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TECHNICAL PAPER

RISK ASSESSMENT: ADMINISTRATIVE COMPLAINTS AGAINST JUDGES IN ALBANIA

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EXECUTIVE SUMMARY

In the framework of the Project against Corruption in Albania (PACA), its output 1 – “Tools and mechanisms available to ensure the implementation of the anti-corruption strategy and action plan in line with GRECO recommendation and good practices”, PACA commissioned Mr. Eugenio Turco to conduct a risk assessment and analysis of the system for handling administrative complaints against judges in Albania. The risk assessment draws on a preliminary study on the same subject matter completed in July 2010.

The expert was tasked to analyze the regulatory framework and the administrative procedures whereby the High Council of Justice (hereinafter referred to as the HCJ) and the Ministry of Justice of Albania (hereinafter referred to as the MoJ) investigate complaints against judges as well as the capacities of the two actors, and to articulate specific, realistic and prioritized recommendations to the HCJ and MoJ to effectively address the findings of the risk assessment.

The main findings of the paper are as follows:

- There is a lack of clear boundaries between the competencies of the HCJ and the MoJ inspectorates in carrying out verifications of complaints against judges;
- There is subjectivism and lack of transparency in some phases of the verification of complaints procedure;
- There are no coordination procedures and mechanisms between the HCJ and the MoJ inspectorates in carrying out the verifications of complaints leading to the possibility of overlapping activities performed by the two inspectorates and, most importantly, to the hollowing of the anti-corruption potential of this instrument;
- The system for registering and handling complaints is clearly not adequate;
- There is a lack of information for citizens with regard to “where and how” to deposit complaints, their rights to be informed and to access the documents used during the procedure;
- The structural and human capacity of the HCJ inspectorate to perform verification of complaints is not adequate.

In view of these findings, the risk assessment elaborates the following main recommendations:

- Some aspects of the current procedure of verification of complaints do not appear to be consistent with the overall need (admitted by the stakeholders) to guarantee transparency and reduce subjectivism in the process of complaints’ verifications.

Therefore it is recommended that **the High Council of Justice and the Minister of Justice issue common manuals for verifications of complaints (and inspections), standardizing each and every step of the procedure** including their registration, the cooperation and exchanges of information between HCJ and the MoJ in performing this shared task, and the motivation of final and interim decisions in the verification process.

- With regard to the division of power between the Minister of Justice and the High Council of Justice in the mentioned procedure, the serious problems identified by earlier commentators and the PACA preliminary study concerning the potential for overlapping activities and possible inconsistency in the implementation of the function (verification of complaints) have not been addressed yet. Therefore **amendments to the current HCJ and MoJ laws are requested.**
- Moreover, as a short-term objective, **the signing of a Memorandum for Cooperation among the two authorities**, similar to the one submitted for their approval in July 2006, could be regarded as a step in the right direction.
- **It is recommended that the system currently employed by the HCJ to register complaints (basically a book containing hard copies of the complaints), be replaced by an electronic data-base supported by software** that would facilitate the use of data in the various processes performed by the HCJ such as evaluation of judges, disciplinary proceedings, reporting, compiling statistics and studies etc.
- Furthermore, even though the HCJ has elaborated “a complaint form”, which is currently available only in Tirana, **a revised standard complaint form needs to be approved by the HCJ and distributed, in cooperation with the MoJ, to all courts accompanied by informative brochures** about the right of the citizens to complain, the procedure to follow and certain indications on how to put together a complaint that is admissible by the HCJ and MoJ.
- **The HCJ inspectorate’s capacity to investigate complaints needs to be strengthened** considering their numerous duties and the need to increase the emphasis on the proper implementation of the complaints’ verification function.
- **The right of the complainants to be informed on the results of investigations that are triggered by their complaints should be supplemented by conferring to them a right to access documents acquired during verification**, in order to enable complainants to verify that the inspection was properly performed and the decision of the inspectors to archive a case (when they do so) is motivated and in compliance with the law.

The next PACA next Steering Committee scheduled for 4 March 2011 will discuss the findings and recommendations of the risk assessment as well as the best way to secure their implementation.

1 PURPOSE AND METHODOLOGY

The present technical paper aims to analyze the regulatory framework and the procedures whereby the HCJ and the MoJ perform the verification of complaints against judges as well as the capacities of the two institutions. This is done with a view to establishing and increasing the potential of this crucial instrument in the efforts to detect and fight corruption in the judiciary.

