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## **European Commission for the Efficiency of Justice (CEPEJ)**

### **STRENGTHENING THE QUALITY AND EFFICIENCY OF THE JUSTICE SYSTEM IN ALBANIA (SEJ II)**

*Final Report on the roles of Court Presidents, Chancellors and Legal Advisors  
and Judicial Assistants in Albania*

Tirana (Albania), 27 March 2018  
Reviewed as of 8 January 2019

## Contents

I.	Introduction .....	3
II.	International standards for the organization of judicial systems.....	4
III.	Court organisation and administration.....	<b>Error! Bookmark not defined.</b>
1.	The role of Court Presidents for first instance courts and appeal courts.....	5
a.	International standards.....	5
b.	The institutional background of Court Presidents in Albania .....	6
c.	Tasks of the Court Presidents .....	7
d.	The Court President in relation to other judicial actors.....	<b>Error! Bookmark not defined.</b>
e.	The Court President of the High Court .....	<b>Error! Bookmark not defined.</b>
f.	Concluding remarks on the role of Court Presidents.....	11
2.	The role of Chancellors.....	14
a.	International standards.....	14
b.	The institutional background of Chancellors in Albania.....	15
c.	Tasks of Chancellors.....	15
d.	Concluding remarks on the role of Chancellors.....	17
3.	The role Legal Advisor and Legal Assistants.....	20
a.	The international standards.....	20
b.	Institutional background of Legal Advisors and Legal Assistants in Albania	21
c.	Tasks of Legal Advisors and Legal Assistants .....	22
d.	Concluding remarks on the role of Legal Advisors and Legal Assistants .....	24
IV.	Recommendations.....	26
1.	Recommendations on the role of Court Presidents.....	26
2.	Recommendations on the role of the Chancellors.....	27
3.	Recommendations on the role of Legal Advisors and Legal Assistants .....	28
	Annex 1-Legal framework for the roles of Court Presidents.....	31
	Annex 2- Legal framework for the roles of Chancellors.....	25
	Annex 3- Legal framework for the roles of Legal Advisors and Legal Assistants.....	26
	Annex 4-Table on the European standards for the role of Court Presidents.....	27

## I. Introduction

In the framework of the SEJ II Action “Strengthening the efficiency and quality of the justice system in Albania”, which is part of the programme "Horizontal Facility for the Western Balkans and Turkey", co-funded by the European Union and the Council of Europe and implemented by the Council of Europe, two consecutive activities have been organised in Tirana regarding the role of Court Presidents, Chancellors, Legal Advisors (High Court) and Legal Assistants (Appeal Courts) in the context of the justice reform in Albania: (1) a meeting with 3 targeted workshops<sup>1</sup> which took place on 14 November 2017 with the presence of CEPEJ experts, Mr. Marco Fabri, Mr. Vivien Whyte, and Mr. Jon Johnsen; (2) a meeting with two targeted workshops<sup>2</sup>, which took place on 17 of October 2018 with the presence of CEPEJ experts Mr. Marco Fabri and Mr. Vivien Whyte.

These activities were organised following the new laws in this area and the expressed request for support from Court Presidents during the SEJ II court coaching activities, to understand better the practice of the new roles and responsibilities of the various functions of Court Presidents, Chancellors and Legal Advisors and Legal Assistants. Both these activities have been useful and productive to address concerns on the possible interpretation and questions raised on the new roles and respective tasks of these categories. As result of the first meeting, with the assistance of CEPEJ experts has been drafted a report that reflects the proposals put forward by participants, in a way that it ensures the definition of roles for each category based on the legislation but also following a complementary approach with the general principles of international law and models of European practices.

To further encourage their involvement on this regard, the draft-report (prepared during the first phase) has been circulated to courts and judicial institutions for comments and suggestions and in a second sequential meeting (as of 17<sup>th</sup> October 2018) they had the opportunity to directly discuss on their feedback. The results of the second meeting have thus been reflected in the content of the report for the context-based description of the roles of each category by obtaining a greater “know – how” and adoptability of their skills. Before its finalization, the reviewed draft of the report (after the second meeting) was also circulated among participants, including the international partners such as EURALIUS, USAID, OSBE and other actors such as the School of Magistrate, the Union of Chancellors, etc., with the aim to collect their comments and see how they may enrich this report.

The report thus seeks to address the common needs of Court Presidents, Chancellors and Legal Advisor and Legal Assistants, to understand roles and tasks better, as a condition for the balanced use of human resources which has to be proportional to the distribution of their caseload. This is important when giving thoughts to the problems that affect the efficiency and productivity of judicial administration, such as for example the increased backlog<sup>3</sup> in courts. This issue intrinsic in the medium and large sized courts and, in particular in the administrative courts, calls for rapid solutions in the light of legal time limits stipulated for the duration of judicial proceedings in the recent changes of the law/legislation<sup>4</sup>. Courts have thus to address the proper administration and organisation of justice

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<sup>1</sup>Workshops had three different targets, discussions with Court president, Chancellors, and Legal Advisors/Judicial Assistants

<sup>2</sup> Workshops has two different targets, discussions with Court Presidents and judicial assistants, and one with Chancellors

<sup>3</sup>Backlog” is the number or percentage of cases that have remained unresolved within a certain period, which is the time limit for the duration of the judicial proceedings; i.e. if a time limit for the termination of the civil judicial proceedings is set out 24 months, than the backlog cases are those that are older than 24 months.

<sup>4</sup>The amendment of Code of Civil Procedures (entered into force on 5<sup>th</sup> November 2017), has provided the legal time limits for the duration of judicial proceedings at each level of jurisdiction, including the enforcement proceedings per each case category (administrative, civil and criminal); *Article 399.2* of the Code of Civil Procedure provides the reasonable time for the duration of investigation, the trial or execution procedure of a final court decision (a) 1 year in the administrative cases at the 1st instance, and appeal court (b) 2 years the adjudication in civil proceedings at 1st instance, appeal and recourse before the Supreme Court (c) 1 year (d) 2 years for criminal offence and 1 year for contraventions at 1st instance, 1 year for the crimes and 6 months for the contraventions the duration at appeal, 1 year for the crimes and 6 months for the contraventions the duration of adjudication before the High Court.

whilst taking into account the desired timeliness of judicial proceedings in line with Article 6 of the European Convention on Human Rights (ECHR).

For this purpose, the recommendations propounded in SEJ I report “On court organisation and court administrators’ capacities in Albania”<sup>5</sup>, have been used as a reference point to look on the deep-rooted problems that the court system in Albania has experienced before and after the judicial reform. The idea behind this is to pay attention of how the previous recommendations made in SEJ I report influenced the definition of roles and tasks of Court presidents, Chancellors, Legal Advisors and Legal Assistants in the new laws meeting the due international standards in this area. From this viewpoint, the present report proposes consecutive recommendations, aimed at offering a good understanding of the roles in a consistent way with the contextual needs of beneficiaries. Nonetheless, it should be highlighted that the proposed recommendations are not binding but may only serve to orient the justice governance institutions and courts, in the future adoption of governing rules respective to the status and competencies of these staff categories in the courts.

## II. International standards for the organization of judicial systems

International recommendations<sup>6</sup> encourage the justice governing authorities in member states to undertake measures that aim to gradually reduce the non-judicial and some judicial tasks entrusted to judges by assigning such tasks to other persons or bodies. Balancing the distribution of tasks to judges and non-judge staff depends greatly on the organisation of the judiciary in the country concerned. The impact of these recommendations is contingent on state structure, governance of the judiciary, level of judges' independence, size of the country and context: historical, social, political, and economic. For example, countries that have a centralised judiciary (e.g. Italy, France, Finland, and Portugal) follow a different practice from countries with a federalised organisation of judiciary (e.g. Germany, Austria, Spain, and Switzerland).

