts of Appeal (general jurisdiction, administrative, serious crimes)*
     Size, competences & functions, number of judges and non-judges staff, Court Administrators roles, main organization features, budget
   - *1.3. High Court*
     Size, competences& functions, number of judges and non-judges staff, Court Administrators roles, main organization features, budget

President of the court

1. **Background information**
   - *1.1. Do all courts have a chief judge?*

1.2. How many chief judges are there?

2. Managerial role and functions

2.1. Do they prepare a court budget?
2.2. Do they manage a court budget?
2.3. Do they manage the court space and layout?
2.4. Do they recruit judges and/or administrative personnel?
2.5. Can they fire judges and/or administrative personnel?
2.6. Do they have a disciplinary power against the judges and/or administrative personnel?
2.7. Can they give any fringe benefits to the other judges and/or administrative personnel?
2.8. Are they in charge of Information and Communication Technology (ICT) in the court?

3. **Judicial role and functions**

3.1. Do they assign cases to the other judges?
3.2. Can they influence the composition of judge panels?
3.3. Can they retrieve a case from a judge?
3.4. Do they set priorities in the cases to be handled by the judges?
3.5. Do they set timeframe for the pace of litigation?
3.6. Do they set up local rules of practice?
3.7. Do they play a role to guarantee the consistent interpretation of the law within the court?
3.8. Do they hear cases or their role is only a "managerial one"?

4. **Performance *evaluation***

4.1. Are the performance evaluated during their service as court president?
4.2. How does this performance evaluation take place? (Are they accountable before any other body e.g. Court board, Ministry of Justice, Judicial Council etc.?).
4.3. What kinds of criteria are used?
4.4. What are the consequences of the evaluation process? (e.g. removal, salary increase or cut, possibility to apply for other presidency etc.)

5. Selection, appointment and training

5.1. Who selects them?
5.2. How are they selected?
5.3. How long do they hold the position?
5.4. Do they get any kind of "confidence vote" from the other judges of the court?
5.5. Is education/training in management a requirement for becoming court president?

6. Relationship with other key players

6.1. Do they represent the court in any institutional body?
6.2. Which are the relationships with other Presidents of courts?
6.3. Which are the relationships with the Chief prosecutor?
6.4. Which are the relationships with the senior judges/head of chambers or department?
6.5. Which are the relationships with the chief administrator?
6.6. Which are the relationships with the other governance bodies (Ministry of Justice, judicial council, etc.)?

7. Strengths and weaknesses

7.1. Which are the strengths of the present role and functions of the Court president?
7.2. Which are the critical issues of the present the role and functions of the Court president?
7.3. Which of such issues are currently debated?

Court Manager/Chief administrator/ Court chancellor…

1. Background information

1.1. Do all courts have a court manager?
1.2. How many court managers are there?

2. Managerial role and functions

2.1. Do they prepare a court budget?
2.2. Do they manage a court budget?
2.3. Do they manage the court space and layout?
2.4. Do they recruit administrative personnel?
2.5. Can they fire administrative personnel?
2.6. Do they have a disciplinary power against administrative personnel?
2.7. Can they give any fringe benefits to administrative personnel?
2.8. Are they in charge of Information and Communication Technology (ICT) in the court?

3. **Quasi judicial functions**
   - *3.1. Do they assign cases to the judges?*
   - *3.2. Can they retrieve a case from a judge?*
   - *3.3. Do they set priorities in the cases to be handled by the judges?*
   - *3.4. Do they set timeframe for the pace of litigation?*
   - *3.5. Can they influence the composition of judge panels?*
   - *3.6. Do they set up local rules of practice?*
   - *3.7. Do they play a role to guarantee the consistent interpretation of the law within the court?*
4. **Performance *evaluation***
   - *4.1. Are their performance evaluated during their service?*
   - *4.2. How does this performance evaluation take place?*
   - *4.3. What kinds of criteria are used?*
   - *4.4. What are the consequences of the evaluation process?*
5. **Selection, appointment and training**
   - *5.1. Who selects them?*
   - *5.2. How are they selected?*
   - *5.3. What kind of professional background do the court managers have?*
   - *5.4. How long do they hold the position?*
   - *5.5. Do they get any kind of "confidence vote" from the president of the court / court judges?*
6. **Relationship with key players**
   - *6.1. Which are the relationships with the President of court?*
   - *6.2. Which are the relationships with the senior judges/head of chambers or department?*
   - *6.3. Which are the relationships with the other governance bodies (Ministry of Justice, judicial council, etc.)?*
   - *6.4. Which are the relationships with the administrative and technical staff of the court?*
   - *6.5. Do they represent the court in any institutional body?*
7. **Strengths and weaknesses**
   - *7.1. Which are the strengths of the present role and functions of the Court manager?*
   - *7.2. Which are the critical issues of the present the role and functions of the Court manager?*
   - *7.3. Which of such issues are currently debated?*