On the basis of recommendations provided by the preliminary study on this subject matter, PACA requested the consultant to provide an assessment of “the administrative complaints against judges” function with particular reference to the following points:

- The division of power between the Minister of Justice and the High Council of Justice concerning the verification of complaints.
- The system for recording and tracing complaints.
- Procedures for the submission and format of complaints.
- The capacity of the HCJ inspectors to investigate complaints.
- Access of complainants to the inspection file.

This technical paper has been drawn up relying on information collected during the meetings arranged with representatives of the HCJ, the Head of the Euralius mission, with representatives of the Institute for Policy & Legal Studies in Tirana and with the author of the Preliminary Study on the “Administrative complaints against judges in Albania”. Unfortunately the consultant did not have the opportunity to meet the representatives of the MoJ.

The main Albanian Laws consulted by the expert were: the Constitution of Albania, Law n. 8811/2001 as amended by Law n. 9448/2005 “On the Organization and functioning of the HCJ”, Law n. 8678/2001 “for the Organization and functioning of the MoJ, Law n. 9877/2008 “On the Organization of the Judicial Power in the Republic of Albania”, (the Organic Law); the Regulation dated 7/2/2007 of the HCJ Inspectorate.

Furthermore, the expert consulted the annual progress report of the EU (2009), the recent “Communication from the Commission to the European Parliament and the Council (dated 11-11-2010) on Albania’s application for membership of the European Union”, the above-mentioned Preliminary Study, the final report of the EU Project of the European Commission for supporting the HCJ Inspectorate and the documents sent by the Euralius mission and drafted by the MoJ.

2 THE PROCEDURE OF VERIFICATION OF COMPLAINTS

With the constitutional entrenchment of the judiciary and the increasing understanding that the court inspection function should be directed to the courts as organizations rather than the individual judges, the verification of complaints is about the only instrument in the armory of the HCJ and MoJ that enables them to detect corruption within the judiciary. The proper implementation of this function is therefore crucial to anti-corruption policies in the judiciary.

According to the recent reports of the European Union, corruption in the judiciary imperils the independence of judges. For this reason recommendations were issued for removing “obstacles to investigations, in particular of judges, ministers and Members of the Parliament”. Despite the mentioned reports, prosecutions of judges for corruption are rare (the figure, indeed, is zero) and ongoing or proposed measures to address this problem are lacking.

The main obstacles to investigating cases of alleged corruption of judges are notably due to the fact that, according to the Albanian Constitution, judges enjoy full immunity which can only be lifted by a decision of the HCJ. This fact reduces the effectiveness of possible investigations.

Therefore, in the overall framework of the disciplinary system, the procedure for the verification of complaints against judges is an important instrument in the fight against corruption within the judiciary considering that by means of such verification, the investigation of alleged misconduct by the judges may lead to findings of judicial corruption proper.

Bearing in mind the importance of the complaints’ verification function, it follows that the procedures for its implementation are need to be laid down in a way that takes into account the principles of transparency and efficacy.

For the above-mentioned reasons, it is important to assess if and how the current procedure of complaints’ verification has a sufficient level of transparency, consistent with the interest of citizens in guaranteeing their rights (Albanian Constitution, art. 42, which refers to the right of everyone to have his constitutional and legal interests duly protected) and efficiency, consistent with the need to effectively tackle corruption in the judiciary.

2.1 General aspects

According to the HCJ law, the system for verifying judges’ misconduct during their professional activity is based on the results of the two following processes: court inspections or/and verifications of complaints. As noted above, increasingly the inspection function is being considered as one that is aimed at spotting structural deficiencies of the judiciary or individual courts and addressing them through regulation or policies. The investigation of complaints, quite logically, needs to make up for the “loss” by being streamlined from a procedural point of view and properly supported with human and other resources.

In the meantime, several regulatory or organizational deficiencies dilute the full potential of this instrument (the investigation of complaints). The HCJ law, to begin with, has not provided sufficiently detailed rules for the verification of complaints against alleged misconduct by the judges. In other words there is no sufficient regulatory guidance establishing how the respective authorities have to perform their activities in the complaints' verification process.

