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PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

Technical Paper

**THEMATIC INSPECTION OF COURTS IN ALBANIA AND THEIR
POTENTIAL AS AN ANTI-CORRUPTION INSTRUMENT**

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July 2010**

ECD/27/2010

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This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe

1 EXECUTIVE SUMMARY

In view of PACA's objective to review and analyze the results of High Council of Justice and Ministry of Justice thematic inspection of Albanian courts in order to identify priority areas for training, this opinion provides comments and recommendations on the current system of performing the thematic inspections on the courts with special emphasis on the roles performed by different government agencies and the breakdown of their responsibilities in relation to the thematic inspections on the courts, the defining features of the thematic inspection function in terms of goals, scope and procedures as compared to general inspections and investigation of complaints, the sub-regulatory level instruments and the procedures at work as well as the use of the information and statistical data derived from the thematic inspections. Additionally, the papers includes recommendations on training needs for judges as well as legislative and institutional reforms that would enable a more effective use of the instrument in an attempt to fight corruption among judges.

On a regulatory level, this paper argues that the duality of the inspection role, so far handled independently (even though in practice there has been cooperation between the 2 agencies) by the High Council of Justice (HCJ) and the Ministry of Justice (MoJ) needs to come to an end. This is seen as the best way to rationalize the function by avoiding dualities and solving the uneasy co-existence (from a constitutional point of view) among the HCJ and the MoJ inspection powers regardless of the fact that the Constitutional Court has upheld the right of the government to perform inspections on the judiciary with certain limitations.

Secondly, both the HCJ and the MoJ (and their judicial inspectorates) should be more imaginative when it comes to sanctioning misbehaving (possibly corrupt) judges. They should not rule out (as they have done so far) the option of criminal liability for judges when they commit procedural violations which lead directly to criminal consequences. There is no legal obstacle to referring findings of this nature to the prosecution for further criminal investigation. Clearly, this would entail prior lifting of a judge's immunity by the HCJ.

Thirdly, on the sub-regulatory level, provided that the power of the Minister of Justice to perform inspections (including thematic inspections) is preserved, as a matter of urgency, the Minister of Justice should issue a sub-regulatory act to regulate in detail the activity of the Directorate of Inspection at the MoJ.

Fourthly, the *mantra* whereby judicial inspectors so far have come exclusively from the ranks of the judiciary needs to be questioned as it seems to have led to a certain familiarity between judges and inspectors. It must be borne in mind that inspections (even thematic inspections) are not intended to assess the performance of judges. Quite

on the contrary, they are intended to evaluate court processes and court organization in the first place.

Finally, thematic inspections need to evolve from an instrument aimed at punishing judges to an instrument aimed at understanding and ultimately addressing the failures of the Albanian Judiciary in general.

2 CONCEPT OF THEMATIC INSPECTION ON COURTS

The judicial inspection in Albania is performed under Albanian law by two inspectorates: the Inspectorate of the High Council of Justice and the Inspectorate of the Ministry of Justice. This is a rather generic term in Albanian law referring to various types of lawful control exerted over the Albanian judiciary. Therefore, in order to make things clear over the concept of thematic inspection there is a need to gradually and logically distinguish among various types of control exerted over the judiciary. The first distinction to be made is that between the term and concept of inspection and that relating to the verification of complaints. This terminology is used by the relevant Albanian legislation, which also makes a clear distinction between these types. In short this first and big distinction lies in the focus, procedures and outcome of the control activity. Whereas the inspection is a control exerted over a rather larger number of issues/aspects/subjects (judges and/or courts), always initiated internally by the inspectorates, and results into general improvements of the system, the verification of complaints is a control exerted always over one individual judge, always initiated by a third person (complainant), and results into the disciplinary proceedings against the individual judge.

The second distinction to be made is that between the thematic and general inspection. The Concept of thematic inspection seems pretty much a mere Albanian invention. In international literature this concept is conveyed through terms such as “inspection”, “judicial inspection”, “random inspection” or even “general inspection”. Therefore the concept that will be defined here is forcibly based on a thorough study of the relevant Albanian legislation only. The consideration of the organic law on High Council of Justice (hence “HCJ”)¹, the organic law on the Ministry of Justice² (hence “MoJ”), the law on the Judicial Power³ and the respective bylaws, notably the HCJ Regulation “On the Organization and Functioning of the Inspectorate of the High Council of Justice”⁴ (hence “HCJ Inspectorate Regulation”) as well as the consideration of the way it is

¹ The Law no.8811 “On the Organization and Functioning of the High Council of Justice”, dated 17.05.2001

² The Law no. 8678 “On the Organization and Functioning of the Ministry of Justice”, dated 14.05.2001

³ The Law no. 9877 “On the Organization and Function of the Judicial Power”, dated 18.02.2008

⁴ The Decision of the High Council of Justice no.195/2/a “Regulation on the Organization and Functioning of the Inspectorate of the High Council of Justice”, dated 05.07 2006, as amended by Decision of HCJ no. 207/1, dated 07.02.2007

implemented by both inspectorates in Albania suggests the following definition of the thematic inspection: "an institutional inquiry/investigation focused on specific aspects of the professional activity of judges and courts".