Yet, central for the organisation of the judiciary is the universal principle of judicial independence. An independent and impartial judiciary is an institution of the highest value in every society and an essential pillar of liberty and the rule of law. Judicial independence incorporates in itself several dimensions, such as the individual independence of judges<sup>7</sup>, the collective independence of the judicial system as a whole<sup>8</sup>, the internal independence of judges (*meaning the autonomy amongst judges vis-à-vis their colleagues*)<sup>9</sup>, and the external independence<sup>10</sup> of judges and courts. The definition of judicial independence has thus been developed broadly in several international instruments (with binding and soft power effect), such as:

- The Basic Principles on the Independence of the Judiciary (endorsed by the resolutions of the General Assembly of the United Nations in 1985) which is the first international text that formulates ethical standards for judges. It is designed not only to ensure the independence of the judiciary but also to ensure the right of everyone to a fair and public trial, conducted before

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<sup>5</sup>Adopted during the first phase of the SEJ programme on 15 March 2016

<sup>6</sup>The international standards for the organization of judicial systems stem notably from the European Union of Rechtspfleger (EUR) WhitePaper for a *Rechtspfleger/Greffier for Europe courts*, 2016 [www.rechtspfleger.org](http://www.rechtspfleger.org); the Council of Europe Recommendation 86(12) “*On measures to prevent and reduce the excessive workload in the*

<sup>7</sup>Individual independence can be personal and substantive, where personal independence is reflected in the security of office, life tenure, and adequate remuneration and pensions, whereas the substantive independence refers to the freedom of judges to perform their judicial functions independently.

<sup>8</sup>Collective independence is reflected in the structure of court administration (the executive-judicial model, the exclusive judicial model, and the shared responsibility model)

<sup>9</sup>Internal independence refers to the protection of judges from any unlawful or undue directives or pressures from peers or those who have administrative responsibilities in the court, such as the Court President, or chairpersons of the court sections.

<sup>10</sup> External independence refers to the insularity of court system from any outside interference coming from the other powers ( executive and legislator), with a view to ensure that judges and courts maintain working relations with institutions and public authorities involved in the management and administration of courts, in order to facilitate an effective and efficient administration of justice.

an independent and impartial tribunal, in respect to the Article 10 UDHR and the Article 14 ICCPR.

- The Universal Charter of the Judge<sup>11</sup> which highlights the basic rules and obligations concerning judicial conduct, such as the obligation to be and to be seen as impartial (Art.5), and other related duties. (Art.7).
- The Bangalore Principles<sup>12</sup> which consist of a decisive code of judicial ethics, solely aimed at judges and not the states. It identifies six basic values of the judiciary: Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence, associated with their respective definitions and the required standards of judicial conduct.
- The Recommendation on the Independence, efficiency and role of judges (Rec (94) 12)<sup>13</sup> addressed to member states, which reiterates the dual purpose of the ethical standards (individual and institutional) to ensure the duty of judges to guarantee the protection of individual rights and protect the independence of the judiciary as a power of the State.
- The European Charter on the Statute for Judges of the Council of Europe<sup>14</sup>, which establishes some requirements for the court of law and for judges, with regard to their competence, independence and impartiality. It refers mostly to the protection of individual rights, but is not a code of ethics for judges.
- Judges' *Magna Carta*<sup>15</sup>, which emphasises the principles of judicial conduct but also the standards for the judicial systems. It reiterates the responsibility for judges and for states based on criteria of the rule of law and the ethical principles in a national and international context.
- Kiev Recommendations on Judicial independence in Eastern Europe, South Caucasus and central Asia<sup>16</sup>.

These principles also apply to non-judge staff such as Rechtspfleger when they have been entrusted with judicial tasks<sup>17</sup>.

### III. Court Organisation and Administration

#### 1. The role of Court Presidents for first instance courts and appeal courts

##### a. International standards

In Europe<sup>18</sup>, there are various models to frame the role of Court Presidents. The legal and institutional background of the country also affects the selection and recruitment process, as well as their length of term. In some countries, Court Presidents are involved in deciding the judicial budget<sup>19</sup>, recruitment of court staff<sup>20</sup>, disciplinary proceedings<sup>21</sup>, assignment of cases to judges<sup>22</sup> and adoption of rules of practice for the judicial timeframes (at national or local level)<sup>23</sup>.

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<sup>11</sup> Approved by the International Association of Judges on 11.17.1999

<sup>12</sup> The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002

<sup>13</sup> Adopted by the Council of Europe, Committee of Ministers in 1994

<sup>14</sup> Approved on 8-10 July 1998

<sup>15</sup> Adopted by the Consultative Council of European Judges at its 11th Plenary meeting (Strasbourg, 17-19 November 2010)

<sup>16</sup> Kiev, 23-25 June 2010

<sup>17</sup> White Paper for a Rechtspfleger/Greffier for Europe, EUR, 2016

<sup>18</sup> See Joint Project on "Strengthening the Court Management System in Turkey" (JP COMASYT) "Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States, Marco Fabri, 18 September 2013, pages 4-34.

<sup>19</sup> Germany, Finland, see footnote 15

<sup>20</sup> Denmark, see footnote 15

<sup>21</sup> Czech Republic (limited in France, Germany, Netherlands), see footnote 15

<sup>22</sup> Netherland, Poland, Finland, Denmark, see footnote 15.

<sup>23</sup> Germany (Netherlands, Finland, Denmark, Czech Republic), see footnote 15

European judiciaries span the role of Court Presidents from *Primus inter Pares* to Court managers. Opinion no.19 of the Consultative Council of European Judges (CCJE) yet suggests a proportional combination of the judicial and managerial functions of Court Presidents, ensuring a fair balance between their caseload as a judge, with their workload for the organisation and administration of justice. In some countries, this would mean that Court Presidents have indeed a more managerial role. In essence, they would directly deal, with the recruitment of judges and staff of the court, the development of their training, the set-up of economic incentives, and the delegation of powers to spokespersons. Some other states put the emphases in the judicial functions of Court Presidents, which have thus more judicial duties, being directly responsible for the assignment of cases (assign, re-assign and prioritising cases), the monitoring of data collection, the assessment of court performance, setting out timeframes for the length of judicial proceedings, stipulating targets for judges and non-judge staff<sup>24</sup>, and coordinating meetings with judges for the synchronisation of case law from the higher courts.

**Based on the “Exploratory study<sup>25</sup> on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States” the following examples could be indicated:**

**Germany:** Court President’s role depends on the *Länder*. They may have a role in the preparation of budget and are in charge of IT technology in their courts but technical decisions are made by the Ministries of justice, they do not devise rules of practice at national or local level for the monitoring of caseload of judges and court performance.

**France:** Court Presidents have a role in the management of the court space. Though they play no role in the adoption of rules of practice at national level, nor to guarantee the consistent interpretation of the law within the court.

**Italy:** in Italy the Court President has no say on the court budget, the recruitment of court employees, or IT national strategies. They do not have a real power to set up local rules of practice, but these rules can be negotiated with the judges and the lawyers, always within the framework of the codes of civil and criminal procedure (pag.13, Comasyt Study). Also, they may organise meetings to discuss trends of the jurisprudence as a part of their style in managing the office but this practice is not mandatory<sup>26</sup>.

**Denmark:** Court Presidents jointly with Court managers can regulate the salaries of court employees, take charge of IT technology in the courts, and partly have disciplinary power only over the non-judge personnel. They also have power to set out rules of practice, assign cases to judges with the collaboration of the judges, decide on the composition of trial panels, and a more general role for the hearing of cases, setting out priorities for handling of cases by judges, and in the consistent interpretation of law and judicial practice.

**Finland:** Court Presidents are involved in the preparation and management of the court budget and the recruitment of court employees. Also, they play a role for the assignment of cases to judges, composition of judge panels, retrieval of a case from a judge and set up local rules of practice for the monitoring of court performance.

**Netherlands:** Court Presidents are involved as member of management Board in the preparation of the budget, and recruitment of court employees’ etc.They can set priorities as a general rule not for specific judge’s roster. They can promote the setup of local rules of practice and the guarantee of consistent interpretation of the law. (page13, Comasyt study)

## **b. Institutional background on the role of Court Presidents in Albania**

<sup>24</sup> Czech Rep., Finland—in theory, Romania, Slovenia, Lithuania, see footnote 11

<sup>25</sup>Joint Project on “Strengthening the Court Management System in Turkey” (JP COMASYT) “Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States, Marco Fabri, 18 September 2013, page 4-35.

<sup>26</sup> See footnote 25, page 13.