Judicial assistant

1. **Institutional background**
   - *1.1. Which courts have such position?*
   - *1.2. Do you have a national policy or law that established and rule them or are they regulated at court level?*
   - *1.3. Does this position help them to become judge?*
2. **Role and functions**
   - *2.1. In which functions do they assist the judge (legal search, legal writing, court reporting, court scheduling etc.)?*
   - *2.2. Are there any other functions that they may perform?*
   - *2.3. Is each assistant assigned to one particular judge (or a group of judges), or do they provide assistance to all judges in the court?*
3. **Performance evaluation**
   - *3.1. Are their performance evaluated during their service?*
   - *3.2. How does this performance evaluation take place?*
   - *3.3. What kinds of criteria are used?*
   - *3.4. What are the consequences of the evaluation process?*
4. **Selection, appointment and training**
   - *4.1. Who does select them?*
   - *4.2. How are they selected?*
   - *4.3. Do these assistants have a legal background?*
   - *4.4. Are these positions part time or full time?*
   - *4.5. How long do they hold the position?*
   - *4.6. Can a judge fire them?*
   - *4.7. Are they paid for their work, how?*
   - *4.8. Do they receive some sort of training?*
5. **Relationship with key players**
   - *5.1. Which are the relationships with the President of court?*

5.2. Which are the relationships with the judges they assist?
5.3. Which are the relationships with the other governance bodies/relevant players of the court?

6. Strengths and weaknesses
6.1. Which are the strengths of the present role and functions of the judicial assistant?
6.2. Which are the critical issues of the present the role and functions of the judicial assistant?
6.3. Which of such issues are currently debated?

Registrars/ court clerks

1. Institutional background
1.1. How many registrars/ court clerks are there in the various courts?
1.2. Do you have a national policy or law that established and rule them or are they regulated at court level?

2. Role and functions
2.1. In functions do they perform?
2.2. How are they organized?
2.3. Is there a front/back office, units specialized in performing specific tasks etc.?

3. Performance evaluation
3.1. Are their performance evaluated during their service?
3.2. How does this performance evaluation take place?
3.3. What kinds of criteria are used?
3.4. What are the consequences of the evaluation process?

4. Selection, appointment and training
4.1. Who does select them?
4.2. How are they selected?
4.3. Do they have a legal background?
4.4. Are these positions part time or full time?
4.5. How long do they hold the position?
4.6. Can the Court President/ Court Manager fire them?
4.7. Do they receive some sort of training?

5. Relationship with key players
5.1. Which are the relationships with the President of court?
5.2. Which are the relationships with Court Manager?
5.3. Which are the relationships with the other governance bodies/relevant players of the court?

6. Strengths and weaknesses
6.1. Which are the strengths of the present role and functions of the registrars/ court clerks?
6.2. Which are the critical issues of the present the role and functions of registrars/ court clerks?
6.3. Which of such issues are currently debated?

Annex 2: Fact finding meetings agenda

EU / CoE Support to Efficiency of Justice – SEJ
A joint project between the European Union and the Council of Europe

Working Meeting and Meetings with Albanian Counterparts

"Analyses of Court Organisation and Court Administrators' capacities"