As a matter of fact the term 'thematic inspection' is not mentioned in none of the three above mentioned laws passed by the Albanian Parliament. This term can only be found at the HCJ Regulation "On the Organization and Functioning of the Inspectorate of HCJ" in articles 36, 37, 47 and 48. The law on the MoJ in its article 11/3.b uses the term "inspection on courts and individual judges", whereas the law on HCJ mentions the term "inspection of judges" in its articles 1 and 16.

The HCJ Inspectorate Regulation is the only legal document that provides for the applicable typology of judicial inspection in Albania. This Regulation defines the types of judicial inspection along the lines of investigated subject and methodology used. In terms of subjects investigated the judicial inspection may be divided in two types: inspection of judges and inspection of courts. In terms of methodology used by inspectorates the judicial inspection is divided into: thematic inspection and general. Both the latter types of inspection may be used either for court or judge activity inspection. As a conclusion, under the HCJ Regulation, judges may be inspected thematically and generally and so do the courts as well.

For the sake of comparison and clarity to be provided when contemplating the concept of thematic inspection, there is a need to also define the concept of general inspection. As for the thematic inspection, the general inspection is also not defined at all in the legislation (the above- mentioned three basic laws). Therefore (same as for thematic inspection) the following definition of general inspection can only be implied: "a comprehensive and programmed institutional inquiry/investigation of the professional activity of judges and courts."

3 LEGAL FRAMEWORK: COMPETENCES, GOAL, SCOPE AND PROCEDURES OF THEMATIC INSPECTION

On May 17, 2001, after a long protraction caused by a Presidential veto, the Parliament adopted Law No. 8811 "On the Organization and Functioning of the High Council of Justice". Generally, according to this law, proposals as to selection, recruitment, appointment, career progress or termination of office of a judge, are left with the High Council of Justice (the formal decision rests with the President of the Republic), an authority independent of the executive and legislative powers dominated by fellow judges.

Article 1 of the this law stipulates that "the HCJ is the State authority responsible

for the protection, nomination,.....of the *activities of judges* of the courts of first instance and appeal.” Article 2 when describing the legal duties of HCJ constantly refers to the judges as the target of its action. More to the point, Article 16 (Duties of the Judicial Inspection Office, hence “JIO”) of the Law on HCJ asserts the 4 (four) competencies of the JIO. Namely, Law no. 8811 states (some procedural detail is added) the following competencies for the JIO:

- The ability to verify complaints;
- The ability to evaluate the professional competency of judges;
- The ability to collect and verify the judges' declarations of assets;
- The ability to verify incompatibilities and the conduct of judges.

Notably, the Law on the High Council of Justice remains silent on two of the competencies vested with the JIO by the earlier Law on the Organization of the Judicial Power⁵. Namely, no mention is made of the competence of JIO to *inspect the organization of judicial services* and the other competence to monitor the courts' workload and their overall efficiency. That was no accident indeed. Based on article 14/1 of this law the HCJ issued the internal regulation on the organization and functioning of JIO (see above). This regulation details *inter alia* in the article 35 the duty of the JIO to “...inspect individual judges on a decision by the HCJ” and in article 46 the duty to “..inspect courts of first and second instance on a Decision by the HCJ”. The exercise of this inspection competence is detailed from 36 to article 50. For the sake of clarity there should be emphasized that this inspection competence is *only mentioned in the JIO regulation*, not in the Law.

On May 14, 2001, almost simultaneously with the Law on the High Council of Justice (although the latter was submitted much earlier), the Parliament adopted Law No. 8768 "For the Organization and Functioning of the Ministry of Justice (MOJ)". The Law on MoJ clearly makes the organization and inspection of judicial services (formerly vested with the JIO) *a competence of the Minister of Justice* (see article 6, para. 6 and 7 of the Law). Article 11, para.3/b determines the duty of the Directorate of Inspection at MoJ to “..exert inspections over *courts and individual judges*.” Additionally, article 11 of the Law on MOJ makes the monitoring of the workload of courts and their overall efficiency (again a competence formerly vested with the JIO) another domain for the Minister of Justice (see paragraph 2 of article 11 of the Law on MOJ). As for the sublegal

⁵ Law no. 8436 “On the Organization of Judicial Power in the Republic of Albania”, dated 28.12. 1998, as replaced by Law no. 9877, dated 18.02.2008

level, it is worth noting that so far the *MoJ paradoxically has not yet issued any internal regulation for the organization and functioning of its judicial inspectorate* [Directorate of Inspection].