Part of the shortcomings of the former regulation<sup>27</sup> has been that as of 2013, if not before, the law has not conferred on Court Presidents any direct or clear authority in organisational and operational matters relating to judicial administration. The law thus provided that the Chancellor directs and is responsible for the auxiliary services in the court, and further extended its competencies for the appointment and discharge of the court personnel. Besides, the law did not provide the Court Presidents with the supervision or guiding competencies to oversee the Chancellor when carrying out these duties. The relevant provisions therefore were challenged as being unconstitutional<sup>28</sup>, on the grounds that the avoidance of the Court Presidents from matters related to the organization, management and controlling of the accountability of judicial administration as well as appointment and dismissal of personnel, would create premises for an improper influence on the exclusive function of the judiciary to deliver justice. Consequently, there was a legal gap which caused organisational uncertainty around how to interpret the powers of the Court President, e.g. the remit to hire and dismiss judicial secretaries and administrative technical staff. Due to the legislative shortfall, Court Presidents devised fragmented practices from court to court in an effort to carry out their budgeting duties, assignment of cases (allocation of cases by lottery), the distribution and division of judges into chambers and sections, and assigning judges to trials each month.

As a further matter, there was nothing in the law to govern the recruitment process by means of qualifying criteria to indicate that such skills related to administration and management of judicial administration, were necessary to their role. Indeed, the personal specifications for the skills and qualifications of the Court Presidents mainly related to legal studies and experience. Recommendations made in SEJ I report "On court organisation and court administrators' capacities in Albania", outlined the need to fill the legal gap and address the shortcomings, by offering the proper solution for the clarification of the court governance structure, including a redefinition of the duties of the Court President with their specific responsibilities linked to skills, capabilities and training. Based on this recommendation (of the SEJ I report)<sup>29</sup> have been proposed two different models: a) a Court President that has crucial managerial responsibilities b) a Court President that has only supervision and directive responsibilities for the management of the court, supported by a Court Manager. The second model (which had been chosen by the Albanian legislator) according to the aforementioned recommendation suggested that (see Rec.2):

*"The responsibility of the Court President does not necessarily require strong managerial skills, which by contrast the Court Manager should have. In any case, it is necessary to have a strict link between the two positions in term of formal (hierarchical) dependence of the Court Manager on the Court President as well as a high level of trust and confidence. Proper accountability mechanisms for the Court President' supervision role should be put in place"<sup>30</sup>.*

### c. Tasks of the Court Presidents

According to the Opinion no.19 of CCJE<sup>31</sup>, and in light of European practices<sup>32</sup>, Court President may have their responsibilities divided into three major functions:

- **Judicial functions:** Court Presidents deal with a certain volume of court cases, their role to guarantee the consistent interpretation of the law and other significant legal issues coming out from the judicial practice, their role in the judicial administration when dealing with the assignment of cases to judges and legal assistants, setting out priorities for handling of a case by judges etc.

<sup>27</sup> The Law No. 9877/2008 "On the Organization of the Judicial Power in the Republic of Albania"

<sup>28</sup> The Constitutional Court by decision no. 20 dated 9.7.2009 declared anti-constitutional Article 38/a of the judicial power law, which had been into power since March 2008

<sup>29</sup> The SEJ I ' report "On court organisation and court administrators' capacities in Albania"<sup>29</sup> adopted as of 15 March 2016, page 55

<sup>30</sup> See footnote 29, page 55

<sup>31</sup> See footnote 9

<sup>32</sup> See footnote 23

- **Managerial functions:** include both the court' management and judicial time management.
- a) Court Presidents manage the operation of the court, oversee the maintenance of the electronic case management system, decide on matters related to the status of non- judge staff (selection and recruitment, setting remuneration levels, transfer, discipline, performance assessment and dismissal), the evaluation of performance of individual judges, set out rules for court security and infrastructure, management of the court budget etc.
- b) Court Presidents monitor the length of court proceedings, the workload of court and judges, set out rules of practice, or set up timeframes etc.
- 
- **Organizational functions:** Court presidents play a role in the strategic planning of the court' activities, representation of the court in relation with third parties, selection of judges for panels and court structure etc.

Each country has thus framed these functions depending on a number of aggregate influencing factors, such as: the organization of judiciary, the historical, social political and economic context, the population of the country, the level of internal and external independence of the judges and their accountability.

Bearing in mind the above, it may be said that in Albania, Court Presidents will play these different functions in different capacities. Functions of Court Presidents on the organization and management of judicial administration have been assigned in their capacity as the chair of the Court Council, while the judicial functions have been assigned to them as the Chairman of the general meeting of judges. That being so, it needs to be underlined that the law has clearly pointed out the roles and responsibilities of Court Presidents on the (1) status of judges (2) status of non-judge staff (3) administration of non-judicial services (4) judicial administration and (5) as Chairperson of Court Council. Still, some other functions have not been expressively stated and yet entail further interpretation of their competences in the future regulation<sup>33</sup>.

### **(1) Role of Court President related to the status of judges<sup>34</sup>**

According to the legislation, the Court President is directly involved in the management of the status of court staff, in particular, of judges, as the following:

- Supervises the judges' discipline at work and requests the initiation of investigations into an alleged disciplinary misconduct of the judges at their courts;
- Suspends a magistrate based on the grounds provided by law (Art.151-154);
- Supervises the judicial ethics and solemnity of judges on how they satisfy the formal procedural requirements during the judicial process)and evaluates them for the ethical commitment to the professional values (Art.75);
- Issuing an opinion for the global evaluation of magistrates (Art.75, 77, 85, 87,88);
- Reports to the HJC the incompatibility or ineligibility of a magistrate to the duty of the judge (Art.66);
- Submits the request to the HJC for the secondment of assistant magistrates to the Constitutional Court, or High Court (Art.56);
- Receives claims from magistrates regarding the non-remuneration of extra activities of magistrates, approves their right to sick leaves or annual leaves, gives the opinion on the reduction of judges' caseload, and approves their early retirement (Art. 9,23,24,26,27);
- Notifies the HJC on the vacancy of judges (Art. 61);
- Requires to HJC to assign a magistrate from mobility scheme (Art.45);

<sup>33</sup> Immediately the justice governing institutions will be established

<sup>34</sup> The law 96/2016 "On the status of judges and prosecutors in the Republic of Albania"



## **(2) Role of Court President on the status of judicial civil servants (non-judge staff)<sup>35</sup>**

Regarding judicial civil servants (*Chancellors, Legal Advisors, Legal Assistants, and other non-judge staff*), the Court President has other functions that relate to the determination of their status, meaning they play a role on procedures provided by law for their recruitment /appointment, career development, the end of their mandate, ethical and professional performance evaluation, disciplinary liability, as the following.

- Provides consultation to Chancellors for the guidance and control of the work carried by judicial civil servants
- Verifies complaints, investigates disciplinary misconducts and proposes the initiation of disciplinary proceedings against the chancellor;
- Submits an opinion to the High Judicial Council to determine the estimated number of vacancies for legal advisors and legal assistants for the upcoming year, and for the Chancellors for the three upcoming years (Art.53);
- Notifies the judicial civil servants on the commencement of evaluation proceedings and requests them to write a self-evaluation two months before the end of the two-year performance evaluation and notifies all supervisors to provide a written opinion on the performance of judicial civil servants towards the evaluation criteria (Art.65);
- Submits to the Court Council the draft decision on the evaluation, the draft evaluation report together with the self-evaluation, the written opinion of all supervisors and, if applicable, any objection;
- Proposes disciplinary measures for the chancellor, legal advisor and judicial assistant (Art.69);

## **(3) Role of Court President on the administration of non-judicial activities<sup>36</sup>**

- Ensures the implementation of decisions of the High Judicial Council, in particular in regard to the measures aiming at enhancing the efficiency and quality of judicial services (Art.37);
- Guides and supervises the Chancellor, ensuring the organization and the functioning of judicial administration in the court in regard to non-judicial activities;
- Ensures access and the manner of using the electronic case management system in compliance with the general state policies in the field of technology and security of information and rules adopted by the High Judicial Council;
- Performs any other tasks in regard to non-judicial activities of the court as set out by law or decision of the High Judicial Council;
- Represents the court in relations with third parties;
- Maintains contacts with inspectors assigned by the High Justice Inspector for judicial inspections, becomes acquainted with the purpose and object of the control and creates possibilities for them to perform the duty;
- As a member of the Restructuring Committee which is chaired by a representative of the High Judicial Council, takes part on the reorganization of court structure in case of major changes (Art.66);

## **(4) Role of Court President on the judicial administration<sup>37</sup>**

- Convenes, prepares and chairs the meetings of the general meeting of judges and the Court Council (Art.37);

<sup>35</sup> The law 98/2016 "On the organization of the judicial power"

<sup>36</sup> See footnote 35, Article 37.

