IN-DEPTH ASSESSMENT REPORT OF THE JUSTICE SYSTEM IN ALBANIA

EU / CoE "Support to Efficiency of Justice – SEJ"

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

IN-DEPTH ASSESSMENT REPORT OF THE JUSTICE SYSTEM IN ALBANIA

written by Jacques Bühler and Jon Johnsen

2015

The content of this report reflects the views of its authors and not necessarily those of the Council of Europe and the European Union.

EXECUTIVE SUMMARY

The report on the Albanian justice system is based mostly on the 2012 data for the whole Justice system, provided by the Albanian authorities for the preparation of the latest CEPEJ report on the European Judicial Systems. However the assessment and the recommendations provided in the report also take into consideration the current situation in some of the Albanian courts the CEPEJ experts visited in 2013 and 2014. Based on this analysis, the following ten general recommendations can be made. Other, more specific, recommendations are included in the analysis of each pilot court and in the report about service of judicial documents in the Albanian Justice system.

The CEPEJ experts recommend

A. regarding the general functioning of the justice system

Recommendation 1: To introduce an effective and efficient monitoring mechanism within the justice system in order to avoid excessive duration of the total length of proceedings, we recommend:

a) to establish a working group with the tasks of overseeing revision and improvement of the data collection processes, define templates of judicial statistics for the courts of Albania and preparing the relevant changes to the existing regulation and procedure related to the data collection[1],
b) to use the unique identifier (file number in the ICMIS-System) for each proceeding, from the starting point of the procedure[2] to the final and binding decision to measure and control the total duration of a case and to detect in early stage of the proceedings all risks of excessive procedure lengths,
c) to introduce additional restrictions for sending back a case to an inferior court in the procedural law, for example with introducing an obligation for the Appeal Court or the High Court to decide every time the needed facts are established.

Recommendation 2: To improve the functioning of the service of judicial documents based on the recommendations presented by the expert of the International Union of Judicial Officers.

Recommendation 3: Regarding the High Court of Albania:

a) The proposed recommendations do not take into consideration the issue of redefining the constitutional position of the High Court, specifically the issue of transformation of the High Court into a real Supreme Court, which should not take any evidence and look into points of law only; or removing any first instance jurisdiction from the High Court. These issues were briefly addressed in the Venice Commission opinion on the Draft Amendments to the Criminal Procedure and Civil Procedure Codes of Albania[3]. There is a need to continue these discussions in the framework of the process of the reform of the Albanian judicial system. These recommendations concern possible interim steps and measures that could help the High Court to reduce its existing backlog. To study the possibility of simplifying the internal

[1] The letter a) of the recommendation 1 is also found on the results of the workshop organised by the SEJ project on judicial statistics hold on 3-4 November 2014 in Tirana.
[2] The starting point is not the same for the different type of proceedings. In criminal matters, for example, data ought to include the time used from the moment a suspect is charged with an offence, independent of whether the charge is issued by the police, the prosecution or the court.
[3] CDL-AD(2014)016-e Opinion on the draft amendments to the criminal procedure and civil procedure codes of Albania, adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014).

procedure to take a decision, for example by means of reducing number of judges involved in a decision, especially for clearly non- admissible appeals[4].

b) To study a possibility of introducing additional filters to bring a case before the High Court. (e.g.by changing the procedural rules, especially for appeals regarding incidental use decisions of courts).
c) To increase temporarily the resources (human or material) of the High Court in order to reduce quickly the backlog.
d) After the implementation of the recommendations a) to c), study the necessity/possibility to improve durably the resources of the High Court to achieve a clearance rate of 100%.

Recommendation 4: Regarding the first and second instance courts of Albania

a) To analyse the workload and the resources needed by the Albanian first and second instance courts at least by means of the indicators CR, DT, TB, number of cases older than two years, CPJ and CPS.
b) To optimise the repartition of the resources within the judiciary and eventually, if needed, improve the resources of the courts.

B. regarding alternative dispute resolution (ADR)

Recommendation 5: To achieve an optimal application/use of ADR, it is suggested:

a) to collect data on the number of cases concluded by ADR, particularly by judicial mediation[5];
b) to introduce arbitration and adopt arbitration rules (see example of arbitration rules in appendix 1);
c) to extend, when useful, the implementation of compulsory mediation for certain types of civil and commercial cases;
d) to analyse the possibility of creating an institution of ombudsmen for complaints of citizens against the administration or against other social insurance matters;
e) to study the opportunity to introduce in criminal proceedings related to an offence that is prosecuted only following a complaint the possibility for the public prosecutor to look for private settlements[6].

C. regarding the daily business of the courts and the prosecution service

It is important that the courts have all the necessary resources to provide to the Albanian public the quality service. This concerns that the Courts have the infrastructure necessary for well-functioning;

[4] See particularly the document CEPEJ-GT-EVAL(2010)3 called "Single Judge – Panel, MEDEL contribution for CEPEJ".

[5] In the answer 2006 (data 2004) to question 167 of the CEPEJ questionnaire for the report about the European judicial systems, Albania provided the following information: "During the year 2004 has been solved through mediation 2515 cases. Out of these 2515 cases, 26% are criminal cases and 73% are other than criminal cases".

[6] Example from the Swiss criminal procedure code from 5.10.2007: "Art. 316:

[1] Where the proceedings relate to an offence that is prosecuted only on complaint, the public prosecutor may summon the complainant and the accused to a hearing with the aim of achieving a settlement. If the complainant fails to attend, the complaint is deemed to have been withdrawn.

[2] If consideration is being given to an exemption from punishment due to reparation being made in accordance with Article 53 SCC[1], the public prosecutor shall invite the person suffering harm and the accused to a hearing with the aim of agreeing on reparation.

[3] If an agreement is reached, this shall be placed on record and signed by those involved. The public prosecutor shall then abandon the proceedings.

[4] If the accused fails to attend a hearing in accordance with paragraphs 1 or 2 or if no agreement is reached, the public prosecutor shall immediately proceed with the investigation. In cases where it is justified, it may require the complainant to provide security for costs and damages within ten days."

the ICT tools are installed and fully functional and the optimal human resources are available for them – all judicial vacancies filled and roles of non-judicial staff reconsidered.

Recommendation 6: To introduce ICMIS in all Albanian Courts and gradually replace the manual registration. To ensure that all functionalities of the system are used and its application is standardised in all the Albanian courts.

Recommendation 7: To hold all hearings in civil, administrative and criminal procedures in courtrooms equipped with audio-recording systems.

Recommendation 8: To replace the metal cages for prisoners in courtrooms with other security measures.

Recommendation 9: To analyse and, when possible, delegation of tasks from judges to other qualified employees; in order to implement this recommendation it might be necessary to increase the number of judicial employees. This recommendation should be considered in the light of overarching court administration reform and the comprehensive analysis is needed prior to amending the Law on Judicial Administration.

Recommendation 10: To study the opportunity of introducing:
a) the competence for the public prosecutors to impose penalties or measures for (minor) offences and
b) the possibility for parties condemned by a prosecutor to appeal and bring the case to a court.

REPORT 2015 (DATA 2012) ABOUT THE ALBANIAN JUSTICE SYSTEM

This report principally addresses the issue of the efficiency of the Albanian judicial system and focuses on elements like the resources allocated to the justice, the organisation of the judicial system and the workload of courts - incoming and resolved cases at the courts. The European Commission for Efficiency of Justice (CEPEJ) is the Council of Europe body, which strives to improve the efficiency and functioning of justice in the member States, and develop and implement the practical instruments adopted by the Council of Europe to this end.

The CEPEJ philosophy for efficiency and the effectiveness of the justice includes:

- first the courts or the prosecution offices have to improve their functioning (even in the absence of more resources);
- when their functioning is optimised, other measures can be taken on a higher level (generally without more resources for the courts or the prosecution offices) like changing the distribution of the current resources, introducing new ICT tools, modifying the judicial organisation or the procedural laws, improving the training, etc.,
- finally, if both categories of measures are not sufficient to solve the problems, it might be necessary to increase the resources (number of magistrates, auxiliary staff and court employees, infrastructures, etc.).

A. GENERAL INFORMATION ABOUT ALBANIA

This report uses 2008, 2010 and 2012 data provided by the Albanian authorities to the CEPEJ in the process of preparation of its biennial report.

On 1 January 2013, there were 2 815 749 inhabitants in Albania. The GDP per capita was €3363. The average annual gross salary was €4323.

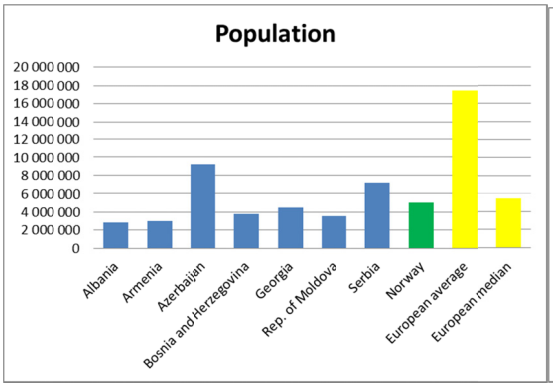


Table 1: Population

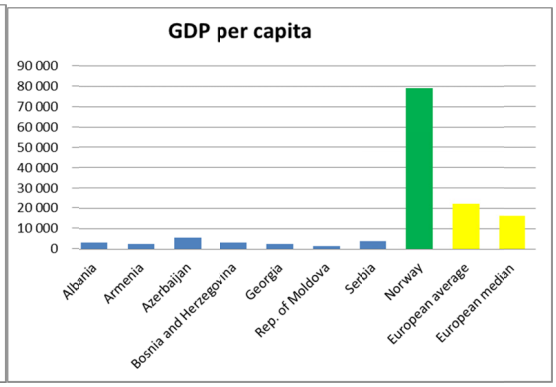


Table 2: Gross Domestic Product (GDP)

To make a meaningful comparison with other member States of the Council of Europe it is necessary to build clusters of similar states with similar size of population (see table 1) and economic level (see table 2). In this report, for the purpose of comparison of financial matters or the organisation of the justice, we will compare Albania with Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova and Serbia. In addition to the states included within the cluster, we add Norway as a country with a well-functioning justice system and similar number of inhabitants; but as the GDP of Norway is one of the highest of the Council of Europe

member States, this makes budgets comparisons of this country to the other states not applicable.

In order to compare the lengths of proceedings, we will use another cluster of similar states; we selected all the states that have a total disposition time indicator[7] (DT) of two years or more. Nine countries fulfil this criterion: Albania, Bosnia and Herzegovina, Croatia, Cyprus, France, Italy, Malta, Slovenia and Spain. We compare them again to Norway, as a state that was among the fastest (having the shortest duration of the proceedings) in delivering justice in Europe.

The evolution of the exchange rate Euro / LEK was the following in the last years (see table 3):

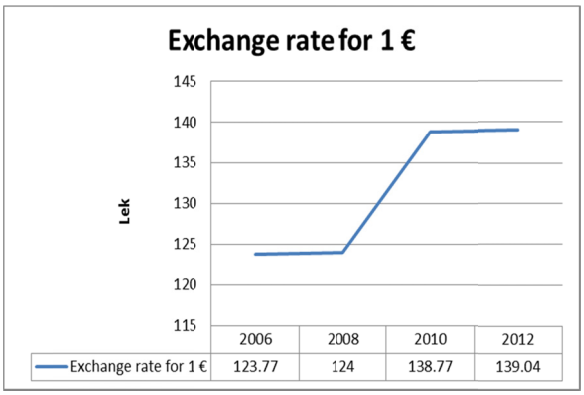


Table 3: Evolution of the exchange rate LEK – Euros 2006-2012

A stability of the exchange rate can be observed between 2006 and 2008 and between 2010 and 2012, but the value of the LEK in comparison with the Euro also decreased by 12 % between 2008 and 2010. This factor needs to be taken in consideration when analysing the evolution of the Albanian judicial system's budgets expressed in Euro.

[7]Total disposition time (DT) = DT of the first instance courts + DT of the second instance courts + DT of the High Court level

B. BUDGET OF THE JUDICIAL SYSTEM

The budgets of judicial systems include three main parts, which generally exist in all European judicial systems: the budget of courts, legal aid and public prosecution system.

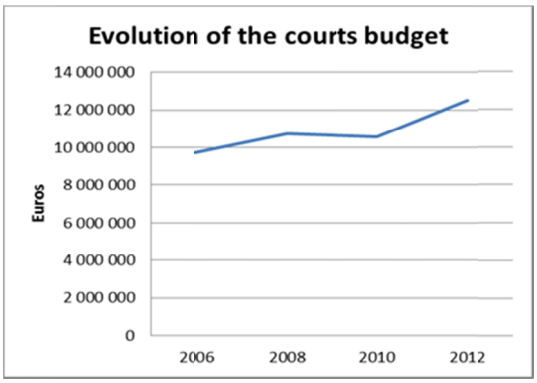


Table 4: Evolution of the courts budget

1. Budget of the courts

In Albania, the budget of the courts was growing between 2006 and 2012 (see table 4). It represents about 0.4 % of the total annual State public expenditure.

Within this budget, the share of the *salaries* is about 74 % in 2012 which is very close to the European average of 70 % and corresponds to the European median of 73.3%[8].

In 2012 the part of the courts' budget for *ICT* (in a cluster of similar member States) is presented in the table 5. It gives a picture of the effort of the States to introduce ICT tools in courts. Albania has a similar value (1.8 %) as Bosnia and Herzegovina, Georgia and Republic of Moldova (between 1.5 and 1.7 %), but this value is less than the European average and median (3.1 and 3.8 %). Azerbaijan makes a particular effort concerning computerisation (12 %).

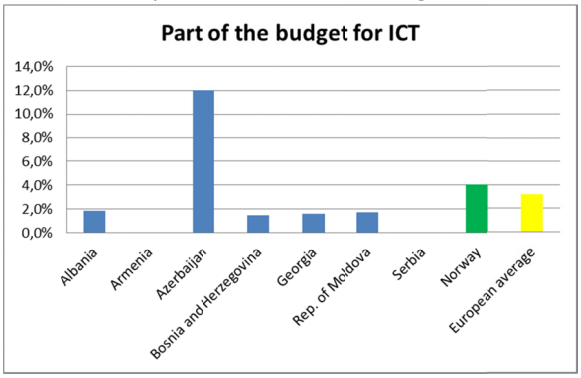


Table 5: Part of the courts' budget for ICT (data 2012)

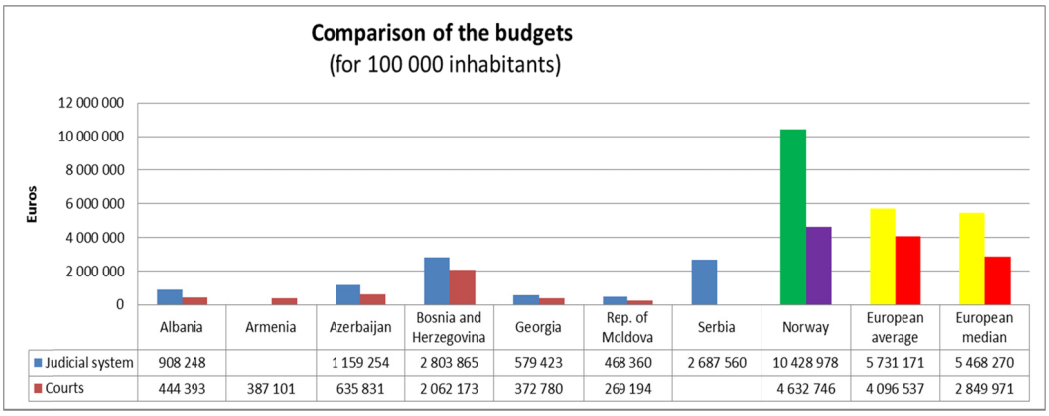
Albania has invested in the ICT for courts the same amount as other CoE member States of the same cluster, but it appears that the judicial authorities do not to make full use of it. While visiting some pilot courts in the process of court coaching, it has been found out that in some of them the case management tool called ICMIS has not been introduced/used (e.g. Tirana District Court which is still using an other case management tool, called Ark IT). In those courts where it is introduced, in parallel, there exists a manual case registration. Courts seem not be ready to fully rely on the digital means.

<u>Recommendation</u>: To introduce ICMIS in all Albanian Courts and gradually replace the manual registration. To ensure that all functionalities of the system are used and its application is standardised in all the Albanian courts.

[8] See CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), tables 2.8 and 2.9 p. 35 and 37.

To achieve this target, it will certainly be necessary to introduce new functionalities or to improve the current one. It is suggested that a project manager, entrusted with the introduction and improvement of ICMIS, applies a *scrum* project management methodology[9].

On a *general level* (see table 6), a comparison of the budget allocated to the courts by Albania (with the cluster of similar States) shows that the courts budget 2012 per 100 000 inhabitants is about 450'000 Euros. The budgets of similar amounts (between 270'000 and 390'000 Euros) can be found in Armenia, Azerbaijan, Georgia and Republic of Moldova, while Bosnia and Herzegovina spends more than 2.8 million Euros per 100 000 inhabitants. It is not useful to compare Albania with Norway because the GDPs of these two counties are too different.

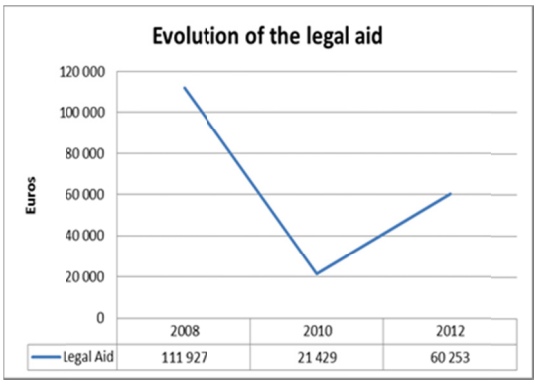


	Albania	Armenia	Azerbaijan	Bosnia and Herzegovina	Georgia	Rep. of Moldova	Serbia	Norway	European average	European median
Judicial system	908 248		1 159 254	2 803 865	579 423	468 360	2 687 560	10 428 978	5 731 171	5 468 270
Courts	444 393	387 101	635 831	2 062 173	372 780	269 194		4 632 746	4 096 537	2 849 971

Table 6: Comparison of the budgets of the courts and judicial system (data 2012)

2. Budget of legal aid

Legal aid is the assistance provided by a state to people who do not have sufficient financial means to defend themselves before a court or to initiate court proceedings (access to court)[10] . Albania provides legal aid in criminal and civil procedures for representation in court and legal advices. The criminal procedures also include a possibility to be assisted by a lawyer free of charge[11].