Beyond the legal texts there have been discussions since 2001 over the division of competences between MoJ and HCJ regarding the judicial inspection. They stem from the fact that the JIO inspects judges and courts regularly solely based on a sublegal act not deriving from a clear legal text. This has created a practice whereby two inspectorates control the same subject (courts/judges) over the same issues. This is a clash situation.

In this context, there was a great degree of expectation among interested stakeholders to have the Constitutional Court deliberate and decide on these questions. In fact, in 2004⁶ the Constitutional Court examined a recourse where one of the issues raised before it by the Supreme Court touched upon the division of competences between MoJ and HCJ as regards the judicial inspection function. In essence, the Court encouraged the legislators to undertake necessary improvements to the relevant legislation on judicial inspection with a view to clearly divide and define the respective competences on general and thematic inspections.

In conclusion, the legal texts in force (laws on HCJ and MoJ) *do not confer* clear competence on the HCJ to conduct judicial inspections on the courts and judges of first and second instance. The only place where such “competence” exists is in the HCJ Inspectorate Regulation (a sub-legal act of HCJ). By contrast such competence is *clearly vested in the authority of the MoJ* in the article 11/3.b of the Law on MoJ.

This “legal competence” background helps better situating and understanding the thematic inspection issue. What is clear by now is that the thematic inspection is based on the law on the MoJ but is applied according to the detailed procedures of the HCJ Inspectorate regulation. As absurd that it sounds this is the present state-of-affairs. Thus, the goals, the scope and the procedures of the thematic inspection carried out in Albania since 2003 are to be found in the HCJ Inspectorate Regulations (the applicable one is the Regulation of 2006).

3.1 Goals of thematic inspection

First of all it’s worth mentioning that the Regulation does not distinguish in legal terms between general and thematic inspections. Such distinction is made in practice while,

⁶ Decision of Constitutional Court No.11, dated 27.05.2004

from the procedural point of view, it is the same thing. In practice, the distinction lies in the elements described further above (see page 1 para.2).

The articles 36 and 47 state the goals of thematic inspections over both courts and judges as “inspections that have an informative nature over the activity of judges and courts” and “possibly spotting disciplinary violations committed by individual judges”. Article 46/2 also contains some provisions which are related, in our opinion, to the goals of inspection. It mentions the “taking of necessary measures for rectification of identified dysfunctions/problems and the improvement of services”.

3.2 Scope of thematic inspections

This results from the reading of articles 40, 46/2 and 51 of the HCJ Inspectorate Regulation.

The scope of inspection is different for the judges and the courts. The scope of inspection on judges is rendered indirectly⁷ by the provisions of article 40 and includes the collection of data on:

- the quality and workload;
- the productivity;
- the observance of reasonable deadlines of judicial proceedings;
- the planning and organization of work;
- the professional capability.

The scope of inspection of courts on the other hand is provided in article 46/2 and 51, and consists of the collection of data on:

- effectiveness of service;
- case management;
- organization, structuring and human resources;
- physical infrastructure;
- workload and expediency in rendering services;
- ethical behavior.

As for the depth of inspection exercises, the spirit of the Albanian law, the international best practice and finally the Albanian Constitutional Court all of them combined suggest that the boundaries of the independence of the judiciary should be respected. This means in concrete terms that no inspection whatsoever should examine/control the essence/opinion of the judicial decisions. It can only examine the observance of

⁷ Article 40 gives a description of the content of the Report submitted by the inspectors of HCJ at the end of their inspections.

procedural law.

3.3 Procedures of thematic inspection

One should first be reminded that the only legal basis at disposal for describing the detailed procedures of thematic inspection in Albania is the HCJ Inspectorate Regulation. Again, the MoJ has not passed as of yet any sublegal document that describes the procedures of thematic inspections conducted by the Directorate of Inspection at the MoJ.

Under the HCJ Inspectorate Regulation, the applicable procedures for thematic inspections are the same regardless of whether such inspection is exercised on courts or individual judges. They both develop through the following three steps, each of them broken down in further procedural actions:

Initiation. The initiation of thematic inspections is always based on an officially approved three years a program. Given that the thematic inspections are planned internally, without any third party triggering the mechanism in a procedural meaning, the three year programs of inspection (two years in the case of courts) need to address certain specific needs/issues for a specific three years period. Therefore in a chronological sense, a number of reasons need to be formulated so that a program is elaborated in order to address them. Although this delicate moment where the initiative is born is not clearly identified, a careful reading of the law and the HCJ Inspectorate Regulation as well as common sense indicate that the such initiative is first born in the mind of the Deputy Chairman of the HCJ, who is at the same time the real manager of the High Council of Justice and the direct superior of the Inspectorate of HCJ. This fact does not mean that other HCJ members cannot suggest, inspire him/her to take up the initiative. For the thematic inspections specifically the reasons are *linked to specific problems, difficulties or situations* existing at that point in time. This specificity distinguishes the initiation procedures from the general inspections. In the case of the MoJ thematic inspections there can be assumed with a great degree of probability (again there is nothing written in this case) that this procedural phase is consumed by the Minister himself (aided by his staff).

