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Report on the Individual Evaluation of Judges in Albania

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## I. Introduction

1. This report aims at providing an analysis of the current system of the individual evaluation of judges in Albania against international standards, especially those developed by the CCJE in its Opinion 17 (2014) “On the evaluation of judges’ work, the quality of justice and respect for judicial independence“. The report provides a summary of the current practice of individual evaluation of judges in the member states of the Council of Europe (II). Then, the Report summarizes the CCJE standards (III). Next, the Report describes the current legal framework and practice of the individual evaluation of judges in Albania (IV). Then, the report analyses and discusses the current situation with respect to the standards developed by the CCJE. (V). Finally, the Report makes recommendations to improve the current situation (VI).

## II. Evaluation of judge’s work in the member states of the Council of Europe

### 1. Materials used

2. The following part is based on Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities (hereafter Recommendation CM/Rec(2010)12), on the Report of 2012-2013 of the European Network of Councils for the Judiciary (ENCJ) on minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary (hereafter ENCJ Report),<sup>2</sup> on the Report of 2013-2014 of the European Network of Councils for the Judiciary on Independence and accountability of the Judiciary, the OSCE Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) – Judicial Administration, Selection and Accountability (hereafter Kyiv Recommendations), the CCJE draft summary report of the questionnaires answered in preparation of the CCJE Opinion 17 (2014) and CCJE Opinion 17 (2014) itself.

### 2. Formal and informal evaluation

3. The ENCJ-Report<sup>3</sup> and CCJE Opinion 17 (2014)<sup>4</sup> distinguish between informal and formal systems of individual evaluation of judges. If individual evaluation is undertaken in a formal way, the purpose of the evaluation, the criteria used, the composition and responsibilities of the evaluating body as well as the possible consequences of an evaluation are clearly set out, often by means of primary legislation. In a formal system of evaluation, the judge usually receives a formal rating. Moreover, the evaluation often has direct consequences, such as better chances for promotion, an increase in salary or even a dismissal from office. A system of informal evaluation does not usually use either formalised ratings or criteria. Usually, informal evaluation has no direct consequences but to offer feedback to the judge in question. However, a gathering of information, about a judge who is a candidate for promotion, such as practiced in the UK by the Judicial Appointments Commission (JAC), might also be considered informal.

### 3. The practice in the member states of the Council of Europe

4. The practice of evaluation of judges as explained in this report is based on the Summary Report of the questionnaires handed in by 33 member states of the Council of Europe in preparation for CCJE Opinion 17 (2014). As the CCJE pointed out, the decision whether and how judges are evaluated is inextricably linked to the history and culture of a country and those of its legal system.<sup>5</sup> The majority of member states in the Council of Europe use a formal system of individual evaluation of judges. Those countries are: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, France,

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<sup>2</sup> Report of 2012-2013 of the European Network of Councils for the Judiciary (ENCJ) on minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary, hereafter ENCJ-Report, Chapter 2, p. 10.

<sup>3</sup> Report of 2012-2013 of the European Network of Councils for the Judiciary (ENCJ) on minimum standards regarding evaluation of professional performance and irremovability of members of the judiciary, hereafter ENCJ-Report, Chapter 2, p. 10.

<sup>4</sup> CCJE Opinion 17 (2014) para 9, 10.

<sup>5</sup> CCJE Opinion 17 (2014) para 22.

Georgia, Germany, Greece, Hungary, Italy, Moldova, Monaco, Poland, Romania, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Turkey. Especially in eastern European countries, the evaluation of judges is an important issue. The former Yugoslav Republic of Macedonia explained that judicial independence could be promoted through the evaluation of judges. Romania argued, the trust of the public in the judicial system could be promoted this way. Slovenia stated evaluation ensured judicial accountability and with it the quality of the judicial service.

5. Czech Republic, Cyprus, Denmark, Estonia, Finland, Iceland, Luxemburg, The Netherlands, Norway, Sweden, Switzerland, Ukraine, UK do not use formal systems of evaluation. Such countries often consider evaluation of judges as a possible threat for judicial independence. However, such countries often use informal evaluation tools which can offer valuable inspiration for the development of means that help improving a judicial system. Sweden, Switzerland, Finland and The Netherlands, for example, use certain evaluation tools in order to ascertain performance-linked wages (Sweden), to provide feedback for judges in order to improve their work and efficiency (The Netherlands, Switzerland) or in preparation of career development discussions (Finland). In the UK, a specific kind of evaluation takes place by the Judicial Appointment Committee (JAC) when a judge's promotion is in question. Estonia, Luxemburg and Ukraine only formally evaluate recently appointed judges before their permanent appointment.

#### 4. Different models of evaluation with special regard for new democracies

6. The approach in the member states of the Council of Europe differs both in respect to the way the evaluation is undertaken (a) as well as in respect to the person or body responsible for the evaluation process (b).

##### a. Process of evaluation

###### aa. Discussion model

7. In some countries, the evaluation process is conducted in form of a discussion, in which the evaluated judge presents his or her work and the evaluator/the evaluating commission agree with the judge on career and development goals (Belgium, Finland, France, Monaco, Romania). During the discussion, the evaluated judge might also receive feedback that can help to improve his or her work and performance (Switzerland). Such discussions can be informal (Finland, Switzerland) or they can be conducted in a formal way and end with a rating (Belgium, France, Monaco, Romania). In the latter case, the evaluation process often starts with a self-assessment (France, Romania).

###### bb. Report model

8. In many member states, especially young democracies, a group or single evaluator gathers the relevant information about the evaluated judge and prepares a draft evaluation (Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Germany, Greece, Hungary, Italy, Moldova, Poland, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Turkey). Only when the draft report is ready, the evaluated judge may comment on the draft. Only in Cyprus and Georgia, the evaluated judge does not participate in the evaluation process.

##### b. Body responsible for the evaluation

###### aa. Court president model

9. In some member states, a single evaluator is responsible for the evaluation. Usually, this evaluator is the president of the court where the evaluated judge performs his or her duties (Germany, Hungary, The Netherlands). The individual evaluator gathers the relevant information on the judge's work which often includes reading the judge's decisions, visiting hearings chaired by the judge and interviewing the judge and his colleagues. The evaluator makes the final decision after having given the judge the opportunity to comment on a preliminary draft (Germany, Hungary, The Netherlands).

###### bb. Council model

10. In other countries, especially in young democracies, a Council for the Judiciary or a subgroup of that council gathers information on the work of the evaluated judge and decides on the evaluation (Albania, Austria, Bulgaria, Austria, Croatia, Estonia, Italy, the former Yugoslav Republic of Macedonia, Moldova, Slovenia, Spain, Turkey). In some countries, different levels of the council and/or the president of the judge's court participate in the process. In the UK, both lay people and members of the legal professions and judiciary participate in the evaluation process.

cc. Inspection model

11. In Poland, individual evaluation of judges is undertaken in the course of regular court inspections carried out by inspector judges from other courts.

5. Criteria

12. In many member states, a number of quantitative criteria play a role in the evaluation of judges. Especially the number of cases in which a judge has made a decision, the time spent on each case and the average time to judgement is taken into account (Austria, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Italy, Poland, Romania, Slovenia, Turkey). In other member states, only one quantitative indicator, the number of decided cases, is considered (Bosnia and Herzegovina, Estonia, Hungary, for the purpose of ascertaining a judges performance based salary: Spain, The former Yugoslav Republic of Macedonia, Ukraine). In Bosnia and Herzegovina and Spain, for example, a judge is evaluated according to the extent she has met a fixed quota (orientation quota set in the Rulebook on Orientation Criteria for the Performance of Judges and Legal Officers in Courts in BiH, in Spain, the quota is ascertained by the Council for the Judiciary). In the evaluation process, a judge is allocated a number of points depending on the percentage of the quota he has achieved. Other criteria are settlement rates and the observance of statutory time lines for deciding cases (Moldova, Italy).

The way such criteria are used in the evaluation differs widely. In some member states, data on such quantitative criteria, as for example the number of cases decided, is converted into a percentage or points reflecting the performance of each individual judge compared to other judges (Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, The former Yugoslav Republic of Macedonia, Italy, Turkey). In other states, such quantitative factors only provide the starting point for an individual assessment (Austria, France, Germany, Slovenia). Other member states do not use a fixed set of criteria in the evaluation (Belgium, Monaco).

13. Most countries use qualitative criteria as well in the evaluation process, such as the behaviour of judges in oral hearings, and their communications skills in talking with advocates, citizens and colleagues (Germany, Moldova, Poland, Slovenia). Reversal rates i.e. the percentage of cases in which a judge's decisions are overturned by a court of appeal, are also taken into account (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Greece, Hungary, The former Yugoslav Republic of Macedonia, Moldova, Poland, Rumania, Turkey, Ukraine). In many member states, the quality of the judge's analysis and the complexity of the cases she has worked on are considered of great importance in the evaluation process (Albania, Belgium, France, Georgia, Germany, Greece, Italy, Poland, Rumania, Slovenia). In Germany, a judge's ability to identify the critical point on which a case turns, is considered decisive for a judge's abilities. Many countries stress that the quality of a judgement, not the merit of an individual decision, is tested in order to respect a judge's independence. Other factors to be considered in certain member states are the judge's organization skills and work ethic (Germany, Moldova, Poland, Slovenia, Sweden), leadership skills (Germany, Hungary) the ability to mediate, draft clear and understandable judgements (Germany) and use information technologies (Croatia, Moldova). A Judge's scholarly activities such as teaching, publications and lecturing can also be taken into account (Albania, Croatia, Germany, Slovenia).

The Judicial Appointment Committee (JAC) in the UK assesses a candidate according to the following criteria: intellectual capacity, personal qualities, an ability to understand and deal fairly, authority and communication skills, and efficiency. For posts requiring management skills, a candidate's leadership and management skills may be assessed instead of her efficiency.

## 6. Consequences

14. In most member states, evaluation results are of great importance when decisions on a judge's promotion are made (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Germany, Greece, Hungary, Italy, The former Yugoslav Republic of Macedonia, Monaco, Poland, Romania, Slovenia, Turkey, UK). In Romania and Italy, only judges who have received the highest grade (Romania) or at least a positive evaluation (Italy) may apply for promotions.

15. In some countries, a newly appointed judge can be dismissed before obtaining security of tenure because of poor evaluation results (Bulgaria, Estonia, Georgia, Germany, Greece, Ukraine). However, this question, which concerns the appointment of judges rather than the evaluation of acting judges, shall not be pursued in this report.

16. Other judicial systems allow the dismissal of acting judges after poor evaluations (Albania, Austria, Estonia, only in rare cases: Greece, Hungary, Italy, Moldova, Poland, Romania, Slovenia, The former Yugoslav Republic of Macedonia). In Austria, Italy, Moldova, and Romania for example, a judge can be dismissed who has received the grade "insufficient" twice. The initiation of disciplinary proceedings may also be the consequence of a poor evaluation (Belgium, Bulgaria, Croatia, Cyprus, Greece, Hungary, Poland, Slovenia). In some countries, a judge who has been evaluated poorly can be required to participate in special training courses (Italy, Romania).

17. Evaluation results may also affect a judge's salary as, for example in Belgium, Bulgaria, Spain, Sweden, and Turkey. In Sweden, only a very small percentage of a judge's salary is set individually and stringent safeguards are in place to protect the judges' independence in the process.