	2008	2010	2012
legal Aid	111 927	21 429	60 253

Table 7: Evolution of the budget of legal aid in Euro

[9] "Scrum emphasizes the idea of "empirical process control." That is, Scrum uses the real-world progress of a project — not a best guess or uninformed forecast — to plan and schedule releases. In Scrum, projects are divided into succinct work cadences, known as sprints, which are typically one week, two weeks, or three weeks in duration. At the end of each sprint, stakeholders and team members meet to assess the progress of a project and plan its next steps. This allows a project's direction to be adjusted or reoriented based on completed work, not speculation or predictions." Extract from the webpage: http://scrummethodology.com/ point: "What's Unique about Scrum? "

[10] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 69.

[11] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), table 3.1, p. 70.

The evolution of the budget of legal aid between 2008 and 2010 is reproduced in table 7. Table shows significant variations. It would be interesting and important to found out the reasons of such variations and analyse the situation of legal aid budget later on.

For the CEPEJ reports on the Judicial systems of the members States of the CoE, Albania has not provided data on the number of civil and criminal cases. After the mission in February 2015, the Ministry of Justice has sent to the experts data concerning the State Committee of Legal Aid (SCLA). The SCLA started his activities in 2011. In 2011 it was dealing with 27 applications and in 2012 with 62 applications (45 of them were approved)."

3. Budget of the Public Prosecution Office

The annual public budget allocated to the public prosecution system was growing between 2008 and 2012. In 2012 it was about 50.8 %. The budget is higher than in the other States of the defined cluster: in Azerbaijan, Georgia and the Republic of Moldova the share is between 30 % and 45 %, while the value of Bosnia and Herzegovina corresponds to the European average of 19 % (see table 9 below).

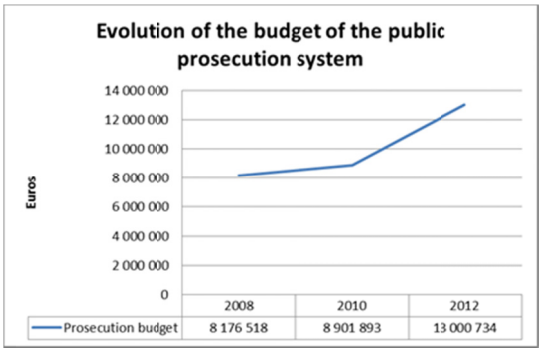


Table 8: Evolution of the Prosecution budget

In November 2014, the Albanian Public Prosecution Office explained (during the meeting with the CEPEJ experts) that the number of cases was three times more between 2002 and 2013; the number of cases reached 27 000. In the same period the budget was increased by more than 40 %.

In 2012, Albania had 330 prosecutors[12]and approximately 860 people in the staff of the prosecutors' offices, among them 120 police officers. According the Public Prosecution Office these numbers were relatively stable between 2008 and 2012; the main reason for the increasing the budget would be the increase of costs of the cases.

[12] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 266.

4. Budget of the judicial system and concluding remarks

The budget allocated for the judicial system is the sum of the budget of the courts, legal aid and public prosecution system.

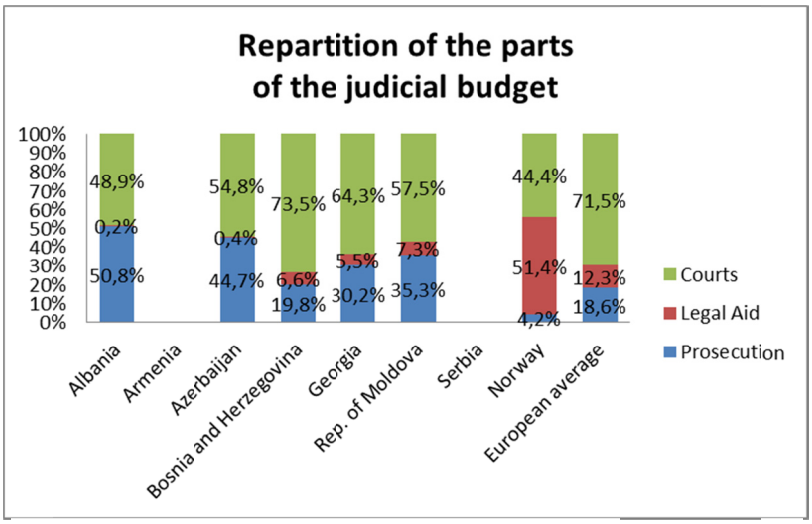


Table 9: Distribution of the budgets for courts, legal aid and the prosecution within the judicial budget (data 2012)

In comparison with the other states within the selected cluster, it appears that Albania spends the biggest part of the judicial budget for the public prosecution (50.8 %). This value is also the European maximum, while the European average is 24 % and the European median is 22.4 %.

From 2008 to 2012 the evolution of the three parts of the judicial budget (including the evolution of about -12% of the exchange rate between Euro and LEK) was:

- Courts: + 5 %
- Legal Aid: - 34%
- Prosecution: + 47 %.

Neither this evolution, nor the comparisons of the parts of the justice budget within the cluster of similar states allow concluding that the budget of the Albanian Justice System is not sufficient. To guarantee an equal access to justice, it will certainly be useful to stabilise the legal aid budget on an appropriate level, which can be established on the basis of the actual expenses during the last years. Secondly, it can be observed that the court budgets were approximately stable (+ 5 %) during this period while the budget of the public prosecution was growing (+ 47%). This is not sufficient evidence for suggesting a similar increasing of the budget of the courts. The functioning of the courts and how they manage their workload must be first analysed in details to understand what are the budgetary needs of the Albanian courts.

C. JUDICIAL ORGANISATION - NUMBER OF COURTS

In 2012, Albania had 22 general first instance courts and 1 specialised court. Since November 2013, 6 first instance administrative courts have been established. The comparison of a density of first instance courts was the following in 2012 (see table 10):

We observe that the density is 0.82 per 100 000 inhabitants in 2012 and achieves the value of 1.0 in 2014, after the creation of the new administrative courts. This new value is still less than the European average of 2.37 first instance courts per 100 000 inhabitants.

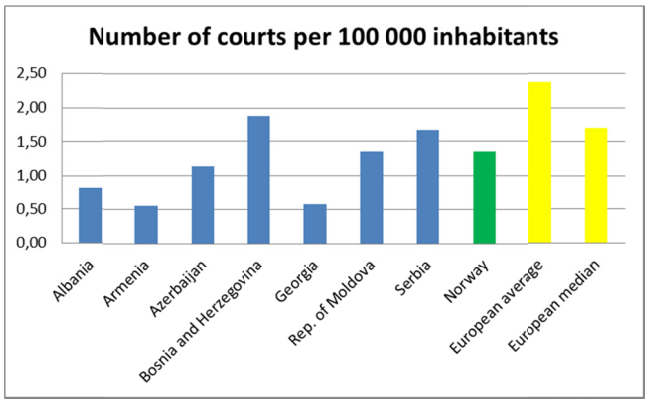


Table 10: Number of all first instance courts per 100 000 inhabitants in 2012

Some of the court buildings visited by the CEPEJ experts were mostly old and few were new ones. We can say that regardless whether the building is old or new often there are **not enough courtrooms** and many hearings take place in the offices of the judges. This is not in line with the principles of transparency and the impartiality of justice.

Recommendation: To hold all hearings in civil, administrative and criminal proceedings in courtrooms equipped with audio-recording systems.

Regarding the infrastructure of the existing court rooms dedicated to the criminal cases, often there are **metal cages**. The Grand Chamber of the European Court of Human Rights considered unanimously in a recent judgment[13] that the practice of keeping remand prisoners in a metal cage during the court hearings constitutes a degrading treatment (violation of Art. 3 of the European Convention on Human Rights).

Recommendation: To replace the metal cages for prisoners with other security measures in courtrooms.

Often in Council of Europe member States, the metal cages are replaced by glass cages which seems in conformity with human dignity of the parties involved in a criminal procedure.

D. MAGISTRATES AND PERSONNEL

1. Judges

In 2012 Albania had 380 professional judges (full time equivalent). It gives a proportion of 13.5 judges for 100 000 inhabitants.

[13] Judgment of the Grand Chamber of the 17.7.2014 in the case of *Svinarenko and Slyadnev v. Russia* (application nos. 32541/08 and 43441/08). In this case the dimension of the metal cage was about 1.5 by 2.5 meters.

This proportion is very similar to the Republic of Moldova (12.4) and Norway (11); it is more than Armenia, Azerbaijan and Georgia, but less than the number of judges in Bosnia and Serbia. The European average is 21 judges for 100 000 inhabitants and the European median is close to 18 (see table 11)[14].

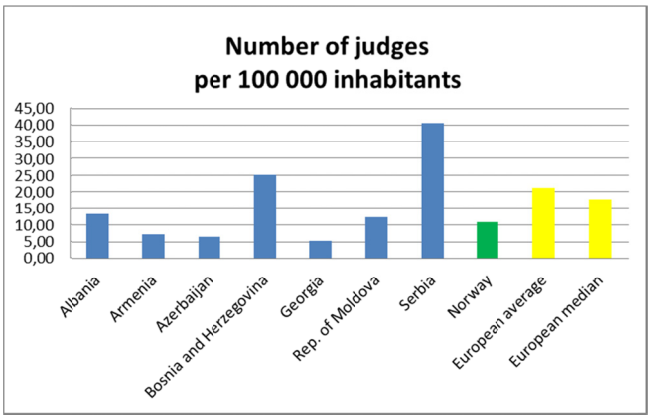


Table 11: Number of Judges per 100 000 inhabitants (data 2012)

When we analyse the distribution of 380 professional judges between the three judicial levels (first instance, appeal and High Court), we observe that Albania has, within the cluster of similar states, the greatest proportion of first instance judges (79 %) and one of the smallest proportion of High Court judges (4.2 %). Norway has a proportion of 3.6 % High Court judges. The European average of first instance judges is close to 74 % and of High Court judges close to 7 %[15].

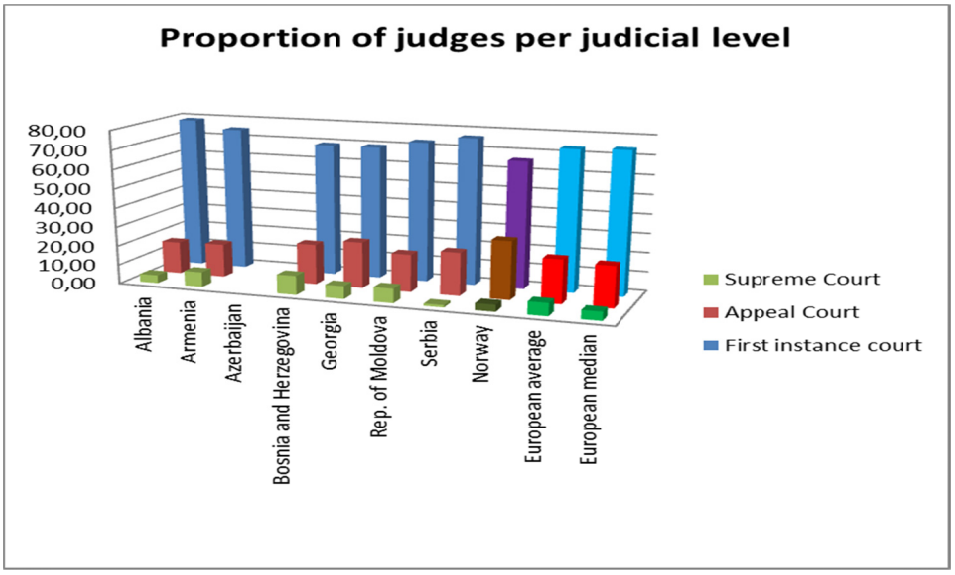


Table 12: Proportion of judges per instances

Regarding the comparison within the cluster of similar States and Norway, there is no reason, at this stage of our study, to suggest increasing the number of judges. The number of judges also depends on the judicial and legislative context in which the courts and the judges have to work.

[14] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 156.

[15] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 162.

For this reason, we will reassess the question concerning the number of judges when we will analyse the workload of the courts.

2. Non-judge court employees

A good functioning justice system needs also non-judge court employees who have to be well trained and in sufficient number. In 2012 Albania had 807 court employees[16].

The breakdown of non-judge staff in courts by gender in 2012 is the following[17]:

- 425 staff who have the tasks to assist the judges (generally judicial secretaries);
- 99 staff in charge of administrative tasks and management of the courts;
- 163 technical personnel;
- 120 other non-judge staff (101 people of the administrative staff of the High Court and 19 of the administrative staff of the Office of judicial budget[18]).

The analysis of the number of court employees for one judge shows that within the selected cluster of states, Albania has the smallest number of personnel (2.12 for 1 judge) while the other states of the cluster have values close to the European average (3 employees for 1 judge). Norway has a proportion of 1.47 employees for one judge.

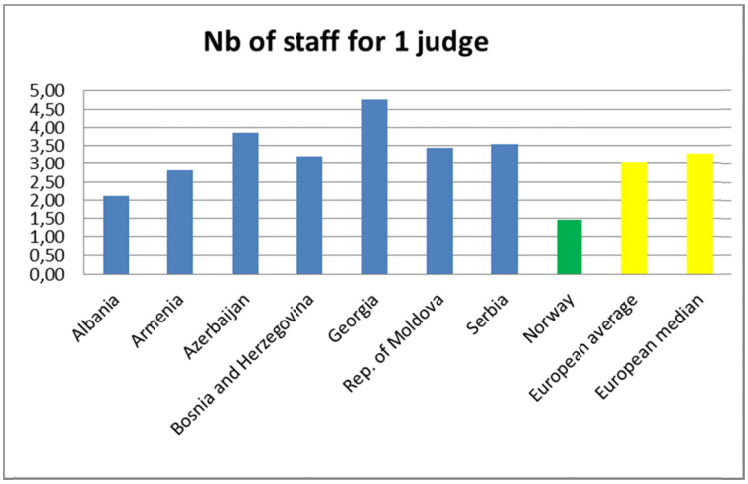


Table 13: Number of court employees for one judge.

Difference between the breakdown of the Albanian court staff and of other countries is a very small number of law graduate judicial assistants in Albania. In the courts which have such assistants, the judges have the possibility to delegate some tasks to the assistants like the reasoning of the judgments. The delegation of tasks from the judges to court employees and specifically to judicial assistants (law graduates) or court clerks is recommended by the Council of Europe[19] and allows better performances of the courts.

[16] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 177.
[17] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 180.
[18] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 178.
[19] Recommendation No. R (86) 12 of the Committee of Ministers to member States concerning measures to prevent and reduce the excessive workload in the courts, adopted on 16 September 1986 at the 399th meeting of the Ministers' Deputies.

<u>Recommendation</u>: To analyse and, when possible, realise the delegation of tasks from judges to other qualified public employees; in order to implement this recommendation it might be necessary to increase the number of judicial employees. This should be considered in the light of overarching court administration reform and the comprehensive analysis is needed prior to amending the Law on Judicial Administration.

The idea of this recommendation is first to establish a list of tasks, which can be delegated from judges to other public employees. And then, where there are possibilities for delegation:

a) to modify consequently the list of the tasks for the concerned functions and
b) more particularly, to nominate within a reasonable time already foreseen law graduate judicial assistants and, if useful, to create more judicial assistants (law graduates) posts within the courts; in higher courts generally, the maximum proportion between judges and judicial assistants is about one to three.

3. Prosecutors and non-prosecutor staff attached to the prosecution service

In 2012, Albania had 330 public prosecutors (full time equivalent). It represents 11.7 prosecutors for 100 000 inhabitants, which corresponds to the European average and also is similar of the value of the majority of other states (cluster of similar states) and Norway[20].

In 2013 the number of public prosecutors was increased to 336. About 860 non-prosecutor staff is attached to the prosecution service and assisting the prosecutors, out of this number 120 are police officers.

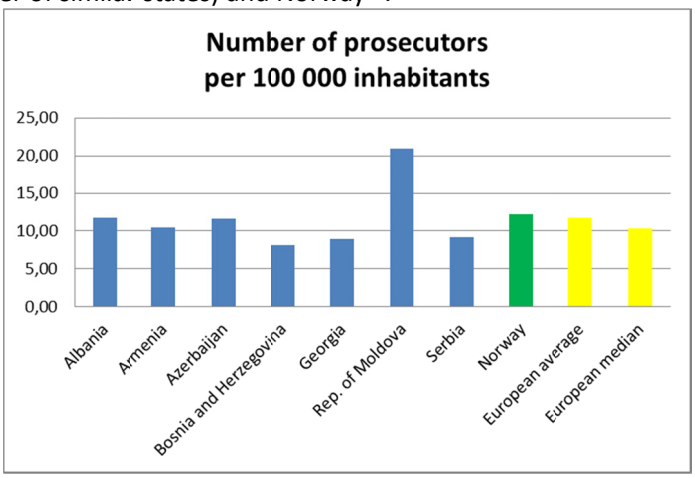
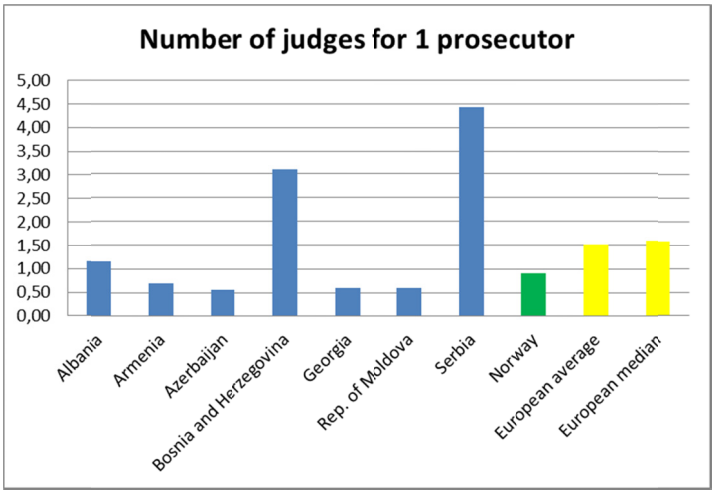


Table 14: Number of public prosecutors for 100 000 inhabitants in 2012

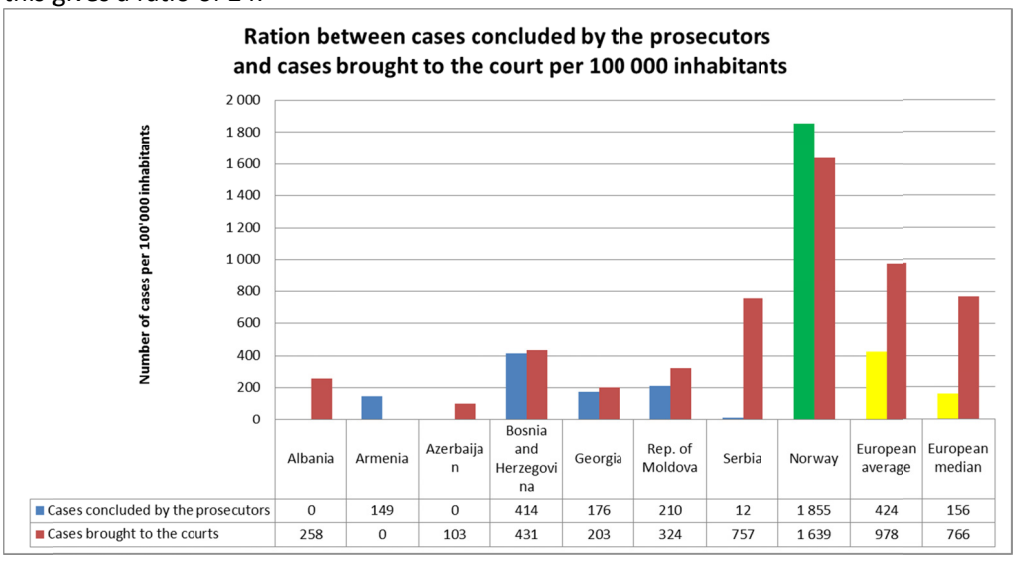
[20] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 265.