Further on, the Deputy Chairman of HCJ drafts the Decision of HCJ that he/she submits to HCJ formally for approval. This Decision contains the themes of inspection for the upcoming three years, the courts/judges to be inspected, the period of conduct of inspections as wells the inspection group that will be charged with the conduct of inspections. Once the HCJ Decision is passed, the Deputy Chairman charges the Chief Inspector to submit the plan of inspections for the respective three years, which he/she will further formally approve. At the MoJ, the Minister of Justice replicates the work of both the HCJ and the Deputy Chairman. Here the Director of the Inspection Directorate submits the plan of inspections based on the Order of Inspection issued by the Minister.

Conduct of inspection.

Inspection of a specific court cannot exceed a period of 1 year. The HCJ inspection program on courts cannot exceed a period of 2 consecutive years, whereas this program on individual judges should not exceed three consecutive years.

The composition of inspection teams are set by the Chief Inspector of HCJ (Order of the Minister). They can be replaced (under article 29 of the HCJ Inspectorate Regulation) in specific circumstances such as conflicts of interest, work load, etc. The heads of inspection teams communicate, previously, their inspection to the respective heads of courts. The respective courts are obliged to facilitate the work of inspection teams in terms of documents, work accommodation, interviews, etc.

Termination.

Once the phase of examination by the inspectors is over, the inspection team prepares and submits to Chief Inspector the inspection report. Further, the Chief Inspector sends the report to the Deputy Chairman of HCJ. At the MoJ, this report is sent to the Minister of Justice by the Director of Inspections.

a. Reporting.

The Inspection Report should contain the following:

- Findings on the approved theme of inspection;
- Documents supporting the findings;
- Statistical Data supporting the findings;
- Minutes of meetings, interviews, etc;
- Analysis of findings.

This reports goes to the Chief inspector who sends it to the Deputy Chairman with or without suggestions for action.

b. Follow-up/Outcome of reports.

The Deputy Chairman of HCJ informs the HCJ on the results of the Inspection Report and may suggest actions or measures to be taken in view of improving problem situations. It's up to the HCJ to take decisions on that basis. In the case of MoJ, it's up to the Minister to take appropriate measures that fall within his/her jurisdiction to improve the situation.

Article 41 of the HCJ Inspectorate Regulation specifies that "if the inspection report on an individual judge identifies violations, the Deputy Chairman sends the Inspection Report to the Minister of Justice, accompanied by his/her recommendation to start the disciplinary proceedings".

Article 42 stipulates that where the Minister of Justice proposes to the HCJ disciplinary

measures as a result of thematic inspections (or general inspections) conducted by his/her own inspectors, against a judge, the HCJ Inspectorate may conduct a verification of the proposal of the Minister and the claims of the judge proposed for disciplinary measures. This verification happens only upon expressed decision by HCJ.

4 ANALYSIS OF LEGAL FRAMEWORK

Having depicted the legal frame in force, our analysis may focus on existing concerns of judicial inspection in Albania as expressed in deliberations of Albanian public institutions (notably the Constitutional Court) but also in the reports of various national and international organizations taking an interest on the issue. Our focus of analysis therefore will rest upon issues of legal competence, scope and procedures of thematic inspections.

1. Legal Competence of Judicial Inspection.

Given the legislative picture related above, there is ample room for discussion on the mission and policies of JIO in order for that controlling mechanism to conform to the mission of its superior body, the High Council of Justice, from which it derives its authority and own mission. Under the Law on HCJ, the legislator has entrusted this body, rather anchored in the judiciary (being mostly composed of judges), with the “ recruitment,...moral and professional evaluation,career and *oversight of the activity of the judges...*” (Art. 1, Law on HCJ). On the other hand, given the apparent legislative intent to allocate the general and thematic inspections of courts to the Ministry of Justice, the mission of the HCJ (thereby JIO’s mission as well) seems to need a rethinking so that legislative ambiguity does not extend itself into the day-to-day functioning of both MoJ and HCJ inspection tasks. It follows from a careful reading, especially so between the lines, of the Law on HCJ that HCJ is “specialized” into everything that directly relates to the judge and only to the judge, while the MoJ would rather deal with matters surrounding and supporting the performance of a judge such as personnel, administration, court management. By going deeper into this “specialization” intent of the Albanian legislators, one might speculate that there is room either for at maximum dividing the tasks by law (MoJ to deal with inspection of courts and HCJ with inspection of judges) or at minimum for a sharing *by law* of similar tasks between HCJ and MoJ. It is appropriate to remind here that the Albanian Constitutional Court suggested already in its Decision No. 11 of 27.05.2004 the need for improvement and further clarification of the legislation related to the division of competences on judicial inspection.