21 – 23 October 2015

Agenda

Tuesday 20 October		**Venue**
Dinner at 20.00hrs		Tirana International Hotel (All meet at 7.45 at the lobby of Tirana International Hotel)
Wednesday 21 October		**Venue**
09:30 - 11:30	**Working meeting** with representatives of Courts Judicial administration (chancellors of the 6 initial courts the project is working with) Representatives of: • Serious Crimes Court First Instance **(Mr Sander Simoni – Chairman, Mr Saimir Shyti, Ms Idanda Nasufi)** • District Court of Tirana **(Mr Fatri Islamaj – Chairman, Mr Edmond Ademi, Ms Jorida Lushaj)** • High Court (**Ms Jelita Kacurri, Ms Ermelinda kadiu)** • District Court of Elbasan **(Ms Lindita Cela, Mr Ledio Sulkuqi)** • Tirana Administrative Court First Instance (**Mr Eriol Roshi – Chairman, Ms Albana Sinjari, Ms Leartida Balili)** • Tirana Appeal Court (**Ms Sonila Agaj, Mr Arber Kushe)**	Tirana International Hotel – Blue room (Based on a suggestion by Mr. Fatri Islamaj, Head of Tirana District Court, we invited all the chairpersons of the relevant courts to attend this meeting, along with chancellors and chief/secretaries).
11:30 – 12:45	Lunch	
13:00 – 14:00	Meeting with **Mr Sokol Pasho – General Director, General Directory of Strategic Planning and Justice Affairs Inspection** and other relevant staff – MoJ	Ministry of Justice
14:15 – 15:15	Meeting with the HCJ – **Ms Marsida Xhaferllari, Chief Inspector**	HCJ
15:45 – 17:15	Meeting with Serious Crimes Court – **Mr Sander Simoni, Chairmen of the Court**	Serious Crimes Court
17:30 – 18:30	Internal meeting, wrap-up of the day	CoE Meeting Room
Thursday 22 October		**Venue**
09:30 – 11:00	Meeting with Tirana District Court – **Mr Fatri Islamaj, Chairmen of the Court**	Tirana District Court
11:15 – 12:45	Meeting with Tirana Court of Appeal – **Mr Alaudin Malaj, Chairmen of the Court**	Tirana Court of Appeal
13:00 – 14:30	Lunch	
14:30 – 15:30	Meeting with the Office for Judicial Budget Administration **(Ms Luljeta Laze – Head of OAJB)**	Office for Judicial Budget Administration
16:00 – 17:00	Meeting with Euralius **(Ms Agnes Bernhardt, Deputy Head)**	Euralius premises MoJ
Friday 23 October		**Venue**
09:30 – 11:30	Internal meeting – discussions and conclusions so far	CoE meeting room
12:00 – 13:30	Meeting with the High Court - **Mr Miran Kopani, Advisor to the Chief Justice of the HC**	High Court
14:00 – 15:30	Meeting with Tirana Administrative Court – **Mr Eriol Roshi, Chairmen of the Court**	Tirana Administrative Court
15:45 – 16:30	Meeting with the EUD	EUD premises

Annex 3: Follow-up visits reference questionnaire

EU / CoE Support to Efficiency of Justice – SEJ
A joint project between the European Union and the Council of Europe

"Analyses of Court Organisation and Court Administrators' capacities"

Follow-up visits reference questionnaire

Marco Velicogna, 29-10-2015

Objective:

Assess the current situation with regards to court organisation and administrators' capacities (judicial and non-judicial staff), their functions and responsibilities

In particular, special attention needs to be given to the "appointment mechanisms of Court president and Court manager, the relationship between the two actors, the tasks associated with their roles, the mechanisms for allocation of human and financial resources, and their accountability and performance evaluation". This has to be considered in light of the court administration governance structure, which includes the allocation of powers and functions to the various governance bodies, but also the mechanisms for allocation of human and financial resources to the courts, for their accountability and for court performance evaluation.

Reference questions:

Institutional background

2. Key justice administration players

2.1. List, composition, main functions
- *2.1.1. High Council of Justice*
  - *2.1.1.1. Inspectorate*
- *2.1.2. Ministry of Justice*
  - *2.1.2.1. Inspectorate*
- *2.1.3. High Court (as governance player)*
- *2.1.4. Constitutional Court*
- *2.1.5. Judicial Budget Administration Office*
- *2.1.6. National Judicial Conference*
- *2.1.7. School of Magistrates*
- *2.1.8. Other Institutional players*
  - *2.1.8.1. Parliament*
  - *2.1.8.2. EU*
  - *2.1.8.3. CoE*
  - *2.1.8.4. Euralius*

2.2. Roles in Court budget allocation/management

2.3. Roles in Court personnel (judicial and non judicial) allocation

3. Legal Framework

Constitution, 1998 (in particular Part 9 - 'The Courts')

Law No. 7905, 21/03/1995, adopting the *Code of Criminal Procedure*, as amended;
Law No. 8116, 29/03/1996 adopting the *Code of Civil Procedure*, as amended;
Law No. 8136, 31/07/1996 'On the *School of Magistrates*' amended