In absolute numbers (data 2012), there are 380 professional judges and 330 prosecutors. So in Albania we have 1.15 judges for one prosecutor. With the exceptions of Bosnia and Herzegovina and Serbia, which have a very high number of professional judges, the other states of the cluster and Norway have fewer judges than prosecutors. But the European average and median are 1.5 judges for one prosecutor.

Table 15: Number of judges per 1 prosecutor

Difference between Albania and 27 other member States of the Council of Europe (also within countries of the cluster of similar states: Armenia, Bosnia and Herzegovina, Georgia, Republic of Moldova, Serbia and also Norway) is that the prosecutor has no competence to conclude a case him/herself by a penalty of a measure imposed or negotiated[21]. As a consequence, in Albania all cases not discontinued are brought to courts. Often (see the European average and median values) in the countries that give the competence to the prosecutors to conclude a case him/herself by a penalty or a measure, a bigger part of the cases are brought to the courts than concluded by the prosecutors. In Norway we have the opposite situation - a bigger part of the cases are concluded by prosecutors than brought to courts. Norway with its 5 million inhabitants has approximately 1.7 more inhabitants than Albania. While the total number of cases not discontinued is about 176 455 in Norway, we have 7 271 cases brought to the courts in Albania; this gives a ratio of 24.

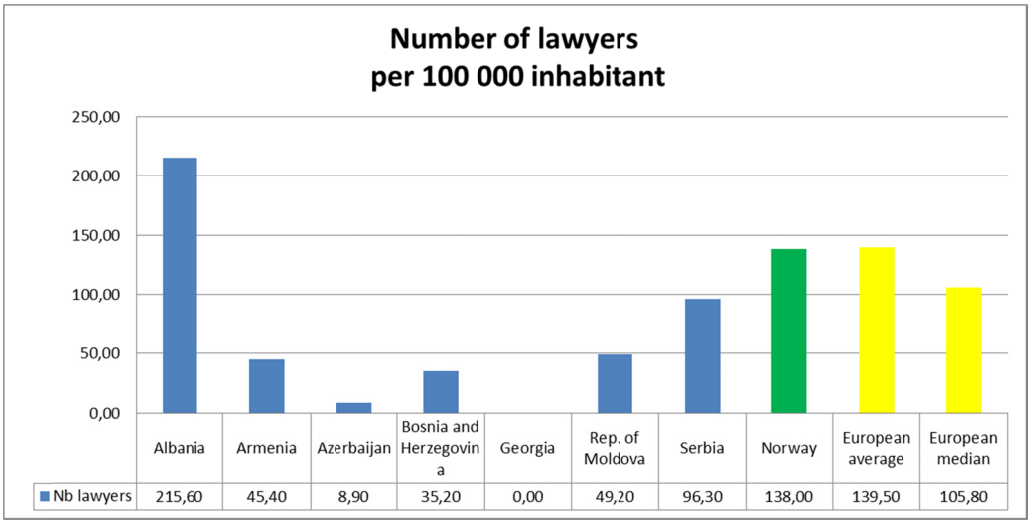


[21] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 274.

Table 16: Number of cases concluded by a penalty or a measure imposed or negotiated by the prosecutors and the number of cases brought to the courts (data 2012)

<u>Recommendation</u>: To study the possibility to introduce
a) the competence for the public prosecutors to impose penalties or measures for (minor) offences and
b) the possibility for parties sentenced by a prosecutor to appeal and bring the case to a court.

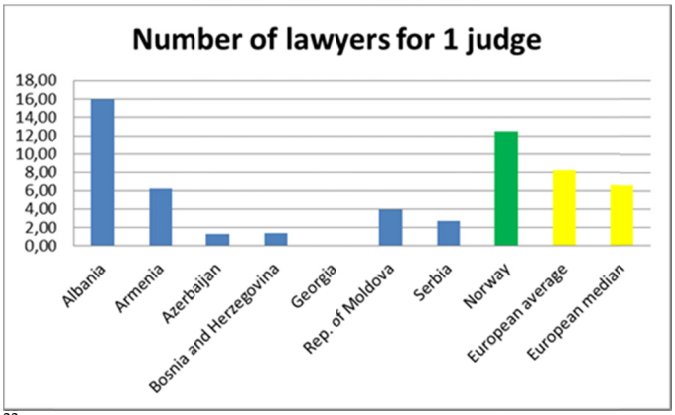
E. OTHER ACTORS OF THE JUSTICE SYSTEM - LAWYERS



	Albania	Armenia	Azerbaijan	Bosnia and Herzegovina	Georgia	Rep. of Moldova	Serbia	Norway	European average	European median
Nb lawyers	215,60	45,40	8,90	35,20	0,00	49,20	96,30	138,00	139,50	105,80

Table 17: Number of lawyers per 100 000 inhabitants (CEPEJ data 2012)

In 2012, Albania had registered 6 070 **lawyers**[22]. In February 2015, the Ministry of Justice informed the CEPEJ experts that the 2012 figure provided to CEPEJ by the Albanian authorities probably is a total number of lawyers; the number of **practicing lawyers** was close to 2 000. It gives a proportion of 216 lawyers for 100 000 inhabitants and of 71 practicing lawyers for 100 000 inhabitants. The total number of lawyers is comparatively high value among the CoE member States. The European average is close to 140 lawyers for 100 000 inhabitants (median value is 106).



This high number of lawyers gives also a proportion of 16 lawyers and of 6 practicing lawyers for one judge, while the European average is approximately 8 practicing lawyers for one judge and the other states of the cluster of similar states have a value between 1.4 and 6.3 practicing lawyers for one judge.

[22] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 377.

Table 18: Number of lawyers for one judge (CEPEJ data 2012)

Generally a part of the workload of the courts is generated by the propensity of the lawyers to bring cases to courts. With a high number of lawyers the propensity is bigger to bring more cases to the courts.

F. ALTERNATIVE DISPUTE RESOLUTION

Recourses available to alternative measures to the settlement of disputes (ADR – *Alternative Dispute Resolution)* continue to increase in the member States. These alternative mechanisms have a strong influence on the number of cases, which the courts will have to judge, but also on the way in which the dispute can be resolved between the parties. Thus ADR, depending on the way in which it is conducted, can improve the efficiency of justice by reducing the courts' workload, as well as improving the quality of the response to the citizens by offering them an opportunity to resolve a dispute and limiting its prejudicial consequences and cost or (and) diminishing the contentious situation brought before the court[23].

The Committee of Ministers of the Council of Europe has adopted several specific Recommendations on mediation. Recommendation Rec(98)1 concerns mediation in family matters, particularly in the area of divorce (and custody cases of children). The aim of this Recommendation is not only to reduce the workload of the courts, but also to create a more acceptable solution for the parties and (in the case of children) to better protect the welfare of children. Recommendation Rec(99)19 concerning mediation in criminal matters aims to enhance the active participation of the victim and the offender in criminal proceedings. The recommendation seeks, on the one hand, to recognise the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimisation and to communicate with the offender, and on the other hand, to encourage the offenders' sense of responsibility by offering possibilities of reintegration and rehabilitation. Mediation in civil matters is addressed in Recommendation Rec (2002)10, where a definition is given: *"a dispute resolution process whereby parties negotiate over the issues in dispute in order to reach an agreement with the assistance of one or more mediators".* Guidelines have been adopted by the CEPEJ in 2007 to facilitate the proper implementation of these recommendations in the member States[24].

Different kinds of ADR exist in the member States of the Council of Europe:

- *Mediation*: this is a voluntary, non-binding private dispute resolution process in which a neutral and independent person assists the parties in facilitating the discussion between themselves in order to help them resolve their difficulties and reach an agreement. It exists in civil, administrative and criminal matters.
- *Conciliation*: the conciliator's main goal is to conciliate, most of the time by seeking concessions. He can suggest to the parties proposals for the settlement of a dispute. Compared to a mediator, a conciliator has more power and is more proactive.
- *Arbitration:* parties select an impartial third party, known as an arbitrator, whose (final) decision is binding. Parties can present evidence and testimonies before the arbitrators. Sometimes there are several arbitrators selected who work as a court. Arbitration is

[23] CEPEJ report about the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 147.

[24] See particularly

- the Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters, document CEPEJ(2007)13
- the Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters
- the Guidelines for a better implementation of the existing recommendation on alternatives to litigation between administrative authorities and private parties.

CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 147.

most commonly used for the resolution of commercial disputes as it offers greater confidentiality[25].

In the CEPEJ-report 2014 (data 2012), Albania is mentioned to apply mediation, conciliation and also other alternative dispute resolution but not arbitration[26]. The types of cases concerned by judicial mediation in Albania are civil and commercial cases, including family law cases, administrative cases and criminal cases. In the civil, commercial and administrative cases, the mediation is provided by a private mediator or a judge; in criminal cases only a judge provides mediation[27]. The number of judicial mediation procedure could not be supplied. Finally the CEPEJ-report 2014 (data 2012) explains that Albania has introduced mediators licensing commission and the National Chamber of Mediators[28].

Based on the available information, the CEPEJ experts can only make general recommendations:

Recommendation: To achieve an optimal application/use of ADR, we suggest:

- *f) to collect data on the number of cases concluded by ADR, particularly by judicial mediation[29];*
- *g) to introduce arbitration and adopt arbitration rules (see example of arbitration rules in appendix 1);*
- *h) to extend, when useful, the implementation of compulsory mediation for certain types of civil and commercial cases;*
- *i) to analyse the possibility of creating an institution of ombudsmen for complaints of citizens against the administration or against other social insurance matters;*
- *j) to study the opportunity to introduce in criminal proceedings related to an offence that is prosecuted only on complaint the possibility for the public prosecutor to look for private settlements[30].*

[25] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 147.

[26] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 148 + 153.

[27] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 151.

[28] CEPEJ report on the European judicial systems, Efficiency and quality of justice, CEPEJ Studies N° 20, Edition 2014 (2012 data), p. 154.

[29] In 2006 questionnaire for the Judicial Systems Report (data 2004) to question 167 of the CEPEJ questionnaire for the report about the European judicial systems, Albania provided the following answer: "During the year 2004 has been solved through mediation 2515 cases. Out of these 2515 cases, 26% are criminal cases and 73% are other than criminal cases".

[30] Example from the Swiss criminal procedure code from 5.10.2007: "Art. 316:

[1] Where the proceedings relate to an offence that is prosecuted only on complaint, the public prosecutor may summon the complainant and the accused to a hearing with the aim of achieving a settlement. If the complainant fails to attend, the complaint is deemed to have been withdrawn.

[2] If consideration is being given to an exemption from punishment due to reparation being made in accordance with Article 53 SCC[1], the public prosecutor shall invite the person suffering harm and the accused to a hearing with the aim of agreeing on reparation.

[3] If an agreement is reached, this shall be placed on record and signed by those involved. The public prosecutor shall then abandon the proceedings.

[4] If the accused fails to attend a hearing in accordance with paragraphs 1 or 2 or if no agreement is reached, the public prosecutor shall immediately proceed with the investigation. In cases where it is justified, it may require the complainant to provide security for costs and damages within ten days."

F. WORKLAOD OF THE COURTS

1. Indicators

For the analysis of the workload of the courts, the CEPEJ generally use the following relevant indicators: Clearance Rate (CR), Disposition Time (DT), Case Turnover Ratio, Total Backlog (BT) and Case per judge (CPJ)[31].

a) Clearance Rate (CR indicator): Relationship between the new cases and completed cases within a period, in percentage.

$$\frac{\text{[number of resolved cases]} * 100}{\text{[number of new cases]}}$$

Example: If in a calendar year 500 new cases were submitted to the Court, and the Court completed within the same period 550 cases, the CR would be 110%. If the Court completed 400 cases, the CR would be 80%. A CR above 100 % means that the number of pending cases decreases.

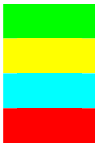
= CR > 95 %
= CR > 50 %
= CR < 51 %

b) Disposition Time (DT indicator): it compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. 365 is divided by the number of resolved cases divided by the number of unresolved cases at the end, so as to be able to express it in number of days. The ratio measures how quickly the judicial system (of the court) turns over received cases – that is, how long it takes for a type of cases to be resolved. This indicator provides further insight into how a judicial system manages its flow of cases.

$$\frac{365 * \text{[number of pending cases on 31.12]}}{\text{[number of resolved cases]}}$$

or

$$\frac{365}{\text{[Case Turnover Ratio]}}$$



= DT < 365 days / < 1 year
= DT < 730 days / < 2 years
= DT < 1'095 days / < 3 years
= DT > 1'094 days / > 3years

c) Case Turnover Ratio: Relationship between the number of resolved cases and the number of unresolved cases at the end. This requires a calculation of the number of times during the

[31] See the revised SATURN Guidelines for Judicial Time Management (2nd revision), document CEPEJ(2014)16, Appendix I European Uniform Guidelines for Monitoring of Judicial Timeframes (EUGMONT), Nr. 5 Analytical information and indicators.

year (or other observed period) on which the standardized case types are turned over or resolved.

$$\frac{\text{[number of resolved cases]}}{\text{[number of pending cases on 31.12]}}$$

d) Total Backlog (TB indicator): Cases remaining unresolved at the end of the period, defined as difference between the total number of pending cases at the beginning of the period, and the cases resolved within the same period.

Example: If there were 1000 cases pending at the beginning of the calendar year, and the court terminated 750 cases during the calendar year, at the end of the calendar period there would be 250 cases that are calculated as total backlog.

e) Case per judge (CPJ indicator) and Case per staff (CPS indicator): Number of cases of a particular type per judge in the given period. A similar type of indicator can also be used to calculate the number of cases per person of the court's staff (Case per staff: CPS indicator).

It will be useful to use two types of CPS indicators:
- the CPS for the entire staff of the court (CPS-E) and
- the CPS for the part of the staff who are directly involved in the jurisprudence activity (CPS-J).

Examples:
- CPJ: If a court has 600 incoming civil cases during a calendar year and 4 judges that deal with them, the CPJ is 150.
- CPS for the entire staff of a court: If a court has 600 incoming civil cases during a calendar year and 15 staff, the CPS-E is 40.
- CPS for the part of the staff directly involved in the jurisprudence: If a court has 600 incoming civil cases during a calendar year and 8 staff employees who deal with the jurisprudence, the CPS-J is 75.

2. Evolution of the workload of the Albanian courts from 2008 to 2012

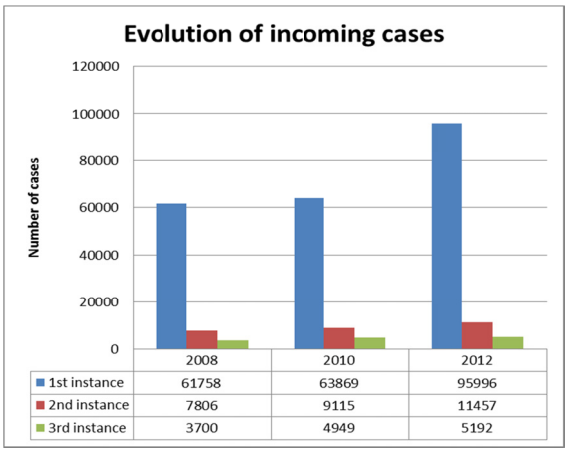
To have a comprehensive overview on the actual situation of the Albanian judicial system, it is useful to observe the evolution of the main data and indicators from 2008 to 2012. It is not possible to go back to the years 2004 and 2006 because Albania has not provided enough data to CEPEJ for these years.

a) Evolution of the number of incoming cases

The workload of the courts directly depends on the number of incoming cases. From 2008 to 2012 number of incoming cases was increasing especially at the first instance courts. The number of incoming cases at the first instance courts were increasing of 55%, within the second instance courts of 47 % and within the third instance (High Court level) of 40 % (see table 19). Within the first instance level, essentially the number of civil and administrative cases was growing during this period: + 61 % (see table 20).

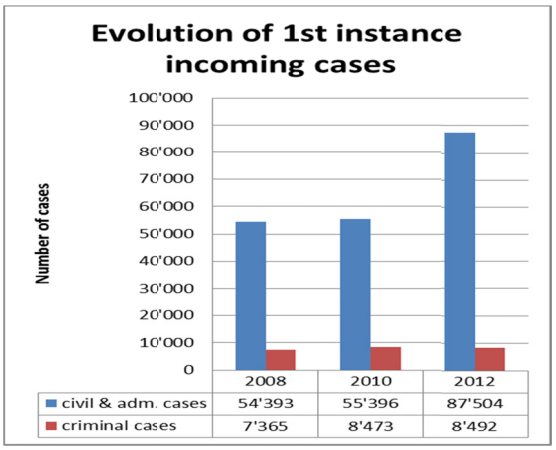
b) **Evolution of the number of resolved cases and the clearance rate indicator**

During the same time, the number of resolved cases was also increasing, but it could not grow in



	2008	2010	2012
1st instance	61758	63869	95996
2nd instance	7806	9115	11457
3rd instance	3700	4949	5192

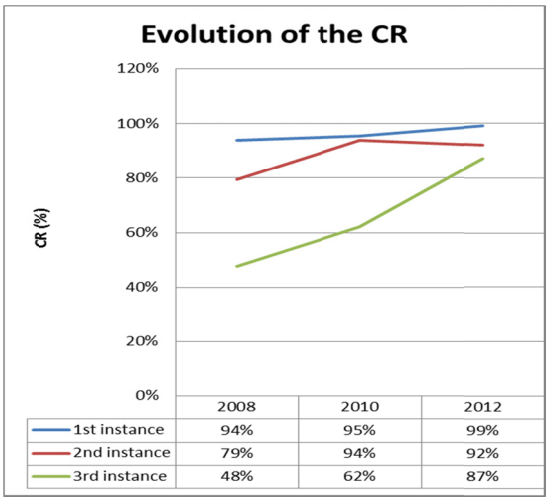
Table 19: Evolution of the number of incoming cases



	2008	2010	2012
civil & adm. cases	54'393	55'396	87'504
criminal cases	7'365	8'473	8'492

Table 20: Evolution of the number of incoming cases within the first instance courts

the same proportion as the number of incoming cases and was for all three instance levels it was permanently less than the number of incoming cases.