Whereas, the new organic law on the judiciary adopted by the Albanian Parliament in 2008, regulates in sufficient detail (most commentators agree that the regulation is satisfactory and in compliance with the main European standards) the disciplinary violations of the judges and the corresponding sanctions, no similar effort has been made either by the HCJ or by the MoJ to strengthen the verification of complaints function, which is designed to provide the HCJ and the MoJ with the necessary hints and information on alleged misconduct (including corruption) by the judges.

In order to circumvent such a legal vacuum, the HCJ adopted an internal Regulation, "On the Organization and Functioning of the HCJ Inspectorate" (hereinafter referred to as the HCJ Reg,) approved on the basis of the delegation made by article 14/1 of the HCJ Law.

The HCJ Reg., among others, regulates with a certain degree of detail the verification of complaints against judges (art. 23-34). It is important to note here that the experience of some European countries has shown that the proper regulation of this function (namely detailed precise and transparent rules for the conduct of investigation of complaints) is able to reduce the influence of subjectivism in the process and to bring about the desired result of judicial accountability. In some EU countries (notably Spain) a "Disciplinary Commission", within the Superior Council of Judges, is established with clear competences on the verification of complaints against judges.

2.2 Specific aspects

2.2.1 The time period for performing the verification of the complaint

The process of complaint verification (art. 23 of HCJ Reg.) is basically an administrative investigation process which must be completed within a time-period of 30 days starting from the date of the registration of the complaint in a Register. Exceptionally, the Chief Inspector of the HCJ may decide to extend the time period for the completion of the investigation through a reasoned decision.

During the meeting held at the HCJ, both the deputy chairman of the HCJ and the Chief Inspector considered this time limit to be sufficient. In practice, it seems only in very few cases the mentioned time-period has been extended. However, the consultant considers the time period reserved for the investigation of complaints to be too short. The main reason for this conclusion is the fact that the judicial inspectorate of the High Council of Justice is in charge of numerous other duties, particularly the professional evaluation of judges and managerial functions.

Chronologically, the complaint first undergoes a preliminary assessment by the Chief Inspector with a view to establish its admissibility. The HCJ Reg. fails to provide a specific sub time-period for the completion of such preliminary assessment (art.27), during which the Chief Inspector verifies whether the complaint is admissible and verification may be initiated or whether it must be archived. The consultant is of the opinion that a specific time limit for the verification of the admissibility of the complaint would boost both the transparency and the efficiency of the complaints' investigation process.

2.2.2 The preliminary assessments

A complaint against a judge does not automatically bring about the initiation of an investigation (let alone disciplinary) process. The investigation can only start after a preliminary assessment made by the Chief Inspector who rules on the admissibility of the complaint (it appears, quite often, citizens file to the HCJ complaints which resemble judicial appeals on the merit of the case rather than complaints on the judges' misconduct).

According to art 27 of the HCJ Reg. when the complaint "is deemed as **inappropriate** in form and content" it can be archived. In this case the Chief Inspector "presents the reasons for which verification is not initiated".

However, the HCJ Reg. does not specify the main elements which have to underpin the decision on admissibility. The wording "inappropriate" used to refer to those cases when a complaint is not deemed admissible does not appear clear considering the absence of an explanation for it.

Therefore in order to reduce a level of subjectivism and efficiency in the preliminary consideration of complaints, the HCJ should establish in a more detailed manner, the criteria that need to be met for the Chief Inspector to archive a case rather than initiating a verification procedure.

2.2.3 Initiating verification

If the Chief Inspector decides to initiate a verification, a "verification order" which defines the inspector or the group of inspectors who have to perform the verification, the object of the verification and other duties of verification is issued (art. 28 HCJ Reg.).

Another deficiency emerges here. It seems there is no specific provision concerning a system for the assignment of cases to the different inspectors. A reasoned order is only requested if the Chief Inspector decides to replace one or more inspectors in a verification procedure (art.29).

Furthermore, the delegated inspector "despite the duties defined in the order of verification", according to the gathered information, can also verify facts not specifically mentioned in the order but connected with those under investigation.

The expert is of the opinion that the provision attributing the inspector with the power to verify different facts, other than those specified in the order, should also be framed by clearer criteria in an attempt to diminish the opportunities of abuse by the inspectors.

2.2.4 The system for performing verifications

Perhaps the biggest deficiency in the way the verification of complaints function is regulated by the HCJ law and the HCJ Reg. (art.31) is the fact that none of the two legal acts has provided for procedures and rules that need to be observed by the inspectors in the process of performing verifications. The only provisions that regulate this process are confined to those requiring a written form for the verification action performed by the inspector and the main documents that may be acquired (art.31/c) by the inspectors during the process.