In Finland and Switzerland, evaluations have no purpose and consequences but to provide feedback for the individual judge.

## 7. Protection of the evaluated judge

18. In most judicial systems, the judge participates in some form in the evaluation process, for example, by providing a self-assessment as a starting point for discussion, or by being interviewed. In some member states of the Council of Europe, the judge has a right to comment on a preliminary draft of the evaluation (Albania, Bosnia and Herzegovina, Germany, The former Yugoslav Republic of Macedonia, Poland). Moreover, in the former Yugoslav Republic of Macedonia, the evaluated judge must confirm the correctness of the data which form the basis of the evaluation and are taken for this purpose from the court's data bank.

19. In some countries, the evaluated judge may demand the removal of members of the evaluation body for good reason, for example in case a member can objectively be perceived as biased (Albania, Bulgaria, Greece, Moldova, Romania, Turkey). In Germany and Croatia, a removal may be demanded under the same procedural rules regulating the removal of a (possibly) prejudiced judge in a trial. However, in other member states, a judge cannot demand the dismissal or removal of a possibly prejudiced member of the evaluation body (Austria, Belgium, Bosnia and Herzegovina, Cyprus, Estonia, Finland, France, Georgia, Hungary, The former Yugoslav Republic of Macedonia, Monaco, Poland, Sweden). In some of those countries, however, the judge may challenge the evaluation report itself on the basis that a prejudiced person took part in the evaluation process (Austria, Estonia, France, Poland).

20. In most countries (except Belgium, Finland and Moldova), there are possibilities for the evaluated judge to demand some form of review of the evaluation. Usually, the evaluated judge may apply to a special body (Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, France, Greece, Hungary), for example the plenum of the Council for the Judiciary, where the report has been made by a committee of that council (Bosnia and Herzegovina, Estonia, Moldova), or by a number of judges at

the Supreme Court (Croatia). In Poland, the evaluated judge may present his or her opinion in writing. In Albania, Georgia, Germany, and Italy, evaluation results can be challenged in court.

### III. CCJE Standards

#### 1. Judicial independence

21. The CCJE stresses the importance of judicial independence as a pre-requisite to the maintenance of the rule of law and the fundamental guarantee of a fair trial.<sup>6</sup> Judicial independence must not only be protected against external influences, for example from the executive, but also against influences from within the judiciary. Therefore, the CCJE identifies the reconciliation of judicial independence with the individual evaluation of judges as decisive. Ultimately, judicial independence must prevail.<sup>7</sup> The CCJE also states the need that every member state of the Council of Europe provides a system of justice of the highest possible quality and to ensure the accountability of the judiciary in a democratic system. Some form of evaluation, the CCJE holds, is necessary to achieve these goals.<sup>8</sup>

#### 2. Informal yes, formal if needed

22. In Opinion 17 (2014), the CCJE endorses the view that some form of evaluation is necessary.<sup>9</sup> However, the CCJE does not demand that a member state introduces a formal system of evaluation if a system of high judicial quality is achieved by other means. The CCJE recommends, however, that all member states reflect whether to introduce a system of formal evaluation.<sup>10</sup>

23. The CCJE recommends that member state introduce informal evaluation tools that help improving the skills of judges and thereby the overall quality of the judiciary, e.g. self-assessment, feedback and informal peer-review.<sup>11</sup>

#### 3. Purpose: judicial system of the highest possible quality

24. The CCJE states that all evaluation must aim at improving the judiciary as a whole.<sup>12</sup> If promotions are based on merit (in particular ability, integrity and experience) rather than seniority, as the CCJE and UN recommend<sup>13</sup> some form of evaluation is necessary. Therefore, the CCJE expresses the view that gathering information for the suitability for promotion can be an important purpose of evaluation.<sup>14</sup>

25. The CCJE also encourages the member states to use the material gathered during the process of evaluation of judges to improve the organisational structure of courts and the working conditions of judges.<sup>15</sup>

#### 4. The legislative framework and the criteria of evaluation

26. The CCJE holds the view that the basis and main elements of a formal evaluation system should be set out clearly and exhaustively in primary legislation. The Council for the Judiciary (where it exists) should play an important role in assisting in formulating these matters, especially the criteria for evaluation.<sup>16</sup>

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<sup>6</sup> Opinion No. 1(2001) para 10; Recommendation CM/Rec(2010)12 para 3,11; CCJE Magna Charta of Judges (2010) para 2.

<sup>7</sup> CCJE Opinion 17 (2014) para 46.

<sup>8</sup> CCJE Opinion 17 (2014) para 23, recommendation 1.

<sup>9</sup> CCJE Opinion 17 (2014) para 23, recommendation 1.

<sup>10</sup> CCJE Opinion 17 (2014) para 23, recommendation 1, 2.

<sup>11</sup> CCJE Opinion 17 (2014) para 25, recommendation 4.

<sup>12</sup> CCJE Opinion 17 (2014) para 24, recommendation 3.

<sup>13</sup> See the CCJE Opinion No. 1(2001), paras 17 and 29; UN Basic Principles on the Independence of the Judiciary (1985), para 13.

<sup>14</sup> CCJE Opinion 17 (2014) para 27.

<sup>15</sup> CCJE Opinion 17 (2014) para 26.

<sup>16</sup> CCJE Opinion 17 (2014) para 30, recommendation 5.

27. The CCJE endorses the view that evaluation must be based on objective criteria which should be published.<sup>17</sup> Objective standards are required not merely in order to exclude political influence, but also to avoid the risk of a possible impression of favouritism, which exists if appointments/evaluations are made in an unstructured way or on the basis of personal recommendations.<sup>18</sup> Such objective standards should be based on merit, having regard to qualifications, integrity, ability and efficiency<sup>19</sup> and consider all aspects that constitute good judicial performance. Such criteria should be tested by using qualitative indicators. In addition, quantitative indicators such as percentages and numbers, may be used as well.<sup>20</sup>

28. Expressing evaluation results by numbers, percentages or by ranking judges without further explanation should be avoided as this could create a false impression of objectivity and certainty. The CCJE expressly opposes any permanent ranking of judges as done in Albania.<sup>21</sup> However, the CCJE recognises that in specific situations, for example when more than one judge applies to be promoted to a certain position, some form of ranking of those candidates is inevitable.<sup>22</sup>

29. The CCJE urges member states not to evaluate judges badly because of the effects of poor working conditions judges cannot influence. As an example, the CCJE refers to delays caused by massive backlogs caused by a lack of judicial personnel or an inadequate administrative system.<sup>23</sup>

#### 5. Procedure and protection of the evaluated judge

30. The CCJE states that evaluators should be mainly judges in order to ensure judicial independence.<sup>24</sup> Moreover, evaluators should have sufficient time and resources. The evaluated judge should be informed who the evaluators are and the judge must have the right to ask for the replacement of any evaluator who might objectively be perceived as biased.<sup>25</sup>

31. The sources of evidence on which evaluations are based must be sufficient and reliable, particularly if the evidence is to form the basis of an unfavourable evaluation.<sup>26</sup>

32. Individual evaluation of judges should – in principle - be kept separate, both from inspections assessing the work of a court as a whole, and from disciplinary procedures.<sup>27</sup>

33. The CCJE stresses the necessity of procedural fairness in all elements of individual evaluations. Judges should be able to express their views in the evaluation process. They must also be able to challenge assessments, particularly when they affect the evaluated judge's "civil rights" in the sense of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>28</sup>

#### 6. Consequences

34. The Recommendations of Ministers of the Council of Europe<sup>29</sup> and the CCJE both take the view that the use of individual evaluations to determine the salary and pension of individual judges should

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<sup>17</sup> See Recommendation CM/Rec(2010)12, para 58.

<sup>18</sup> CCJE Opinion 17 (2014) para 31; See the CCJE Opinion No. 1(2001), para 24.

<sup>19</sup> See the CCJE Opinion No. 1(2001), para 25.

<sup>20</sup> CCJE Opinion 17 (2014) para 31-35, recommendation 6.

<sup>21</sup> CCJE Opinion 17 (2014) para 42.

<sup>22</sup> CCJE Opinion 17 (2014) para 42-43, recommendation 7.

<sup>23</sup> CCJE Opinion 17 (2014) para 26.

<sup>24</sup> CCJE Opinion 17 (2014) para 37.

<sup>25</sup> CCJE Opinion 17 (2014) para 36.

<sup>26</sup> CCJE Opinion 17 (2014) para 39, 44, recommendation 9.

<sup>27</sup> CCJE Opinion 17 (2014) para 29, 39, recommendation 10.

<sup>28</sup> CCJE Opinion 17 (2014) para 41, recommendation 11.

<sup>29</sup> See Recommendation CM/Rec(2010)12, para 55; see also the IAJ General Report (2006), Conclusions, para 12.



be avoided as this process could influence judges' behaviour and so endanger judicial independence.<sup>30</sup>

35. An unfavourable evaluation alone should not (save in exceptional circumstances) result in a judge's dismissal from office. Any action to remove incompetent or corrupt judges should live up to the high standards set by the principle of the irremovability of the judges whose independence must be protected.<sup>31</sup> This should only be done in a case of serious breaches of disciplinary rules or criminal provisions established by law or where the inevitable conclusion of the evaluation process is that the judge is incapable or unwilling to perform his judicial functions to an objectively assessed minimum standard.<sup>32</sup>

36. The principles and procedures on which judicial evaluations are based must be made available to the public. However, the process and results of individual evaluations must, in principle, remain confidential so as to ensure judicial independence.<sup>33</sup>

#### IV. Current Situation in Albania

##### 1. Materials used

37. The following description and analysis of the situation in Albania is based on the following documents in English translation:

##### 38. Laws of the Assembly of the Republic of Albania

- Law No. 8236 of July 32, 1996, as amended by the law no 9414 of May 2005 "On the magistrates' school of the Republic of Albania"
- Law No. 8811 dated 17/05/2001, amended by Law No 9448, dated 5/12/2005 "Law on the organization and functioning of the High Council of Justice"
- Law No. 9877 dated 18 February 2008 "On the organisation of the judicial power in the Republic of Albania"
- Law No. 10385 of 24.2.2011 "On mediation in dispute resolution"
- Law No. 49/2012 "On organisation and functioning of the administrative court and the adjudication of administrative disputes"
- Law No. 97/2014, dated 24/7.2014 "On some amendments to Law No 8136, dated 31.7.1996, " On the magistrates' school"
- Law "On some amendments to law No. 8811 dated 17/05/2001 "On the Organization and functioning of the High Council of Justice" approved on 31/07/2014

##### 39. Draft Laws

- On the evaluation system of judges in the republic of Albania

##### 40. Decisions of the High Council of Justice

- Decision No. 137, dated 21/02/2003 pursuant to Article 33 paragraph 3 of Law No. 8811 dated 17/05/2001 "On the organisation and functioning of the High Council of Justice" "Regulations on the disciplinary proceedings against judges"
- Decision No. 195/2/a, dated 05/07/2006 pursuant to Article 14 paragraph 1 of Law No. 8811 dated 17/05/2001 "On the organisation and functioning of the High Council of Justice"
- Decision 238/1/b dated 24.12.2008
- Decision 261/2 dated 14/04/2010 pursuant to Article 1, 2 paragraph dh of Law No. 8811 dated 17/05/2001 "On the organisation and functioning of the High Council of Justice" and

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<sup>30</sup> CCJE Opinion 17 (2014) para 28, 45, recommendation 13.