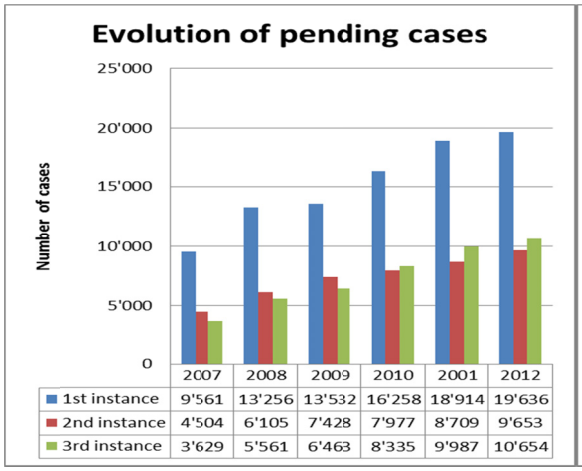
	2008	2010	2012
1st instance	94%	95%	99%
2nd instance	79%	94%	92%
3rd instance	48%	62%	87%

Table 21: Evolution of the Clearance rate of the Albanian courts (CEPEJ data: 2008, 2010 and 2012)

As a result, the clearance rate was always under 100 % (see table 21). That means that globally the Albanian justice system did not have the capacity to solve a sufficient number of cases to avoid an increase of the number of pending cases. While the clearance rate was between 94 % and 99 % at the first instance level, it was between 79 % and 94 % at the second instance level. The situation is especially worrying within the third instance level, because the clearance rate started at a value of 48 % in 2008 and could not exceed the best value of 87 % in 2012.

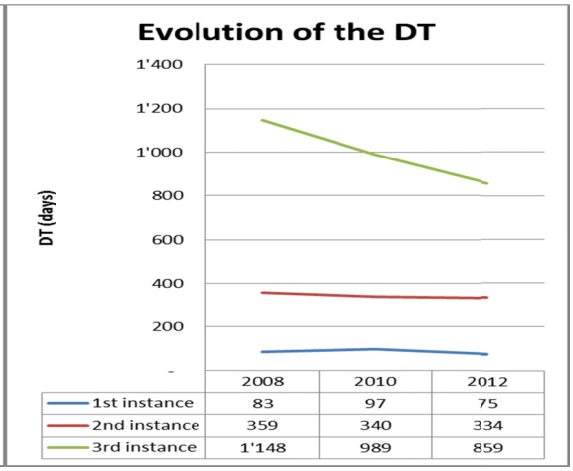
c) Evolution of the number of pending cases and of the disposition time indicator

From the end of 2007 to the beginning of 2013, the number of pending cases doubled within the first and second instance courts and almost tripled at the High Court (see table 23).



	2007	2008	2009	2010	2001	2012
1st instance	9'561	13'256	13'532	16'258	18'914	19'636
2nd instance	4'504	6'105	7'428	7'977	8'709	9'653
3rd instance	3'629	5'561	6'463	8'335	9'987	10'654

Table 23: Evolution of the number of pending cases from the end of 2007 to the end of 2012 (CEPEJ data 2008 - 2012)



	2008	2010	2012
1st instance	83	97	75
2nd instance	359	340	334
3rd instance	1'148	989	859

Table 24: Evolution of the disposition 2008 - 2012

From 2008 to 2012, because of the positive evolution of the clearance rate, we can observe a decrease of the disposition time, which corresponds generally (when there is not long waiting time for the cases in the courts) with the average duration of the proceedings. While the first instance courts have stable disposition under 4 months and the appeal courts less than one year, we observe that the High Court have still a disposition time higher than two years. This signifies that most probably the duration of the proceedings is also longer than two years. Considering that not all cases are complex, there is a serious risk of excessive length of proceedings.

3. Procedural length in Albania's justice system compared to selected European states and the "reasonable time" standard in ECHR article 6 (1)

a) Introduction

In this section we compare Albania's speed of handling case to other European justice systems. We will use the data on time use that CEPEJ gathers from its members; see above section A p. 5.

Statistics tell about variations between systems and internally within a system. Performance according to normative benchmarks also might be of value, because they tell about achievements according to different kinds of expectations. In addition to the statistical comparisons, this section also makes rough comparisons to the demands on case handling speed in justice systems, found in the European Convention of Human Rights (ECHR). According to article 6 (1) everyone is entitled to a fair and public hearing "*within reasonable time*" when a claim that concerns their civil rights and obligations or a criminal charge against them is brought before the courts. We only intend a rather rough analysis. Unreasonable time use also raises questions about causes for delay and how they can be remedied, but this report does not dwell on them.

b) European standards for time management

Looking at the European standards for time use embodied in ECHR; we might note that complaints about violations of the "reasonable time" criterion are the single most important category in the case load of ECtHR. Between thirty and forty per cent of the judgements concluding with violations each year relates to this issue[32]. It means that the case law is rich and the principles are well established.

The Court evaluates the time use in each complaint individually. It does not emphasize general guidelines on time use, but has repeatedly said that

> "… its case law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case"[33].

A CEPEJ study of a significant number of cases on alleged violations of the "reasonable time" - standard shows that the Court's principle of individual examination has resulted in very complex and nuanced norms with no strict limits for time use. The study also brought out some general trends on what is considered reasonable time use, and when it will become a violation of article 6, see *Calvez and Régis* 2012.

According to their study, the starting point of the evaluation is that two years per instance is the limit beyond which suspicions of violation may arise. ECtHR then will give particular attention to the circumstances of the case[34].

[32] Calvez and Régis 2012 Appendix 1 p 74. Statistics from 2006-2010.
[33] See *Obermeier v. Austria* judgment of 28 June 1990.
[34] See also Calvez and Régis 2012 p 2, 4-5 and 66-69 for illustrations.

Several circumstances might justify a more extensive time use, like the complexity of the case[35], the applicants' behaviour [36]and how the courts have handled the case.

However, delay due to an inefficient judicial system does *not* justify extended time use; for example backlogs because of a general and ordinary lack of capacity in the courts, unusually complicated and time consuming appeal structure, significant standstill time, accusatory proceedings that leaves the progress of the case to the initiative of the parties, insufficient measures against delaying tactics and an appeal court's legitimate wish to join similar cases in a common hearing[37].

Circumstances that might lead to violations also when the time span is *shorter* than the starting point of two years per instance also can be identified. They mainly relate to the welfare importance of the case to the applicant and the detrimental effects even of a time use according to the ordinary time limits will have[38].

Speed might vary during the processing of cases. Judicial systems might be slow at one instance and faster on another. In the end ECtHR's evaluations are made from the *total* time use on all stages of the proceedings that a case has undergone. The underlying principle is that guarantees of ECHR article 6 (1), as of other articles in the Convention, should be practical and effective[39].
To conclude: According to the case law of ECtHR, the criteria for time use are discretionary, flexible and complicated. In this analysis, we only focus on the principle that that durations of more than two years per instance means that suspicions of violation of article 6 will arise. We will only give some rough estimates on how well this standard is respected in the states that we compare. Available data does not permit more sophisticated analyses.

c) Data and indicator

As mentioned, CEPEJ has developed statistics on time use for different types of cases in CoE member States in 2006, 2008, 2010 and 2012[40], but data are not complete for all of the states. In this section we use EJS data from 2008 and 2012 on disposition time *(DT).* The formula of for calculating DT is explained above in section F 1.

What sort of answers do data on disposition time offer? According to CEPEJ

> *"(i)t needs to be mentioned that this ratio does not provide a clear estimate of the average time needed to process each case. For example, if the ratio indicates that two cases will be processed within 600 days, one case might be resolved on the 30th day and the second on the 600th day. The ratio fails to indicate the mix, concentration, or validity of the cases. Case level data from functional (and cost-intensive) ICT systems are needed in order to review these details and make a full analysis. In the meantime, this formula offers valuable information on the estimated length of proceedings"*[41].

[35] Calvez and Régis 2012 p 18-20.
[36] Calvez and Régis 2012 p 20-22.
[37] Calvez and Régis 2012 p 3 and p 22-25.
[38] Calvez and Régis 2012 p 25-28.
[39]Calvez and Régis 2012 p 28-29.
[40] Sources: European Judicial Systems (*EJS*) 2010, EJS 2012, Velicogna 2011, EJS 2014.
[41] Supra.

What do figures on DT tell about the "reasonable time"- standard? As shown, real time use of two years or more in a case gives reason for concern from the ECtHR. A prospected DT of more than two years should then produce a clear warning that a court needs to increase its case handling speed. However, CEPEJ's reminder that DT "does not provide a clear estimate of the average time needed to process each case", cited above, should be kept in mind. Several principled caveats should be made:

As said by CEPEJ, DT is only an *average* and not a precise measuring of the DT of the individual case. If the average DT for a judicial system is for example one year for each instance, it might well be that no case exceeds the two year limit. However, if DT for half of the cases is one month, the average DT for the other half will be almost two years. Then many of them might endure for more than two years. Truly DT "fails to indicate the mix, concentration, or validity of the cases".

DT is a theoretical figure. It is an estimate and not based on counts of the real time use of each case at the different levels. DT also is a rough indicator since it only tells about predicted future time use. We might say that average disposition time is a reliable prediction of real average time use when the present case handling speed continues. It becomes less accurate when caseloads or case handling time changes – for example due to court reforms or changes in judge capacity.
In jurisdictions with large backlogs of old cases, stipulations from disposition time to total real handling time for the backlog might easily be too optimistic, especially when backlog capacity is improving. Disposition time only tells about future time use that might be shorter than actual time use in the past.

For appellate proceedings DT for the different levels is calculated from different selections of cases. First, only a limited share of the cases appealed from the first instance to the second instance will be brought to the third instance. Second, when all data are from a given year, for example 2008, only a share of the third instance cases in 2008 is selected from the second instance cases in 2008 and only a share of the second instance cases are selected from the first instance cases. Therefore the added DT for the second and third instance in 2008 is not the DT of the selection of the 2008 cases that the parties appealed through the second instance to the third instance.

We might ask why CEPEJ use DT despite the problems mentioned. The explanation is the lack of data on real time use. Sophisticated ICT systems are necessary to produce them and they are not in place in many, or most, jurisdictions. Data on DT is meant as a provisional measure until sufficient IT - systems are in place[42].

With these precautions I think that CEPEJ data on DT can be used for rough comparisons of time use between European judicial systems.

We will follow the development of the Albanian system and comparable European systems from 2008 to 2012, to get an idea whether disposition time has increased or not.

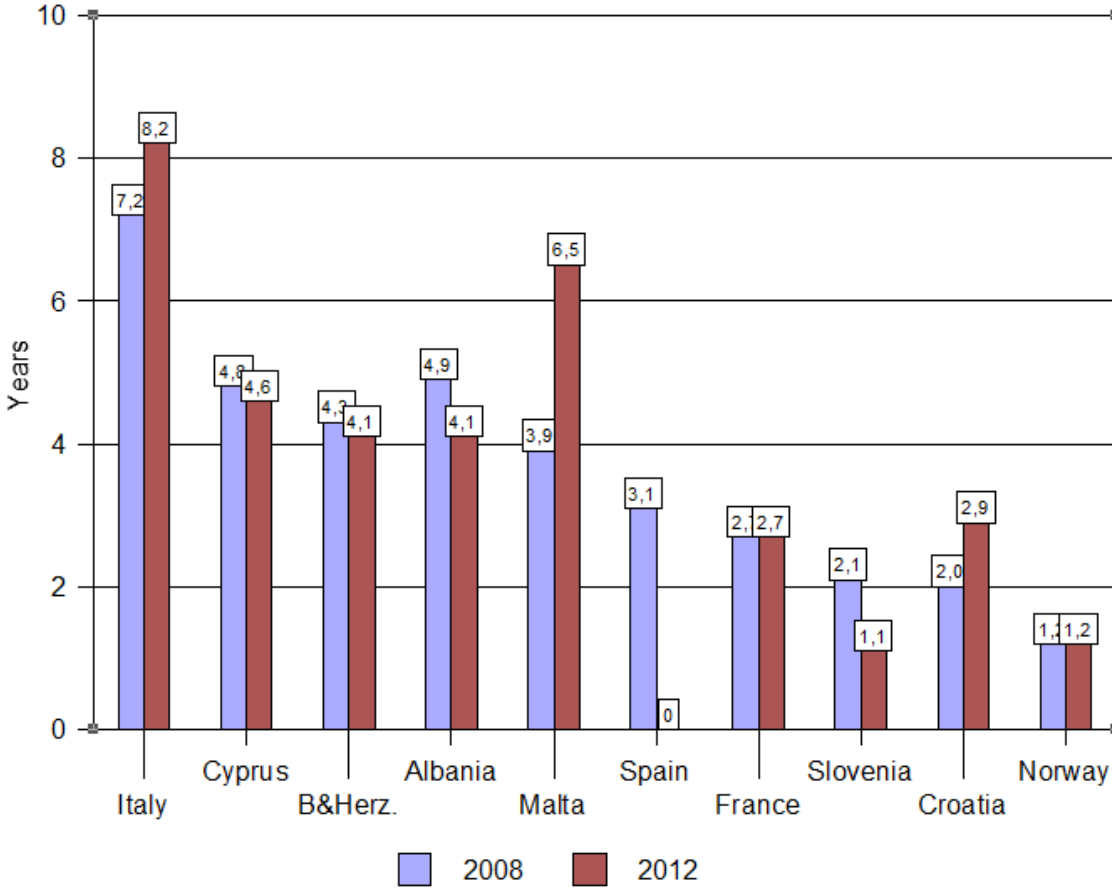
[42] Supra. I have made a preliminary comparison between DT and CEPEJ data on actual time use from a few so called "Pilot Courts" that showed a fair correspondence. (CEPEJ-SATURN (2012)11. However, these data are both internal and incomplete and not available at the CEPEJ website. When quality and completeness becomes satisfactorily, such data might provide a basis for empirical tests of the reliability of DT.

27 states gave data on time use in 2008. Not all of them gave complete numbers. I have selected the "worst cases" – states that had a DT of 2 years (730 days) or more when we add the DTs at the first, second and third instance for civil, commercial and administrative cases in 2008[43]. Nine countries fulfilled this criterion. All of them belonged to Southern Europe. We compare them to Norway, as a state that was among the fastest in Europe.

d) Overall distribution of disposition time

Figure one shows the overall distribution of disposition time in the selected jurisdictions in 2008 and 2012.

Figure 1: Disposition time in years. All instances. Other than criminal cases.



If we start with 2008, Italy's DT was 7.2 years for all civil instances. This figure for predicted time use significantly surpassed the standard of two years per instance, adding to six years for three instances before becoming a reason for concern.

Actual number of cases that would be of concern to the ECHR, of course, depends on the variations in time use between the cases. If 50 percent of the cases are disposed of after 3 years, the other 50 percent will use 11.2 years on average and undoubtedly contain a large number of

[43] Data from 2008 are extracted from Velicogna 2011. For 2012 I have used data received from the researchers preparing the 2012 data for EJS 2014. I expect them to be published in the next volume of *Velicogna*.

violations. So, when the average DT surpasses the time use that gives reason for concern, it is unavoidable that a share of the cases also do so and the state in question must apply measures to reduce time use if it wants to avoid violating the "reasonable time" standard in ECHR art 6 (1). It is however, difficult to tell how large that share is and how the length of the overruns are distributed among the cases that violate the standard. Anyhow, the figure strongly indicates a need for reform.

Albania came in second with DT amounting to 4.9 years, closely followed by Cyprus wit 4.8 years. Both states showed a total average project time use well below the 6 years. However violations of article 6 still cannot be excluded. If 50 percent of the cases use 2 years, then the average for the other half will be 7.6 years in Cyprus and 6.6 in Albania. In both countries the estimate means that a share of the cases will give reasons for concern and that several violations probably will occur.

Croatia was the fastest with a total disposition time of 2 years, which is well within the limits for concern set by the ECtHR. Norway in Northern Europe only had 1.2 years – less than one third of Albania. In those two countries DT does not indicate violations of any volume.

How has time use developed between 2008 and 2012?

In Italy, Malta and Croatia DT has increased. The raise in Malta from 3.9 years to 6,5 years – 67 percent – appears alarming. Time use seems to increase almost uncontrolled. Also Italy showed a significant raise of one year – or 27 percent. Given the already difficult situation in 2008, far more effective remedies seem a necessity to avoid further massive violations of article 6.

Cyprus, Bosnia and Herzegovina, France and Norway appear fairly stable with DT almost at the same level as in 2008.

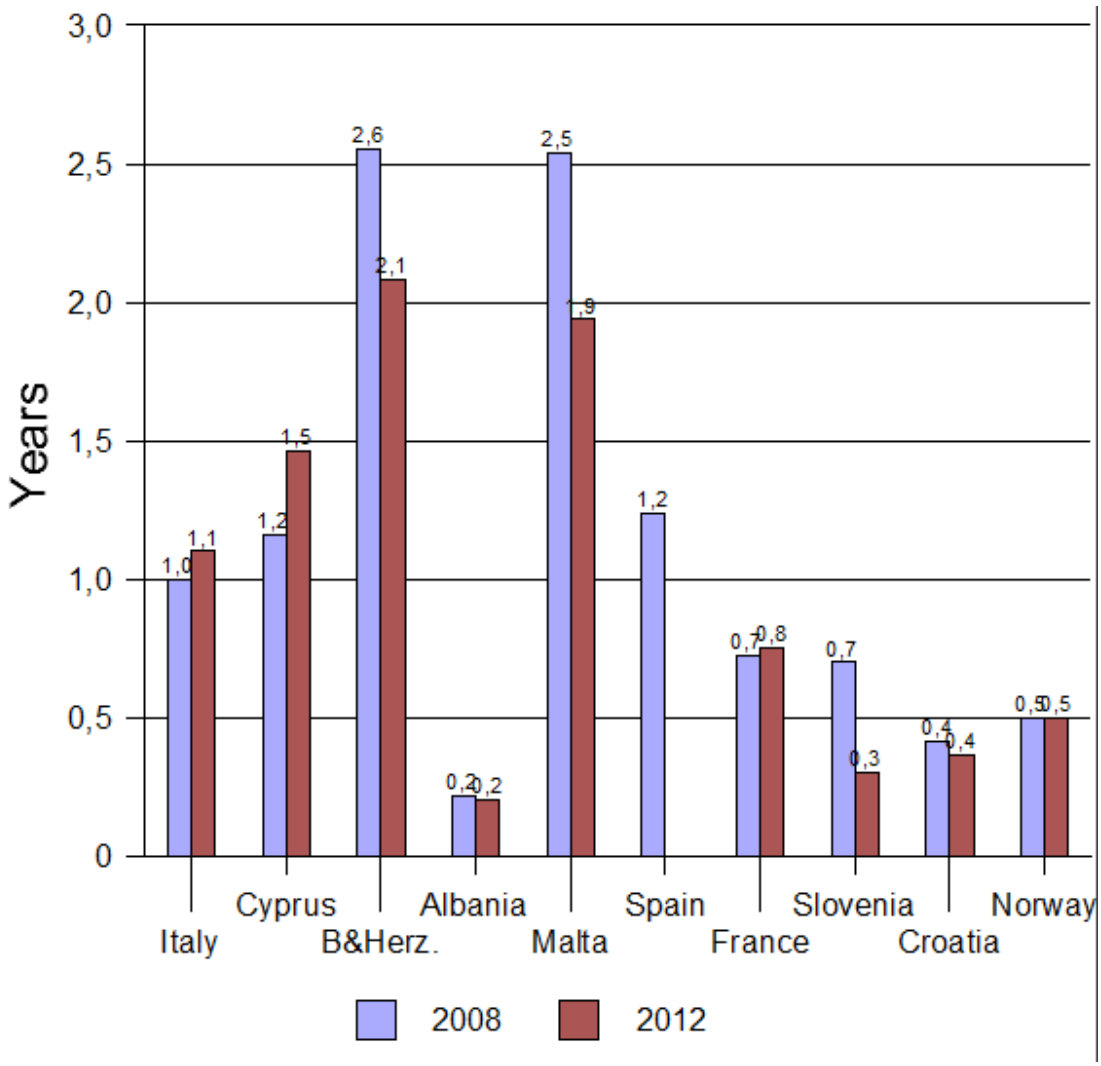
Slovenia is the only state that shows a significant decrease in projected time use. DT is down from 2,1 year to 1.1, or 48 percent. DT in Albania also decreased somewhat.