The Law on HCJ does not expressly authorize the JIO to engage into thematic (general) inspection. However, article 16 of the Law provided that JIO may implement “other duties” ordered by the HCJ. In accordance with the interpretation of the so-called “other duties”, the HCJ regulation on JIO entrusted the latter with the extra task of conducting general/thematic inspections on the judiciary (articles 37, 47 and 48). As a result of this interpretation, it is up to the HCJ to determine the frequency of such inspections and the topics to be inspected (articles 35 and 46). This might occur either in rare circumstances, or very often, as decided by HCJ. The existence of this Regulation has provoked a debate between the MoJ and HCJ over the legality of certain provisions of HCJ Inspectorate Regulation authorizing the JIO to conduct thematic inspections. Why this debate?

Firstly, and this is the heart of the debate, the *law on HCJ does not authorize clearly the HCJ to conduct any type of judicial inspection* be it on the courts or on the judges. It only confers upon HCJ a clear authority to conduct verification of complaints. By contrast, the *law on MoJ clearly authorizes the Minister of Justice to conduct judicial inspections of every type*, but does not recognize any authority of the Minister to conduct verification of complaints. In strict legal terms this is what the division of judicial inspection competencies is all about. The logical question then to ask is: how can a bylaw (HCJ Inspectorate Regulation) supersede the respective law [HCJ law]?

Secondly, not only the judicial inspection function of HCJ is not clearly based on the law but it is also questionable from a constitutional point of view. So, article 118 of the Albanian Constitution provides:

- “1. Subordinate legal acts are issued on the basis of and for implementation of the laws by the organs provided in the Constitution.
2. A law must authorize the issuance of subordinate legal acts, designate the competent organ, the issues that are to be regulated, as well as the principles on the basis of which these subordinate legal acts are issued.
3. The organ authorized by law to issue subordinate legal acts as specified in paragraph 2 of this article may not delegate its power to another organ.”

This article determines the hierarchy of legal norms. This means that a sub-legal act is not subordinate to the legal acts but also cannot exceed the content and the principles of the latter. In simple words this article of the Constitution requires from a legal act to *clearly* confer competences in terms of content and principle upon subjects of the law and *clearly* authorize these subjects to detail such competences in their respective legal acts. In this light, the HCJ Inspectorate Regulation has not fulfilled the constitutional criteria. It has detailed a competence [judicial inspection] which the law on HCJ does not provide. The wording of the 'famous' article 16/3 of HCJ law "...Inspectorate carries out other duties determined by HCJ..." does not fulfill the clarity criteria set by the Constitution since it does not mention *expressly* 'the competence of judicial inspection'. However, the provisions in question of the HCJ Inspectorate Regulation are still an applicable piece of legislation because no one has brought this issue to the Constitutional Court as of yet.

In the Albanian practice, on the other hand, the thematic inspection function is overlapped with that of the MoJ inspectors. Is it possible then, in these cases, to divide or alternate this function in a way that the whole thematic inspection duty across the two bodies is handled in a complementary way? Could sub-functions be defined and allocated complementarily between them so that each of them has its appropriate and unambiguous mission? Or, rather, might it be better to have both inspectorates on the same boat and conduct joint inspection on the same themes? Do all these questions need to be addressed by the law or might there be another legal instrument to the same effect?

These are logical and necessary questions to be considered by Albanian legislators in order to make the judicial inspection function and practice effective and harmonized with the legal framework.

2. Scope and Procedures of Judicial Thematic Inspection

From the beginning, in order to be clear and safe on the legal side, this analysis can and will only be done based on the HCJ Inspectorate Regulation because, as already mentioned, it is the only piece of legislation that describes the concept, goals and procedures of the thematic inspections. It is worth repeating here that the MoJ urgently needs to issue an inspection regulation on its side, in order to fill out the legislative vacuum.

This being said the HCJ Inspectorate Regulation is in our analysis not sufficient and not clear enough in terms of goals and procedures.

4.1 Insufficient and unclear goals and scope.

The Regulation indicates the nature and the types of inspection in very broad terms. It only describes them as control activities of an 'informative character'. There are on fact two statements of goals: one relating to the inspection of judges (art.36) and the other on the inspection of courts (art.46). There must be said that the definition of court inspection is rather clear and sufficient while the one on judge inspections remains incomplete and unclear. They are both not complete in terms of not drawing a distinction between general and thematic inspections, but the inspection of judges in article 36 is the only one that does not reflect the opinions of the Constitutional court according to which any inspection conducted by a body outside the judiciary cannot touch upon the material aspects of judgment. It can only focus on the procedural requirements. The definition of goals as provided in the Regulation does not mention any of these important features of the thematic inspection. The description of scope is done rather broadly without detailing the focus in various inspection steps such as the planning, the organization of work in the field, the content of reporting, etc.