<sup>37</sup> See footnote 31, Article 37

- Adopts, at the beginning of year, a list that is updated whenever needed, assigning judges for trials in urgent cases as determined by law, by alphabetical order on the basis of surname, in accordance with the rules established by the High Judicial Council (Art.37);
- Assigns tasks to a legal assistant, taking into account the professional experience and the specialization and by ensuring an equal workload among the legal assistants (Art.42);

#### **(5) Court Council competencies exercised by Court President jointly with other members<sup>38</sup>**

- Assesses and revises the draft budget elaborated by the finance officer before submitting it to the High Judicial Council;
- Provides information, opinions or reports requested by other state institutions (High Judicial Council, Ministry of Justice etc.) according to the law;
- Cooperates with the School of Magistrates and the High Judicial Council on issues relating to the initial and continuous training of judges and judicial civil servants;
- Adopts specific rules on safekeeping and security matters in the court;
- Approves job descriptions of all categories of judicial civil servants and court employees, according to the model adopted by the High Judicial Council, and in special cases adopts them to the needs of the court and the job criteria;
- Approves the structure and organogram of the court administration, according to the model adopted by the High Judicial Council, and in special cases adopts them to the needs of the court and the capabilities of the incumbents;
- Approves the court structure and the assignment of judges to sections and panels after having received the opinion of the general meeting of all judges, following general rules established by the High Judicial Council;
- Decides on the rules of procedure for the complaint on the infrastructure and other auxiliary services based on the general rules adopted by HJC. Examines complaints linked to court infrastructure issues, auxiliary services in courts and other issues not related to the performance of judicial administration tasks and reports to the High Judicial Council on complaints and on the measures taken in accordance with the rules issued by the High Judicial Council;
- Organizes regular meetings with court users for the increase of the efficiency and quality of judicial services;
- Takes decisions relating to the status of judicial civil servants (apart from Chancellors, Legal advisor and Legal assistants) as set out in law;
  - Designates a judicial civil servant for the public relations services as coordinator;
  - The lateral transfer, and promotion of judicial civil servants (*communicating vacancies for the position of judicial civil servants to HJC, reviewing the applications, conducting interviews, selecting and notifying the candidate also the HJC for the appointment, opening a recruitment procedure for appointing the candidates to other judicial civil servant positions, Art. 57*);
  - The procedures of recruitment for the judicial civil servants (*invites the candidates for an interview and selects the candidate for the respective position in the judicial civil service, notifies without delay the High Judicial Council on the result of the recruitment process, including appeals lodged, and any final court decisions, Art. 60, 61*);
  - May summon a hearing based on the request of the judicial civil servant under evaluation and decides on the work evaluation (*by assigning one of the following evaluation grades: a) Very good b) Good c) Satisfactory ç) Non-satisfactory, justifying the decision in writing and notifying the evaluated judicial civil servant within three days upon taking the decision, Art. 65*);
  - Decides on the transfer, suspension, disciplinary sanctions of judicial civil servants and duly informs the HJC (Art. 66, 67, 69);
  - Removes the recording of final decision on a disciplinary sanction from the file and expunges it from the registry (Art.79);

<sup>38</sup> See footnote 31, Article 38

- Notifies the High Judicial Council on the resignation notice or receiving the notice on the legal cause of termination of the relationship in the judicial civil service Art.81);
- Evaluates the formal criteria met by incumbent employees for the position they hold pursuant to this Law within 6 months upon its establishment, (except for the chancellors and legal assistants, Art. 84);

## f. Concluding remarks on the role of Court Presidents

On the account of the above-mentioned, it may be concluded that there are other implied functions which were not expressed in the law, and will necessitate further specification and definition in the future bylaws, rules of procedures of the courts, and decisions of the High Judicial Council. Further functions of Court Presidents could thus be implied from the: (1) joint competencies of Court Presidents with Chancellors as members of Court Council (2) judicial functions of Court President when performing as a judge (3) functions related to the judicial administration (4) functions related to the management of judicial services. More concretely,

### (1) Joint competencies of Court Presidents with Chancellors as members of Court Council

Court Presidents as the chairperson of the Court Council will convene the meetings of the Court Council without delay upon a written and reasoned request of any member of the Council, ex-officio, and whenever the Council has to fulfill the tasks as set out by law. In this capacity, the chairperson will, at the latest three days before the meeting, notify the members on the date, venue, and agenda, sending materials and draft decisions to be considered. The decisions of the Court Council will be taken by a majority of members, and accordingly be signed by all of them<sup>39</sup>.

This would mean that as members of the Council, the Court President will carry out in partnership team with Chancellors administrative and organisational functions related to court services, by offering professional management of internal operations. That being so, the Court Presidents are expected to assume supervision<sup>40</sup>, management<sup>41</sup> and leadership<sup>42</sup> functions that fall within the administration and organisation of the court, whereas, Chancellors as court managers<sup>43</sup> are supposed to bring management knowledge to judiciary with a view to maintain the independence of individual judges in the judicial administration. On this account, the model adopted in Netherlands could serve as a reference point in order to have a better understanding for the adaptation of roles and competencies as an executive partnership team for the Court Councils in Albania.

**Example<sup>44</sup>:** the Management Board, in the court system in the Netherlands, is composed of the Court President, a senior judge (the chief of court sections) and the Court Administrator (provided in the Judicial Organisation Act, which entered into force in 2002). Management Board represents the leadership team entitled with competencies for the daily management and operational control, such as the:

- electronic Case management system,
- Budget,
- Accommodation and security,
- Administration and organisational procedure,

<sup>39</sup>Article 4 of the law provides the principle of cooperation for the that is mandatory for court council, court President, Chancellors and all other civil judicial servants.

<sup>40</sup>**Supervision** meaning providing oversight, directing and watching the implementation of a set of activities and actions

<sup>41</sup>**Management** meaning coordination of the work, actions, and efforts of people to accomplish goals, and clear cut objectives in short and long term

<sup>42</sup>**Leadership** meaning establishing a vision, promoting and sharing the vision and goals and then providing support via information, knowledge and support

<sup>43</sup>With fit upgraded skills and qualifications for a professional position with managerial responsibility

<sup>44</sup>See the Judicial Organization Act, Netherlands (2002),

-Personnel matters and other.

The Management Board carries leadership functions in a collegial manner, meaning its members decide jointly on building a vision for the administration of court services, for example by drawing down:

- Strategic policies and general directives,
- The regulation for the procedural rules of its functioning,
- The procedure for its decision making,
- Division of responsibilities,
- Organisational structure etc.

According to the Judicial Organisation Act, the Management Board' functions may be authorised to one or more of its members who will then be entitled to carry out its competencies<sup>45</sup>. That being so its functions could be authorised to the court administrator or to the Court Presidents (and /or senior judge) depending of the nature of tasks, managerial or legal.

Taking advantage of the similarities of the Court Council in Albanian court system, with the model of Management Board in Netherlands, it could be suggested that some competencies of Court Council may be further specified by decision of HJC. Other competences could thus be clarified such as:

- Take decisions on the procedure of Court Council;
- Draw up rules in the form of regulation for its own procedure, decision making and division of responsibilities;
- Authorise one or more of its members to exercise some of the Court Council' powers;
- Monitor and coordinate the working processes in close cooperation with court' sectors;
- Issue general and specific directions for the court staff;
- Adopt a procedure for dealing with complaints;
- Adopt an annual plan, which will contain the description of activities, the budget, and issues related to its implementation;
- Report to High Judicial Council every year on the financial statements, annual reports and other financial aspects, including also an audit report to its support;

Highlighting one of the above suggestions, Court Council may authorise one or two members with specific functions that could be exercised separately. For example, Court Presidents (jointly with the deputy Court President) could be authorised to hold regular meetings with the chief judge of sections for the discussion of issues that concern to the specialization and training needs (*for judges and the legal advisor and legal assistants within the section*), and other matters related to their status, assignment to trial panels, allocation of cases, evaluation, ethical and discipline etc.