<sup>31</sup> Report of 2013-2014 of the European Network of Councils for the Judiciary on Independence and accountability of the Judiciary, p 59.

<sup>32</sup> CCJE Opinion 17 (2014) para 29, 44, recommendation 12.

<sup>33</sup> CCJE Opinion 17 (2014) para 48, recommendation 14.

articles 13, 14 Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania” “The system of judges evaluation” and “On the criteria of evaluation of judicial activity Annex 1”

- Decision No. 269/2, dated 27/09/2010 “Detailed rules on the Scoring/ranking system which is binding in the case of candidates’ selection procedure for filling vacancies in the courts of appeal and in the serious crimes courts”
- Printout of Public Ranking List available at the website of the High Council of Justice of 1.3.2014
- Explanatory note of the High Council of Justice on some decision made by the HCJ

#### 41. Other official Albanian documents

- Memorandum of cooperation between Minister of Justice and Deputy Chairman of High Council of Justice of 13 September 2012 “On avoidance of overlapping of powers in judicial inspection”
- Alliance for European Albania, Government Programme 2013-2017 – Next generation Albania
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#### 42. Other documents

- Recommendations of working group on the HJC inspectorate drafted by the working group
- USAID Albania “JuST – Justice Sector Strengthening Project” Fact Sheet
- Justice Inter-Sector Strategy
- JUST Training Report “The evaluation and inspection system of judges in Albania. Alignment with the international standards” by Albana Boksi and Valbona Vata
- Towards Justice, Analysis of civil proceedings in the district courts, OSCE, Presence Albania, 2012
- Manual on procedures of verification of complaints and inspection of courts of first instance and courts of appeal, EURALIUS III, October 2012
- OSCE Comments of July 15<sup>th</sup> 2014 on the draft law “On some amendments to law No. 8811 dated 17/05/2001 “On the Organization and functioning of the High Council of Justice” approved on 31/07/2014
- The Slynn Foundation, Judicial Reform in Albania, Discussion Paper of December 1<sup>st</sup> 2014
- GRECO Fourth Evaluation Round, Corruption prevention in respect of parliament, judges and prosecutors, Evaluation Report Albania, 2014

43. Moreover, the expert had the privilege to meet Mr Idlir Peçi (Deputy Minister of Justice), Mr Sokol Berberi (Judge of the Constitutional Court), Ms Marsida Xhaferllari (Chief Inspector of the HCJ Inspectorate), Mr Sokol Pasho, (General Director of the Strategic Planning and Justice Affairs Inspection Directorate) and other representatives of the MOJ, Ms Rezarta Abdiu, Head of International Relations of the Bar Association, the head of the School of Magistrates, as well as representatives of OSCE, JuST, Euralius IV and Ms Lora Ujkaj from the EUD during a stay in Tirana from October 1<sup>st</sup> to 3<sup>rd</sup> 2014. Especially useful was a meeting with judges of first and second instance of various courts, and with the legal advisor of the Constitutional Court on October 3<sup>rd</sup> 2014. The views and opinions expressed in those meetings were taken into account in the analysis.

On January 30<sup>th</sup> 2015, the expert had the privilege to present a draft of this report at a Round Table “On the current system of the individual evaluation of judges in Albania in the light of international standards” with Mr Marco Leidekker (Head of the CoE Office in Tirana), Mr Clive Rumbold (Head of Political, Economic and Information Section of the Delegation of the EU in Albania), Mr Idlir Peçi (Deputy Minister of Justice), Mr Ilir Mustafaj (Judge, Member of the HCJ), Ms Marsida Xhaferllari, (Chief Inspector of the HCJ Inspectorate) and Dr Agnes Bernhard, Deputy team leader EURALIUS IV) and many judges, inspectors and representatives of NGOs, including Sir David Latham of the Slynn

Foundation. The report was updated both in light of the comments made at the event as well as the comments made in writing by Sir Henry Brooke of the Slynn Foundation.

The expert is also grateful for the valuable insights provided by the CoE mission Albania, especially its long term consultant Ms Aida Bushati.

The report analyses the current legal situation. Recent draft laws are not taken into account.

## 2. Organisation of Courts

44. Judicial power in Albania is exercised by the courts of first instance, the courts of appeal and the High Court (Article 3 (1) Law No. 9877 dated 18 February 2008 "On the organisation of the judicial power in the Republic of Albania"). Courts may be created by law for particular fields, for example administrative courts, according to Article 7. However, no extraordinary courts may be created (Article 3 (2)). In Albania, there are 38 courts: the High Court, six courts of appeal and 22 courts of first instance (general jurisdiction), one court of first instance for serious crimes and one court of appeal for serious crimes, six courts of first instance for administrative disputes and one court of appeal for administrative disputes. Thus, courts of first instance are the 22 courts of the judicial districts, one court for serious crimes (Article 4) and six administrative courts of first instance. The courts of second instance are the six courts of appeal (general jurisdiction), one court of appeal for serious crimes and one administrative court of appeal (Article 5). The territorial competences of the courts are set by degree by the President of the Republic on the proposal of the Minister of Justice. The Minister makes the proposal after having received the opinion of the High Council of Justice (hereafter HCJ) (Article 6).

## 3. Appointment of judges

### a. High Council of Justice (HCJ)

45. According to Article 1 Law "On the organization and functioning of the High Council of Justice" No 8811, dated 17.05.2001, as amended by Law No. 9448 dated 05.12.2005, the HCJ is the authority responsible for the nomination, transfer, discharge, education, evaluation, career, and control of the judges of first and second instance. The President of the Republic appoints judges of first and second instance on the proposal of the HCJ. The HCL appoints presidents of courts of first instance and of courts of appeal (Article 2 a), e) Law "On the organization and functioning of the High Council of Justice" No 8811, dated 17.05.2001, as amended by Law No. 9448 dated 05.12.2005; Article 16 Law No. 9877/2008 "On the organization of the judicial power in the Republic of Albania").

46. The HCJ is composed of the President of the Republic, the Chairman of the High Court, the Minister of Justice, three members elected by the Assembly of the Republic of Albania (who must be jurists with no less than 15 years of experience in the profession (Article 3, 4), and nine judges of all levels elected by the National Judicial Conference (Article 3), who must have at least ten years of experience (Article 4). Elected members serve for a term of five years. A position in the HCJ is incompatible with serving as public prosecutor, advocacy in courts of first instance and appeal courts, and membership and/or positions in political parties (Article 5 as amended by a new Law of 31.07.2014). Members of the HCJ elected by the National Conference of Judges cannot be transferred or promoted even if they resign before the end of their five year term (Article 6 as amended by a new Law of 31.07.2014).<sup>34</sup> The Chairmen of the HCJ is the President, the deputy chairmen, the only full-time appointee, must be elected by the members of the HCJ among the members elected by parliament (Article 12 as amended by a new Law of 31.07.2014).

### b. Appointment and promotion

47. It is important to note that not only a nomination of a first instance judge to a court of appeal is considered a promotion but also a transfer from a rural court district to a bigger city, especially to

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<sup>34</sup> The OSCE Presence in Albania commented favourably on those amendments as they would help to avoid favouritism: Comments on the draft law on „Some amendments and additions to Law No. 8811 dated 17.05.2001, on the „Organisation and functioning of the High Council of Justice“ as amended.

Tirana. Therefore, it is important that also such transfers are made according to objective criteria based on merit.

48. According to Article 11 (1) Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania”, an Albanian citizen can be appointed judge if he or she has completed higher legal education and the School of Magistrates, has not been sentenced for a criminal offence and has high moral qualities and professional abilities. However, according to (2), up to 10% of judges may be chosen from candidates who have previously worked as judges and who meet all of the above criteria, except the completion of the school of magistrates. It might be discussed, whether this system is still appropriate now that the School of Magistrates is fully established.

49. The appointment of judges is regulated in Article 11-12 of the Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania”. Judges of first instance and judges in the courts of appeal are appointed by the President of the Republic on the proposal of the HCJ (Article 12 (1)). Judges can be appointed to the court of appeal or the court of serious crimes after a competition with curriculum vitae. Candidates must have distinguished themselves for their professional abilities and high moral ethics and must not have a disciplinary measure in force. Moreover, they must have been evaluated “very good” the last two times (Article 12 (2) b-d, (3) b-d). A judge must have worked no less than five years in a court of first instance before promotion to the court of serious crimes (Article 12 (2) a), and seven years before appointment to the court of appeal (Article 12 (3) a). Among the candidates who meet the criteria explained in Art 12 (2) and (3), the HCJ selects candidates according to a permanent evaluation/ranking list (Article 12 (4)) set out in Article 14. Administrative Court judges of the first and second level are appointed based on the criteria and the procedures foreseen in the Law 49/2012 “On organisation and functioning of the administrative court and the adjudication of administrative disputes”, (Article 5). According to Art.5 of the Administrative Court law, every Albanian citizen who has worked as judge for at least five years can be appointed as administrative court judge of the first level. With nine years of experience, a judge can be appointed as an administrative appeal judge. Administrative Court judges are appointed through a two step procedure: first, a written test and, second, a selection by the HCJ. The law does not provide specific rules on the promotion and disciplinary procedures of administrative court judges. However the rules of Law No. 9877/2008 “On the organisation of the judicial power in the Republic of Albania” apply to these issues as long as they do not contradict with the provisions of Art. 5 (1) “On organisation and functioning of the administrative court and the adjudication of administrative disputes”.

50. Chairmen of courts of first and second instance are selected and appointed by the HCJ according to Article 16. They must not have worked fewer than four years as a judge in courts of the same or higher level, must have been evaluated “very good” the last two times, have no disciplinary measure against them in force, must have organisational and management abilities and must not be members of the HCJ. According to Article 17, chairmen stay in office for four years with the right to reappointment. Chairmen of courts fulfil numerous administrative duties, among them the representation of their their courts in relation to third parties (Article 18 (3) a), they divide judges into chambers and panels (Article 18 (1), (3) b) and oversee the work discipline and ethics of judges (Article 18 (3) d,e) and maintain contact with the school of magistrates, the HCJ and the Ministry of Justice (hereafter MoJ) on issues of professional improvement of judges (Article 18 (3) ë).

#### 4. Status of judges

51. Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania” also contains rules on the status of a judge (Chapter IV). According to Article 20, a judge cannot be removed from office except when he resigns, reaches the age of 65, is punished by final decision for the commission of a crime and when he is discharged from duty. As a general rule, a

judge may not be transferred without his or her consent (Article 21 (1)). However, Article 21 Law No. 9877 “On the organisation of the judicial power in the Republic of Albania” and Article 147 of the Albanian constitution allows the transfer of a judge against her wishes if the reorganisation of courts requires it. Judges are prohibited to be a member of a political party or to take part in political activities. They are also not allowed to take part in the administration or direction or commercial companies, to be an arbitrator or expert in an arbitration, to strike, to make public declarations in connection with proceedings or to perform any other activity that could infringe their impartiality. Judges must respect rules on clothing and on the solemnity of trial (Article 25). Rights, benefits and payment of judges are also regulated in the Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania” Article 24, 26, 27. Criminal and civil responsibilities of judges are regulated in Articles 29 and 30.