4.2 Insufficient and unclear procedures.

The procedures of thematic inspection in the HCJ Inspectorate Regulation are described in articles 38 to article 51. They are divided in two parts. The first part relates to inspection of judges while the second one relates to inspection of courts.

The first part describes the following procedural steps: initiation of inspections (issue of orders, definition of goals and scope, appointment of the inspection teams); conduct of inspection activity on the ground; preparation of the inspection report; outcomes of the inspection report. The second part (inspection of courts) contains exactly contains the same procedural steps. In both cases, the procedural language is similar, if not identical, with the language of the laws rather instead of being more appropriate to a sublegal act. Indeed the language of bylaws should be more manual-oriented and therefore details should abound to materialize the law. Overall it may be safely stated that the Regulation should have been much more lengthy and detailed on each of the procedural steps mentioned above.

As a matter of fact no detailed account of the process of carrying the judge inspection is provided in the Regulation. Procedural steps such as the planning, the notifications, the organization of work in the field, etc., lack tremendously necessary details that all combined avoid subjectivity in the work of inspectors. In their absence the inspectorates come up with creative, on-the-spot actions as they think best to do. For instance, the conduct of inspection activity on the ground in the Regulation is confusing, because it deals with the preliminary steps of inspection (preparation of the plan of inspection of inspection, inspection team composition, etc.) instead of the describing the concrete actions that should be performed on the ground by the inspection team. This confusion

results into a disconnection between the title of the relevant articles (39 and 50) and their content. Some conclusions may be drawn from a combined reading of both the description of the legal framework and the legal analysis:

1. Inefficiency of inspections.

The existence of two inspectorates belonging to two separate branches of power operating on an unclear legal basis leads undoubtedly to inefficiency of judicial inspection work. It is to be expected and indeed it happened a great deal in the Albanian practice that the two inspectorates have investigated the same courts on the same themes more or less at the same time. In the meantime, other issues with urgent need for investigation and help were left aside for that reason. This is the very definition of inefficiency.

2. Subjectivity of inspections.

This is of two sorts: political and professional. Thematic inspections may be politicized because of the very existence of two inspectorates, of which one belongs to the majority in power at a moment in time (MoJ) while the other may suffer from a given degree of corporatism (nine of the members of the HCJ are judges). This is not only theoretical, the recent history of Albanian institutions have proved this theory in certain instances.

Professionally speaking, thematic inspections may also be subjective. By subjective in this case there should be understood the great deal of discretion conferred upon inspectors on the ground because of lack of detailed procedures. In this context, an inspector may or may not perform certain actions that otherwise might lead to detection of violations by judges or courts. In the case of the MoJ this subjectivity nears the absolute degree since the MoJ has no regulation at all to guide its inspectors.

3. Relative lack of detailed procedural and work standards for judges and courts.

An essential thing to be mentioned and explained about the effectiveness and legality of judicial inspection is that inspectorates can only investigate or control something that exists in laws or in bylaws which makes mandatory the activity of judges and courts. So, regulations and procedures should detail first the actions of judges and courts so that inspectors may then control them for respect of legality or effectiveness. In the Albanian institutional setup, the Minister of Justice is charged by law to set standards and work procedures for the services the judges and courts should deliver to their communities. Once the Minister sets these standards and procedures upon courts and judges the judicial inspection goes then post factum to observe their status if implementation. Logically, then, a poor or deficient standard or procedures making by MoJ impairs the effectiveness of judicial inspections.

5 STATUS OF IMPLEMENTATION OF LEGAL FRAMEWORK

Against a background of legal confusion as explained above, the thematic inspections in the last three years have been conducted with various frequency levels by both inspectorates. In carrying out this duty the HCJ Inspectorate is guided by its specific Regulation (see above the description of legal framework) while the MoJ judicial Inspectorate carries out its inspections based on express orders of the Minister of Justice issued on a case by case basis. One thing should be mentioned here: the thematic inspections come last on the list of inspection activities in both cases. The priority is almost constantly given to the verification of individual complaints, with the general inspections coming second on the list. For instance, there were on average 1500 complaints per year recorded by the JIO in the last three years, while at the same time only four (4) thematic inspections were conducted mainly in the major courts of the country (seven of them).

In addition to the legal basis used in thematic inspections, the other major difference between HCJ and MoJ inspections is their focus: HCJ inspections have focused exclusively on investigating the activity of judges while the MoJ inspections have been focusing on both judges and court staff.

The themes that have been investigated included the professional ethics, the delays in court proceedings, the observance of work timing and work discipline in general, workload, case management, etc.