## **(2) Judicial functions of Court President when performing as a judge**

In accordance with the principle of *primus inter pares*<sup>46</sup>, it is important that Court Presidents continue to perform as judges, which allows them not only to maintain a bridge in relation to judges of the court, but also to better fulfil their organisational role. This may also depend on the size of the court. The caseload of Court Presidents may be reduced having regard of their managerial tasks. As the previous regulation by Decision No. 261/ 2 of the High Council of Justice<sup>47</sup> set out the caseload of Court Presidents at 40% of the caseload of judges, the future regulation may increase the flexibility in this respect, taking into account several factors that are relevant from court to court. At present, this percentage may be reviewed taking into consideration, for example, the new tasks, the size of the courts, the kind of cases that Court presidents could just deal with, the size of the court, the nature

<sup>45</sup>See Section 18 of the Judicial Organization Act, (2002), page 13.

<sup>46</sup> CCJE opinion.no.19.

<sup>47</sup>Decision no.261/2, date 14.04.2010 on the system for the evaluation of judges

and level of jurisdiction etc. This is a sensitive matter to be taken care by the Judicial Council. The European countries follow different practices for this aspect, i.e. in Germany the Court Presidents “still perform some judicial functions, even though the managerial role is the large part of their activity has a reduced caseload” in Switzerland they perform 80% of the caseload of a judge, and in the Netherlands “generally speaking about 80% of their time is dedicated to managerial activity and 20% to judicial ones”<sup>48</sup> (p.13 Comasyt study).

### **(3) Other implied functions of Court President related to the judicial administration**

According to the law the High Judicial Council (HJC) has the power for adopting rules of practice, decisions, guidelines that aim at increasing the efficiency and quality of court’ services and performance. Whereas the implementation at court level of any HJC decisions is assigned by the law to the Court Presidents, who play a role as guarantor in this respect<sup>49</sup>. Future regulations may elaborate further the role of Court President as guarantor, granting them the power to set out local rules of practice of non-binding nature that serve for managerial purposes only. For example, the legislation confer(s) no explicit power to the Court President in setting timeframes at local level for the pace of litigation or specific stages of judicial proceedings, nor for setting targets necessary for the monitoring of the length of court proceedings, the workload of the court or that of judges. That being so, Court Presidents could be authorized to actively engage for setting out local rules of practice necessary for the monitoring of court performance.

### **(4) Other implied functions of Court President for the management of judicial services**

- a. Internal independence of judges requires that Court Presidents be assigned with responsibilities of administrative nature that affect as less as possible the substantive adjudication of cases by judges. For example the assignment of cases to judges according to the new existing laws, is carried randomly by the lottery system, which in a way avoids any interference by the Court President. Having said that, the Court President are also entitled to assign “*the most urgent cases*” to judges at the beginning of year<sup>50</sup>, according to a list that is updated whenever needed by alphabetical order on the basis of surname<sup>51</sup>. In addition, Court Presidents of appeal courts<sup>52</sup> and the Court President of the High Court have power to assign cases respectively to legal assistants and legal advisors. In all these aspects of case assignment where Court Presidents will play a role, it is important that their decisions be taken strictly on the bases of pre-established criteria (which intend the assignment based on the specialisation, nature of cases etc) also following a transparent procedure.
- b. The new laws into force have not explicitly provided the role of Court Presidents to set priorities on the cases to be dealt with by judges. Most of the European countries do not accord this responsibility to the Court President (France, Germany, Italy, Poland, Finland), apart from Netherland and Denmark<sup>53</sup> where the Court President plays a role in this respect. In this connection, the SEJ I report “On court organisation and court administrators’ capacities in Albania”, adopted in 15 March 2016, in its Recommendation 7 endorses the idea of the active case management at court level, more concretely:

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<sup>48</sup>Joint Project on “Strengthening the Court Management System in Turkey” (JP COMASYT) “Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States, pages 4-34.

<sup>49</sup>Article 37/letter “gj” of the law on the organisation of judicial power

<sup>50</sup> “At the beginning of the year” is explicitly provided in article 37, letter b of the law no.98/2016 “On the Organization of judicial power”, which needs to be further specified in the future regulations.

<sup>51</sup>The former practice based on decision no. of HCoJ only indicated as urgent those cases that aimed to evaluate routine arrest or detention or the setting of security measures and any other request during the phase of investigation

<sup>52</sup>In the appeal courts, the Court President shall only have the remit to assign tasks to a legal assistant based on the same criteria. However, they have no authority to supervise the legal service unit or to set out rules of procedure, which is a task solely attributed to the HJC (Art.42 of the Law on OJP)

<sup>53</sup> See footnote 22, JP FOMASUT

*“Recommendation 7: Establish a working group for the development of differentiated case management and the investigation of the judicial specialization question. The working group should investigate case management related issues, including case management practices, the case-load distribution between and within courts taking into consideration inter-temporal variation and main case typologies, weighting of cases and possibilities to have case management initiative at court level to devise solutions that do not threaten or being perceived as threatening the judicial independence and impartiality. Implications, requirements and possible spaces for the growth of judicial specialization in the Albanian context should also be investigated”<sup>54</sup>.*

Briefly put, the above recommendation encourages the active case management at court level, with a view to ensure an efficient monitoring of the status of cases in order to detect as early as possible the complexity of the case, the estimated workload requirement, and the scope and duration. This way, based on the case requirements, courts would be capable to carry out the appropriate actions and apply the needed level of resources. In case the future regulations, involve the Court Presidents on setting out priorities for the handling of most complex cases that require ad-hoc attention by judges, then *“the due guarantees need to be put in place in order that the devised solutions do not threaten the judicial independence and impartiality of judges”*. Also it is important that the criteria for the definition of complex cases be substantiated on the ECtHR criteria, which define as priority cases those *including applicant’s state of health/life, exercise of parental authority, the applicant’s advanced age, labor-employment disputes, length of prison sentence served by the applicant, individual physical state capacity, cases of police violence, compensation of damages suffered by the accident victims etc*<sup>55</sup>.

- c. Coherent and consistent case-law is an important part of legal certainty and Court Presidents have a role in ensuring the quality, coherence and consistency of judicial decisions. The legislation into force confers to the Court Presidents the role of chair of the general meeting of judges<sup>56</sup>, meaning they have to summon regularly at least once per month the general meeting of judges and discuss questions of a legal nature, the unifying decisions of the High Court, decisions of other courts, decisions of the High Judicial Council, the acts on the controls and inspections carried out by the High Justice Inspector, as well as relevant acts of the Ministry of Justice and any other matters relating to the court in general<sup>57</sup>. In the course of fulfilling these tasks, Court Presidents could be advised to respect the principle of judicial independence, especially when they promote consistency in the interpretation and citation of the case-law of the court itself, higher courts, Supreme Court and international courts. For example, these tasks could be delivered by facilitating education and training including seminars, meetings, ensuring access to the relevant databases, as well as promoting dialogue and the exchange of information between different instances, etc.

## **2. The role of Chancellors**

### **a. International standards**

Court managers, referring to European<sup>58</sup> practice are usually the head of the non-judge personnel, and are in charge of supervising all the court’s administrative work. Depending on the autonomy of the court governance they can also have some other tasks related to the budget, court facility, and discipline regarding administrative personnel. The functions of “court manager” have increased in

<sup>54</sup> The SEJ I’ report “On court organisation and court administrators’ capacities in Albania” adopted as of 14 March 2016, page 58

<sup>55</sup> See .SEJ I (2006)15 Report “Length on the Court Proceeding in Europe”, 8th plenary meeting (Strasbourg, 6 - 8 December 2006)

<sup>56</sup> See article 29 & 40 of the Law no.98/2016 “On organization of judicial power”

<sup>57</sup> The article 40 of the Law no.98/2016 “On the organization of judicial power”

<sup>58</sup> Joint Project on “Strengthening the Court Management System in Turkey” (JP COMASYT) “Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States, pages 16-34

several countries such as Denmark, Finland, Lithuania, and Poland, while such changes seem less evident in Czech Republic, Germany, and Italy. In Germany, and Poland, court managers of the higher courts have even greater authority over court managers of the lower courts (i.e. inspection, supervision, discipline). In some countries, they are selected by the President of the court, and in other countries e.g. France, Italy and Poland, they are selected by the Ministry of Justice. In principle, the Court manager's role (hereinafter Chancellors) is to manage the use of resources so that the court meets the required performance standards.