## 5. Evaluation of judges

### a. Institutional Framework

52. The HCJ Inspectorate (regulated in Articles 14-17 of the Law on the organization and functioning of the High Council of Justice No 8811, dated 17.05.2001, as amended by Law No. 9448 dated 05.12.2005 and by the law dated 31.07.2014) is the institution carrying out the bulk of work concerning the evaluation of judges. Moreover, another branch of the Inspectorate inquires complaints made by the public against certain judges. The legal framework for this organisation has been in force since 2006 (The regulation on the organization and functioning of the Inspectorate, approved by the (HCJ with the decision No. 195/2/a, dated 05.07.2006, as amended with the decision No. 207/1, dated 07.02.2007). However, only in 2013, the structure was implemented. The HCJ Inspectorate consists of the Head or Chief Inspector and the inspectors who are nominated and discharged by the HCL on the proposal of the Deputy Chairman. The Head Inspector organises the duties of the Inspectorate as set out in Article 16, namely the evaluation of judges. The candidates for the position of inspector are selected for a five year term after public announcement and must fulfil the criteria to be appointed judge at a court of appeal. If there is no such candidate, a successful candidate must have served as a judge at least for five years (Article 14 and 15).

53. A new amendment of 31.07.2014 of the Law on the organization and functioning of the High Council of Justice No 8811, Article 14, prescribes that the work of the Chief Inspector and the Inspectors shall be evaluated every second year and that the Chief Inspector presents a report on the work of the HCJ Inspectorate every year.

54. Each judge is evaluated by a certain inspector who prepares a draft evaluation for the Chief inspector. The Chief inspector then checks the draft and assigns the overall rating, which is then reaffirmed or changed by the HCJ. The work of the HCJ Inspectorate only started in practice in 2013, with the appointment of the current chief inspector. In 2014, all judges have been successfully evaluated with respect to their work in the years 2005/2006. In October 2014 the HCJ Inspectorate worked on the years 2007-2009.<sup>35</sup>

### b. Primary Legislation

55. Article 13 Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania” establishes that every judge of first and second instance be professionally evaluated at least once every three years according to evaluation criteria approved by the HCJ (Article 13 (1)). According to Article 13 (2), a judge can be evaluated very good, good, acceptable and unacceptable. Being evaluated “unacceptable” constitutes a reason to begin a process of dismissal of the judge in question. A judge who is evaluated “acceptable” must be re-evaluated within a year. (Article 13 (4)).

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<sup>35</sup> See: The Slyn Foundation „Judicial Reform in Albania – Discussion Papers 2014, p. 7; GRECO Fourth Evaluation Round, Albania 2014, para 73.

c. Evaluation as regulated in the Decisions of the HCJ

56. The details of the evaluation process and the criteria to be used in the process are set out in the Decision 261/2 dated 14/04/2010 pursuant to Article 1, 2 paragraph dh of Law No. 8811 dated 17/05/2001 "On the organisation and functioning of the High Council of Justice" and articles 13, 14 Law No. 9877 dated 18 February 2008 "On the organisation of the judicial power in the Republic of Albania" (Hereafter Decision 261/2) "The system of judges evaluation" and "On the criteria of evaluation of judicial activity Annex 1" (hereafter Annex 1).

aa. Purpose

57. According to Article 1 Decision 261/2, the purpose of the system of judges' evaluation is to highlight the professional qualities of judges in view of their chances for career advancement, to identify judicial performance of low and high quality, to identify problems of courts and the training needs of judges. According to Article 2 (1) of Decision 261/2, all elements of the judge's work shall be assessed. The HCJ determines every year in November the courts where judges shall be evaluated the next year (Article 2 (6) Decision 261/2). Evaluations are prepared by the HCJ Inspectorate in both descriptive form as well as using statistical tables. The final decision on a judge's evaluation shall be made by the HCJ Article 2 (2) of Decision 261/2.

bb. Evaluation Process

58. According to Article 2 (3) of Decision 261/2, the evaluation process has three stages:

1. The evaluation of the president of the court where the evaluated judge performs his or her duties (Article 19) followed by a voluntary self-evaluation of the judge him- or herself (Article 20).
2. A report of the evaluation findings and a draft evaluation by the Inspectorate of the HCJ prepared on the basis of criteria set out in Chapter II, and according to the procedure set out in Article 27, 28.
3. The final evaluation decision by the HCJ (Article 32).

59. According to Decision 261/2, an evaluation shall be based on the data collected at the court where the judge performs his or her duties (Article 2 (4, 5) of Decision 261/2). For each judge, a statistical table shall be compiled containing:

- the number of cases a judge has handled over one year;
- the number of cases appealed to higher courts and among them the number of cases reversed and affirmed. The table shall contain the percentage of the number of cases quashed, modified and upheld by higher courts.
- The table shall also include the number of cases in which the judge exceeded the time limits set by the HCJ. This number shall be compared to the number of cases the judges has worked on.

cc. Criteria

60. In Chapter II of Decision 261/2, the evaluation criteria are regulated. According to Article 3, three sets of evaluation criteria must be distinguished:

- (a) The set of general professional, organisation and execution skills (as regulated in Section I, Article 4-8);
- (b) The set of judicial and technical professional abilities (as set out in Section II, Articles 9-12)
- (c) The set of human skills and professional engagement (as regulated in Section III, Articles, 13-17).

Quantitative and qualitative approaches are used to assess the criteria in Section I, qualitative criteria are used in Section II and III.

61. In Section I,

- a judge's efficiency and productivity (Article 4 a, Article 5 of Decision 261/2),
  - methodology (Article 4 b, Article 6 of Decision 261/2),
  - promptness (Article 4 c, Article 7 of Decision 261/2 ) and
  - scheduling of court hearings (Article 4 d, Article 8 of Decision 261/2 )
- shall be assessed.

62. With respect to evaluating a judges' efficiency, statistical data are assessed. A judge's efficiency is scrutinised according to the judicial performance guiding standards in terms of quality, quantity and timeliness in Annexe 1. Quantitative criteria are used in this context, such as the number of cases the evaluated judge has decided and the number of decisions reversed on appeal. The quantity standard demands that the judge manages a minimum workload over a calendar year. The minimum workload is measured differently according to the court and division of the evaluated judge. For example, a judge in the criminal division of first instance shall accomplish a workload of at least 100 criminal cases a year as a rapporteur, while a judge at the serious crimes court shall accomplish not less than 10 criminal cases. A judge at the appeal court, civil division, shall accomplish no less than 200 cases as a rapporteur (Annexe 1, 3.).

63. The quality standard set out in in Annexe 1 requires that the number of reversed decisions shall not exceed 30% of the appealed decisions (Annexe 1, 4). The timeliness standard requires that the evaluated judge conduct trials within a maximum time limit. The time limits vary in respect to the subject area. A trial concerning a commercial dispute at first instance shall not exceed 6 months, while a family dispute shall be solved within 4 months. A trial at the court for serious crimes shall not exceed 12 months.

64. A visit at the HCJ Inspectorate showed that evaluation reports are long and detailed. Numbers and statistics concerning the quantity and quality of the decisions are carefully analysed and detailed reasons are given. The HCJ Inspectorate has developed practices to interpret abstract evaluation criteria. For example, reversal rates are not simply used for the evaluation but every reversal case is analysed. Only if a reversal was due to clear procedural and legal mistakes of the judge in question, the reversal is counted negatively. Moreover, the quality of the evaluated judge's decisions is carefully scrutinised with an eye to the logical structure of the decision, its persuasiveness, spelling, use of grammar, and clearness. The HCJ Inspectorate and its Chief Inspectorate gave the impression that it did not take the responsibilities of judicial evaluation lightly but followed the rules in the legislation carefully.

65. Article 6, the criterion of a judge's methodology, serves to assess the judge's ability to plan and undertake the necessary procedural or administrative actions within or outside the court he is a member of. Article 7, the criterion of „promptness“ serves to assess the judge's ability to decide cases within reasonable time limits or to otherwise bring those cases to a conclusion. There seems to be an overlap between the „timeliness“ standard set out in Annexe 1 and “promptness” criterion set out in Article 4 c, Article 7 of Decision 261/2. Article 8 asks an evaluator to assess the judge's ability to plan court hearings in a just and timely manner to conclude the case in time.

66. In Section II, which is the most important section considering the overall evaluation of a judge (see under Article 29 of Decision 261/2), the judge's judicial and technical professional abilities shall be assessed. In this section, it is assessed, if the judge is able to

- draft clear decisions (Article 9 a, Article 10 of Decision 261/2). The criterion “drafting clear decisions” tests a judge’s skills in preparing legal decisions in a simple and clear fashion, so that they are easily understandable (Article 10).
- The Articles 9 b,11 serve to assess the evaluated judge’s ability to manage a fair legal process, to properly steer and guide the legal debate, and to express himself clearly in compliance with the requirements of law and legal ethics.
- Articles 9 c, 12 of Decision 261/2 request the evaluator to assess the judge’s competence to set up and organise a judicial file in a way that makes it readily usable.

67. According to Section III, the evaluated judge’s human skills and her or his professional engagement shall be assessed. Here, the evaluators must review:

- the judge’s sense of ethics during and outside judicial proceedings (Article 13 a, 14 of Decision 261/2). This criterion as set out in Article 14, aims at assessing the judge’s communication skills during court sessions and the way he behaves.
- The judge’s solemnity and discipline at work (Article 13 b), 15 of Decision 261/2) is a criterion that looks at the judge’s ability to conduct a solemn legal process, in line with the law and the by-laws adopted for its implementation, and to observe discipline at work.
- Finally, the judge’s participation and involvement in professional and training activities (Article 13 c, 16 of Decision 261/2) is taken into consideration.
- The judge’s work as a legal scholar is assessed according to Article 13 d, 17 of Decision 261/2.

ee. Information used in the evaluation process

68. Article 23 Decision 261/2 includes detailed rules on how the data on the evaluated judge’s performance is gathered:

- seven files the judge has worked on are selected by the Inspectorate using a lottery system (regulated in detail in Article 24)
- five decisions are selected by the judge him- or herself.
- the judge’s decisions reversed or amended by higher courts are collected. The inspector in charge inspects the whole court file of each case in order to identify the reasons for the reversal.
- Data from 20% of the cases the evaluated judge has decided are selected by lottery.
- Data from complaints handed in against the judge (the complaints must have been verified) are collected.
- Data from the inspection of the court is taken into account.
- Evaluation by the court president is considered as well.
- Self-evaluation by the judge in case he or she has completed the relevant form must also be used in the evaluation process.

In practice, inspectors have explained that they assess up to 100 decisions per judge.

69. In order to assess the evaluated judges’ participation in training activities, the inspector in charge asks the School of Magistrates for information (Article 25). The School of Magistrates does not only organise and execute the education of young jurists who aim at becoming judges, but also provides courses for the on-going education of judges (See Article 2 of the Law on the school of Magistrates, No 8136 of 31.07.1996 as amended by law no 9414 of 20.05.2005 and law 97/2014 of 31.07.2014).