As a result, verifications performed by different inspectors may be conducted following different methods resulting in inconsistency in the implementation of the function (different conclusions for similar cases).

2.2.5 The final phase: the inspector's report

The findings of the verification procedure are included in a report which contains "reasoned conclusions", even though the same HCJ Reg. does not require that verifiable and concrete data be brought forward. The inspector's report is reviewed by the Chief Inspector who drafts a final report whether to refer the case to the MoJ or to archive it.

It is not very clear from the wording of the HCJ Law and the HCJ Reg. whether the conclusions of the inspector's report contain a specific proposal for action and if such proposal is binding for the Chief Inspector. Similarly, it is not clear whether the proposals of the Chief Inspector are binding for the Deputy Chairman of the HCJ. The above-mentioned doubts have been already highlighted by PACA's preliminary study among "the raised problems" but continue to be unsolved.

A closer look at the wording of art. 31/f of the HCJ Reg. which mentions "reasoned conclusions" seems to indicate that the inspector's report does contain a proposal and that the proposal is not binding for the Chief Inspector. This conclusion is based on the language of art. 33/B/2 of the HCJ Reg. which provides that the final report, containing a proposal, is drafted by the Chief Inspector and the interviews with HCJ personnel.

With regard to the other question (whether the proposal of the Chief Inspector is binding on the Deputy Chairman of the HCJ), it is important to underline the wording of art. 16 of the HCJ Law according to which the final report is sent "to the MoJ *through* the Vice Chairman of the HCJ". On top of this, art. 33 HCJ Reg. has established that "the way of termination of the verification is ordered by the Deputy Chairman after receiving the report from the Head Inspector".

Based on the above-mentioned provisions and the interviews with HCJ personnel, it seems that the Deputy Chairman has the exclusive power to decide whether to send the report to the MoJ, thereby asking the initiation of disciplinary proceedings, or to archive the case regardless of the proposal of the Chief Inspector. Even in those cases

when the issue is finally archived because the investigation has not produced sufficient evidence to initiate a disciplinary proceeding against a judge, there may still be useful material in the investigation file that may be used by the HCJ in the evaluation of judges. This use of the investigation file, if at all made, should be done upon a decision of the Deputy Chairman of the HCJ.

Finally, it is important to highlight that the MoJ has the exclusive power to initiate a disciplinary proceeding. Therefore, in the case of the HCJ Deputy Chairman sending a file for starting a disciplinary proceeding, the MoJ is not obliged to initiate a proceeding before the HCJ. This seems to be yet another factor that contributes to dilute the effectivity of the investigation of complaints as an instrument to tackle the judges' misconduct. According to the expert's opinion, even in this case, the MoJ should motivate his decision.

2.3 Recommendations

Taking into account that a transparent and efficient procedure of complaint verification is an important mean for detecting judicial misconduct and fighting corruption in the judiciary, the following recommendations for action are due:

- In line with the experiences of other European countries the HCJ, in cooperation with the MoJ, should issue an operational manual for the procedure of verification of complaints, guaranteeing that verifications are performed following detailed rules and specific methods.
- The period of 30 days established by art. 23 of HCJ-Reg. for performing verifications should be increased, considering the numerous duties of the HCJ inspectorate. Moreover a deadline for the preliminary assessment of the Chief Inspector should be established.
- In order to guarantee transparency in the verification of complaints process, art. 27/2 of HCJ-Reg. should be amended, establishing clear rules for archiving cases without initiating a procedure of verification.
- The HCJ Reg. should provide for a system for the random assignment of cases by the Chief Inspector coupled with a more meticulous regulation of the duties to be carried out by the inspector in the verification process;
- All decisions related to the termination of verifications should be formally reasoned.

3 DIVISION OF COMPETENCIES BETWEEN THE MoJ AND HCJ

3.1 Findings

The HCJ-Law (art 16/a) provides that the HCJ inspectorate, *inter alia*, “verifies or sends to the MoJ for handling, complaints of citizens and other subjects, addressed to the HCJ regarding actions of judges considered in conflict with the proper fulfillment of duty”. On the other hand, art. 31/1 of the same Law states that the MoJ performs inspections in courts for verifying the level of the courts organization of the court services. It is also clearly provided in the law that MoJ decides on the initiation of a disciplinary proceeding against judges.