## **b. Institutional background on the Chancellors' role in Albania**

The former regulation, the law on Organisation of Judicial Power no. 9877/2008, did not establish exhaustively the status, competencies, evaluation, recruitment, training, discipline and dismissal for the function of Chancellors. Chancellors were appointed based on a decision by the Ministry of Justice and represented the highest court administration staff<sup>59</sup>. According to this regulation, they had power to decide on the appointment and dismissal of court employees as well as disciplinary measures. However this power ceased to be in effect after the relevant provisions were annulled by the Constitutional Court<sup>60</sup>. It was believed that giving such powers to Chancellors rather than Court Presidents organisation potentially compromised the courts' independence<sup>61</sup>. This repeal created a gap in court administration regulations which left the power structure between Chancellors and Court Presidents unclear and open to interpretation. The previous SEJ report<sup>62</sup> noted that Chancellors in Albanian courts had a weak status and capacity to sufficiently support Court Presidents in executing their court management duties. Also, the law did not provide Court Presidents with the legal instruments necessary to thoroughly carry out their organisational or managerial duties for the supervision of Chancellors' work. All the more, Court Presidents had a disproportionately high volume of adjudication of cases which could encroach on the major court management and administration facet of their role. For this reason, the SEJ I report recommendation<sup>63</sup> suggested models of court governance structure, such as the one where Court Presidents<sup>64</sup> were to have leading and supervisory responsibilities on the court management aspect, whilst the chancellors role on this aspect were to be reinforced. The new legislation addresses SEJ' recommendations by having adopted this model, that is by strengthening the Chancellors' court' management remit, improving their status, selection, skills and capabilities. In this framework, Chancellors will have a more active role in ensuring the efficiency of judicial administration in close cooperation with the High Judicial Council and Court Presidents.

## **c. Tasks of Chancellors<sup>65</sup>**

The law establishes the place of Chancellors at the highest rank of the judicial civil servants<sup>66</sup>. Chancellors will be also one of the three members of the Court Council<sup>67</sup> and will be a member of the Restructuring Committee<sup>68</sup>. In this connection, they will assume managerial competences concerning the court administration related to the status of judicial civil servants (apart from legal assistants/advisors), exclusive authority for the appointment, training and dismissal of court

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<sup>59</sup>According to the Law No. 9877/2008 "On the Organization of the Judicial Power in the Republic of Albania"

<sup>60</sup>By Constitutional Court decision no. 20 dated 9.7.2009

<sup>61</sup>Declared anti-constitutional Article 38/a of the judicial power Law, no. 9877 dated 18 February 2008, "On the organization of the judicial power in the republic of Albania" as amended Article 46 provides that the law enters into force 15 after its publication in the Official Gazette. The law has been published in the Official Gazette no. 27 Decision dated 29.2.2008.

<sup>62</sup>The SEJ I' report "On court organisation and court administrators' capacities in Albania", adopted as of 14 March 2016, page 55

<sup>63</sup>See footnote 52

<sup>64</sup>Not with standing as such, the law has reinforced the selection criteria for Court Presidents including the organizational and managerial skills

<sup>65</sup>Law no.98/2016 "On Organization of Judicial Power"

<sup>66</sup>See footnote 61, Art.50

<sup>67</sup> Art.27 of law on OJP no.98/2016 provides that Court Council shall consist of three members: Court President, deputy Court President, Chancellors,

<sup>68</sup> According to Article 66 paragraph 6 of law no.98/2016 "On Organization of Judicial Power": "In case of closure or reorganization of a court structure, the High Judicial Council shall establish a Restructuring Committee in the sense of the Law "On Civil Servant". The Restructuring Committee shall be chaired by a representative of the High Judicial Council and shall include the Court Presidents and the Chancellors of the courts, which are affected by the restructuring measures."

employees (*administrative and supporting*), and also competencies for the maintenance of the electronic case management system, the court organization and other issues concerning the maintenance and safekeeping of the court premises.

**Status of judicial civil servants**<sup>69</sup>: on this account, Chancellors will decide on the following:

- Take actions and decisions in relation to the status of judicial civil servants (apart from legal assistants) as provided by this law;
- Guide and supervise the work of the judicial civil servants of the court;
- Guide the coordination, organization and distribution of work carried by the secretary office is within the competence of the chief secretary (Art 43.);
- Announce the open vacancy and requests on the official website of the court and the High Judicial Council, no later than three weeks from the receipt of notification on a vacant position (Art.54);
- Carry out the preliminary screening for the evaluation of candidates for judicial civil servants (the final evaluation is done by the Admission Committee at the court);
- Inform the High Judicial Council on a vacant position or an upcoming vacant position in the court without delay, in any case not later than two weeks after having received the information (Art.57);
- Create and administer the individual file for each judicial civil servant and court administration employee. The individual file shall contain the professional data for each judicial civil servant and court administration employee, as well as any other data concerning the judicial civil service or work relationship (Art.63);
- Propose disciplinary sanctions of the court for the judicial civil servants who perform their duties in the relevant court, except for the legal advisor and the legal assistant (Art.69);

**Electronic Case management system**: Based on the article 39, point 2 of the law Chancellors will be responsible under the supervision of the Court President for the functioning of case management system by ensuring the accuracy of collection and processing of statistical data and will provide access for the High Judicial Council and Ministry of Justice on these data. In this connection Chancellors will cooperate closely with the HJC for its update and will deliver annual reports on its usage and functioning. More concretely the Chancellor, upon consultation with the Court President, will be responsible for the:

- Functioning of the case management system in the court in accordance with the legislation in force on technology and security of information, overseeing the accurate gathering and processing of data (Art.39);
- Delivery of periodical reports to the High Judicial Council on the usage and functioning of the case management system;
- Reporting without delay to the High Judicial Council on needs and necessary updates of functions of the case management system;
- Giving to the High Judicial Council and the Ministry of Justice access to statistical data to the extent these institutions need to exercise their competences as established by law;
- Performing any other task as set out by law or as authorized by the Court President;
- Reflecting the professional data for every judicial civil servant and court administration employee, as well as any other data related to the judicial civil service, or employment relationship, and the information on the structure and organization of the relevant court to the Central Staff Registry<sup>70</sup>;

**Court organization**: Chancellors will supervise the lottery process for assignment of cases to judges, will prepare and administer the necessary documentation, and will sign the judicial practice to judges based on the rules decided by HJC (Art.25); They will also participate as member of Court Council in

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<sup>69</sup> Apart from the legal advisors, and judicial assistants

<sup>70</sup> The Central Staff Registry is created and administered by the Public Administration Department, in accordance with the Law "On Civil Servant" and the applicable sublegal acts



the preparation of court structure and the organogram of the court administration, the assignment of judges to sections and panels, the cooperation with the school of magistrates for the training needs of the civil judicial servants of the court.

**Budget/Safekeeping and security matters:** Chancellors as member of the Court Council will participate in several tasks under its competence such as:

- Prepare and assess the draft budget elaborated by the finance officer;
- Adopt specific rules on safekeeping and security matters in the court;
- Provide the information, opinions or reports if inquired by other state institutions;
- Organize regular meetings with court users on the court services;
- Examine complaints linked to court infrastructure issues, and auxiliary services in courts (and report them to the HJC<sup>71</sup>;

**Judicial functions:** Chancellors will not carry any judicial functions. Their role for the process of allocation of judicial cases by lot will be limited only to the administration of documentation and signing the handing over of the judicial case to the respective judge.