For the purpose of judicial evaluation, the School provides a list indicating the invitations the evaluated judge has been received to attend courses at the School of Magistrates and the number of times he or she has actually attended such courses. As the Chief Inspector of the HCJ Inspectorate explained, the attendance or absence of a judge is especially taken into consideration if a course was held that has special relevance for the area of law the evaluated judge works in.

70. The evaluated judge may also request a personal interview with the Inspectorate of the HCJ, which is conducted either by the inspector in charge of the judge's evaluation or the Chief Inspector (Article 26 of Decision 261/2).

#### ff. Rating

71. The Chief Inspector of the Inspectorate of the HCJ compiles the draft evaluation report and appraises the judge with the overall rating "very good", "good", "acceptable" or "incompetent" (Article 28 of Decision 261/2). The ratings are assigned according to the ratings achieved in the three sections. A judge receives the overall rating "very good" if he or she has received a "very good" in all three sections or a "very good" in section II and one more "very good" and on more "good" in the other two sections. A judge must receive the overall evaluation "incompetent" if he or she has been evaluated "incompetent" in at least two of the three sections. An overall evaluation as incompetent can also be based on an evaluation as "incompetent" in Section II and not better than acceptable in the other sections. If a judge is evaluated as "incompetent" in one section, she or he cannot receive a better overall evaluation than "acceptable" (Article 29).

72. Being evaluated acceptable, triggers re-evaluation within a year.<sup>36</sup> Being evaluated as "incapable" according to Article 13 (2) Law No. 9877 dated 18 February 2008 "On the organisation of the judicial power in the Republic of Albania" constitutes, according to Article 13 (3) "a reason for beginning the procedure for discharge from the office of judge". Article 13 does not appear in Articles 32, 33, however, so it is not entirely clear if the "Procedure of discharge" referred to means a disciplinary procedure according to Chapter V of the law. According to information provided by the HCJ Inspectorate, so far no judge has been evaluated as "incapable". Nevertheless, it is necessary to have the procedural rules according to which a judge can be discharged set out clearly in primary legislation.

#### gg. Review and final Decision

73. According to Article 30 of Decision 261/2, the evaluated judge can file an appeal at the HCJ against the draft evaluation of the Chief Inspector. In that case, the HCJ hears the evaluated judge and the Chief Inspector (Article 31 of Decision 261/2).

74. Irrespective of an appeal, the HCJ makes a final decision on a judge's evaluation. If the HCJ considers the evaluation too positive, a member of the HCJ, who is a judge, prepares a new evaluation report within ten days. The evaluated judge is heard when the plenary decides on the evaluation.

75. The reasoned decision of the HCJ then becomes part of the evaluated judge's personal file (Article 32 of Decision 261/2). In Albania, the possibility to demand judicial review of decisions of the HCJ as an administrative act is accepted. At the moment, a number of cases concerning such cases are pending at the court of appeal level. However, there is a lack of clear procedural rules regulating the judicial review of decisions of the HCJ.

#### hh. Evaluation of court presidents

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<sup>36</sup> GRECO Fourth Evaluation Round, Albania 2014, para 73.

76. As judges, presidents of courts of first instance and courts of appeal are evaluated according to the same criteria as ordinary judges (Article 18 of Decision 261/2). Presidents of courts are also evaluated in their capacity as manager of the courts. Chairmen of the courts are elected for 4 years with the right to be re-elected. Based on the HCJ Decision no.227/2 dated 28.03.2008 "On the chairing functioning of the court", the chief inspector of the HCJ every two years (or whenever it is required by the HCJ) prepares and submits a report on the work of the chairman of the court to the plenary meeting of the HCJ. The report is prepared by the Chief inspector of the HCJ and takes into consideration different sources, such as an annual analysis of the court, the indicators of the performance of the courts based on the court statistics, visits of different HCJ members to this court, information of the management of financial resources, information from the office for the judicial budget, prosecutors offices and bar associations. The report is then discussed with the chairman of the court and he or she has the right to make observations. The report is discussed in the plenary meeting of the HCJ and it can also serve as an incentive for his/her dismissal as a chairman of the court. The HCJ every November prepare the list of the chairmen that will be evaluated for the upcoming year. Priority is given to the ones that are at the end of their mandate as chairman or if they want to be re-elected (Article 9). The Inspectorate has just started collecting data on three court presidents.

#### 6. Permanent evaluation/ranking/scoring list

77. According to Article 14 of Law No. 9877 dated 18 February 2008 "On the organisation of the judicial power in the Republic of Albania", the HCJ keeps a permanent list of the "Ordering of judges" for the "purpose of the professional career" which is updated every six months. All judges of first and second instance are ranked according to the number of points achieved from Number 1 down to Number 361. The ranking list that results from this scoring system is publicly available on the website of the HCJ.

78. This ranking of judges is undertaken according to Decision No. 269/2, dated 27/09/2010 "Detailed rules on the scoring/ranking system which is binding in the case of candidates' selection procedure for filling vacancies in the courts of appeal and in the serious crimes courts". A working group of three members is elected for one year to allocate the relevant points.

79. According to Decision No. 269/2, a maximum score of 200 points can be reached. The relevant score is allocated comparing points collected according to the following criteria:

- 50% experiences, seniority, up to 100 points can be achieved: Three points are allocated for each year of professional experience as a judge, which add up to a maximum score of 80 points. Two additional points are assigned for each year of professional experience as a judge in the court of appeal, which add up to a maximum score of 20 points.

- 40% evaluation results, up to 80 points can be reached. 80 points are assigned if a judge receives an evaluation of "very good" in all three categories. The evaluated judge receives 60 points for an overall evaluation of "very good". The provisions in Article 4 contradict these scoring measurements, however, as they mention four evaluation sections.

- 10% scientific and academic activity, up to 20 points can be achieved.

80. The calculation necessary to ascertain the „scientific and academic activity“ is explained in detail in the Annex enclosed to the Decision. A judge can score up to 10 points for having achieved an academic title: 4 points for a master's degree and 10 points for a PhD. For publications, a judge can achieve up to 10 points. For the authorship of legal articles, a judge can score up to 5 points, 0,5 points for each article. For any book the judge has published, he obtains 1,5; one more point for a

republication. If the candidate has published more than three books, the maximum score is 10 points.

Moreover, the evaluated judge can receive up to 10 points for having been a Judge of the High Court, Judge in the Constitutional Court, Head of the School of Magistrates or a Member of the HCJ. For each position, the judge scores 3 points but not more than ten in total. Out of all three sections, academic title, publications and memberships, the evaluated judge cannot receive more than 20 points in total.

## 7. Disciplinary proceedings, Ministry of Justice (MoJ)

### a. MoJ Inspections

81. The Minister of Justice is not only a member of the HCJ but is also responsible for the inspection of the courts of first and second instance with respect to their organisation and performance. The MoJ also performs inspections according to special thematic or territorial programmes and verifies complaints brought by citizens and initiates disciplinary proceedings against judges according to Article 31-35 Law on the organization and functioning of the High Council of Justice No 8811, dated 17.05.2001, as amended by Law No. 9448 dated 05.12.2005. Insofar, there is an overlap with the verification of complaints by the HCJ Inspectorate. Only the MoJ, however, has the right to initiate disciplinary proceedings against judges.

### b. Rules on disciplinary proceedings

82. Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania” also provides rules on the “responsibility for disciplinary violations, disciplinary measures and a disciplinary proceeding against a judge” (Chapter V). According to Article 33 (1), disciplinary measures are given in fair relationship with the violation committed. Disciplinary measures range from receiving a reprimand, a reprimand with warning to temporary lowering in office to a court of a lower level for a period of one to two years, or being sent for one to two years to a court of the same level outside the judicial district where the judge is appointed up to a discharge from duty. A Judge can only be discharged from office if he or she has committed a serious violation of his or her duties according to Article 32 (d).

83. According to Article 34 Law No. 9877 dated 18 February 2008 “On the organisation of the judicial power in the Republic of Albania” the Minister of Justice has the right to start disciplinary proceedings in the HCJ against a judge. The procedural rights of the judge in question are set out in Article 35. The judge has the right to be informed of the relevant facts, the violations in question, the sanctions that might be set and the inspector who is assigned to the case (Article 35 (1) a). The judge can formulate claims and requests (Article 35 (1) b), can deposit evidence and has access to the documents used in the disciplinary proceedings (Article 35 (1) c) as well as having the assistance of a colleague or lawyer during the proceedings (Article 35 (1) ç). A decision of a discharge from duty can be appealed to the High Court, for other disciplinary measures, the appeal is taken to the Tirana Court of Appeal (Article 36).

### c. Relationship between MoJ Inspectorate and HCJ Inspectorate

84. The fact that both the MoJ as well as the HCJ Inspectorate conduct “inspections” assessing judicial performance and verifying complaints against judges has often be criticised.<sup>37</sup> There is a Memorandum of Cooperation between the HCJ and the Minister of Justice to avoid an overlapping of powers in judicial inspection.

## V. Analysis of the current situation in Albania

### 1. Negative Perception of Judiciary

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<sup>37</sup> GRECO Fourth Evaluation Round, Albania 2014, para 101.

85. Discussions of issues concerning the Albanian judiciary often mention a negative perception of the judiciary in the public eye. The judiciary is often conceived to be corrupt.<sup>38</sup> Moreover, decisions are assumed to take too long and public hearings show sometimes shortcomings in the way they are conducted. Judges at court of appeals report that judgements of first instance judges are often of bad quality and difficult to understand. A successful system of evaluation can help to improve the work of judges and their professionalism. This way, a transparent and careful evaluation of judges can be a small step in improving the public perception of the judiciary and thereby increasing the trust of Albanian citizens in their judicial system.

## 2. Promotion in Albania and permanent ranking list

86. According to my experiences in personal discussions, it is not clear if Albanian judges have a full understanding of how the promotion process works. Moreover, Albanian judges seem to have a poor opinion of the fairness of the appointment and promotion system. If this perception is correct, there is a general feeling of distrust which harms the judiciary as a whole. Judges must not only be evaluated in a transparent and fair manner, but they must also be able to trust that deservedly good evaluations will effect promotions within the judiciary.

87. According to the Article 12 (4) and Article 14 of the Law No. 9877 dated 18. February 2008 “On the Organisation of the Judicial Power in the Republic of Albania”, promotions should be based on the score achieved in the permanent ranking list. The ranking list should be abandoned. There are a number of problems with the permanent ranking list:

First, if consequently applied, the permanent ranking list should dictate which judge must be promoted in every case, irrespective of the position in question. However, in order to find the best possible candidate, it is better to evaluate each candidate individually. For example, certain experiences might make a candidate a better choice for one open position rather than for another position. For example, a judge who is considered for promotion as head of a court of serious crimes should have experience in working in the field of serious crimes. A judge who is considered for a position at the court of appeal does not need such experiences. If the rank in the permanent ranking list is scrupulously observed, however, there could be no place for such considerations. Therefore, decisions on promotions should not be based on the permanent ranking list alone.

88. Second, the list puts great weight on the seniority of a judge. The CCJE<sup>39</sup> and the UN<sup>40</sup> both state that the appointment and promotion of judges should not be based on seniority alone but on objective criteria, in particular ability, integrity and experience. In general, therefore, it is not objectionable to take seniority into account as the scoring system does. However, relying heavily on seniority can make it difficult to bring new, brilliant young judges to positions where new ideas might be needed to improve the judiciary.