Figures for Spain are missing.

e) First instance

We might evaluate time use for the three instances separately. DT for the first instances in the selected jurisdictions is distributed as shown in figure two:

Figure 2: Disposition time in years. First instances. Other than criminal cases.



In 2008, Bosnia and Herzegovina and Malta had an average DT in their first instance courts exceeding the two year limit for concern with half a year. Such figures obviously indicated a need for reform.

Italy, Cyprus, and Spain had DTs around one year, or half of the two year limit for concern, with France and Slovenia somewhat faster. Croatia, Norway and Albania had DTs of half a year or less, with Albania as the fastest with an average DT of 0.2 years. Such predicted time use is not in itself a matter of concern.

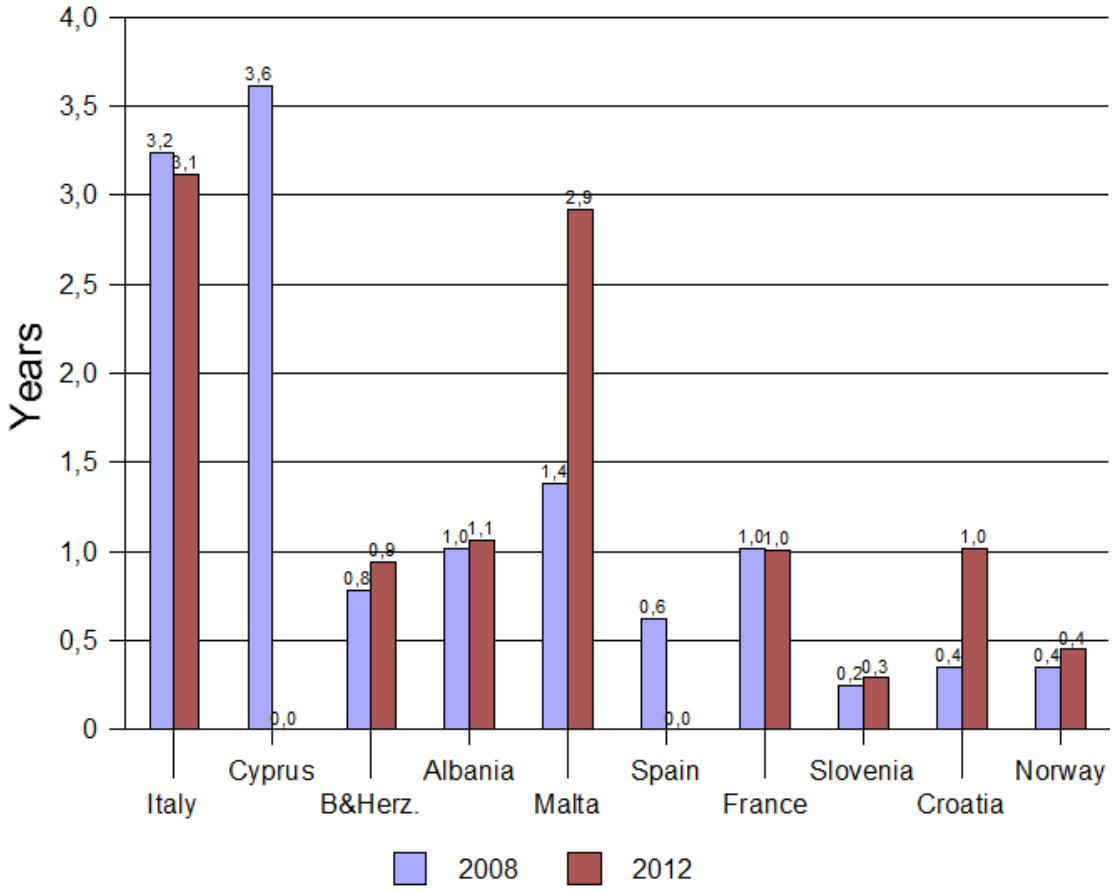
If we turn to 2012, DT in Bosnia and Herzegovina and Malta appear significantly reduced with half a year (20 percent in Bosnia and Herzegovina and 24 percent in Malta), which is a clearly positive development, given the long disposition time in 2008.

Slovenia shows an even steeper decrease from 0.7 to 0.3 years, while DT in Albania, Croatia and Norway did not show much change. None of these countries seemed to be in any danger of gross violations of the "reasonable time" limit in ECHR article 6 in 2008. Spain did not give figures for 2012.

f) Second instance

Disposition time at the second instance courts is shown in figure three.

Figure 3: Disposition time in years. Second instance. Other than criminal cases.



DT at the second court level in 2008 was excessive in Cyprus (3.6 years) and Italy (3.2 years). Malta had 1.4 years, while Albania, Bosnia and Herzegovina and France had around one year and Spain, Slovenia and Norway had half a year or less.

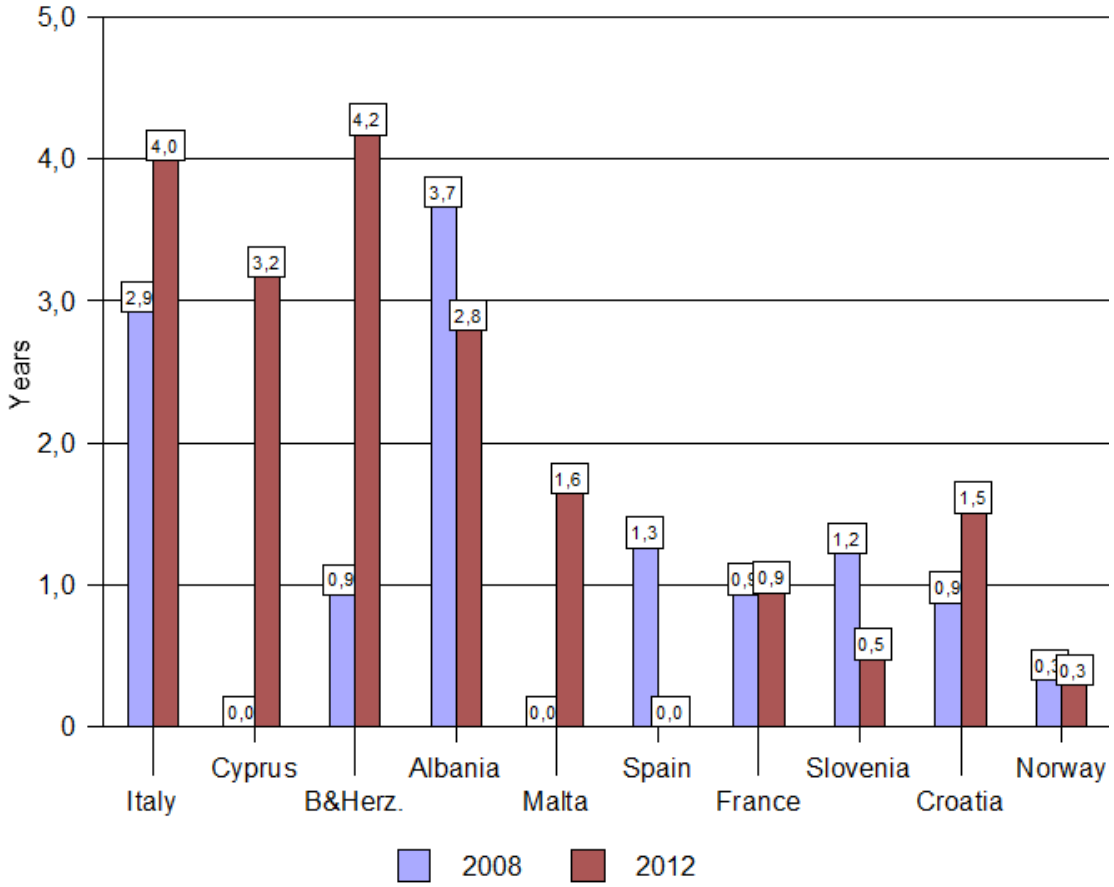
Turning to 2012, time use in Italy was still excessive. Reforms did not bring predicted time use down. Time use in Malta seemed to have increased significantly since DT had doubled from 1.4 years to 2.9 years. Cyprus did not give figures.

Among the countries with DTs of one year or less in 2008, DT remained stable until 2012, except Croatia that more than doubled its DT from 0.4 years to 1.0 years. Although still well within the two year border for concern, the significant raise obviously meant a warning signal. A similar development for another four years would bring Croatia close to the two year limit. Spain did not give figures.

g) Third instance

Disposition time at the third level appears from figure four:

Figure 4: Disposition time in years. Third instance. Other than criminal cases.



DT at the third and highest level was the most extensive of the three levels, with Albania at the top in 2008 with more than three and a half years, followed by Italy with 3 years. Both figures give raise to serious concerns about massive violations of the “reasonable time” standard. Spain, Slovenia, Croatia, Bosnia and Herzegovina, France and Norway all had DTs below one and a half year, with Norway at the bottom with 0.3 years.

From 2008 to 2012 DT increased dramatically in Bosnia and Herzegovina and significantly in Italy and Croatia, Cyprus, that did not give figures for 2008, had a DT of 3.2 in 2012, which is also alarming[44]. In Slovenia DT went significantly down and also decreased in Albania with almost a year. It remained stable in France, and Norway. Spain did not give figures.

h) Conclusions

If we sum up the civil side, the overall DT shows significant variations also among the slow states. Generally the overall DTs did not decrease in the four year period between 2008 and 20012, while three countries showed marked increases. The finding does not appear promising for a speedier justice in the future.

The overall figure contains huge variations in DT per instance. Italy show fairly low DT on the first level, while the second and third levels show high figures.

Bosnia and Herzegovina has the highest DT on the first level, low figures at the second level and show and alarming raise at the third level between 2008 and 2012.

In Albania the first level figure is even lower than in Norway, while the second level figure lies in the middle with one year, well below the two year limit of concern. Disposition time at the third level, however, is more than three times as high, indicating a significant need for reform. However DT decreased markedly between 2008 and 2012.

Malta's DT is very high both on the first and the second level, but more moderate on the third level.

DT in France does not show much variation between the levels. All values are around one year.

Slovenia's DT on the first level was well below one year at the first instance in 2008, while DT on the third level was somewhat above one year. DT on both levels decreased significantly between 2008 and 2012, indicating efficient reforms. DT on the second level remained low and stable. In 2012 DT all levels showed DTs of half a year or less.

Croatia's DTs on the first and second levels were among the lowest and remained stable between 2008 and 2012, while the third level DT was higher and also increased in the period.

Norway had stable DTs of half a year or less on levels.

Cyprus and Spain are difficult to evaluate due to missing figures.

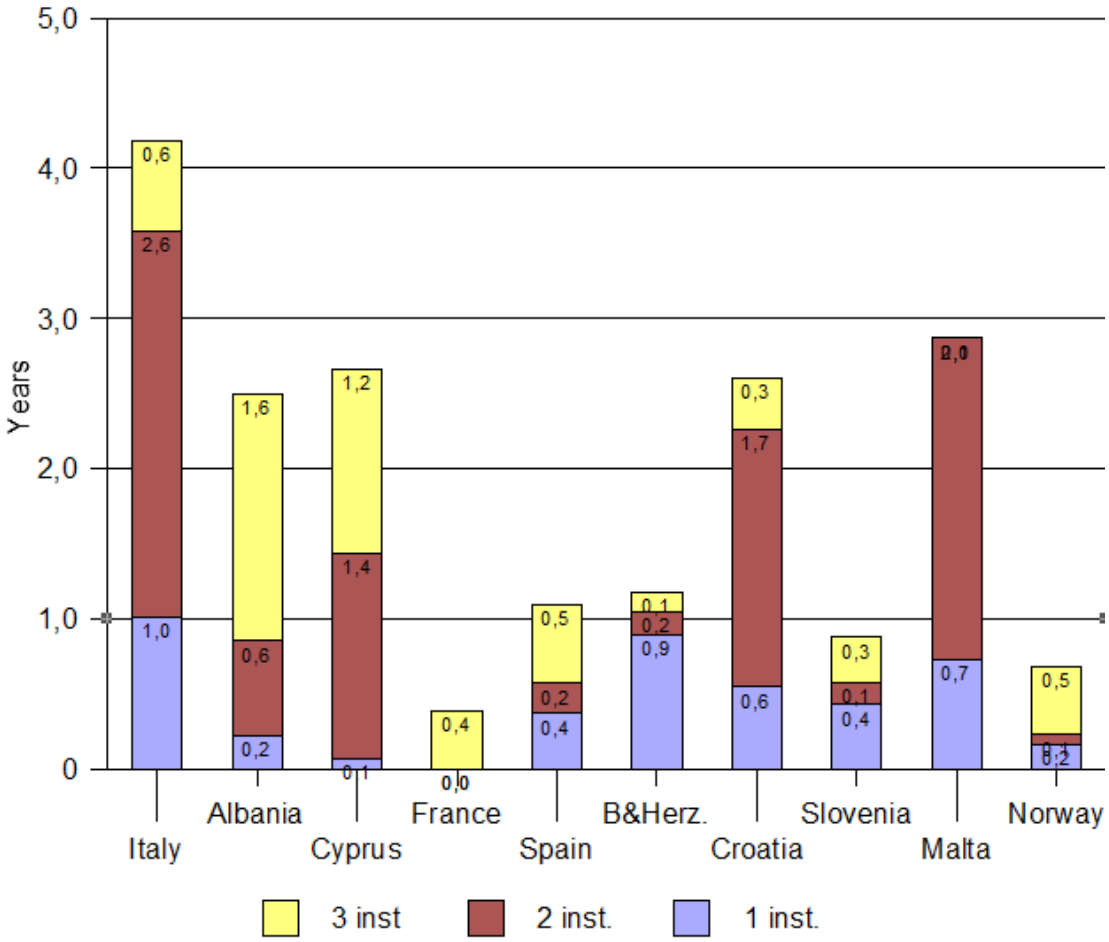
[44] The finding might well be artificial. Cyprus only has two instances and did not give figures for their third instance in 2008 and the second instance in 2012. It might well be that the highest instance court has been classified as a second level court in 2008 and a third level court in 2012. Time has not permitted us to check it out.

i) Criminal cases

We have seen that slowness in one part of the civil justice system often go together with slowness in other parts, but not always. Lastly we shall ask if slow civil systems also mean slow criminal justice.

Data on DT in the criminal justice system in the European Survey are similar to the data on civil justice. To avoid making the international comparison too extensive, we will only present figures for 2012. Figure five shows the distribution.

Figure 5: Disposition time in years per instance. All instances. Criminal cases.



Overall, predicted time use was most extensive in Italy with a DT of 4.2 years, followed by Malta, Cyprus, Croatia and Albania with DTs between 3.0 and 2.5 years in 2012. Bosnia and Herzegovina, Spain, Slovenia and Norway had overall DTs of one year or less. France did not give figures for its first and second level.

Our general impression is that criminal justice is significantly faster than civil justice in all states except Croatia. However, states with the longest overall DTs in civil cases also are among the

slowest in predicted time use at the criminal side, except Bosnia and Herzegovina that is among the states with the lowest DT on the criminal side.

We also observe huge differences in time use at the different instances. Italy has highest DT of all states at the first, and especially the second level. No state, however, had a DT above one year at the first level. Malta, Croatia and Cyprus also had high DTs – between two and one and a half year – at the second level.

Albania had the highest DT at the third level with one and a half year, followed by Cyprus with more than one year. All other countries showed DTs of half a year or less.

Except Italy's second instance, all DTs in criminal cases are within the two years limit for concern by ECtHR. However, time counting in criminal cases does not start when the case arrives in the criminal court, as is the case with most civil cases. Counting starts when a suspect is substantially affected by the investigation, for example by indictment, custody, ransacking, or other event that implies a charge. Such events usually happen long before the case arrives in court and such time use must be added to time actually used at the first instance, and also to the total time use. DT does not include such pre-trial time use.

j) Conclusions on Albania.

Overall Albania came out as one of the slowest states in Europe among 27 states that gave numbers – both on the civil and the criminal side. Both rankings, however, were due to long durations at the top of the appellate system. DT at the first and second level seemed reasonable, and on the first level well in line with the fastest states in Europe.

4. Actual workload of the Albanian courts

After this general and comparative overview, we would like to study more in detail the situation of the Albanian courts. This analysis is based on the data provided by the courts visited by the CEPEJ experts until the end of 2014[45] and will be extended to all the Albanian courts in a due course. The data 2012 provided by the Albanian authorities to the CEPEJ for the report 2014 on the European judicial systems were also used for this analysis. Because not all data are available, some indicators could not be calculated.