#### **d. Concluding remarks on the role of Chancellors**

##### **1. Concerns expressed on the status of chancellors in the meeting of 17<sup>th</sup> October 2018**

Participants present in the meeting questioned some issues regarding the financial treatment for Chancellors, and the gap created with the financial treatment of judges, and that of the Court President, for which applies a different scheme from the one that pertains to the public civil servants. According to Article 64 of the law<sup>72</sup> Chancellors have been placed at the highest rank of judicial civil servant in the Court and will enjoy the rights and be subject to the obligations as established in the chapter on the rights and duties in the civil service in the Law “On Civil Servant”<sup>73</sup>. The High Judicial Council (HJC) will determine by decision three categories of Chancellors in compliance with the workload and level of each court, whereby the Council of Ministers decides rules on the salary scheme<sup>74</sup> and the salary progression which will be at least equivalent to the salary scheme of respective categories of civil servants. As a further matter, having the executive authorities, namely the Council of Ministers deciding on the structure of their salaries infringes also the principle of division of three powers: executive, legislative and judiciary in detriment of the internal independence of the court administration. Concerns were also raised on the difference in wages between Chancellors of smaller and larger a court, which is perceived as an inequality and may create tensions within the profession. The participants were very interested to hear about European countries such as France where wages are based on the person’s own individual rank and not on the occupied position (*career public service*).

Another point that was raised is the condition posed to Chancellors for carrying a written exam for their confirmation into duty<sup>75</sup> which is considered to be a standard inconsistent with the law on the status of civil servants and is applicable also only to chancellors and legal assistants and advisors (but not to judges). According to this provision, “the vetting” (*the screening of figure, professionalism, and assets*) of Chancellors and that of legal advisors/judicial assistants will be carried by HJC in close cooperation with other institutions for their evaluation, such as: High Inspectorate for the declaring and controlling of assets and conflict of interests (ILDKP), Prosecution Office, National Investigative Board (a structure of the future court against corruption and organised crimes). Chancellors that will

<sup>71</sup> All these tasks shall be carried based on the general rules and models adopted by the High Judicial Council.

<sup>72</sup> According to the Article 64 of the law 98/2016 “on the organisation of judicial power”

<sup>73</sup> The Law no.152/2013 “On Civil Servant”, as updated

<sup>74</sup> The highest level of salary for a chancellor is equal to the “salary per function” of a Director of Directorate-General, the average level is equal to the “salary per function” of a Director of a Directorate and the lowest level is equal to the “salary per function” of a Chief of Sector in a Ministry level.”

<sup>75</sup> The law requirement (Art. 84 of the law on the OJP) obliges incumbent Chancellors to carry out a written exam

successfully pass the first phase of the vetting process will thereafter have to undergo a written exam organised by the School of Magistrates. Only those that receive more than 70% of the scores in the exam will be confirmed on duty by HJC. Taking as such into account, this fact raises the other concern that the law appears to apply different standards for the regulation of Chancellors status: one standard regarding their salary, which is inconsistent with the legal framework for their confirmation into duty.

## 2. The division of roles between Chancellors and judges

The vision of court managers with strong organisational leadership has been endorsed by law to Chancellors in Albania as well<sup>76</sup>. Chancellors will thus have management responsibilities under the supervision of Court President for the facilitation of the judicial administrative functions. Further, Chancellors, as member of Court Council will increase the cooperation with judges in the bench, with a view to offer more guarantees for their individual judicial independence. This is the case, especially when Court Presidents, due to ethical considerations may not be directly involved on certain matters that would amount interference in the adjudication of cases by judges i.e. hearing scheduling, monitoring of their caseload etc. Chancellors' mission is thus to offer managerial services that intend among others the adequate time management of judicial proceedings, by saving the amount of time that could be dedicated for adjudication of a case by judges. On that account, Chancellors will have to cooperate closely with judges on building a roadmap with concrete goals, for the coordination of work processes that could be followed by other court staff also (*non-judge staff*).

## 3. The division of roles between Chancellors and Court President

With a view to make the Court Council function properly, it is requisite to establish a team where Court Presidents see Chancellors as partners, and override an old mentality whereby Chancellors were mere supporters of their functions. The new vision of court governance fosters the image of an executive partnership between Court Presidents and Chancellors, that will have to decide jointly on a range of Court Council' competencies. Nonetheless, it is essential that the new responsibilities assigned to Chancellors be accepted by the court and hence be institutionalised. That being so, competencies of Court Council could clearly outline the respective roles of Chancellors *vis a vis* Court Presidents. As such was also a demand expressed by participants in the meeting of 17<sup>th</sup> of October 2018. Court Council' competencies that could be authorised only to Chancellors could be the following:

- Court Council may authorize Chancellors to organize meetings with the respective categories of judicial civil servants and separate meetings with court employees. These periodical meetings may serve as a mean to channel the communication among court departments and exchange feedback on matters that require internal coordination (*e. g co-operation of different structures within the court which are directly responsible for the functioning of the electronic case electronic system, for the management of data collection, validation, recording, monitoring and dissemination of statistical data*)<sup>77</sup>. More concretely, may be suggested the following meetings:
  - **Meeting with legal advisors/judicial assistants** could serve to promote the culture of knowledge sharing for the discussion of issues related to the initial and continuous training, efficiency of training, specialization needs and productivity.
  - **Meeting with chief secretary/judicial secretaries/finance officers/IT staff/Archive officer/public relations officer/human resources officer** could serve for the discussion of results on production, quality of service, issues concerning staff etc and using them for the adaptation of working procedures.

<sup>76</sup>See the legal framework on the status for Chancellors in Annex no.2

<sup>77</sup>CEPEJ (2008)8, Guideline IV.A.1; CEPEJ (2015) 18, Section A, guidelines 2,3,4,5,6.

- **Meeting with court employees** could serve for the discussion of matters related to the maintenance of court building and implementation of rules for the court premises security, the working conditions and emergency services.
  - **Joint meetings with judicial civil servants** could serve for the results of evaluation of the court staff' satisfaction before they become public, assess the progress achieved against the court' workload, and assess training and promotion opportunities
- Court Council<sup>78</sup> may authorize Chancellors to organize by their own initiative meetings with court users, depending on the urgency of the eventual situations. CEPEJ guidelines<sup>79</sup> suggest that Chancellors may have an active role in the management of crises related to court performance<sup>80</sup>. Meeting these ends, by setting objectives and priorities, Chancellors may need to collaborate closely with court users.

#### 4. Role of Chancellors for the active management of judicial timeframes of judicial proceedings

Chancellors may play a role for the collection and recording of information on the most important intermediary steps in the judicial process<sup>81</sup>, and its continuous analyses with the view to provide solutions. Provided that the law no.98/2016 has conferred a major role to Chancellors for the management of electronic case management system (CMS) and court judicial statistics, it would be preferable if these tasks be further elaborated in the framework of CEPEJ guidelines<sup>82</sup>. CEPEJ guidelines<sup>83</sup> have thus emphasized that the efficiency of judicial time management requires a more active role from the part of Court managers in the judicial case management, with a view to set targets for the supervision of hearings' time management, and the monitoring of workload of the court and caseload of judges. As the law confers no power to Chancellors in this respect<sup>84</sup>, Court Presidents as guarantors of implementation of HJC directives, may authorise Chancellors to monitor closely the duration of intermediary steps of judicial process<sup>85</sup>.

Referring to the discussions of the meeting of 17<sup>th</sup> October 2018, Chancellors argued that the monitoring of intermediary steps of proceedings seems quite impossible to be implemented in practice due to issues that the electronic case management system is encountering at present, which impedes the system from producing data in real time. For example in the Tirana district court there might be on daily basis 500 judicial sessions/day in average. Monitoring the time between the sessions for each of the individual cases if not electronically, it is not possible to be done based on manual registers. Notwithstanding as such, there are some steps that could be monitored such as: the summoning of parties, the notification of acts, the defense declarations. For example, Chancellors may play a role in evidencing the causes of postponement of sessions. In such a case they may only signal the relevant actors with a view to correct the issue for the future arrangement of proceedings, but Chancellors may not be held responsible.

<sup>78</sup> Provided that the law no.98/2016 assigned to the Court Council the competence to hold regular meetings with court users

<sup>79</sup> CEPEJ (2015)18 report on implementation of SATURN guidelines, no.9,10,11,12,13.