These inspections have been, as rule, of a campaign type. The themes were selected based on various sources such as the type of complaints recorded, the issues raised in various reports published by international organizations on Albanian judiciary, issues raised by the media or by the meetings of HCJ, etc.

Last element of implementation to be mentioned is of an organizational nature. In both inspectorates there is no clear cut organization of inspections along a functional line. At least this is true for the HCJ Inspectorate where all of its 12 inspectors carry out all types of inspections and assessments, verification of complaints included. At the MoJ the specialization of work runs along thicker lines such as inspection of courts, inspection of prosecution, inspection of free professions. Inside the judicial inspections even at the MoJ the degree of specialization is very little. This situation stems from the fact that on the one hand little care is paid in these institutions (also in this country as a whole) to the public management. Things are generally handled on block, based on inertia of long lived administrative traditions. On the other hand, standards of administrative work for judges and court staff administration are not detailed enough to allow for a higher degree of work division and specialization. If for instance, the inspection processes were fully detailed in each procedural step (planning, initiation, field inspection, reporting, rectification phase, etc.) then, maybe the work of general/thematic inspectors would

become so abundant that a division of tasks in each inspectorate would become necessary. At present, the procedure that is implemented on the ground is rather light and general, and leaves a great degree of discretion on each inspector as to the scope and depth of investigation that he/she is carrying out. So, in reality the volume of work performed by inspectors is under the ideal levels that would be required according to best practice cases. The scrutiny of international literature shows that, for instance, the preliminary preparation of field inspections takes an average of six months, while that figure is much lower in Albania. The same lack of details is also noticed in the elements of investigation.

The relative lack of details in inspection processes leads logically to a relatively poor knowledge and then poor analysis of the situation in our courts. The state action undertaken on this basis is logically non comprehensive in most cases.

6 USE OF INSPECTION REPORTS

On the outcome of inspections, the first thing to be said is that while the law is silent on the use of inspection reports, only the HCJ Inspectorate Regulation provides specifically for this a issue. So, articles 36 and 47 recognize the “informative character” of the thematic inspections, while articles 40, 41, 42 and 52 give indications as to the destination and use of inspection reports. Taken together these provisions explain that the outcome of a thematic inspection activity may be of two kinds: improvement of the situation (soft outcome) and the disciplinary measures against a given judge (hard outcome). There must be said though that the real essence of thematic inspections as stemming from the spirit of legislation and international best practices is the first outcome: inspection reports should be used for improving various aspects of judicial activity through training, investments, better process organization, etc. The Albanian practice in fact tends to favor the second outcome: most inspections are seen as an opportunity to discipline the judges. So the punishing character of inspections prevails over the required ‘informative character’. The frequent use of the ‘punishing’ action not accompanied by improving measures (that should be identified by the inspection report tends to possible errors and compromise the disciplinary measures enforced in various cases. So, based on information secured at the HCJ Inspectorate there are at least four cases that have been referred to the Minister of Justice to start a disciplinary proceeding but the latter has not taken any action in this respect. One of the reasons for the Minister not to act is the lack of appropriate action for improving the general situation leading to such errors. In this light, a number of decisions of the Supreme Court taken during the last years against a number of disciplinary decisions passed by the HCJ recognized the importance of improving the environment where the judges operate in reducing the “disciplinary cases”.

On the procedural side, once the inspection report is drafted by the inspection team the

chief inspector forwards it to the Deputy Chairman of HCJ together with this/her suggestions for possible measures. If the Report finds disciplinary violations by a judge or court staff the Deputy Chairman forwards the report and such suggestions to the Minister of Justice. The latter may start a disciplinary proceeding at the HCJ if the violating subject is a judge of first or second instance, or he/she may take administrative measures him/herself if the subject is a member of the court staff.

This procedure has a loophole: nothing in the procedure makes mandatory the submission to the Minister of Justice for initiation of disciplinary proceedings of the found cases of violations by judges. Whereas, most of the interviewed stakeholders have had little difficulty to agree with the idea that the HCJ inspectorate should be the opponent of the Minister of Justice in cases of disciplinary proceedings brought by the latter, and that the findings of the Inspectorate in the pursuit of an individual complaint, when they lead to disciplinary proceedings against the judge, should be referred to the Minister of Justice, it is still unclear for many what would the HCJ inspectors do if, in the course of a thematic inspection, the inspectors find out irregularities committed by judges. Admittedly, the situation is somewhat different from the case when an individual complaint triggers the inspection (the verification of complaints procedure). Theoretically, this may be an opportunity for either political or corruptive maneuvers.