Indicators of the Albanian Courts (data 2013/when not available: 2012) 4.3.2015/BrJ

Court	CR	DT (days)	TB	Nb of cases > 2 years	Incoming cases	Effective nb of judges	Nb of staff involved in the jurisprudence	CPJ	CPS staff involved in the jurisprudence	Source of the data
A1. First instance - civil procedures										
Tirana District Court	106%	197	0	200	12 481	55	70	227	178	data 2013 provided by the court
Elbasan District Court	122%	109	0	66	2 176	8	8	272	272	data 2013 provided by the court
TOTAL FIRST INSTANCE - CIVIL PROCEDURES	99%	62	0	NA	82 150	NA	NA			data 2012 CEPEJ report
A2. First instance - administrative procedures										
Tirana First instance administrative court	82%	76	-	some	9 565	15	17	638	563	data 2014 provided by the court
TOTAL FIRST INSTANCE - ADMIN. PROCEDURE	91%	287	0	NA	5 354	NA	NA			data 2012 CEPEJ report
TOTAL FIRST INSTANCE (CIVIL. & ADM. PROC.)	99%	75	0	NA	87 504	NA	NA			data 2012 CEPEJ report
A3. First instance - criminal procedure										
Tirana District Court	86%	57	0	358	2 000	18	23	111	87	data 2013 provided by the court
Elbasan District Court	88%	132	0	4	742	6	6	124	124	data 2013 provided by the court
Tirana Serious Crime Court	93%	158	0	4	128	16	9	8	14	data 2013 provided by the court
TOTAL FIRST INSTANCE - CRIMINAL PROCEDURES	105%	81	0	NA	8 492	NA	NA			data 2012 CEPEJ report
TOTAL FIRST INSTANCE - CIVIL & ADM. & CRIM. PROCEDURI	99%	75	**0**	**NA**	**95 996**	**300**	**NA**	**320**		**data 2012 CEPEJ report**
B1. Appeal courts - civil and criminal procedures										
Vlora Appeal Court	62%	829	587	NA	1 438	12	7	120	205	data 2013 provided by the court
TOTAL APPEAL COURT - CRIMINAL PROCEDURE	106%	231	0	NA	3 434	NA	NA			data 2012 CEPEJ report
B2. Appel courts -administrative procedure										
Administrative appeal court of ...										
TOTAL APPEAL COURTS - ADMINISTRATIVE PROCEDURE	NA	NA	NA	NA	NA	NA	NA			
TOTAL APPEAL COURTS - CIVIL & ADM. PROCEDURE	86%	389	0	NA	8 023	NA	NA			data 2012 CEPEJ report
TOTAL APPEAL COURT - CIVIL, ADM & CRIM. PROCEDURES	**92%**	**334**	**0**	**NA**	**11 457**	**65**	**NA**	**176**		**data 2012 CEPEJ report**
C. Supreme Court Level										
C1. High Court - civil procedures	72%	1 245	4 051	NA	2 777	6	14	463	198	data 2013 provided by the court
C2. High Court - administrative procedures	61%	1 370	1 285	NA	989	6	14	165	71	data 2013 provided by the court
C3. High Court - criminal procedures	100%	451	386	NA	1 619	5	11	324	147	data 2013 provided by the court
TOTAL HIGH COURT	79%	959	5 722	1 554	5 385	17	39	317	138	data 2013 provided by the court
Constitutionnal Court	NA	NA	NA	NA	NA	NA	NA			no data
TOTAL SUPREME COURT LEVEL	**87%**	**859**	**5 462**	**NA**	**5 192**	**16**	**NA**	**325**		**data 2012 CEPEJ report**
TOTAL 1ST, 2ND & 3RD INSTANCE LEVELS	98%	132	**0**	**NA**	**112 645**	**380**	**425**	**296**	**265**	**data 2012 CEPEJ report**

CR = Clearance Rate Indicator — TB = Total Backlog Indicator
DT = Dispostiion Time Indicator — CPJ = Case per Judge Indicator — CPS = Case per staff indicator

a) First instance courts

- In *civil procedures* in 2012, the first instance courts had a clearance rate of 99 % and a disposition time of 62 days. This means that generally the courts decided approximately the same number of cases during the year as number of incoming, within a reasonable time. This observation was confirmed in 2013 in the two visited pilot district courts (Tirana District Court and Elbasan District court). Regarding the Total Backlog indicator, there is no backlog. But within the two pilot courts, there are some cases (266) that are older than two years

[45] The Court Coaching Programme is implemented currently in 6 Albanian courts and it will be extended to all the Albanian courts in a due course.

with a risk of excessive procedure lengths, when the long duration is not caused by the conduct of the parties or by the complexity of the cases, but by the inaction of the courts or by the lack of resources within the courts.

- In *administrative procedures* in 2012 (before the creation of the first instance administrative courts), the first instance courts had a clearance rate of 91 % and a disposition time (DT) 287 days. This means that globally the courts decided less number of cases during the year than number of incoming cases they had; but the DT less than one year indicates that the cases generally could be solved within a reasonable time. Regarding the creation of new first instance administrative at the end of 2013, it is necessary to follow the activities of these courts during the next years and to evaluate if their performances are in conformity with the requirements of a fair trial. The European Council of Judges (CCJE) studied the impact of the creation of specialised courts [46].

- In *criminal procedures* in 2012, the first instance courts had a clearance rate of 105 % and a disposition time of 81 days. This means that generally the courts decided approximately the same number of cases during the year as number of incoming ones, within a reasonable time. This observation was partially[47] confirmed in 2013 in the three visited pilot courts (Tirana District Court, Elbasan District court and Serious Crime Court). Regarding the Total Backlog indicator, there is no backlog. But within the three pilot courts, there are some cases (366) that are older than two years with a risk of excessive procedure lengths, when the long duration is not caused by the conduct of the parties or by the complexity of the cases, but by the inaction of the courts or by the lack of resources within the courts.

- Generally, the *first instance level* had in 2012 a clearance rate of 99 % and a disposition time of 75 days. The CPJ indicator for the same period gives 320 cases per judge. This means that generally the courts decided approximately the same number of cases during the year which were incoming within a reasonable time. Regarding the Total Backlog indicator, there was no backlog, but some cases are registered since more than two years.

b) Second instance courts

- In *civil and administrative procedures*[48], the second instance courts had a clearance rate (CR) of 86 % and a disposition time (DT) 389 days. This means that generally the appeal courts decided less cases during the year than the number of incoming cases they had; the DT between one and two years indicates that there is a risk that cases are not solved within a reasonable time. This situation was confirmed in 2013 in the Appeal Court of Vlora, which had in 2013 a CR of 62 % and a DT of 829 days (more than two years). Regarding the Total Backlog indicator (TB) at the level of the second instance courts, there is no backlog. But in the Appeal Court of Vlora, the TB is 587 which indicates the existence of cases with a risk of excessive procedure lengths, when the long duration is not caused by the conduct of the parties or by the complexity of the cases, but by the inaction of the courts or by the lack of resources within the courts.

[46] See Opinion of the CCJE N° 15 (2012) on the specialisation of judges.

[47] Only partially, because all the three pilot courts had in 2013 a CR under 100%. It is not unusual to have variations of CR; so it is useful to follow the evolution of the CR during three to five year before making conclusions concerning the resources or the size of the courts.

[48] Albania did not provide separate data for civil and administrative procedures in 2012 for the second instance level.

- In *criminal procedures* in 2012, the second instance courts had a clearance rate of 106 % and a disposition time of 231 days. This means that globally the courts decided approximately the same number of cases during the year as the number of incoming ones, within a reasonable time. This observation was partially confirmed in 2013 in the Appeal Court of Vlora, because this court had a CR of 137% but a DT of 414 days (more than one year). Regarding the Total Backlog indicator, there is no backlog. But within the Appeal Court of Vlora, there is a TB of 21 cases; that signifies that this court has probably some cases which are older than two years with a risk of excessive procedure lengths, when the long duration is not caused by the conduct of the parties or by the complexity of the cases, but by the inaction of the courts or by the lack of resources within the courts.

- Generally the *second instance (appeal) level* had in 2012 a clearance rate of 92 % and a disposition time of 334 days. The CPJ indicator for the same period gives 176 cases per judge. This means that on average the courts mostly decided less cases during the year than the number of incoming cases they had and generally it was done within a reasonable time. Regarding the Total Backlog indicator, there was no backlog, but probably some cases registered since more than two years. If the CR will stay under 100 % during a few years, the average duration of the procedure will grow and be quickly over two years and generate excessive procedure lengths.

c) High court level

From the data 2012 provided by Albania to the Council of Europe, we can conclude for the High court level a clearance rate is of 87 %, a disposition time of 859 days (more than two years) and a Total Backlog indicator of 5462 cases. For this period, the CPJ indicator was 325 cases per judge. Based on this data, we can observe that the risk of excessive procedure lengths exists on this level. For this reason we suggest to analyse separately the situation of the High Court of Albania below.

4. Workload of the High Court of Albania

a) Based on the statistics delivered by the Albanian High Court during the visit we had in June 2014, we observe the number of *pending cases* of the Court was still growing for all type of cases during the past years (see table 22 below).

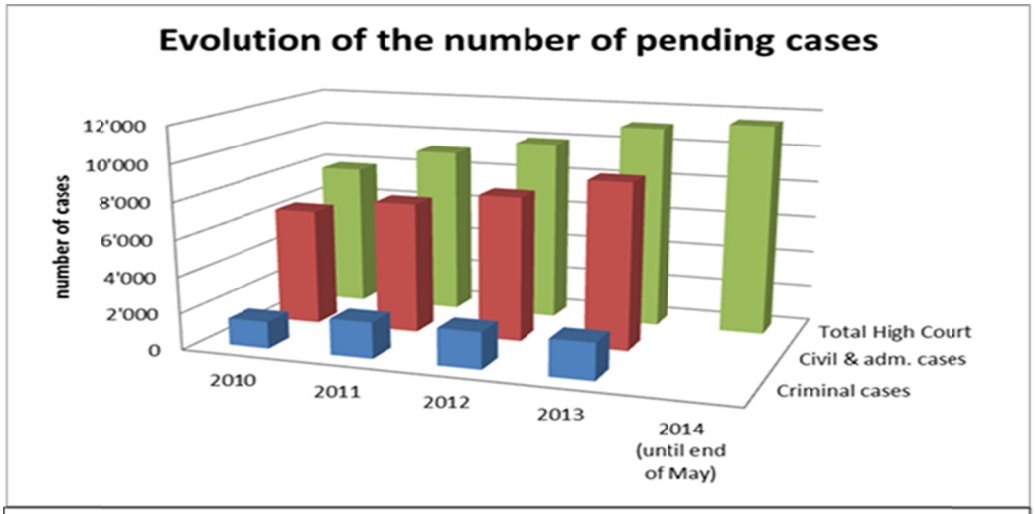


Table 22: Evolution 2010 – 2014 of the number of pending cases within the High Court of Albania (Source: statistics given by the High Court)

During the past years, the Court was not able to solve an equal number of cases to the number of incoming ones. For this reason we consider that there is a structural problem in this Court. It will be necessary first to optimise the functioning of the Court, then, if the optimisation is not sufficient to reduce the number of incoming cases, or to give more resources to the Court.

b) The *disposition time (DT),* and probably also the procedure lengths, are both over the limits for a reasonable time set by the European Court of Human Rights (ECtHR) (see table 23). For normal cases, the ECtHR[49] considers that generally when duration of a case is not over 2 years, there is no excessive procedure length; priority cases (for example custody cases) have to be resolved within a shorter time.

c) *Total Backlog (TB) and number of cases which represent a risk of excessive procedure length:*
The BT of the High Court was increasing from 4094 to 5336 cases from 2011 to 2013. The BT indicates the number of cases which are older than one year.

It is more appropriate to estimate the number of cases pending since more than two years. The time limit of two years is based on the jurisprudence of the European Court of Human Rights, which considers that for normal cases 2 years length of procedure per instance generally could be acceptable.

[49] See the CEPEJ studies N 19: "Length of court proceedings in the member States of the Council of Europe based on the case-law of the European Court of Human Rights (state as at 31 July 2011)" written by the scientific expert Françoise Calvez and Nicolas Régis.

31.05.2014	Years			
	< 2	2 - 3	4- 10	> 10
Nob of cases	9965	1289	265	0

The **number of pending cases** of the High Court **registered since more than two years** consists of **1500 cases** approximately. This number was growing during the last years and is still growing. This situation has the consequence that the procedure lengths of the cases are generally excessive regarding the jurisprudence of the European Court of Human Rights. The experts think that this problem is actually **one of the main problems of the Court**.

5. Conclusion regarding the workload of the courts and recommendations

During the coaching session with the pilot courts, the CEPEJ experts analysed in detail the situation of each court based on the statistics, the implementation degree of the CEPEJ SATURN Guidelines for judicial time management and the implementation degree of selected points from the CEPEJ quality check-list. Two points, which were not mentioned until now in this report, were brought to light: the improvement of service of judicial documents and the so-called "ping-pong cases" between the different judicial levels.

a) Improvement of the service of judicial documents

During the implementation of the SEJ project it has appeared that one of the issues that hinder the work of the judiciary is the notification process. There is no centralised and reliable address system that allows delivery of court notifications. That in turn is causing delays of hearings, etc. There is also a need to review the procedures concerning notification to remove all the existing obstacles hindering an efficient work of the courts.

Recommendation: To improve the functioning of the service of judicial documents based on the recommendations presented by the expert of the International Union of Judicial Officers.

Recommendations were grouped under three main topics:

1. The bodies in charge of the service of documents:
The bodies in charge of the service of documents should be chosen to ensure that:
- The claimant has the guarantee of an effective service on the addressee that will prevent or limit its challenge;
- The addressee has been duly served with adequate notice in a timely manner, preferably by personal service in order to guarantee direct dissemination of information.

The bodies in charge of serving documents should be properly trained to effectively carry out their mission, including all necessary legal knowledge. They should be adequately remunerated and liable for they work.

Albania should consider entrusting judicial officers (bailiffs) with the service of documents.

2. The addressee and his/her localisation:

All state bodies, which administer databases with information required for efficient service, should have a duty to provide the information on the address of the addressee to the body in charge of service, within an agreed time-limit if such information is compatible with data protection legislation.

3. The methods of service of documents:

The methods of service of documents should be harmonised, fully described, and presented as an autonomous corpus. They should cover all their aspects including:

- The bodies in charge of the service of document and their powers relating to the service of documents;
- Templates on the contents of the documents to be served;
- When and where service of documents can be carried out;
- How and to whom the document can be handed, including electronic service;
- The report on the conditions pertaining to how and to whom the document was served and the legal value of this report;
- The formalities relating to the service of documents;
- How to serve a document to an addressee without a known address;
- Service of the document abroad and coming from abroad;
- The liability of the body in charge of serving documents;
- How to challenge the service of documents;
- The costs of the service of documents.

b) Reducing the so-called "ping-pong" of cases between the different judicial instances

The so-called "ping-pong" cases in the Albanian judicial system refer to those cases in which court proceedings go back and forward from one level to another until the final court's decision can be executed (once the case is appealed the execution of the court decision is suspended until the upper court issues its decision on that particular case). According to the Albanian Code of Civil proceedings, the court decisions can be appealed before higher court. The means to appeal of the court decisions are: appeal to the Appeal Court, Recourse to the High Court, request for revision and objection of the third (Article 442 of the CvPC).

Parties of the court proceedings can **appeal to the Court of Appeal** the decision of the court as well as the acts of bailiffs in order to protect their rights (Article 442/a). While the recourse to the High Court is done against the decision of the first or appeal courts according to the rule foreseen in the code. The court of appeal has different possibilities to decide on the case since it has the power to act both as the court of law and court of facts. In any case, parties can submit new evidences in the second level of court. Among other things the court has the right to revoke the case and send the case for retrial in the first level court only for cases listed in article 467 of CvPC.

Recourse to the High Court is made for decisions of the first instance and decisions of the court of appeal for the bad implementation of the law as well as for procedural violations (Article 472 of the CvPC). At the end of the proceedings the High Court can among other things revoke and send back for retrial only the decision of the appeal court or revoke both the decisions of the appeal and first instance court and send back the case to the first

instance court. In both cases a different panel of judges must adjudicate the case (article 485 of CvPC).

The **request for the revision** of a final decision can be done directly to the High Court. The CvPC has listed a number of cases when the court must accept the revision of a final judgment. The High Court can decide to revoke fully or partially the case and send it back to the competent court for retrial with different panel of judges (article 498 of CvPC).

When judgments are sent back and forward from one court to another and if a calculation of the overall proceedings is made, it might go **beyond the reasonable time**. Calculating the length of proceedings between different level of courts remains a difficult task because each time the case is send back it gets a different number thus for the court concerned it can be considered as new case and normally with no priority pressure.

Recommendation: To introduce an effective and efficient monitoring mechanism within the justice system in order to avoid excessive duration of the total length of proceedings, we recommend:

a) *to establish a working group with the tasks of overseeing revision and improvement of the data collection processes, define templates of judicial statistics for the courts of Albania and preparing the relevant changes to the existing regulation and procedure related to the data collection*[50]*,*
b) *to use the unique identifier (file number in the ICMIS-System) for each proceeding, from the starting point of the procedure*[51] *to the final and binding decision to measure and control the total duration of a case and to detect in early stage of the proceedings all risks of excessive procedure lengths,*
c) *to introduce additional restrictions for sending back a case to an inferior court in the procedural law, for example with introducing an obligation for the Appeal Court or the High Court to decide every time the needed facts are established.*

c) Other recommendations to manage the workload

*Recommendation: Regarding the **High Court of Albania**:*

a) *The proposed recommendations do not take into consideration the issue of redefining the constitutional position of the High Court, specifically the issue of transformation of the High Court into a real Supreme Court, which should not take any evidence and look into points of law only; or removing any first instance jurisdiction from the High Court. These issues were briefly addressed in the Venice Commission opinion on the Draft Amendments to the Criminal Procedure and Civil Procedure Codes of Albania*[52]*. There is a need to continue these discussions in the framework of the process of the reform of the*

[50] The letter a) of the recommendation 1 is also found on the results of the workshop organised by the SEJ project on judicial statistics hold on 3-4 November 2014 in Tirana.
[51] The starting point is not the same for the different type of proceedings. In criminal matters, for example, data ought to include the time used from the moment a suspect is charged with an offence, independent of whether the charge is issued by the police, the prosecution or the court.
[52] CDL-AD(2014)016-e Opinion on the draft amendments to the criminal procedure and civil procedure codes of Albania, adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014).

Albanian judicial system. These recommendations concern possible interim steps and measures that could help the High Court to reduce its existing backlog. To study the possibility of simplifying the internal procedure to take a decision, for example by means of reducing number of judges involved in a decision, especially for clearly non- admissible appeals[53]*.*

b) *To study a possibility of introducing additional filters to bring a case before the High Court. (e.g.by changing the procedural rules, especially for appeals regarding incidental use decisions of courts).*
c) *To increase temporarily the resources (human or material) of the High Court in order to reduce quickly the backlog.*
d) *After the implementation of the recommendations a) to c), study the necessity/possibility to improve durably the resources of the High Court to achieve a clearance rate of 100%.*

Recommendation: Regarding the ***first and second instance courts of Albania***

c) *To analyse the workload and the resources needed by the Albanian first and second instance courts at least by means of the indicators CR, DT, TB, number of cases older than two years, CPJ and CPS.*
d) *To optimise the repartition of the resources within the judiciary and eventually, if needed, improve the resources of the courts.*

H. Appendices

1. Example of arbitration rules**:** Extract of the Swiss Civil Procedure Code of the 19 December 2008

2. Recommendations for the improvement of service of documents in the Albanian Justice system, written by Mathieu Chardon, December 2014

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[53] See particularly the document CEPEJ-GT-EVAL(2010)3 called "Single Judge – Panel, MEDEL contribution for CEPEJ".