Therefore, according to the aforementioned legal provisions and various experts’ opinions,¹ it seems that the HCJ-Law has ascribed to the HCJ a specific power to receive and verify the complaints of citizens against judges addressed to the HCJ. Nevertheless complaints are currently submitted to both inspectorates and verified by both authorities.

As a matter of fact it was also ascertained that a system² for handling complaints against judges is set at the MoJ Inspectorate, even though clear and detailed provisions have not been established by the latter.

On the basis of documents acquired, it can be stated that there are different interpretations concerning the apparent collision of powers between the HCJ and the MoJ on the verification of complaints. With a view to ultimately solve what appears to be an overlap of competencies over the verification of complaints against judges, in 13 July 2006 the HCJ and the MoJ proposed to enter a “Memorandum of Cooperation”³ aiming, *inter alia*, to sort out the respective duties and responsibilities in the implementation of the complaints’ verification function.

¹ For example the PACA Preliminary Study, p.6.

² **The handling of complaints from citizens or legal entities in relation to the judges of the First Instance Court and the Appeal Courts.**

-Complaints, coming from the citizens are recorded in the protocol office in accordance with the regulations and internal rules. Then the materials are sent to the Director Of the Judiciary Inspections of the Ministry of Justice for review, evaluations and analysis.

-The problems observed in the complains are addressed further by preparing the file considering that the findings should be in correlation with the provision laid down in Article 32 of Law no. 9877 dated 18.02.2008 "On organization of the judiciary in the Republic of Albania".

- Furthermore, if the complaint/materials claimed by the applicant for an individual judge are considered or identified as violations in the categories provided in the law provisions mentioned above, the Director Of the Judiciary Inspections of the Ministry of Justice sends a Report to the Minister of Justice, accompanied by his/her recommendation with or without suggestions for action to evaluate if there are legitimate reasons for conducting an inspection and start the disciplinary proceedings. This inspection is carried out by inspectors of the Directory of Judicial Inspections.”

³ **“...Standardising the process of complaint verification.** As a result of this standardisation, the services of control of the courts and judges by the MoJ and the HCJ will be guided by harmonised normative acts.... **Standardisation of the procedure of registering the complaints.** The standardised procedure will also include the creation and functioning of the Complaint Register in the MoJ and one in the HCJ.... This register will be harmonised in terms of its nature, content and format, so as to permit and facilitate the exchange of information and data as well as the establishment, in the future, of an electronic interactive system. **General and thematic inspection procedures of the courts and judges...** the MoJ and the HCJ commit to co-operate in the direction of... **Standardising the procedures,** possibly

Unfortunately the memorandum was not signed by the MoJ and no further steps in that regard have been taken ever since although during the meeting held with the HCJ Deputy Chairman, it was ascertained that during a recent plenary meeting, the HCJ proposed the MoJ to assume exclusive responsibility over the investigation of complaints but such proposal was refused by the MoJ.

3.2 Observations

As regards the shared power of the HCJ and MOJ inspectorates in verifying complaints against judges, it can be stated that most of the dilemmas and controversial aspects in this regard originate in the formulation of legislative provisions.

In fact, the HCJ Law provides for an inspectorate to be established within the HCJ, with the task, *inter alia*, to verify or send to the MOJ for verification complaints of citizens against judges (complaint that are addressed to the HCJ). According to the above-mentioned law it is at the discretion of the HCJ Inspectorate to decide whether to carry out verifications itself or to entrust such a task to the MoJ, “for handling them”.

The HCJ law does not provide any criteria upon which the inspectorate should ground the decision to investigate itself or to refer the case to the MoJ. The importance and the impact of such a choice on the way the complaints’ verification function is performed is obvious bearing in mind that the two authorities empowered by the law to perform the verification feature different institutional characteristics and pursue different agendas. In other words, the HCJ inspectorate is an independent body of an independent institution, composed of judges whereas the MoJ is part of the executive with a political profile. This will almost certainly have a bearing in the way the function is performed by the two authorities.