Third, it is questionable if academic activity should contribute 10% of the score, especially since the evaluation already takes into account a judge’s scholarly activities in Article 17 of Decision 261/2 “The System of Judges Evaluation”. The double importance of a judge’s scholarly activities was also criticised in the JuST Training Report by Albana Boksi and Valbona Vata point 1.6, drafted according to the recommendation of the participating judges.

89. Fourth, the permanent ranking list of Article 14 of the Law “On the Organisation of the Judicial Power in the Republic of Albania” No. 9877, dated 18.02.2008 poses other serious problems: The CCJE in its Opinion 17 (2014) para 42 and 43: has expressively recommended not to introduce a permanent ranking of judges as in Albania:

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<sup>38</sup> Justice Inter-Sector Strategy, p. 11; GRECO Fourth Evaluation Round Albania, 2014, para 4.

<sup>39</sup> CCJE Opinion 1 (2001), paras 17 and 29; Opinion 17 (2014) para 27.

<sup>40</sup> UN Basic Principles on the Independence of the Judiciary (1985), para 13.

42. The CCJE also considers detailed permanent ranking of judges as a result of their evaluation<sup>41</sup> as undesirable. Not only does such a ranking give a false impression of objectivity and certainty; even worse, it is inflexible and difficult to change without engaging in an exercise that "re-ranks" all judges of a similar level. Thus, such a system is impractical and, particularly if it is made public, is unjust. It does nothing to improve either the efficiency of the judges or their independence.

43. However, a system of ranking for specific purposes, such as promotion, can be useful. For example, if two or more judges have applied or are being considered for appointment to one position, it is likely that the candidates will be put in some form of "ranking" for that purpose.

90. Given this clear vote against permanent ranking, the permanent ranking list of the HCJ should be abandoned. The list is not a step towards more transparency in the judiciary. In a personal meeting with judges, the opinion was expressed that being ranked publically demeaned the authority of judges. It is indeed difficult to imagine that the parties of a trial chaired by judge ranked 361 will trust and accept the authority and decision of the judge. Rather, the losing party is likely to appeal the decision just because of the lowly ranked judge's perceived incompetence. Ranking systems can be helpful to enable consumers to make choices between different service providers, for example different banks or restaurants. However, a citizen is not free to choose the judge who decides her case. Moreover, as the CCJE pointed out, the ranking list gives a false impression of objectivity. Without careful analysis of the scoring criteria, which a citizen will not usually do because it requires finding and understanding the relevant decision of the HCJ first, the ranking list appears to rank judges according to their merit. Therefore, a lowly ranked judge will be perceived as a bad judge, a highly ranked judge as a good judge. Since young judges cannot collect many points through their seniority and may also not have been evaluated yet, they will necessarily be ranked very poorly. Even though such a young judge may work very hard and well, a citizen looking up his rank will assume that he is a very bad judge whose judgement should not be trusted. A judge convicted for a crime, corruption for example, may deservedly be shamed in a public court hearing. Apart from that, the aim must be to improve the judiciary as a whole rather than to publicly rank judges.

### 3. Evaluation by the HCJ Inspectorate

#### a. General observations

91. In general, the Albanian evaluation system as conducted by the HCJ Inspectorate shows many aspects that are positive and can help to improve the Albanian judiciary. The HCJ Inspectorate should continue its work. After the second round of evaluations, the evaluation system itself should be carefully evaluated and improved. The experiences of the HCJ Inspectorate should be taken into account carefully.

92. The CCJE recommended that the main elements of a formal evaluation should be set out clearly and exhaustively by primary legislation.<sup>42</sup> Insofar, it is good that the basis of the evaluation process is regulated in Albania by primary legislation and that additional rules developed by the HCJ are publicly available. It would be recommendable, however, to have the process regulated in more detail by primary legislation, as the Draft Law on the Evaluation System in the Republic of Albania suggests.

93. This system might not be the ideal choice for every judicial system as it is very complicated, but it seems to have advantages for the Albanian system. The Albanian evaluation system involves many different institutions such as the HCJ, the HCJ Inspectorate, court presidents and the School of Magistrates. This can make the process more transparent and can help minimizing the actual or perceived danger of corruption. In Germany, judges are evaluated by the presidents of the court

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<sup>41</sup> As in Albania.

<sup>42</sup> CCJE Opinion 17 (2014) para 30, recommendation 5.

where they perform their duties. Such court presidents are highly experienced judges at the end of their careers. However, with regard to the Albanian past, it seems plausible not to give court presidents a greater role in the evaluation process at the moment. First, court presidents are only appointed for a couple of years and are not at the end of their careers yet but can still be fairly young. Second, according to the views expressed by judges in personal meetings, court presidents held very strong positions in communist times. Therefore, a greater role for court presidents in the evaluation process was not considered desirable. However, such negative experiences should not necessarily prescribe the way for the future. It is certainly useful to have the input of a judge who can assess a judge's abilities based on experiences gathered over a couple of years and not only rely on inspectors who evaluate a judge from the distance. Therefore, if experiences with the input court presidents provide are positive, their role can be increased in the future.

94. It should also be stressed that the HCJ Inspectorate's evaluation reports seem detailed and based on careful and extensive analysis. This valuable work and the information gathered in the process should be used further to improve the work of the evaluated judge and the Albanian judiciary as a whole.

#### b. Timeliness of the evaluation process

95. It is a serious disadvantage for the evaluation system that it evaluates the work of judges conducted such a long ago.<sup>43</sup> In 2012 and 2013, the years 2005-2006 were evaluated. At the moment, in 2014, the years 2007-2009 are evaluated. Evaluation can only provide up to date information for decisions on promotions and provide feedback and useful information on a judge's training needs if it is timely. Therefore, the reasons for the delays in the evaluation process should be carefully analysed. Then, the necessary steps must be taken to make evaluations more timely. In the past, various factors may have contributed to the delays, among them, as expressed in personal conversations, a lack of political support. Once the HCJ Inspectorate took up its work in earnest, after the appointment of the current chief inspector, the speed increased dramatically.<sup>44</sup> However, evaluations are still not up to speed. This again, might be caused by various factors, including a lack of recourses and the need to assess too many different criteria according to clumsy procedural rules. Moreover, at the moment, inspectors must evaluate between 30 and 100 cases per judge. A considerable reduction (20 per judge, for example) could make the process much faster. Another reason for the delays is that reversal rates of the decisions handed down by the evaluated judges are given importance in the evaluation process. This requires that appeal process must be concluded before a judge can be evaluated for a decision. In the interest of the timeliness of the evaluation process but also for further reasons given below at para 106-107, it is suggested that reversal rates should be abandoned as a criteria in the evaluation process.

#### c. Inspectors

96. Given the recommendations of the CCJE<sup>45</sup> it is positive that the HCJ Inspectorate should consist of judges, especially those who have the qualifications to serve as court of appeal judges. At the moment, the HCJ Inspectorate seems to face difficulties in finding suitable candidates. In order to make evaluation as effective as possible, strenuous efforts must be made to attract the best possible inspectors. From personal conversations, the expert understood that young judges from outside Tirana often apply to become inspectors in order to live in Tirana. However, very young judges are not necessarily the best inspectors. Rather, the most experienced, very best judges should be encouraged to serve as evaluators in order to help improving the judiciary and ensuring that the best judges are promoted. Maybe even former High Court judges could be encouraged to use their experience in order to serve as inspectors and improve the judiciary as a whole. In order to attract

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<sup>43</sup> GRECO Fourth Evaluation Round, Albania 2014, para 75.

<sup>44</sup> GRECO Fourth Evaluation Round, Albania 2014, para 73; The Slynn Foundation „Judicial Reform in Albania – Discussion Papers 2014, p. 7.

<sup>45</sup> CCJE Opinion 17 (2014) para 37.

suitable inspectors, appropriate measures must be taken to make the position of an inspector more attractive. Therefore, the inspectors working conditions and their future career options should be improved. Moreover, since inspectors have a great responsibility for the future of the evaluated judge, they should receive proper initial training and subsequent support. A manual for inspectors, like the Manual on “Procedures of Verification of Complaints and Inspection of Courts of First Instance and courts of Appeal” published by EURLIUS III in October 2012 could be developed to help inspectors in the evaluation of a judge’s professional skills.<sup>46</sup> As CCJE has pointed out, evaluators also need sufficient time and resources to adequately perform their duties.<sup>47</sup>

97. The measures best taken to improve the attractiveness of the position of an inspector should be carefully discussed. At the moment, inspectors enjoy the status of court of appeal judges. When their term ends, inspectors return to their former positions, usually as judges of first instance outside Tirana. This means a double loss of status. In order to avoid such difficulties, the Chief Inspector has suggested that former inspectors should be automatically promoted to the court of appeal after the end of their term. If considered at all, automatic promotion should only be introduced after a careful evaluation of the inspectors. Appropriate rules for the evaluation of inspectors are currently under discussion.<sup>48</sup> A member of the CCJE has been invited to comment on the current draft. However, guaranteed promotion is not necessarily the best option, as a good inspector does not necessarily make a good appeal court judge.

#### d. Criteria

98. According to CCJE Opinion 17 (2014), evaluation must be based on objective criteria. Criteria may include qualitative but in addition also, though not exclusively, quantitative indicators. They must enable the evaluators to assess all aspects that constitute good judicial performance.<sup>49</sup> Since evaluation aims at improving the judiciary as a whole and the trust of the people in the judiciary, evaluation should focus on the skills a judge requires to serve the public rather than on scholarly or academic achievements. The criteria used in by the British Judicial Appointment Commission (JAC) might offer valuable inspiration in this regard.<sup>50</sup> The integrity of judges is – of course – the indispensable basis for public trust in the judiciary. Violations of rules of integrity must, however, be primarily handled in disciplinary procedures. Moreover, judges must be educated and encouraged to develop a mindset of integrity and independence. Apart from that, the skills of judges in organising fair and effective courtroom hearings and in drafting understandable, clear decisions are of foremost importance to gain the trust of the public.

99. Decision no. 261/2 “The System of Judges Evaluation” includes numerous criteria subdivided in three sections which allow an assessment of different aspects of judicial work. Moreover, there is an Annexe that includes standards defining the quantity of decided cases, reversal rates and timeframes. All those criteria require some effort to understand them and their significance in the evaluation process. After careful evaluation of the first two rounds of evaluation, the criteria could be simplified and overlaps between different criteria avoided. However, this should only be done with judges and Inspectors involved, using their experiences and the specific problems of the Albanian judicial system. The following examples are just ideas which would require careful discussion. For example, the criteria set out in Articles 7 and 8 could be combined into one. Articles 14 and 15 are difficult to understand without further explanation. The differences between Articles 11 “manage a fair legal process, guiding the legal debate by clearly expressing oneself”, Article 14 “communication skills” overlap slightly. This, after careful consideration, could be improved. For example, Section I could be reduced to “efficiency and timeliness”, using the present criteria in

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<sup>46</sup> The Slynn Foundation „Judicial Reform in Albania – Discussion Papers 2014, p. 5.

<sup>47</sup> CCJE Opinion 17 (2014) para 36.

<sup>48</sup> The organisational skills, methodology, integrity and commitment of inspectors shall be assessed according to those rules. Moreover, rules are discussed on the possibilities to challenge an unfavourable evaluation.