What steps should the Inspectorates follow when inspectors identify violations at the hands of the administrative staff of the courts? Despite some minor skirmishes over the Regulation of the Minister of Justice on Court Administration, the administration of courts in Albania remains largely the domain of the Minister of Justice. The Minister of Justice is entitled to appoint the chancellors in the courts of first instance and appeals. Consequently, the chancellors propose to the respective presidents of the courts the appointment of the rest of the staff. It may be safely maintained that the Chancellor is the person in charge of most aspects of court administration such as the management of human resources (non judges) at the courthouse, the maintenance of the court's physical premises, the keeping of judicial statistics and the procedures relating to case management. Clearly, a multitude of violations can take place at this level without the judges being necessarily involved. Even though presumed violations of the judges are the real target of the inspections, it would be simply impractical to bar the inspectors from reporting on the violations of the non-judicial staff. However, in this second case (violations of non-judicial staff), the disciplinary competences lay neither with the HCJ nor with the Minister of Justice, but with the chief judge.

7 CONCLUSIONS AND RECOMMENDATIONS

Based on the above analysis and conclusions, as well as on the main target of this ToR (fighting corruption), the suggestions or recommendations for improvement, in

summary, fall on three levels of possible action:

- Legal framework.
1. Duality of inspection roles. In theory, two inspectorates, belonging to two different power branches of government, investigating in the same subjects and targets should be the ideal means to fight corruption in the judiciary. Not only the judicial inspection gains in strength but also the checks and balances principle is assured. In practice though, the existence of two judicial inspectorates in Albania since 2001 has proved to be cumbersome, inefficient and confusing for the judiciary. Synergies rarely occurred, inefficiencies were more frequent. The reasons lie in the lack of proper will to coordinate and complement each other. This paradoxical situation has led to inefficiencies to fight a myriad of negative phenomena, notably corruption. For the sake of truth, there should not be high expectations that any inspector will ever catch a case of corruption “in flagrante”. What is realistically expected indeed is that the opportunities for corruption might be reduced were the judicial inspections made more effective. Various documents from relevant and important institutions such as EU (progress reports, European Partnership Document, etc.) have emphasized the need for rationalizing the judicial inspection, notably avoid dualities
 2. Criminal responsibility of judges. There exists in Albanian judicial practice a largely disseminated opinion that judges are not criminally responsible when exercising their duty. While it is true that they cannot be held criminally responsible for the material aspects of their decisions (their convictions) they may be held criminally responsible for their breaches of the judicial procedures when these lead *directly* to criminal effects. The judicial inspectorates are have the duty to investigate all kinds of procedural violations committed by judges of first and second instance, included those that directly lead to criminal effects. Under article 281 of the Albanian Criminal Procedures Code, the inspectorates must relate findings on procedural breaches accompanied by criminal effects to the prosecution for further criminal investigation. This duty has never been exerted in Albanian practice. Also, should such cases occur, the immunity of judges should be called into question. This is at least our opinion. Under current Albanian legislative arrangements, judges are immune from any kind of criminal investigation, with the exception of flagrant crimes.
 3. Regulatory vacuum at the MoJ. It is a matter of urgency to have the Minister of Justice issue a sub-regulatory act (order) that regulates and details the judicial activity of the Directorate of Inspection at the MoJ. As already mentioned the MoJ inspectors are currently exercising in legal vacuum and may float in subjectivity in the discharge of their duty.

- Policy level.

The laws on HCJ and MoJ may consider the possibility of appointing judicial inspectors \who do not come from a judiciary career. At least the thematic inspection yields more managerial skills and knowledge than judicial and procedural knowledge. A side effect of this choice would be to avoid a kind of familiarity between inspectors and inspected judges that we usually call corporatism. Moreover, in the Albanian context of extreme political clivages and clashes, under political pressure of the moment, the judiciary and its directly related institutions (HCJ, JIO) tend to fall in corporatism. Judicial professionalism and rigorous control of judiciary can only suffer from that. A more managerial oriented inspectorate will lead to a more effective inspection of an “informative” character. It will be well versed in the modern ways of managing courts (community courts, etc.).

- Institutional capacity

It is true that the Albanian judicial inspection, as other public bodies in Albania, suffer from a lack of managerial knowledge and behavior. The spirit of law requires from thematic inspections to fully and deeply understand the failures and problems of the judicial system, not merely punishing judges. The inspection practice in Albanian has been just too simplistic-finding procedural breaches, propose disciplinary measures. Current trends of European integration require another type of goals and practice from our inspectorates. They are there to help the judiciary to improve its functioning. This in turn requires al lot of managerial understanding and thinking.

This new orientation cannot happen overnight. It will, in the first place, call for another type of human resources engaged in both the judiciary itself and in the judicial inspection bodies. Till then, helpful regulatory frame should be proposed in the form of work manuals for inspectors, in addition to proper training. This effort should result in the end with judicial inspection plans and activities conforming to a system of management by objectives (MBO). In this way, policy makers may greatly benefit from field observations and policy advices by judicial inspectors.