The problems are not over. In the same article 16 point a) of the HCJ law, there is a regulation of the complaints made by citizens that are directed to the MoJ. In such a case the MoJ, on the basis of its own evaluation, can decide to refer the complaints to the HCJ inspectorate to handle them. Pursuant to a literal interpretation, when the complaint is directed to the HCJ the latter may decide whether to investigate the complaints itself (through its inspectorate) or to refer the case to the MoJ. On the other hand, when the complaint is directed to the MoJ the situation is reversed and the MoJ has the chance to choose whether to investigate itself or to refer the case to the HCJ. This regulation is not completely rational.

by agreeing to draw up and approve a single Manual of the procedures of control of the courts and judges”. **The deadline:** “within one year after the signing of the memorandum, the Minister commits to issue an order putting the Manual of Inspection Procedures into force. The HCJ commits to reflect to the same rules” in the internal regulation.

In addition to the legal flaws, when it comes to complaints that addressed both to the HCJ and to the MoJ, although the HCJ Reg.⁴ has established a system for avoiding the duplication of verifications, even the current work practice is not adequate. In fact, considering that no exchange of information between authorities has been foreseen in law (and registered in practice) and that equivalent rules aiming to avoid duplication are not present within the MoJ Reg., it is possible that both inspectorates perform the investigation of the same complaint without being reciprocally informed of the result of the verifications carried out by each other. As a result, the investigation of the same situation by both authorities may lead to different conclusions.

This possibility of duplication is particularly likely when a verification procedure, carried out by the HCJ or by the MoJ is archived considering that in these cases both inspectorates may terminate the verification procedure without informing the other authority.

According to the consultant, amendments to the HCJ-Law are needed and an institutional agreement for drafting a proposal is recommendable between the two authorities.

Despite the numerous proposals drawn up on this issue - some of them attributing a prevalent role to the MoJ and others to the HCJ - it is essential to set up a proposal which takes into account the necessity that the complaints' verification function is performed in a way that does not infringe the independence of the judiciary while securing the necessary accountability of the judges. Furthermore it is essential to avoid the establishment of a "domestic system" in which both authorities set up their own parallel systems without taking into account the activity of the other.

The consultant is of the opinion that the best proposal on this particular issue (the shared competence of the HCJ and the MoJ over the investigation of complaints) is the one worked out by the Twinning Project carried out by the European Commission with the scope, among others, to solve the mentioned conflict. The twinning project has elaborated a "balanced proposal" (according to the principle of "*check and balance*"), which reconciles the respective prerogatives of the two authorities by attributing the competence to investigative complaints exclusively to the MOJ and the following phase of hearing the findings to a Disciplinary Commission established within the HCJ.⁵ In this scheme the MoJ maintains the exclusive competence in starting a disciplinary proceeding and the HCJ its exclusive competence in deciding cases.

⁴ HCJ Reg. 2: "...when the same complaint, addressed to the HCJ and to the Ministry of Justice, concerning the activities of judges and considered to be appropriate for verification, as a rule, its verification is performed by the HCJ Inspectorate. 3. When the same complaint, addressed to the HCJ and to the Ministry of Justice, concerning the activities of courts and considered to be appropriate for verification, as a rule, its verification is performed by the Directory of Inspections in the Ministry of Justice.

⁵ The proposal is included in the publication issued in Nov.2008 by the Twinning Project with the support of the Delegation of the European Commission in Albania

3.3 Recommendations

- In order to solve the current conflict, the HCJ should schedule for in its 2012 legislative program amendments to Art. 16 of HCJ law with a view to achieving a clear division of competencies and responsibilities between the HCJ and the MoJ in the investigation of complaints against judges.
- As an interim solution, the MoJ and the HCJ could enter a “Memorandum for Cooperation” pledging to agree on a platform for standardizing the process of complaint verification and approving a joint manual of procedures for the performance of this function.

4 THE SYSTEM FOR RECORDING AND TRACING COMPLAINTS

4.1 Findings

The process of verification may be initiated following the filing of a complaint addressed to the HCJ or any other complaint made public in media (article 25.1 of the Reg.). According to the HCJ Reg., the following information should be included in the complaint file: the complainant’s identity, the court or judge towards whom the complaint is directed, the general content of the complaint, the offence alleged to have been committed, the date of issuance of the order for verification, the inspector charged with the verification.

During the meeting held with the HCJ Chief Inspector, it was ascertained that the HCJ also receives complaints by email. In these cases, the inspectorate, after having received the complaints, verifies all main data. It was also ascertained that the Register of Complaints as laid down in art 25 of HCJ Reg. has been set up and is kept by the Chief Inspector. Currently, even though the HCJ has at its disposal PCs provided for registering complaints, the registration phase is usually carried out in a hard copy book. The Register of complaints is continuously updated following the steps undertaken and the results of the verification.