Law No. 8363, 1/07/1998 'On the Establishment of the *Office of Judicial Budget*';
Law No. 8436 of December 28, 1998 'On the *Organization of the Judicial Power* in the Republic of Albania (as amended by law no. 8546 of November 5, 1999; no. 8656 of July 31, 2000; no. 8811 of May 17, 2001; and no. 9111 of July 24, 2003)
Law no. 8549, 11/11/1999 'on the status of civil servants';
Law No. 8588, 03/15/2000 'On the Organization and Functioning of the *High Court*', as amended;
Law No. 8811, 17/05/2001 'On the Organization and Functioning of the *High Council of Justice*';
Law No. 8678, 14/05/2001 'On the Organization and Functioning of the *Ministry of Justice*', as amended;
Law No. 9110, 24/7/2003 'On the Organization and Functioning of the *Serious Crimes Court*', as amended
Law No. 9877, 18/02/2008 'On the *Organization of the Judicial Power* in the Republic of Albania', as amended;
Law No. 49, 3/05/2012 'Organization and Functioning of the *Administrative Courts* and Adjudication of Administrative Disputes', as amended;
Law No. 77, 26/07/2012 'On the Organization and Functioning of the National Judicial Conference';
Law No. 109, 1/04/2013 'On the Judicial Administration in the Republic of Albania', repealed;
Law No.152, 30/05/2013 'On Civil Servants'.

Order No. 1830, 03/04/2001, on the Approval of the Regulation 'On the Organization and Operation of the Judicial Administration'.

4. Courts structure, key courts organization features and Court Administrators roles

For 2015 the number of approved by the law on budget for the judicial power is 1339 employees - 402 judges and 937 administrative staff (907 in 2014).[111] The total number of judges at first and second instance in Albania is 383. "This number is determined by a Decree of the President of 2012 (no. 7818, dated 16.11.2012)". [112] The High Court consists of 19 judges (17) organized in three sections, civil, criminal and administrative.

4.1. First instance courts (general jurisdiction, administrative, serious crimes)
Size, competences & functions, number of judges and non-judges staff, Court Administrators roles, main organization features, budget
4.2. Courts of Appeal (general jurisdiction, administrative, serious crimes)
Size, competences & functions, number of judges and non-judges staff, Court Administrators roles, main organization features, budget
4.3. High Court
Size, competences& functions, number of judges and non-judges staff, Court Administrators roles, main organization features, budget

Chairman court

1. Background information
1.1. Do all courts have a Chairman?
1.2. How many Chairman judges are there?
1.3. Are there /were there any Vice-Chairmen?
2. Managerial role and functions
2.1. Do they prepare a court budget?

[111] Data source: Special Parliamentary Committee on Justice Reform, 'Analysis of the Justice System in Albania', 15/05/2015, p.87
[112] ibidem p. 74

2.2. Do they manage a court budget?
2.3. Do they manage the court space and layout?
2.4. Do they recruit judges and/or administrative personnel?
2.5. Can they fire judges and/or administrative personnel?
2.6. Do they have a disciplinary power against the judges and/or administrative personnel?
2.7. Can they give any fringe benefits to the other judges and/or administrative personnel?
2.8. Are they in charge of Information and Communication Technology (ICT) in the court?

3. **Judicial role and functions**

3.1. Do they assign cases to the other judges?
3.2. Can they influence the composition of judge panels?
3.3. Can they retrieve a case from a judge?
3.4. Do they set priorities in the cases to be handled by the judges?
3.5. Do they set timeframe for the pace of litigation?
3.6. Do they set up local rules of practice?
3.7. Do they play a role to guarantee the consistent interpretation of the law within the court?
3.8. Do they hear cases or their role is only a "managerial one"?

4. **Performance *evaluation***

4.1. Are the performance evaluated during their service as court president?
4.2. How does this performance evaluation take place? (Are they accountable before any other body e.g. Court board, Ministry of Justice, Judicial Council etc.?).
4.3. What kinds of criteria are used?
4.4. What are the consequences of the evaluation process? (e.g. removal, salary increase or cut, possibility to apply for other presidency etc.)

5. Selection, appointment and training

5.1. Who selects them?
5.2. How are they selected?
5.3. How long do they hold the position?
5.4. Do they get any kind of "confidence vote" from the other judges of the court?
5.5. Is education/training in management a requirement for becoming court president or provided after they have been selected?

6. Relationship with other key players

6.1. Do they represent the court in any institutional body?
6.2. Which are the relationships with other Presidents of courts?
6.3. Which are the relationships with the Chief prosecutor?
6.4. Which are the relationships with the senior judges/head of chambers or department?
6.5. Which are the relationships with the chief administrator?
6.6. Which are the relationships with the other governance bodies (Ministry of Justice, judicial council, etc.)?

7. Strengths and weaknesses

7.1. Which are the strengths of the present role and functions of the Court president?
7.2. Which are the critical issues of the present the role and functions of the Court president?
7.3. Which of such issues are currently debated?