<sup>49</sup> CCJE Opinion 17 (2014) para 31-35, recommendation 6.

<sup>50</sup> See Slynn Foundation, Annexe 1 to Discussion Papers on Judicial Reform in Albania, 2014.

Articles 5, 7 and 8. Articles 7 and 8 could possibly be summarised in one Article. Section II could remain as it is, with Article 11 “ability to manage a fair legal process” and Article 6, “methodology” and Article 14 “communication skills” combined into one. The ability to manage a fair legal process and steer the legal debate requires communication skills. Section III should assess a judge’s ethical behaviour, his participation in training courses and scholarly activities.

100. According to the JUST Training Report “The evaluation and inspection system of judges in Albania - Alignment with the international standards” by Albana Boksi and Valbona Vata, judges have demanded objective, clear criteria. They have criticised that many of the criteria used are not clear enough, for example “the judges ability to write simply and clearly”, the “ability to chair and guide the judicial debate”, “work discipline” and “solemnity”.

101. Though it is impossible to plan the evaluation of all aspects of optimal judicial work in advance, it would be helpful if the criteria used by the HCJ Inspectorate could be defined more concretely in the future, maybe using examples. For example, the criteria that a judge should be able to “write simply and clearly” could be explained by referring, for example, to correct usage of grammar and spelling as well as with the request that a decision should have a logical structure and be understandable for parties as well as for an appeal court. Inspectors of the HCJ Inspectorate have already developed practices of interpretation of abstract terms in their work. Such practices should be published used to explain to judges what the HCJ Inspectorate asks of them. Moreover, such practices should be taken into account in courses of the School of Magistrates, for example on the drafting of judgements, in order to improve the Albanian judiciary as a whole.

102. Judgements composed in a clear, logical way enable litigants – especially the party who has lost the case – to understand the judge’s reasoning. Even if parties do not agree with a decision, it is important that they understand the willingness of their judge to listen to them and explain the reasons for the decision. Such an understanding is vital for lay peoples’ trust in the integrity and skills of the judiciary. Therefore, a judge’s skills in judgement writing must be of great importance in the Albanian evaluation system. The CCJE stresses the importance of high quality judgements. Therefore, it believes that the quality, not merely the quantity, of a judge’s decisions must be at the heart of individual evaluation. In order to evaluate the quality of a judge’s decision, evaluators should concentrate on the methodology a judge applies in his/her work overall, rather than assessing the legal merits of individual decisions.<sup>51</sup> Inspectors in the Albanian evaluation system scrutinise judicial decisions of the evaluated judges carefully, as a personal meeting with the Chief inspector of the HCJ Inspectorate showed. She pointed out that inspectors assess, firstly, a decision’s structure and whether it meets the appropriate procedural requirements. Secondly, the inspector assesses the logical structure and quality of the decision. Thirdly, when evaluating a reversed decision, the inspector takes into account, if the reversal was based on contradictions or a lack of logic. Moreover, clear language and the correct use of spelling and grammar rules is a factor in the evaluation process. In a personal discussion, a judge of a court of appeal in Tirana commented that many judges of first instance wrote so badly that it was impossible for a court of appeal to understand the decision. According to the experiences of the Slynn Foundation, spelling mistakes and bad grammar were just visible signs of a serious lack of skills like legal reasoning and judgement writing. Therefore, it is appropriate that the current Albanian system of judicial evaluation considers the quality of a judge’s decisions important in Section II Article 10 of Decision 261/2. However, the quality of judgements requires further improvement. Appropriate practical training in decision drafting should be offered at the School of Magistrates both for students as well as for those judges who show weaknesses in their evaluation. Maybe even lay people could be invited to give their perspective on a judgement’s comprehensibility.

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<sup>51</sup> CCJE Opinion 17 (2014) para, 35. See the CCJE Opinion 11 (2008) para 57.



103. Justice must not only be provided with high quality but also within a reasonable timeframe, Article 6 ECHR, Article 42 Albanian Constitution. The 2012 OSCE-Report “Towards Justice – Analysis of civil proceedings in the district courts” addressed the legal framework as well as the current situation in respect to delays in the Albanian judicial system. The Albanian law provides guidelines on how quickly a case must be brought to a conclusion. According to Section I Decision 261/2, the timeliness and efficiency of a judge is also assessed as part of his professional evaluation.

104. Quantitative factors such as the number of cases a judge has decided or his or her clearance rate can be an important factor in the evaluation of judges. There are different ways in which such quantitative indicators can be used to assess a judge’s efficiency. For example, the number of cases a judge has decided can be compared with the average number of cases decided by other judges in a similar position. Whether a judge fulfils certain target numbers set by the court can also be a factor. Moreover, the number of cases can be considered in which a judge took longer than the legal time frame to decide a case. However, such criteria must always be treated with caution. The CCJE endorses the view that a judge’s efficiency should be considered in his or her professional evaluation. However, the CCJE urges not to understand the quality of justice as if it were a synonym for mere “productivity”.<sup>52</sup> First, timelines and prescribed annual workloads should be realistic and fair, taking into consideration the rights and behaviour of the litigants as well as working conditions and the complications in certain legal areas. For example, white collar crime cases take usually longer than simple shoplifting cases, therefore, it would be unfair to measure the number of cases decided by a judge who works on shoplifting cases with the number of decisions handed down by a judge dealing with white collar crimes. Many judges in Albania question the adequateness of the legal timeframes.<sup>53</sup> It is noted, however, that Inspectors of the HCJ try not to apply Annexe 1 too rigidly but take the individual circumstances of each case into consideration.

105. Moreover, the CCJE warns that a heavy reliance on a judge’s clearing rate is problematic because it might lead to false incentives.<sup>54</sup> For example, judges might be inclined to only work on easy, new cases rather than difficult cases, which are often old and cause backlogs. Judges might also subdivide one case into one or more cases in order to give two decisions where one would have been enough. After the second round of evaluations is finished, the current evaluation system should be carefully evaluated taking into consideration both the experiences of the HCJ Inspectorate as well as of judges in order to ensure that the quantitative criteria used provide a realistic and valuable insight into a judge’s productivity.

106. The CCJE urges not to base an evaluation on quantitative criteria and statistics (for example clearance rates and reversal rates) alone.<sup>55</sup> Moreover, the CCJE,<sup>56</sup> the Kyiv Recommendations<sup>57</sup> and the ENCJ Report<sup>58</sup> caution that basing evaluation on the percentage of cases reversed on appeal is problematic, unless the number and manner of the reversals demonstrates clearly that the judge lacks the necessary knowledge of law and procedure. Thus, it is positive that evaluations in Albania are not based on quantitative criteria alone, although those play a role in Section I. However, not relying on reversal rates at all would enable the HCJ Inspectorate to evaluate more timely. In general, the methodology a judge uses, not the question whether or not her decision was reversed on appeal should be decisive in an evaluation. In a legal system without binding precedents such as the

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<sup>52</sup> CCJE Opinion 17 (2014) para 31; CCJE Opinion 1 (2001) para 25.

<sup>53</sup> 2012 OSCE-Report “Towards Justice – Analysis of civil proceedings in the district courts” S. 32; JUST Training Report “The evaluation and inspection system of judges in Albania. Alignment with the international standards” by Albana Boksi and Valbona Vata (recommendation 1.2; 1.4).

<sup>54</sup> CCJE Opinion 17(2014) para 34.

<sup>55</sup> CCJE Opinion 17 (2014) para 31-35, recommendation 6.

<sup>56</sup> CCJE Opinion 17(2014) para 35; See also the CCJE Opinion 11 (2008), para 74, and CCJE Opinion 6 (2004) para 36.

<sup>57</sup> See the Kyiv Recommendations (2010), para 28.

<sup>58</sup> See the ENCJ Report 2012-2013, section 4.12.

Albanian system, a judge's readiness to bring a difficult issue before a court of appeal and risk reversal can be valuable rather than a flaw that must be criticised in an evaluation.

107. Not only time limits and workloads but also the reversal rates in Annexe 1 should be regularly checked for their appropriateness. If considered at all, reversal rates should not constitute more than rules of thumb which must be applied carefully with an eye to the individual circumstances of each case, as for example if a judge's decision is reversed because of an unclear, new piece of legislation or because of a gross mistake in the application of procedural law. Such rules should be collected and published in order to ensure a transparent evaluation process.

108. Transparency of court proceedings is an important aspect of a judicial system in a democratic state.<sup>59</sup> A judge's organisational skills, conduct in hearings, and his willingness to listen carefully to the litigants, are extremely important not only for an efficient judicial process but also for the perception of ordinary citizens of the judiciary as a whole. Article 11 and Article 14 Decision 261/2 take into account the evaluated judge's abilities to conduct fair, understandable and effective hearings. However, as far as the expert has understood the Albanian system of evaluation, inspectors do not usually visit the evaluated judge's court hearings. Therefore it is questionable, if the inspectors can gain a proper insight into the judge's conduct in court hearings. Judges asked for their opinion on this point agreed that this was an important aspects and that it would be helpful for inspectors to visit a number of court hearings of the evaluated judge. Audio recordings made in courts could be used in the process as well. However, the expert believes that a proper impression of a judge's conduct in the courtroom can only be gained by taking into account all aspects of his verbal and nonverbal communication. Therefore, personal visits to courtroom hearings are recommended.

109. In this context, it might also be useful not only to look at the organisation and communication skills of a judge but also on such facts as whether he or she holds hearings in his or her office rather than the court room. Holding hearings in courtrooms is an important prerequisite for public court hearings and consequently a transparent legal process.<sup>60</sup> The HCJ has decided in Decision 238/1/b dated 24.12.2008 that hearings can be held in judge's offices if there are not enough courtrooms. However, according to the information of JuST, most courts have now the necessary technical equipment nowadays to schedule their hearings effectively and reserve courtrooms. Therefore, it might be increasingly appropriate to encourage judges to use the available courtrooms by taking it into account this factor in their evaluations. In court where not enough courtrooms are available, strenuous efforts must be made to provide enough courtrooms.

110. Moreover, Law No 10385 of 24.2.2011 „On mediation in dispute resolution“ has established in Articles 13, 14 a duty of judges to invite parties to settle their disputes through mediation. It might be useful in the future, to take a judges' readiness to invite the parties of appropriate cases to use mediation rather than the court system into consideration in the process of judicial evaluation.

A simplified set of criteria could then look like this:

- **Section I efficiency and timeliness**
- Quantity (using the number of decisions, clearing rates)
- Timeliness (using decisions and scheduling of court hearings)
- **Section II professional and communication skills**
- Ability to draft decisions of high quality (including reversal, if based on serious legal and procedural mistakes)
- Methodology: Ability to organise files and court hearings, transfer of cases to mediation, if appropriate

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<sup>59</sup> 2012 OSCE-Report "Towards Justice – Analysis of civil proceedings in the district courts" Chapter II.

<sup>60</sup> 2012 OSCE-Report "Towards Justice – Analysis of civil proceedings in the district courts" S. 80-81, 87.