4.2 Observations

On the basis of the documents acquired by EURALIUS, it has been ascertained that the MoJ does not have an equivalent Register of Complaints. According to the procedure followed by the MoJ “the complaints coming from citizens are recorded in the protocol office” (note n.3).

It is important to underline that similar Registers, set up both in the HCJ and in the MoJ, with standardized procedure and similar content, would be fundamental for guaranteeing an adequate level of communication between the two authorities.

Moreover, the current system followed by the HCJ in registering complaints should be replaced with an electronic data base system allowing for categorization and searching of data.

4.3 Recommendations

- It would be advisable that the HCJ and the MoJ set up similar registers and procedures in handling the registration of complaints.
- In order to guarantee adequate communication between the MoJ and the HCJ, a database system with proper software for inserting and searching the main data and information related to complaints is indispensable for both registers.

5 PROCEDURE FOR SUBMISSION AND FORM OF COMPLAINTS

5.1 Findings

The HCJ Reg. (art. 26.1) has foreseen that the “complaint must be in a written form, containing important data, facts and circumstances”, establishing also consequences - the non initiation of verification - in the case of lack of specific elements such as the denounced circumstances, documents or sources proving the alleged facts etc.

Although the HCJ Reg has established that the application form is defined by the HCJ upon “a proposal of the Deputy Chairman”, so far, that proposal has been not issued. Nevertheless, the HCJ has elaborated a form which is at disposal of citizens whose complaints are deposited directly at the HCJ. It is important to note that this form is not available in the HCJ web-page.

5.2 Observations

It seems that the consequences attached to the absence in the complaint of the elements indicated in art. 26 paragraph e) of the HCJ regulation (non initiation of the verification procedure) are too severe, bearing in mind that the content of the HCJ Reg. is not sufficiently clear. Furthermore, even though the HCJ has adopted a form which is currently available for the citizens (but only in Tirana), an improved standard form needs to be approved by the HCJ and distributed, in cooperation with the MoJ, to all Courts accompanied by brochures used for informing citizens about their rights (how to complain, what happens next, how long the verification will take, what citizens can do in the case of archiving). Finally, the abovementioned information and the complaint form should be loaded in the current HCJ and MoJ web-pages.

5.3 Recommendations

- The HCJ and the MoJ should adopt a common standard form for the complaints of citizens. Adequate informative brochures should be attached to the forms and be made available to all citizens. The form and explanatory information should also be provided on the HCJ and the MoJ web-pages.

6 THE CAPACITY OF THE HCJ AND THE MOJ TO INVESTIGATE COMPLAINTS

6.1 Findings

The HCJ inspectorate is a well-organized office with 12 inspectors and a Chief Inspector, dealing with almost 400 judges. Considering the HCJ inspectorate duties, particularly regarding the procedure of judges' professional evaluations, the number of inspectors should be increased. During the meeting held in the HCJ, the consultant was informed about the intention of the Chief Inspector to ask for a greater number of inspectors, and in the same way the HCJ Deputy Chairman put in evidence the necessity to strengthen the HCJ inspectorate.

6.2 Recommendations

- In order to guarantee an adequate level of efficiency in performing the verification of complaints, the HCJ inspectorate needs be strengthened by increasing the number of inspectors and other support staff.

7 ACCESS OF COMPLAINANTS TO THE VERIFICATION FILE

7.1 Findings

The HCJ Reg. recognizes to the complainant a right to be informed about the result of the investigation of his/her complaint. If the complaint is archived following the preliminary assessment of the Chief Inspector (no verification is initiated), the complainer receives an announcement by the Chief Inspector" (art. 27/3). When the complaint is archived after verification is performed (art. 33), the complainer receives more information.

It seems that there are differences between the two mentioned cases: in the first one, the closure of a case after the preliminary assessment, the "announcement" that is sent to the complainer is not motivated, whereas in the second one, the announcement is motivated with regard to many points (the results of the verification, the reasons, causes for a further verification or for other initiatives").

There is another aspect which needs to be highlighted: the HCJ Reg. does not specify which documents a complainer might obtain upon his request in order to be acquainted with the results of the performed verification. In the same vein, the regulation does not envisage a duty for the HCJ to formally respond to the complainer.