Court Chancellor

1. Background information

1.1. Do all courts have a Chancellor?
1.2. How many Chancellors are there?
1.3. When were they introduced?

2. Managerial role and functions

2.1. Do they prepare a court budget?
2.2. Do they manage a court budget?
2.3. Do they manage the court space and layout?
2.4. Do they recruit administrative personnel?
2.5. Can they fire administrative personnel?
2.6. Do they have a disciplinary power against administrative personnel?
2.7. Can they give any fringe benefits to administrative personnel?
2.8. Are they in charge of Information and Communication Technology (ICT) in the court?

3. **Quasi judicial functions**

3.1. Do they assign cases to the judges?
3.2. Can they retrieve a case from a judge?
3.3. Do they set priorities in the cases to be handled by the judges?
3.4. Do they set timeframe for the pace of litigation?
3.5. Can they influence the composition of judge panels?
3.6. Do they set up local rules of practice?
3.7. Do they play a role to guarantee the consistent interpretation of the law within the court?

4. **Performance *evaluation***
   4.1. Are their performance evaluated during their service?
   4.2. How does this performance evaluation take place?
   4.3. What kinds of criteria are used?
   4.4. What are the consequences of the evaluation process?
5. **Selection, appointment and training**
   5.1. Who selects them?
   5.2. How are they selected?
   5.3. What kind of professional background do the Chancellors have?
   5.4. How long do they hold the position?
   5.5. Do they get any kind of "confidence vote" from the Chairman of the court / court judges?
6. **Relationship with key players**
   6.1. Which are the relationships with the Chairman of court?
   6.2. Which are the relationships with the judges?
   6.3. Which are the relationships with the other governance bodies (Ministry of Justice, judicial council, etc.)?
   6.4. Which are the relationships with the chief secretary?
   6.5. Which are the relationships with the administrative and technical staff of the court?
   6.6. Do they represent the court in any institutional body?
7. **Strengths and weaknesses**
   7.1. Which are the strengths of the present role and functions of the Chancellor?
   7.2. Which are the critical issues of the present the role and functions of the Chancellor?
   7.3. Which of such issues are currently debated?

Judicial assistant

1. **Institutional background**
   1.1. Which courts have such position?
   1.2. Do you have a national policy or law that established and rule them or are they regulated at court level?
   1.3. Does this position help them to become judges if they are not?
2. **Role and functions**
   2.1. In which functions do they assist the judge (legal search, legal writing, court reporting, court scheduling etc.)?
   2.2. Are there any other functions that they may perform?
   2.3. Is each assistant assigned to one particular judge (or a group of judges), or do they provide assistance to all judges in the court?
3. **Performance evaluation**
   3.1. Are their performance evaluated during their service?
   3.2. How does this performance evaluation take place?
   3.3. What kinds of criteria are used?
   3.4. What are the consequences of the evaluation process?
4. **Selection, appointment and training**
   4.1. Who does select them?
   4.2. How are they selected?
   4.3. Do these assistants have a legal background?
   4.4. Are these positions part time or full time?
   4.5. How long do they hold the position?
   4.6. Can a judge fire them?
   4.7. Are they paid for their work, how?
   4.8. Do they receive some sort of training?
5. **Relationship with key players**
   5.1. Which are the relationships with the Chairman of court?

5.2. Which are the relationships with the judges they assist?
5.3. Which are the relationships with the other governance bodies/relevant players of the court?

6. Strengths and weaknesses
6.1. Which are the strengths of the present role and functions of the judicial assistant?
6.2. Which are the critical issues of the present the role and functions of the judicial assistant?
6.3. Which of such issues are currently debated?

Chief Judicial Secretary

1. Institutional background
1.1. How many Chief Judicial Secretaries are there in the various courts?
1.2. Do you have a national policy or law that established and rule them or are they regulated at court level?

2. Role and functions
2.1. Which functions do they perform?
2.2. How are they organized?
2.3. How do they interact with the Chairmen, Chancellor?
2.4. How do they interact with the judicial secretaries and with the judges?
2.5. How do they interact with the other administrative personnel?

3. Performance evaluation
3.1. Are their performance evaluated during their service?
3.2. How does this performance evaluation take place?
3.3. What kinds of criteria are used?
3.4. What are the consequences of the evaluation process?

4. Selection, appointment and training
4.1. Who does select them?
4.2. How are they selected?
4.3. Do they have a legal background?
4.4. Are these positions part time or full time?
4.5. How long do they hold the position?
4.6. Can the Chairman /Chancellor fire them?
4.7. Do they receive some sort of training?

5. Relationship with key players
5.1. Which are the relationships with the Chairman of court?
5.2. Which are the relationships with the Chancellor?
5.3. Which are the relationships with the Judicial Secretaries and other court administrative personnel
5.4. Which are the relationships with the other governance bodies/relevant players of the court?