Appendix 1: Example of arbitration rules

Extract of the Swiss Civil Procedure Code of the 19 December 2008

Part 3 Arbitration

Title 1 General Provisions

Art. 353 Scope of application

1 The provisions of this Part apply to the proceedings before arbitral tribunals based in Switzerland, unless the provisions of the Twelfth Chapter of the IPLA apply.

2 The parties may exclude the application of this Part by making an express declaration to this effect in the arbitration agreement or a subsequent agreement, and instead agree that the provisions of the Twelfth Chapter of the PILA apply. The declaration must be in the form specified in Article 358.

Art. 354 Arbitrability

Any claim over which the parties may freely dispose may be the object of an arbitration agreement.

Art. 355 Location of the arbitral tribunal

1 The location of the arbitral tribunal shall be determined by the parties or by the body they have designated. If no location is determined, the arbitral tribunal itself determines its location.

2 If neither the parties nor the designated body nor the arbitral tribunal determine the location, the ordinary court that would have jurisdiction to decide the matter in the absence of an arbitration agreement shall decide.

3 If several ordinary courts have jurisdiction, the location of the arbitral tribunal shall be the location of the ordinary court first seized by virtue of Article 356.

4 Unless the parties have agreed otherwise, the arbitral tribunal may hold hearings, take evidence and deliberate at any other location.

Art. 356 Competent ordinary courts

1 The canton in which the arbitral tribunal is located shall designate a superior court that shall have jurisdiction:

a. to decide on objections and applications for review;
b. to receive the arbitral award on deposit and to certify its enforceability.

2 The canton where the arbitral tribunal is located shall designate a different court or a differently composed court to have jurisdiction as the sole instance for:

a. the appointment, challenge, removal and replacement of the arbitrators;
b. the extension of the arbitral tribunal's term of office;
c. supporting the arbitral tribunal in all its procedural acts.

Title 2: Arbitration Agreement

Art. 357 Arbitration agreement

1 The arbitration agreement may relate to existing or future disputes arising from a specific legal relationship.

2 The validity of the agreement may not be disputed on the ground that the main contract is invalid.

Art. 358 Form

The arbitration agreement must be done in writing or in any other form allowing it to be evidenced by text.

Art. 359 Challenging the arbitral tribunal's jurisdiction

1 If the validity of the arbitration agreement, its content, its scope or the proper constitution of the arbitral tribunal is challenged before the arbitral tribunal, the tribunal shall decide on its own jurisdiction by way of an interim decision or in the final award on the merits.

2 An objection to the arbitral tribunal on the grounds of lack of jurisdiction must be raised prior to any defense on the merits.

Title 3: Constitution of the Arbitral Tribunal

Art. 360 Number of arbitrators

1 The parties may freely agree on the number of arbitrators. In the absence of an agreement, the arbitral tribunal shall consist of three members.

2 If the parties have agreed on an even number of arbitrators, it is presumed that an additional arbitrator must be appointed as the chairperson.

Art. 361 Appointment by the parties

1 The members of the arbitral tribunal shall be appointed as agreed by the parties.

2 In the absence of any agreement, each party shall appoint the same number of arbitrators; the arbitrators shall then unanimously elect another person as chairperson.

3 If an arbitrator is designated by his or her function, the holder of that function who accepts the mandate is deemed to be appointed.

4 In matters relating to the tenancy and lease of residential property, only the conciliation authority may be appointed as arbitral tribunal.

Art. 362 Appointment by the ordinary court

1 If the arbitration agreement provides no other body for the appointment, or if such body does not appoint the members within a reasonable time, the ordinary court competent under Article 356 paragraph 2 shall proceed with the appointment at the request of one of the parties if:

a. the parties cannot agree on the appointment of the single arbitrator or the chairperson;
b. a party fails to designate his or her arbitrator within 30 days from being requested to do so; or
c. the appointed arbitrators cannot agree on the appointment of the chairperson within 30 days from their appointment.

2 In case of a multi-party arbitration, the ordinary court competent under Article 356 paragraph 2 may appoint all the arbitrators.

3 If an ordinary court is designated to appoint an arbitrator, it must proceed with the appointment unless a summary examination shows that no arbitration agreement exists between the parties.

Art. 363 Duty to disclose

1 A person asked to take the office of an arbitrator must disclose immediately any circumstances that might raise reasonable doubts about his or her independence or impartiality.

2 This duty continues throughout the proceedings.

Art. 364 Acceptance of office

1 The arbitrators shall confirm acceptance of their office.

2 The arbitral tribunal is constituted only when all the arbitrators have accepted their office.

Art. 365 Secretary

1 The arbitral tribunal may appoint a secretary.

2 Articles 363 paragraph 1 and 367 to 369 apply by analogy.

Art. 366 Term of office

1 The parties may limit the term of office in the arbitration agreement or in a subsequent agreement.

2 The term of office within which the arbitral tribunal must issue its award may be extended:

a. by agreement of the parties;
b. at the request of a party or of the arbitral tribunal: by the ordinary court with jurisdiction under Article 356 paragraph 2.

Title 4: Challenge, Removal and Replacement of Arbitrators

Art. 367 Rejection of an arbitrator

1 A member of the arbitral tribunal may be challenged:

a. if he or she lacks the qualifications required by the parties;
b. if there is a ground for challenge in accordance with the rules of arbitration adopted by the parties; or
c. if there is reasonable doubt as to his or her independence or impartiality.

2 If a party wishes to challenge an arbitrator who has been appointed by that party or in whose appointment that party has participated, that party may do so only on grounds that have come to his or her attention after the appointment. Notice of the reason for the challenge must be given to the arbitral tribunal and the opposing party immediately.

Art. 368 Challenging the arbitral tribunal

1 A party may challenge the arbitral tribunal if an opposing party has exerted a predominant influence on the appointment of its members. Notice of the challenge must be given to the arbitral tribunal and the opposing party immediately.

2 The new arbitral tribunal is constituted according to the procedure specified in Articles 361 and 362.

3 The parties may appoint the members of the challenged arbitral tribunal again as arbitrators.

Art. 369 Challenge procedure

1 The parties may freely agree on the challenge procedure.

2 If no procedure has been agreed, the challenge must be submitted in writing with a statement of the grounds to the challenged arbitrator within 30 days of the challenging party becoming aware of the ground for challenge; notice of the request must be given to the other arbitrators within the same deadline.

3 If the challenged arbitrator disputes the challenge, the challenging party may within 30 days request a decision by the body designated by the parties or, if no such body has been designated, by the ordinary court that has jurisdiction under Article 356 paragraph 2.

4 Unless the parties have agreed otherwise, the arbitral tribunal may continue with the arbitration during the challenge procedure and make an award without excluding the challenged arbitrator.

5 The decision on the challenge may be contested only once the first arbitral award has been made.

Art. 370 Removal

1 Any member of the arbitral tribunal may be removed by a written agreement of the parties.

2 If a member of the arbitral tribunal is unable to fulfil his or her duties within due time or with due diligence, he or she may be removed at a party's request by the body designated by the parties or, if no such body has been designated, by the ordinary court that has jurisdiction under Article 356 paragraph 2.

3 Article 369 paragraph 5 applies to the challenge of the removal.

Art. 371 Replacement of an arbitrator

1 If an arbitrator must be replaced, the same procedure as for appointment applies, unless the parties agree or have agreed otherwise.

2 If replacement cannot be effected in this way, the new arbitrator shall be nominated by the ordinary court that has jurisdiction under Article 356 paragraph 2 unless the arbitration agreement excludes this possibility or becomes ineffective on the retirement of an arbitrator.

3 In the absence of an agreement between the parties, the newly constituted arbitral tribunal shall decide on the extent to which procedural acts in which the replaced arbitrator has participated must repeated.

4 The deadline within which the arbitral tribunal must issue its award is not suspended during the replacement procedure.

Title 5: Arbitration Proceedings

Art. 372 Pendency

1 Arbitration proceedings become pending:

a. when a party seizes the arbitral tribunal designated in the arbitration agreement; or
b. if no arbitral tribunal is designated in the arbitration agreement: when a party initiates the procedure to constitute the arbitral tribunal or the preceding conciliation proceedings agreed by the parties.

2 If identical actions between the same parties are submitted before an ordinary court and an arbitral tribunal, the last seized court shall suspend the proceedings until the first seised court has decided on its competence.

Art. 373 General rules of procedure

1 The parties may regulate the arbitration procedure:

a. themselves;
b. by referring to a set of arbitration rules;
c. according to a procedural law of their choice.

2 If the parties have not regulated the procedure, it is determined by the arbitral tribunal.

3 The chairperson of the arbitral tribunal may decide on certain procedural questions if he or she is authorised to do so by the parties or by the other members of the tribunal.

4 The arbitral tribunal must guarantee the equal treatment of the parties and their right to be heard in adversarial proceedings.

5 Each party may act through a representative.

6 A complaint must be made immediately about any violation of the procedural rules, otherwise it may not subsequently be claimed that the rules were violated.

Art. 374 Interim measures, security and damages

1 The ordinary court or, unless the parties have otherwise agreed, the arbitral tribunal may at the request of a party order interim measures, including measures to protect the evidence.

2 If the person concerned does not comply with the measure ordered by the arbitral tribunal, the tribunal or a party may apply to the ordinary court for it to issue the necessary orders; if the application is made by a party, it requires the consent of the arbitral tribunal.

3 The arbitral tribunal or the ordinary court may make the interim measures conditional on the payment of security if it is anticipated that the measures may cause harm to the other party.

4 The applicant is liable for the harm caused by unjustified interim measures. If he or she proves, however, that the application for the measures was made in good faith, the arbitral tribunal or the ordinary court may reduce the damages or relieve the applicant entirely from liability. The aggrieved party may assert his or her claim in the pending arbitration.

5 The security must be released once it is established that no claim for damages will be filed; where there is uncertainty, the court shall set a deadline for filing the action.

Art. 375 Taking of evidence and participation of the ordinary court

1 The arbitral tribunal takes the evidence itself.

2 If the taking of evidence or any other procedural act requires the assistance of the official authorities, the arbitral tribunal may request the participation of the ordinary court that has jurisdiction under Article 356 paragraph 2. With the consent of the arbitral tribunal, the same may also be requested by a party.

3 The members of the arbitral tribunal may participate in the procedural acts of the ordinary court and may ask questions.

Art. 376 Joinder of parties, joinder of actions and participation of third parties

1 Arbitration may be initiated by or against joint parties if:

a. all the parties are connected among themselves by one or more corresponding arbitration agreements; and
b. the asserted claims are identical or factually connected.

2 Factually connected claims between the same parties may be joined in the same arbitration proceedings if they are the subject of corresponding arbitration agreements between these parties.

3 The intervention of a third party and the joinder of a person notified as a party to an action require an arbitration agreement between the third party and the parties to the dispute and are subject to the consent of the arbitral tribunal.

Art. 377 Set-off and counterclaim

1 The arbitral tribunal has jurisdiction to decide the set-off defence, even if the claim to be set off does not fall within the scope of the arbitration agreement or is subject to another arbitration agreement or an agreement on jurisdiction.

2 The counterclaim is admissible if it concerns a claim that is covered by a corresponding arbitration agreement between the parties.

Art. 378 Advance of costs

1 The arbitral tribunal may order the advance of the presumed costs of the proceedings and may make the proceedings conditional on the payment of the advance. Unless the parties have agreed otherwise, the arbitral tribunal determines the amount to be paid by each party.

2 If one party does not pay the required advance, the other party may advance the entire costs or withdraw from the arbitration. In the latter case, the party withdrawing may initiate new arbitration proceedings for the same matter or proceed before the ordinary court.

Art. 379 Security for party costs

If the plaintiff appears to be insolvent, the arbitral tribunal may at the defendant's request order that security be provided by a certain deadline for the probable party costs due by the defendant. Article 378 paragraph 2 applies by analogy.

Art. 380 Legal aid

Legal aid is excluded.

Title 6: Arbitral Award

Art. 381 Applicable law

1 The arbitral tribunal decides:

a. according to the rules of law chosen by the parties; or
b. based on equity, if the parties have authorised it to do so.

2 In the absence of such choice or authorisation, it shall decide according to the law that an ordinary court would apply.

Art. 382 Deliberations and decision

1 All members of the arbitral tribunal must participate in the deliberations and decisions.

2 If an arbitrator refuses to participate in a deliberation or a decision, the others may deliberate or decide without him or her, unless the parties have agreed otherwise.

3 The award is determined by a majority decision, unless the parties have agreed otherwise.

4 If no majority is reached, the award is determined by the chairperson.

Art. 383 Interim and partial awards

Unless the parties have agreed otherwise, the arbitral tribunal may limit the proceedings to certain questions or prayers for relief.

Art. 384 Content of the award

1 The award contains details of:

a. the composition of the arbitral tribunal;
b. the location where the arbitral tribunal sits;
c. the parties and their representatives;
d. the parties' prayers for relief or, if none, the question to be decided;
e. unless the parties have explicitly dispensed with this requirement: a statement of the facts, the legal considerations and, if applicable, the considerations in equity;
f. the conclusions on the award on the merits, as well as the amount and allocation of the costs and party costs;
g. the date of the award.

2 The award must be signed; the signature of the chairperson suffices.

Art. 385 Agreement between the parties

If the parties settle their dispute in the course of the arbitral proceedings, the arbitral tribunal shall on request record the agreement in the form of an award.

Art. 386 Notice and deposit

1 Each party is served with notice of the award.

2 Each party may at his or her own expense deposit a copy of the award with the ordinary court that has jurisdiction under Article 356 paragraph 1.

3 At the request of a party, this court shall certify the award as enforceable.

Art. 387 Effect of the award

Once notice of the award has been given to the parties, it has the effect of a legally-binding and enforceable judicial decision.

Art. 388 Correction, explanation and amendment of the award

1 Each party may apply to the arbitral tribunal to:

a. correct typographical and arithmetical errors in the award;
b. explain certain parts of the award;
c. make an additional award on claims that have been asserted in the course of the arbitration but not included in the award.

2 The application must be made to the arbitral tribunal within 30 days from the discovery of the error or the parts of the award that need to be explained or amended, but no later than one year from receiving notice of the award.

3 The application does not suspend the deadlines for contesting the award. If a party is prejudiced by the outcome of this procedure, he or she shall be given a new deadline to contest the award on this point.

Title 7: Appellate Remedies

Chapter 1: Objections

Art. 389 Objection to the Federal Supreme Court

1 An arbitral award is subject to objection to the Federal Supreme Court.

2 The procedure is governed by the Federal Supreme Court Act of 17 June 2005, unless otherwise provided in this Chapter.

Art. 390 Objection to the cantonal court

1 By express declaration in the arbitration agreement or in a subsequent agreement, the parties may agree that the arbitral award may be contested by way of objection to the cantonal court that has jurisdiction under Article 356 paragraph 1.

2 The procedure is governed by Articles 319 to 327, unless otherwise provided in this Chapter. The decision of the cantonal court is final.

Art. 391 Subsidiarity

An objection is only admissible after the means of arbitral appeal provided for in the arbitration agreement are exhausted.

Art. 392 Challengeable awards

An objection is admissible against:

a. partial and final awards;
b. interim awards on the grounds listed in Article 393 letters a and b.

Art. 393 Grounds for objection

An arbitral award may be contested on the following grounds:

a. the single arbitrator was appointed or the arbitral tribunal composed in an irregular manner;
b. the arbitral tribunal wrongly declared itself to have or not to have jurisdiction;
c. the arbitral tribunal decided issues that were not submitted to it or failed to decide on a prayer for relief;
d. the principles of equal treatment of the parties or the right to be heard were violated;
e. the award is arbitrary in its result because it is based on findings that are obviously contrary to the facts as stated in the case files or because it constitutes an obvious violation of law or equity;
f. the costs and compensation fixed by the arbitral tribunal are obviously excessive.

Art. 394 Remit for rectification or amendment

After hearing the parties, the appellate court may remit the award to the arbitral tribunal, setting a deadline to rectify or amend it.

Art. 395 Decision

1 If the award is not remitted to the arbitral tribunal or if it is not rectified or amended by the tribunal within the set deadline, the appellate court shall decide and, if the objection is approved, shall set aside the award.

2 If the award is set aside, the arbitral tribunal shall make a new award consistent with the considerations taken into account in the decision to remit the case.

3 Setting aside may be limited to certain parts of the award if the other parts do not depend on them.

4 If the arbitral award is contested on the grounds that the compensation and costs are obviously excessive, the appellate court may itself decide on them.

Chapter 2: Review

Art. 396 Grounds for review

1 A party may request the ordinary court that has jurisdiction under Article 356 paragraph 1 to review an arbitral award if:

a. the party subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings, excluding facts and evidence that arose after the arbitral award was made;
b. criminal proceedings have established that the arbitral award was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one is convicted by a criminal court; if criminal proceedings are not possible, proof may be provided in some other manner;
c. it is claimed that the acceptance, withdrawal or settlement of the claim is invalid.

2 The review on the grounds of a violation of the ECHR may be requested if:

a. the European Court of Human Rights has determined in a final judgment that the ECHR or its protocols have been violated;
b. compensation is not an appropriate remedy for the effects of the violation; and
c. the review is necessary to remedy the violation.

Art. 397 Deadlines

1 The request for review must be filed within 90 days of discovery of the grounds for review.

2 The right to request for a review expires 10 years after the award comes into force, except in cases under Article 396 paragraph 1 letter b.

Art. 398 Procedure

The procedure is governed by Articles 330 to 331.

Art. 399 Remit to the arbitral tribunal

1 If the court approves the request for review, it shall set aside the arbitral award and remit the case to the arbitral tribunal for a new decision.

2 If the arbitral tribunal is no longer complete, Article 371 applies.

Appendix 2

Recommendations for the improvement of service of documents in the Albanian Justice system

Mathieu Chardon

CEPEJ Expert
Judicial Officer (France)
1st Secretary of the International Union of Judicial Officers

December 2014

I - Background to the report

Council of Europe/Justice and Legal Co-operation Department is currently implementing a joint EU/CoE project in Albania "Support to Efficiency of Justice - SEJ".

The overall objective of the project is to improve the efficiency and the quality of public service of justice delivered to the Albania citizens by the court system in accordance with European standards.