7.2 Observations

In order to guarantee transparency, it is fundamental to attribute to the complainant a right to access to the documents used by the inspectorate for verifying his complaint. By means of them, the complainant can verify if the inspection activities have been performed properly, covering all denounced aspects and, in some cases, deposit a further complaint highlighting circumstances which have not been verified. During the meeting held in the HCJ, it was ascertained that the HCJ regularly informs the complainants about the archived cases, supplying, if requested, the documents in question.

7.3 Recommendations

- In the expert's opinion, the HCJ and the MoJ should confer to the complainant a right to obtain, if requested, copies of documents used by the Inspectorate for archiving a case.

8 SUMMARY OF RECOMMENDATIONS

The recommendations forwarded by this Assessment are collated in this section and provided below.

Concerning the overall efficiency and transparency of the complaints verification system:

- In line with the experiences of other European countries the HCJ, in cooperation with the MoJ, should issue an operational manual for the procedure of verification of complaints, guaranteeing that verifications are performed following detailed rules and specific methods. **Recommended timeline: by the end of 2011.**
- The period of 30 days established by art. 23 of HCJ-Reg. for performing verifications should be increased, considering the numerous duties of the HCJ inspectorate. Moreover a deadline for the preliminary assessment of the Chief Inspector should be established. **Recommended timeline: by June 2011.**
- In order to guarantee transparency in the verification of complaints process, art. 27/2 of HCJ-Reg. should be amended, establishing clear rules for archiving cases without initiating a procedure of verification. **Recommended timeline: by June 2011.**
- The HCJ Reg. should provide for a system for the random assignment of cases by the Chief Inspector coupled with a more meticulous regulation of

the duties to be carried out by the inspector in the verification process. **Recommended timeline: by June 2011.**

- All decisions related to the termination of verifications should be formally reasoned. **Recommended timeline: from April 2011**

Concerning the division of power between the minister of justice and the high council of justice concerning the verification of complaints:

- In order to solve the current conflict, the HCJ should schedule for in its 2012 legislative program amendments to Art. 16 of HCJ law with a view to achieving a clear division of competencies and responsibilities between the HCJ and the MoJ in the investigation of complaints against judges. **Recommended timeline: by the end of April 2011.**
- As an interim solution, the MoJ and the HCJ could enter a “Memorandum for Cooperation” pledging to agree on a platform for standardizing the process of complaint verification and approving a joint manual of procedures for the performance of this function. **Recommended timeline: by June 2011**

Concerning the system for recording and tracing complaints:

- It would be advisable that the HCJ and the MoJ set up similar registers and procedures in handling the registration of complaints. **Recommended timeline: by June 2011.**
- In order to guarantee adequate communication between the MoJ and the HCJ, a database system with proper software for inserting and searching the main data and information related to complaints is indispensable for both registers. **Recommended timeline: by June 2011**

Concerning the procedure for submission and form of complaints:

- The HCJ and the MoJ should adopt a common standard form for the complaints of citizens. Adequate informative brochures should be attached to the forms and be made available to all citizens. The form and explanatory information should also be provided on the HCJ and the MoJ web-pages. **Recommended timeline: by June 2011.**

Concerning the capacity of the HCJ and the MOJ investigate complaints:

- In order to guarantee an adequate level of efficiency in performing the verification of complaints, the HCJ inspectorate needs be strengthened by increasing the number of inspectors and other support staff. **Recommended timeline: by the beginning of next fiscal year.**

Concerning the access of complainants to the verification file:

- In the expert's opinion, the HCJ and the MoJ should confer to the complainant a right to obtain, if requested, copies of documents used by the Inspectorate for archiving a case. **Recommended timeline: by April 2011.**

CONCLUSION

The verification of complaints of the private persons (both physical and legal persons) against judges in cases of alleged misconduct by the latter is a fundamental function of a legal system that is designed to secure both judicial independence and accountability.

The way this function is performed is of crucial importance for the achievement of the aforementioned objectives. In the case of Albania, serious flaws that originate both in the legal framework and the actual implementation of the law by the High Council of Justice and the Ministry of Justice seem to have compromised the achievement of recognized standards in this field.

This technical paper argues for the need of legislative action to address the identified problems as well as interim solutions, such as a Memorandum of Understanding between the HCJ and the MoJ, with a view to sort out certain implementation problems that have a potentially huge impact on the achievement of recognized rule of law standards by Albania.