6. Strengths and weaknesses
6.1. Which are the strengths of the present role and functions of the registrars/ court clerks?
6.2. Which are the critical issues of the present the role and functions of registrars/ court clerks?
6.3. Which of such issues are currently debated?

Judicial Secretary

1. Institutional background
1.1. How many registrars/ court clerks are there in the various courts?
1.2. Do you have a national policy or law that established and rule them or are they regulated at court level?

2. Role and functions
2.1. Which functions do they perform?
2.2. How is their work organized?
2.3. Do they perform front/back office tasks?

3. Performance evaluation
3.1. Are their performance evaluated during their service?
3.2. How does this performance evaluation take place?
3.3. What kinds of criteria are used?
3.4. What are the consequences of the evaluation process?

4. **Selection, appointment and training**
   - *4.1. Who does select them?*
   - *4.2. How are they selected?*
   - *4.3. Do they have a legal background?*
   - *4.4. Are these positions part time or full time?*
   - *4.5. How long do they hold the position?*
   - *4.6. Can the Chairman /Chancellor fire them?*
   - *4.7. Do they receive some sort of training?*
5. **Relationship with key players**
   - *5.1. Which are the relationships with the Chairman of court?*
   - *5.2. Which are the relationships with Chancellor?*
   - *5.3. Which are the relationships with the Chief Judicial Secretaries*
   - *5.4. Which are the relationships with the other governance bodies/relevant players of the court?*
6. **Strengths and weaknesses**
   - *6.1. Which are the strengths of the present role and functions of the registrars/ court clerks?*
   - *6.2. Which are the critical issues of the present the role and functions of registrars/ court clerks?*
   - *6.3. Which of such issues are currently debated?*

Annex 4: Round Table on "Court Organisation and Court Administrators' capacities in Albania" agenda

EU / CoE Support to Efficiency of Justice – SEJ
A joint project between the European Union and the Council of Europe

Round Table on "Court Organisation and Court Administrators' capacities in Albania"

2 March 2016

13:30 – 16:00

Tirana International Hotel

Blue Room

Agenda

Wednesday 2 March 2016	**Venue – Tirana International Hotel – Blue Room**
13:30 - 13:45	Opening Remarks – Ms Tea Jaliashvili
13:45 – 14:00	Investigating the Courts Organisation and Court Administrators' capacities in Albania (general introduction, research activities carried out, scope of the round table) – Mr Marco Velicogna
14:00 – 14:20	Institutional and legislative framework in Albania – Ms Anduena Gjevori
14:20 – 14:40	Court organization and administration in Albanian in light of international standards – Mr Davide Carnevali
14:40 – 15:00	Addressing the Albanian Court System organizational and administration challenges: conclusion and recommendations – Mr Marco Velicogna
15:00 – 16:00	Discussion of the report / Input of participants Coffee with be served outside the room

Annex 5: List and summaries of a selection of relevant laws on the organisation of the judiciary in Albania

Constitution, 1998 (in particular Part 9 - 'The Courts')

Part Nine of the current constitution[113] deals with the courts (Articles 135-147). Whereas, the Constitutional Court is provided by Part Eight, (Articles 124-134). The Constitution provides for the main principles and most important institutions with regard to the organization and functioning of the judicial power in Albania. According to Article 135 of the Constitution the judicial power is exercised by the High Court and courts of appeal and courts of first instance, which are established by law. The Assembly has the right to establish special courts but in "no case extraordinary courts".

Law No. 7905, 21/03/1995, adopting the Code of Criminal Procedure, as amended

The Code of Civil Procedure provides for the detailed rules on the proceedings for the adjudication of the civil cases from the first instance courts, courts of appeal and High Court.

Law No. 8116, 29/03/1996 adopting the Code of Civil Procedure, as amended

The Code of Criminal Procedure provides for the detailed rules on the proceedings for the adjudication of the criminal cases from the first instance courts, courts of appeal and High Court.

Law No. 8136, 31/07/1996 'On the School of Magistrates' as amended

The law establishes the School of Magistrates which provides professional training of judges and prosecutors. The amendments of the law introduced in 2005[114] were necessary as law needed to be adjusted with the constitutional changes introduced in 1998. Consequently, changes were introduced with regard to the organisational aspect of the School of Magistrates but also with regard to the composition and main functions of its leading and academic organs. The amendments of 2014 aimed to maintain and further strengthen the high professional level of the School of Magistrates.[115]

Law No. 8363, 1/07/1998 'On the Establishment of the Office of Judicial Budget'

Article 144 of the Constitution provides that the courts have a special budget, which they administer themselves. Law No. 8363 dated 01.07.1998 establishes the Budget Administration Office. The law aims to guarantee the independence of the judiciary in Albania.