The specific objective of the project is to assist judicial authorities in developing an efficient court system, in line with the Justice Reform Strategy of Albania and European standards. This is pursued through the application of the specific tools and methodology developed by the European Commission for the Efficiency of Justice (CEPEJ), and capacity-building of key players in the field of the judiciary and court staff.

In the process of project implementation and through discussions with the courts and with the Albanian authorities, it appears that one of the issues that hinder the work of the judiciary is the problems associated with the notification process. There is no centralised and reliable address system that allows delivery of court notifications. That in turn is causing the delays of hearings, etc. There is also a need to review the procedures concerning notification to address all the existing obstacles hindering work of courts.

It was suggested that members of the International Union of Judicial Officers (UIHJ) could work with the CEPEJ and contribute to resolving these issues together with the Albanian judicial and executive authorities.

For that purpose, a workshop dedicated to these issues was organised in Tirana on 20 November 2014 from 14.30 to 17.00. Mathieu Chardon, judicial officer (France), 1st Secretary of the UIHJ was appointed as a CEPEJ expert to participate in this workshop and to prepare a report reviewing the main points discussed as well as recommendations and suggestions for addressing the problems concerning service of documents in Albania.

Mathieu Chardon would like to place on record his thanks to the Albanian authorities and all those he met for their co-operation, hospitality and help during this exercise.

The comments, observations and recommendations that follow are the opinion of its author. This report was drafted in the light of:

- the workshop in Tirana on 20 November 2014;

- the report that was prepared by Aida Bushati, National long term consultant, SEJ, on service of documents in Albania;
- the Recommendation Rec(2003)17 of 9 September 2003 of the Committee of Ministers to the member States of the Council of Europe on enforcement (hereafter referred to as Rec(2003)17);
- the CEPEJ Guidelines of 17 December 2009 on Enforcement (hereafter referred to as CEPEJ Guidelines on enforcement);
- the European Court of Human Rights case law on service of documents.

Clearly given the limited time and resources devoted to this exercise, this report is not the final word on service of documents in Albania. We hope it will be of some use to the Albanian authorities and will at least serve to stimulate a debate on the subject to the development and strengthening of the service of document in Albania within the framework of the SEJ project.

II - Review of the workshop in Tirana on 20 November 2014

The workshop took place in Tirana on 20 November 2014 from 14.30 to 17.00. It was attended by over 30 participants, including:
- Tea Jaliashvili, Project Manager, SEJ
- Aida Bushati, National long term consultant, SEJ
- Jacques Bühler (Switzerland), President of the Saturn Group of the CEPEJ
- Hélène Jorry (France), CEPEJ expert;
- Mathieu Chardon (France), CEPEJ expert ;
- Representatives of the Ministry of Justice of Albania;
- Representatives of the Ministry of Internal Affairs of Albania;
- Representatives of several Albanian courts;
- The President of the National Chamber of Judicial Officers of Albania;
- Representatives of the Post of Albania;
- Representatives of the Police force of Albania;

The workshop was opened by Jacques Bühler and Aida Bushati.

Mathieu Chardon presented the report he had prepared on “Service of Documents – Stakes and Practice” which is attached to the current report.

The participants addressed several topics on main issues relating to the service of documents in Albania. All participants did fully and widely exchange and discuss problems and possible solutions.

The author of the report would like to highlight the main European Court of Human Rights case law on service of documents.

1. Miholapa v. Latvia, 31 May 2007

The principle of equality of arms requires a fair balance between the parties in order to present one's case in a situation that is not too disadvantageous compared to the opponent. As these principles apply to all the procedural law of the Contracting States, they also apply to the special field of service of judicial documents to the parties.

2. Trudov v. Russia, 13 December 2011

In the interest of a proper administration of justice, each party to the proceedings shall be informed of the hearing, not only to know the time and place but also to have enough time to get prepared and be present. Simply sending a formal notice without any certainty of delivery to the applicant cannot be considered by the Court as a due information according to the process of law.

3. Gospodinov v. Bulgaria, 10 May 2007

It is up to states to organise their judicial systems in such a way that their courts can implement a fair trial. This also implies the establishment of effective process of service of document, ensuring the service of summons to appear and the date of hearing to the parties in a timely manner.

4. Popovitsi v. Greece, 14 January 2010

Obligation of the Contracting States to ensure effective and not theoretical or illusory use of the rights guaranteed by Article 6 of the Convention

5. Papageorgiou v. Greece, 24 October 2013

Service of documents by a judicial officer at last known address according to domestic provisions: no violation of Article 6 of the Convention.

6. Belek &Özkurt v. Turkey, 16 July 2013 - Mater v. Turkey, 16 July 2013 - S.C. Raisa v. Romania, 8 January 2013 - Yabansu v. Turkey, 12 November 2013

States must organise secure service of documents processes, so that the recipient can have actual knowledge of the decision.

III - Recommendations

From the discussions, three main topics were identified. They relate to:
- The bodies in charge of the service of documents;
- The addressee and his/her localisation;
- The methods of service of documents.

1. Bodies in charge of the service of documents

At present, service of documents can be processed out by several actors depending on the type of cases concerned by the proceedings (criminal, civil or administrative matter), or the type of court involved (first instance, court of appeal, High court). Overall the following bodies are involved in the process of service of documents:
- A judicial employee;
- A judicial officer (bailiff);
- The Post;
- The Police:
- Others (parties, lawyers, representatives of parties).

The main issue as regards bodies in charge of carrying out the service of document are their efficiency and the security they bring to the judicial system, i.e. the document is effectively served in a timely manner. This means that the claimant is ensured of the effective service and that the defendant is not inclined to challenge the service. It was mentioned that many defendants challenge the notification, resulting in the annulment of the whole proceedings. It is then necessary that the body in charge of the service is in a position to prove the service.

Also information of the addressee during the notification is essential to an effective service.

This is also true when it comes to the service of document during enforcement. According to Rec(2003)17, III, 2. d, enforcement procedures should “provide for the most effective and appropriate means of serving documents (for example, personal service by enforcement agents, electronic means, post)”.

According to item 20 of the CEPEJ Guidelines on enforcement: “It should be possible to entrust enforcement agents with the service of notices. To this end, member States should determine conditions for a secure method for the service of documents.”

Training of the bodies in charge of serving documents appears necessary. Serving a legal document is not just about handing a document. The legal effects of a legal document entirely depend on the validity of its service to the addressee.

It was mentioned during the workshop that the police is required to serve documents in numerous cases, mainly because of the difficulty to localise addressees. Representatives

of the ministry of Internal Affairs and of the Police department regretted this situation and mentioned that the police should act only in exceptional cases.

A reflexion could be initiated on the necessity to define which bodies should be in charge of serving documents and enable them to carry out their mission in a timely and effective manner. They should be adequately remunerated and also liable.

In most of the countries, the judicial officers (bailiffs) have to serve documents relating to enforcement. This is the case in Albania. This means that they are serve documents on an everyday basis. They also have a high or sufficient legal training that could enable them to be entrusted with the overall service of documents.

Recommendation regarding the service of documents (=RSD) RSD1
The bodies in charge of the service of documents should be chosen to ensure that:
- *The claimant has the guarantee of an effective service on the addressee that will prevent or limit its challenge;*
- *The addressee has been duly served with adequate notice in a timely manner, preferably by personal service in order to guarantee direct dissemination of information.*

Recommendation RSD2
The bodies in charge of serving documents should be properly trained to effectively carry out their mission, including all necessary legal knowledge. They should be adequately remunerated and liable for they work.

Recommendation RSD3
Albania should consider entrusting judicial officers (bailiffs) with the service of documents.

2. The addressee

Two main issues were raised during the discussions relating to:
- The localisation of the addressee;
- Access to information on the addressee's location.

2.1. Localisation of the addressee

There is currently no efficient system in Albania that allows locating people. This means that in these cases postal service is inefficient. This also means that the service relies on the capability of the person in charge of the service of documents, his determination to carry out an effective service and the information he is able to gather during the process.

It seems that this issue goes beyond the scope of the present report. However, the Albanian authorities should be encouraged to provide an efficient system to locate addresses of citizens and legal persons. It was mentioned in that respect that there is currently a reform of the administrative territorial map.

Recommendation RSD4
The Albanian authorities should provide an efficient system to locate addresses of citizens and legal persons.

2.2. Access to information on the addressee's location

It was explained during the workshop that a civil registry of the population exists while not being updated. Nevertheless the bodies in charge of the service of documents should have direct – preferably electronic - access to this registry to locate the addressee. They should also have access to all other available registries (social security registers, land registers, company registers, bank registers, etc.).

Following item 43 of the CEPEJ Guidelines on enforcement, all state bodies, which administer databases with information required for efficient service, should have a duty to provide the information on the address of the addressee to the body in charge of service, within an agreed time-limit if such information is compatible with data protection legislation.

Recommendation RSD5
All state bodies, which administer databases with information required for efficient service, should have a duty to provide the information on the address of the addressee to the body in charge of service, within an agreed time-limit if such information is compatible with data protection legislation.

3. Methods of service

3.1. Harmonisation of methods of service of documents

In the discussions during the workshop and from reading the report that was prepared on the service of documents in Albania, it appears that there is a great variety of means of service of documents, depending on the types of cases and also on the types of courts concerned by the proceedings.

However, the interests at stakes as regards service of documents are the same whatever the case and whatever the court concerned by the proceedings: effective service.

For the sake of a more efficient and clearer justice system, a simplification and specially a harmonisation of the means of service of documents seem appropriate.

Furthermore any system of service of documents should meet the requirements of the European Court of Human Rights:

- States must organise secure service of documents processes, so that the recipient can have actual knowledge of the decision (Belek &Özkurt v. Turkey, 16 July 2013; Mater v. Turkey, 16 July 2013; S.C. Raisa v. Romania, 8 January 2013; Yabansu v. Turkey, 12 November 2013)
- Obligation of the Contracting States to ensure effective and not theoretical or illusory use of the rights guaranteed by Article 6 of the Convention (Popovitsi v. Greece, 14 January 2010)
- In the interest of a proper administration of justice, each party to the proceedings shall be informed of the hearing, not only to know the time and place but also to have enough time to get prepared and be present. Simply sending a formal notice without any certainty of delivery to the applicant cannot be considered by the Court as a due information according to the process of law (Trudov v. Russia, 13 December 2011).
- It is up to states to organise their judicial systems in such a way that their courts can implement a fair trial. This also implies the establishment of effective process of service of document, ensuring the service of summons to appear and the date of hearing to the parties in a timely manner (Gospodinov v. Bulgaria, 10 May 2007).

In that respect, the legal provisions relating to methods of service should include:

- The bodies in charge of the service of document and their powers relating to the service of documents;
- Templates on the contents of the documents to be served;
- When and where service of documents can be carried out;
- How and to whom the document can be handed, including electronic service;
- The report on the conditions pertaining to how and to whom the document was served and the legal value of this report;
- The formalities relating to the service of documents;
- How to serve a document to an addressee without a known address;
- Service of the document abroad and coming from abroad;
- The liability of the body in charge of serving documents;
- How to challenge the service of documents;
- The costs of the service of documents.

<u>Recommendation RSD6</u>

The methods of service of documents should be harmonised, fully described, and presented as an autonomous corpus. They should cover all their aspects including:

- *The bodies in charge of the service of document and their powers relating to the service of documents;*
- *Templates on the contents of the documents to be served;*
- *When and where service of documents can be carried out;*
- *How and to whom the document can be handed, including electronic service;*
- *The report on the conditions pertaining to how and to whom the document was served and the legal value of this report;*
- *The formalities relating to the service of documents;*

- *How to serve a document to an addressee without a known address;*
- *Service of the document abroad and coming from abroad;*
- *The liability of the body in charge of serving documents;*
- *How to challenge the service of documents;*
- *The costs of the service of documents.*

3.2. Addressee refusing service and use of a witnesses

It was mentioned during the workshop that many addressees refuse the service of documents. This can be done by physically refusing the document or by hiding or providing a false address. In civil cases if the addressee refuses the document, the service is valid when a witness signs the notification act on the condition of the service. Likewise, when the addressee is not present the document can be handed to a person present at the domicile or residence of the addressee, providing he/she is over 16 years of age and does have capacity to act. It is likewise possible to hand the document to a guard of the house buildings, office or central place of work. The person who receives the document has to accept it and sign the notification. If the person refuses to receive the document, the agent in charge of service makes a note which should be signed by at least one witness.

The addressee should not have the possibility to refuse the document and the obligation to have a witness in the cases mentioned above seem an unnecessary burden for the agent in charge of service and for the justice system. The agent in charge of service should be liable for the service of documents as mentioned above in Recommendation 2. In return, he should be able to act without a witness.

When the addressee physically refuses the document, or when it was not possible to serve the document to a third party according to the law, the document should be considered as served provided that the agent in charge of the service dully reports his work and leaves a notice at the domicile or residence of the addressee. Following this, the document should be kept at the disposal of the addressee for a limited time (at a special place such as the town hall or the office of the agent in charge of enforcement) and a letter should be sent by post, fax or email, to the addressee with a copy of the document.

Recommendation RSD7
The use of witnesses should be abolished in the process of service of documents.

Recommendation RSD8
When the addressee physically refuses the document to be served or when the service at the domicile or residence of the addressee is not possible to a third party, the law should provide rulings to ensure effective service. These rulings could consist in a series of formalities that will offer maximum security to the parties, such as a report on the condition of service, a notice at the domicile or residence of the addressee, the keeping

of the document at a special place for a certain time, a letter to the addressee, or any other useful means.

3.3. Service to an addressee without a known address

The service of document to an addressee without a known address encompasses different situations:

- The address of the addressee is wrong or false on purpose (the claimant may not want his opponent at the hearing, the defendant may want to avoid trial);
- The address of the addressee is wrong of false by mistake (i.e.: number 15 of a street instead of number 25);
- The address is correct but the addressee no longer lives there and his new address cannot be located.

In order to avoid lawsuits to come to an end, the law should provide for a fictitious service when the addressee has no known address providing that the two following conditions are met:

- The last known address of the addressee has been identified;
- It was not possible to locate the new address of the addressee.

Most of the countries provide a fictitious service. It can take the form of a publication in one or several newspapers, the inscription in a special (public) registry or website, the sending of a letter at the last known address, etc. In Albania, in some cases, a lawyer will be appointed and the documents will be served to him. There is no ideal solution. In all cases it is unlikely that the addressee will be duly informed of the document. This is why the recourse of such a fictitious method should be strictly outlined.

Recommendation RSD9

The law should provide for a fictitious service of documents when the addressee has no known address providing that the two following conditions are met:

- *The last known address of the addressee has been identified;*
- *It was not possible to locate the new address of the addressee.*

3.4. Postal service

It was mentioned during the workshop and in the report on service of documents that postal service is one of the ways to serve documents. The representative of the Post mentioned that the employees of the Post usually do not have a university degree and lack proper training pertaining to the handing of legal documents. He also mentioned some practical difficulties that led people to complain on the conditions of the service.

Service by post can also be carried out by normal handing of the document by the employee of the Post like any other letter, either with a (first class) stamp or through a registered letter with or without an acknowledgement or receipt.

To limit the possibility for the addressee to challenge the service by pretending he/she has not received the document, it is necessary to use a method that contains a proof of receipt by the addressee. It is reminded that the European Court of Human rights considers that "Simply sending a formal notice without any certainty of delivery to the applicant cannot be considered by the Court as a due information according to the process of law" (Trudov v. Russia, 13 December 2011).

Recommendation RSD10
When postal service is used to serve documents, the service should be carried out in such a way that it ensures certainty of delivery to the addressee as required by the European Court of Human Rights.

3.5. Electronic service

Electronic means are the easiest, fastest and cheapest way to serve documents. However, to be effective, the addressee needs to accept this type of service and acknowledge receipt of the document.

Electronic service is possible in Albania. It was mentioned during the workshop that this method of service cannot cover yet all the territory of the country. In rural areas, Internet connexions may not exist and citizens may not be connected. Electronic service is only possible if the addressee accepts the service and acknowledges receipt. This means that within the limits of technology the service only relies on the addressee's good will.

Recommendation RSD11
When electronic service is used to serve documents, the service should be carried out in such a way that it ensures certainty of delivery to the addressee as required by the European Court of Human Rights.

3.6. Other types of service

During the discussions in the workshop and in the report on the service of document in Albania, other types of services, such as telephone, fax, or other forms of communications, are mentioned.

The same issues are at stakes, that of the due information on the addressee.

Recommendation RSD12
When any type of service is used to serve documents, the service should be carried out in such a way that it ensures certainty of delivery to the addressee as required by the European Court of Human Rights.

IV – Summary of recommendations

Recommendation RSD1

The bodies in charge of the service of documents should be chosen to ensure that:

- *The claimant has the guarantee of an effective service on the addressee that will prevent or limit its challenge;*
- *The addressee has been duly served with adequate notice in a timely manner, preferably by personal service in order to guarantee direct dissemination of information.*

Recommendation RSD2

The bodies in charge of serving documents should be properly trained to effectively carry out their mission, including all necessary legal knowledge. They should be adequately remunerated and liable for they work.

Recommendation RSD3

Albania should consider entrusting judicial officers (bailiffs) with the service of documents.

Recommendation RSD4

The Albanian authorities should provide an efficient system to locate addresses of citizens and legal persons.

Recommendation RSD5

All state bodies, which administer databases with information required for efficient service, should have a duty to provide the information on the address of the addressee to the body in charge of service, within an agreed time-limit if such information is compatible with data protection legislation.

Recommendation RSD6

The methods of service of documents should be harmonised, fully described, and presented as an autonomous corpus. They should cover all their aspects including:

- *The bodies in charge of the service of document and their powers relating to the service of documents;*
- *Templates on the contents of the documents to be served;*
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When the addressee physically refuses the document to be served or when the service at the domicile or residence of the addressee is not possible to a third party, the law should provide rulings to ensure effective service. These rulings could consist in a series of formalities that will offer maximum security to the parties, such as a report on the condition of service, a notice at the domicile or residence of the addressee, the keeping of the document at a special place for a certain time, a letter to the addressee, or any other useful means.

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- *The last known address of the addressee has been identified;*
- *It was not possible to locate the new address of the addressee.*

Recommendation RSD10

When postal service is used to serve documents, the service should be carried out in such a way that it ensures certainty of delivery to the addressee as required by the European Court of Human Rights.

Recommendation RSD11

When electronic service is used to serve documents, the service should be carried out in such a way that it ensures certainty of delivery to the addressee as required by the European Court of Human Rights.

Recommendation RSD12

When any type of service is used to serve documents, the service should be carried out in such a way that it ensures certainty of delivery to the addressee as required by the European Court of Human Rights.

IN-DEPTH ASSESSMENT REPORT OF THE JUSTICE SYSTEM IN ALBANIA

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