- Communication skills in court hearings
- **Section III ethics and commitment**
- The judge's sense of ethics and discipline at work
- The judge's participation in training activities
- The judge's work as a legal scholar

#### e. Consequences of evaluation

111. According to the purpose of the Albanian evaluation system as set down by law, evaluation should help to ascertain a judge's training needs. It is therefore important, that the HCJ Inspectorate communicates its insights in the evaluated judges' shortcomings to the School of Magistrates so that effective training tools can be developed. It might also be helpful that judges who show specific training needs, especially those evaluated as „acceptable“ or „incapable“ should receive specific recommendations to attend specific trainings to remedy their shortcomings. Otherwise a re-evaluation a year later might not have the desired effects.

112. According to the CCJE Opinion 17 (2014) para 29, 44, recommendation 12 a judge may – in exceptional circumstances – be dismissed from office if evaluation show that he or she is not able or willing to perform his or her duties up to a reasonable standard, objectively judged. However, in this case, procedural safeguards must be in place and scrupulously observed. According to Article 13, being evaluated as “incapable” constitutes a reason to start procedures for the discharge of the judge. Article 13 does not appear in Articles 32, 33, however, so it is not entirely clear if the “Procedure of discharge” referred to means a disciplinary procedure according to Chapter V of the law. Therefore, it is unclear, what procedural safeguards are in place in this situation. This situation should be remedied. Moreover, it should be checked if only such judges are evaluated “incapable” who could be dismissed according to the strict standard of the CCJE and the ENCJ.<sup>61</sup>

#### f. The rights of the evaluated judge

113. The CCJE stresses the importance to adequately protect the rights of the evaluated judge.<sup>62</sup> Therefore, it is important that the evaluated judge can express his or her views in a self-assessment, in an interview with the inspector and then before a decision by the HCJ. As the Chief Inspector has explained in a meeting, the HCJ is open to the judges' arguments and does modify the draft reports of the HCJ Inspectorate now and then. To assess this fact in more detail, however, more information on the reasons given for decisions of the HCJ would be necessary.

114. Further, following the recommendations of the CCJE,<sup>63</sup> the evaluated judge should have the right to ask for the replacement of an inspector evaluator who might objectively be perceived as biased. The individual inspector has a great responsibility when evaluating a judge. To allow a judge to ask, for good reason, for a replacement could increase the judges' trust in the evaluation system.

115. Moreover, judicial review against decisions of the HCJ is available in Albania. This is convincing as judicial evaluation in Albania can have serious consequences from improved chances for promotion up to a dismissal from office. Therefore, Article 6 ECHR demands effective judicial review. However, the procedural rules on judicial review of decisions by the HCJ are unclear. Therefore, clear rules on the right to judicial review and the procedural rules applicable must be set out in primary legislation.

### 3. Informal evaluation, on-going legal education

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<sup>61</sup> „Any action to remove incompetent or corrupt judges should live up to the high standards set by the principle of the irremovability of the judges whose independence must be protected“. Report of 2013-2014 of the European Network of Councils for the Judiciary on Independence and accountability of the Judiciary, p 59.

<sup>62</sup> CCJE Opinion 17(2014) para 41, recommendation 11.

<sup>63</sup> CCJE Opinion 17 (2014) para 36.

116. The School of Magistrates is an asset that should be used and developed further to improve the quality of the Albanian judiciary. Courses of high quality are necessary to achieve this goal. The head of the School of Magistrates has pointed out in a meeting that the school aims at providing courses on subjects the judges consider useful. This approach should be pursued and developed further. As pointed out above, the experiences of the HCJ Inspectorate should be used to specifically address shortcomings in the judges' knowledge and skills in training courses. Courses should not only aim at improving legal knowledge on substantive law and procedural law but should also offer training in judge-craft skills. This may include practical advice on issues such as "How to organise a hearing effectively?" or "How to draft a clear and persuasive judgement?". In Germany, courses are offered in collaboration with psychologists on issues such as "How to evaluate the reliability of a witness?" Such courses might be useful in Albania as well.

117. The CCJE suggested that peer-review and feed-back among judges can help judges to improve their work.<sup>64</sup> Tools of informal evaluation such as feed-back and peer-review are not used in Albania. In private conversation, the expert was told that judges do enjoy an exchange among colleagues, especially when attending courses at the School of Magistrates. Shortcomings in judicial performance should therefore not only be addressed by threats of unfavourable evaluations but also by encouraging an exchange of best practices and peer-review among colleagues on a voluntary basis of mutual trust. Such tools could be helpful because they separate the learning process from the evaluation process which can be experienced as stressful and distrustful. Especially young judges could profit from the input of their more experienced peers. In Austria, for example, a peer-evaluation project was initiated by the Association of Austrian Judges. Judges participating in it may voluntarily visit each other's hearings in order to provide informal advice and feedback on a basis of mutual trust. Such tools might be useful especially in order to improve a judge's ability to organise hearings, which is considered important in Article 11, 14 Decision 261/2. In international reports, problems in the organisation of court hearings are pointed out as major problems for the Albanian judiciary.<sup>65</sup> The introduction of such tools by means of law may face difficulties, however, because there might be a lack of trust among judges. However, mutual trust and voluntariness are essential for a successful introduction of such tools. A promising way could be an introduction via a pilot project at a small court organised by the National Conference of Judges, or in courses at the School of Magistrates.

#### 4. Disciplinary Procedures

118. The situation of two inspectorates at the MoJ and at the HCJ with overlapping competences as set out in Article 16 a-ç and Article 31-35 of the Law on the organization and functioning of the High Council of Justice No 8811, dated 17.05.2001, as amended by Law No. 9448 dated 05.12.2005, have often been discussed and criticised. There is a Memorandum in place that urges the two Inspectorates to cooperate. However, in the long run, responsibilities should be more clearly regulated and the inspectorates concentrated at the HCJ in order to ensure judicial independence. However, since it is important that disciplinary proceedings and judicial evaluation are kept separate in principle, both the applicable rules as well the persons applying the rules should be organised in different branches of the HCJ. Before such a basic reform can be agreed upon, the HCJ as well as the MoJ should have the right to initiate disciplinary proceedings.

#### VI. Recommendations

1. The Republic of Albania should aim at improving its judicial system in order to provide judicial services of the highest possible quality. The individual evaluation of judges, but also continuing legal education and disciplinary proceedings should be used to pursue this goal in the interest of the Albanian citizens.

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<sup>64</sup> CCJE Opinion 17 (2014) para 25.

<sup>65</sup> 2012 OSCE-Report "Towards Justice – Analysis of civil proceedings in the district courts".

2. The second round of evaluations should be finished by the HCJ.
3. The whole evaluation system including the criteria used should be carefully evaluated. The experiences of the HCJ Inspectorate as well as that of judges should be used in order to improve both the evaluation process, as well as the Albanian judiciary as a whole.
4. The experiences of the HCJ-Inspectorate should be used to assess carefully the judges' training needs and shortcomings. Judges should be given the opportunity to effectively remedy shortcomings discovered in an evaluation. Judges should be encouraged to study their evaluations carefully and learn from them. Judges should also be invited to attend specific training courses at the School of Magistrates.
5. Once training needs and shortcomings are identified by the HCJ Inspectorate as well as by international reports, improvement of the curriculum of the School of Magistrates as well as the introduction of informal means to improve judicial work, such as feed-back among colleagues, should be discussed.
6. The permanent scoring list should be abandoned, or at least removed from the HCJs homepage.
7. In the future, the main elements of judicial evaluation including the criteria applied, should be set out clearly in primary legislation.
8. At present, the HCJ Inspectorate evaluates judges using a big number of abstract criteria in three sections which are difficult to understand. After careful evaluation of the first two rounds of evaluation, the criteria could be simplified. However, this should only be done with judges and Inspectors involved, using their experiences. For example, Section I could be reduced to "efficiency and timeliness", using the present criteria in Articles 5, 7 and 8. Articles 7 and 8 could possibly be summarised in one Article. Section II could remain as it is, with Article 11 "ability to manage a fair legal process" and Article 6, "methodology" and Article 14 "communication skills" combined into one article. The ability to "manage a fair legal process" and "steer the legal debate" requires communication skills. Section III could assess a judge's ethical behaviour, his participation in training courses and scholarly activities.
9. After a careful evaluation of the experiences of the HCJ-Inspectorate, abstract criteria such as the "ability to write clearly" or the "methodology" in Article 6 "solemnity and discipline at work" Article 15 should be further explained using examples.
10. Judges should be evaluated according to a well-balanced set of quantitative and qualitative indicators which allows assessing their qualifications, integrity, ability and efficiency. As the Albanian system does now, evaluation should not be based on statistical data alone. The writing of clear, well reasoned judgement and the ability to hold effective, fair hearings should be at the heart of the evaluation.
11. The criteria set out in Annexe 1 should be reviewed carefully in order to enable the evaluators to deeply assess a judge's efficiency. The timelines and the prescribed annual workload should be realistic and fair, taking into consideration the rights of the litigants as well as working conditions and the complications in certain legal areas. False incentives, such as focussing on "easy cases" in order to produce a high number of decisions, should be avoided.
12. A judge's conduct in court hearings is an important factor for a transparent, accessible legal system. Therefore, evaluations should take into consideration how a judge organises court hearings and how he or she is able to lead the legal debate in a court hearing. In order to assess such important aspects effectively, evaluators should visit the evaluated judge's hearings.

13. In the future, it should be discussed whether to take into account the use of courtrooms and the effective referral of appropriate cases to mediation in a judge's evaluation.

14. The High Council of Justice Inspectorate should publish guidelines and examples based on its previous decisions, explaining how it understands certain criteria in order to make it easier for judges to understand what is asked of them. This could improve both the judicial performance of judges as well as their trust in the work of the HCJ Inspectorate.

15. The evaluation process must be made more timely. In the past, judges have been evaluated for their performance many years ago. Evaluation can only provide up to date information for decisions on promotions and provide feedback and useful information on a judge's training needs if it is timely. In order to enable timely evaluation, the reversal rates of a judge should be abandoned or given less importance.

16. The criteria and procedural rules in the Law No. 9877 "On the organisation of the judicial power in the Republic of Albania" according to which a judge, who has been evaluated as "incapable" can be dismissed from office, should be clarified. Moreover, it must be carefully assessed if the strict standards of CCJE Opinion 17 (2014) for a dismissal of a judge are respected by the law.

17. Judicial review must be available against decisions of the HCJ. Clear legal rules on the availability and the procedural rules governing judicial review must be introduced in primary legislation.

18. Following the recommendations of the CCJE,<sup>66</sup> the evaluated judge should have the right to ask for the replacement of an inspector evaluator who might objectively be perceived as biased.

19. The very best and most experienced judges should serve as evaluators. In order to attract qualified inspectors, appropriate measures must be taken to make the position of an inspector more attractive.

20. Although there are legal rules on promotion and transfer of judges, those rules seem not to be very well known among judges. Such rules might be taught in the initial legal education of judges at the School of Magistrates.

21. Clear legal rules should be set up by law to distinguish the competences of the MoJ and the HCJ in respect of judicial inspections. In general, it might be preferable to concentrate all judicial inspections at the HCJ. However, disciplinary proceedings and judicial evaluations should be kept separate both in respect to the applicable rules as well as in respect to the persons applying the rules. Before such a basic reform can be agreed upon, the HCJ as well as the MoJ should have the right to initiate disciplinary proceedings.

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<sup>66</sup> CCJE Opinion 17 (2014) para 36.