Law No. 8436, 28/12/1998 'On the Organization of the Judicial Power in the Republic of Albania, as amended

The law, which was approved after the current Constitution, regulated the functioning and organisation of the courts of appeal and courts of first instance. Whereas, the activity of the High Court, which according to the law was part of the judicial system, was organised based on its own organic law. [116] According to the law the judicial power was exercised by the courts of first instance, courts of appeal and High Court. The courts of first instance were organised in judicial districts and adjudicated based on the rules provided by the code of procedures. The courts of appeal adjudicated in second instance. The law provided also for the existence of a first instance military court and an appeal court, which were organised and functioned within the judicial system. In addition, the law regulated the criteria to become a judge of the first instance court and court of appeal, status of the judges, and disciplinary responsibility of the judges. The law has been amended in 1999.[117] The amendments introduced

[113] Law no. 8417, dated 21.10.1998 "The Constitution of the Republic of Albania".
[114] Law no. 9414, date 20.05.2005 "On some amendments to the law no. 8136, date 31.7.1996 "On the school of magistrates".

[115] Explanatory note on the draft law "On some amendments to the law no. 8136, date 31.7.1996 "On the school of magistrates" as amended.
[116] See article 13 of the law no. 8436 dated 28.12.1998 'On the organization of the judicial power in the Republic of Albania.
[117] Law no. 8646 dated 5.11. 1999, "On some amendments to the law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania".

among others the position of the Chancellor of the court. The amendments of 2000[118] provided, *inter alia*, that first instance courts were judicial district courts, serious crimes courts and military courts. Whereas, appeal courts adjudicated in second instance appeals against decisions of the district courts and first instance serious crimes court.

Law No. 8549, 11/11/1999 'On the status of civil servants';
The law on the status of civil servant aimed to create a professional, stable and efficient civil service. The law provided an administration scheme of the civil service. It regulated the relationship between civil servants and institutions of central or local public administration. The law provided for the Public Department of the Civil Administration as a central management unit of civil service. In addition it provided for the Civil Service Commission responsible for the supervision of the management of the civil service. The law regulated also the classification of the civil servants and hiring in the civil service, duties and rights of the civil servant, dismissal and suspension from the civil service.

Law No. 8588, 15/03/2000 'On the Organization and Functioning of the High Court', as amended
According to Article 135 of the Constitution, the High Court is the highest power of the judicial system in Albania. The members of the High Court are appointed by the President of the Republic with the consent of the Parliament.[119]The High Court is organized and functions based on its own organic law. The organic law provides for the number of the judges of the High Court, criteria and procedure to be appointed a judge of the High Court. In addition, it defines the competences of the Chairman of the High Court. It provides for the composition and functions of the colleges and the united colleges. This is the first law providing for the position of the legal assistants. The law was amended in 2013,[120] introducing among others the establishment of an administrative college. The changes aimed to increase the transparency of the selection process of candidates for the members of the High Court and to strengthen the role of the added objective criteria, avoiding political influences. However, other amendments having the same aim were introduced in 2014.[121]

Law No. 8811, 17/05/2001 'On the Organization and Functioning of the High Council of Justice' as amended
Part Nine of the Constitution provides also for the establishment of the High Council of Justice. It is a mixed executive-judicial body, which observes and controls the judges of first instance court and appeal court. The organization and functioning of the High Council of Justice is provided by law no 8811 dated 17.05.2011 "On the organization and functioning of the High Council of Justice". According to the amendments of 2005[122] the members of the High Council of Justice, except for the *ex-officio* members, were going to assume their office full time. This amendment was abrogated later by the Constitutional Court.[123]In addition, the changes of 2005 provided that the members elected by the Assembly, couldn't be judges. Whereas, the latest changes of 2014 aimed to increase the accountability of the members and of the High Council of Justice itself.[124]

Law No. 8678, 14/05/2001 'On the Organization and Functioning of the Ministry of Justice', as amended

[118] Law no. 8556, dated 31.7.2000, "On some amendments to the law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania" as amended.
[119] Article 136 of the Constitution.
[120] Law no. 151/2013, "On some amendments to the law no. 8588, date 15.3.2000 "On the organization and functioning of the High Court of the Republic of Albania".
[121] Explanatory note on the draft "On some amendments to the law no. 8588, date 15.3.2000 "On the organization and functioning of the High Court of the Republic of Albania" as amended.
[122] Law no. 9488, dated 5.12.2005, "On some amendments to the law no. 9488 dated 5.12.2005 on the organization and functioning of the High Council of Justice".
[123] Decision of the Constitutional Court No. 29, dated 9.11.2005.
[124] Explanatory note accompanying the draft law, "On some amendments to the law no. 9488 dated 5.12.2005 on the organization and functioning of the High Council of Justice" as amended.

The Ministry of Justice was re-established[125] in the framework of the democratic changes of Albania after the fall of communism in 1990. [126] However, in 2001 law no. 8671 was approved and it provides for the organization and functioning and the fields of activity of the Ministry of Justice.

Law No. 9110, 24/7/2003 'On the Organization and Functioning of the Serious Crimes Court'
The serious crimes courts aim to increase the efficiency of the fight against organised and serious crimes as well as the improvement of the quality of their adjudication. The law provides for the organisation and the functioning of the serious crimes courts.

Law No. 9877, 18/02/2008 'On the Organization of the Judicial Power in the Republic of Albania', as amended
The law provides the creation, organization and competences of the courts of first instance and courts of appeal. In addition, it defines the conditions and procedures for the appointment of judges of the courts of first instance and of appeal, the rights and obligations of judges, disciplinary measures and their discharge. The law regulates the administration of the services in the court providing for the procedure for the appointment and the competences of the chancellors of the court, judicial administration and budget of the judiciary.

Law No. 77/2012, "On the Organization and Functioning of the National Judicial Conference"
Article 147 point 1 of the Constitution provides that the High Council of Justice is composed, among others, of nine judges of all levels who are appointed by the National Judicial Conference. In 2005, a law on the organization and functioning of the National Judicial Conference was approved. In 2008, the Constitutional Court abrogated the above-mentioned law as it was not in compliance with the Constitution. Currently the National Conference is organized and functions based on law 77/2012. The law establishes, an institution which except for the competence to elect nine members of the High Council of Justice, performs continuous activity aiming to increase and consolidate the standards of the justice system.

Law No. 109, 1/04/2013 'On the Judicial Administration in the Republic of Albania', repealed;
The law regulates the organization, functioning and the status of the judicial administration. In particular, it regulates the organizational structure, functional powers, rights and obligations and responsibility of the employees of the judicial administration. In addition the law provides for the recruitment procedures disciplinary procedures, training of the judicial administration.

***Law No.152, 30/05/2013 'On Civil Servants'*, as amended**
The law aims to provide a homogeneous legal regime for all positions exercising public authority entitled by the public law and who are responsible for defending general public interest. The law civil servant extends its field of application. However, it explicitly excludes from its application the civil judicial administration. The law strengthens the position of the Department of Public Administration. In addition it creates a School for Public Administration. It increases the competences of the Commission on Civil Service. The law has been amended in 2014, aiming among others to resolve contradictions within the law, to solve unregulated situations as well as to provide for the date of the commencement of the effects of the law.[127]

Law No. 49, 3/05/2012 'Organization and Functioning of the Administrative Courts and Adjudication of Administrative Disputes', as amended
Law no. 49/2012 establishes for the first time the administrative courts in Albania. The establishment of the administrative courts aims to guarantee an effective protection of the subjective rights and legal interests of individuals through due process and within reasonable deadlines.[128] The law provides for

[125] The Ministry of Justice was abolished during the communist regime in Albania in 1966.
[126] Law no. 7381, dated 9.5.1990 "On the establishment of the Ministry of Justice".
[127] Explanatory note on the draft law "On some amendments to the Law No.152, 30/05/2013 'On Civil Servants'.
[128] Explanatory note on the draft law "On the organization and functioning of the administrative courts and adjudication of administrative disputes'

the criteria of the appointment and of the career of the judges, their status, and responsibility for disciplinary violations. The law has been amended in 2014[129] aiming to balance the workload of the judges of the administrative courts by introducing the position of legal assistants.[130]

Order No. 1830, 03/04/2001, on the Approval of the Regulation 'On the Organization and Operation of the Judicial Administration'

The order provides detailed rules on the structure, management and competences of the judicial administration. In addition, it regulates the relationship between the structures of the judicial administration and also the relationship between the structures of the judicial administration and parties of the judicial process or public in general. The order provides also for rules on the nature and type of judicial and procedural activities performed by the judicial administration.

[129] Law no.100/2014, "On some amendments to the law no. 49/2012 "On the organization and functioning of the administrative courts and adjudication of administrative disputes"

[130] Explanatory note on the draft law "On some amendments to the law no. 49/2012 "On the organization and functioning of the administrative courts and adjudication of administrative disputes"