<sup>80</sup> CEPEJ (2014)161 report on SATURN guidelines for actors involved in time management, page 5,6

<sup>81</sup>They should keep records regarding the duration between these steps, in particular: the (1) instigation of proceedings (2) service of process upon the other party (3) receipt of the response by the other party (4) making of procedural orders by the court (4) the use and timing of preparatory conferences or preliminary hearings (5) beginning of the trial stage <sup>81</sup>(6) existence and duration of technical expertise (7) duration and number of hearings on the merits of each case (8) conclusion of the trial stage (9) decision-making in the first-instance<sup>81</sup> (10) announcement and delivery of the first instance decision to the parties (11) launching of legal remedies (appeal etc.) and their impact on the duration of the proceedings (12) appellate hearings and decisions (13) preliminary decisions and orders in higher courts<sup>81</sup> (14) course and results of the appellate and other proceedings<sup>81</sup>(15) other extraordinary stages and remedies<sup>81</sup> (16) effectiveness of the enforcement of court decision.

<sup>82</sup>CEPEJ (2005)12 Rev Time management Checklist, 7-9 December 2005.

<sup>83</sup> CEPEJ (2014)161 report on SATURN guidelines for actors involved in time management

<sup>84</sup>HJC in their competence to adopt the rules of practice for the courts based on Article 94 of the Law on the governance of justice institutions

<sup>85</sup>See footnote 61

### 3. The role of Legal Advisors and Legal Assistants

#### a. International standards

European practices<sup>86</sup> have, generally speaking, improved the role of Legal Assistants based on the principle of division of labour which implies that the allocation of tasks assigned to judicial authorities need to be balanced and offer independence, proper training and specialisation. According to this principle, it is crucial that the judicial power in courts is distributed in an efficient way, for example judges may be highly supported in their routine cases (or non-contentious cases), and their involvement in the court administration and management. Therefore, some of their duties could be transferred to non-judge staff, especially to legally-trained staff such as Legal Assistants or judicial secretaries. Developing the role of legal assistants has thus been considered as part of the efforts to increase the quality and efficiency of the court performance, but also to ensure the due guarantees for a right to a fair trial within a reasonable under the article 6 of ECHR. In light of these efforts, some European countries<sup>87</sup> have modified successfully the role of Legal Assistants as a way to balance the workload of court staff, which has resulted in the transfer of duties from judges to non-judge staff. Based on these practices, some examples of non-judge court personnel are as follows:

- The “*Rechtspfleger*” function is inspired by the Austrian and German systems<sup>88</sup>, as an independent judicial body, anchored in the constitution and performing the tasks assigned to it by law. The *Rechtspfleger* does not assist but works alongside the judge, and may carry out various legal tasks. For example, in the area of family or succession law; he/she is also authorised to make independent judicial decisions on the granting of citizenship, issuing payment orders, execution of court decisions, auctions of immovable goods, criminal cases, and enforcement of judgments in criminal matters. He/she is ultimately qualified to undertake administrative judicial tasks.
- Non-judge staff whose role is to assist judges directly. Both judicial advisors and registrars assist judges in their judicial activities (hearings in particular) and may have to certify the validity of the acts submitted before the trial
- Staff responsible for various administrative matters and court management
- Technical staff responsible for it equipment, security and cleaning
- Other non-judge staff.

In brief, there are mainly two forms of non –judge staff: (1) those whose remit covers directly assisting judges but does not extend to decision making<sup>89</sup> (*the French ‘Greffier’ is a good example of this model*) (2) those that enjoy independent decision-making power in specific cases (such as *the Rechtspfleger*).

Examples: In 17 Council of Europe Member States, e.g. Denmark the profession of “*Rechtspfleger*”<sup>90</sup> seems similar to that of a deputy judge in Danish courts; In Slovenia it includes legal assistants and legal advisers with autonomous competence to adopt final decisions explicitly fixed in the procedural laws. Also in Germany, Austria Denmark and Spain, *Rechtspfleger* is involved almost in all possible fields of law (criminal, family, execution of sentences, registers, insolvency etc.)<sup>91</sup>

<sup>86</sup>European Union of *Rechtspfleger* (EUR) White Book, page 114-129

<sup>87</sup>See footnote 86.

<sup>88</sup>See footnote 86

<sup>89</sup>The following are common legal tasks without decision-making powers; notifying and providing information to the parties on the stages of proceedings; preparing case-files; delivering copies; conducting legal research; providing legal analysis; taking notes at hearings; preparing decisions; authenticating documents; serving documents.

<sup>90</sup>CEPEJ studies no.26, 2018 edition (2016 data), European judicial systems, Efficiency and Quality of justice, page 14, 17, 21.

<sup>91</sup>Which implies competencies for court decisions in areas such as non-contentious matters, registration or enforcement? This system has been endorsed already in 17 European countries such as: Andorra, Austria, Bosnia and Herzegovina, Croatia, Slovenia, Czech Republic, Denmark, Estonia, Georgia, Germany, Hungary, Iceland, Ireland, Poland, Slovakia, Spain and Israel. etc. see European Union of *Rechtspfleger* (EUR) White Book, page 137, 129

As it will be seen below, in the Albanian judicial system, the equivalent of the first form of non-judge staff is Legal Advisors in the High Court, and Legal Assistants in the Appeal Court. They provide high-level judicial assistance to the judges, limited to the preparation of legal research and drafting decisions. However, they are not authorised to judge the outcome of cases.

**b. Institutional background on the role of Legal Advisors and Legal Assistants in Albania**

The above-mentioned SEJ report<sup>92</sup> highlighted that the Albanian legislation in place at the time had a gap concerning the role and responsibilities of Legal Advisors and Legal Assistants. The shortcoming consisted mainly in the fact that the First Instance and Appeal Courts of general jurisdiction did not have any legal assistants. Whereas, the Legal Advisors in the High Court of Albania were not law graduates specifically recruited and trained for the task, but were hired among court judges of lower instances. In addition, the law provided no clear criteria of what tasks would be assigned to them. In order to address this shortcoming, SEJ Recommendation 8<sup>93</sup> suggested recruiting more widely ‘law school graduate legal assistants by making use of the proxies for similar roles in other European jurisdictions, which could be a good reference point for defining the assistants’ tasks and responsibilities.

In accordance with the SEJ recommendations, the new legislation addresses the noted shortcoming by offering adequate regulation on the status of Legal Advisors and Legal Assistants as well as on the procedures for their selection, training and promotion. It also clearly indicates that the Legal Advisors, Legal Assistants, the Chief Secretary and judicial secretaries, are judicial civil servants (with respectively judicial, administrative<sup>94</sup> and supportive roles)<sup>95</sup>, who will provide services that will directly support judicial activities. More concretely, the Judicial civil servant are all those persons who assume administrative public functions within the judicial or the administrative service of a court in direct support of the judicial system. In this category of staff, may be included: Chancellors, Legal Advisors (High Court), Legal Assistants (Appeal Court), Chief Secretary, Judicial secretary, Finance and budget officer, other judicial civil servants working in the field of legal research and documentation, human resources, information technology, archives, and public relations, external or media relations. Whilst, the Article 51 of the law provides that other “Court employee”, who mainly are those who perform maintenance, transport, custody and other activities in support services of the courts, which are not performed by judicial civil servants will be governed based on the Labor Code.

Court Staff categories		
Judicial civil servants	Court employees	
Chancellors		Courts of all levels
Legal advisors		Only in the High Court
Judicial assistants		Only in the appeal courts
Chief Secretary	Maintenance	Courts of all levels
Judicial Secretary	Transport	Courts of all levels

<sup>92</sup>SEJ report “On the organization and administrators’ capacities in Albanian court system”, 14 March 2016.

<sup>93</sup>SEJ report “On the organization and administrators’ capacities in Albanian court system”, 14 March 2016, page 58

<sup>94</sup>Administrative services that include finance and budgeting, external and public relations, information technology, judicial archive, security and human resources

<sup>95</sup>Support services that ensure in particular the performance of services of notifications, assisting the hearing panel or the Court President of the hearing session, and any other activity relating to the appropriate conduct during the hearing session, transport services and maintenance of the court premise

Finance and budget officer	Custody	Courts of all levels
Legal research and documentation officers	Support Services	Courts of appeal and high court
Human resources officers		Courts of all levels
Information technology officers		Courts of all levels
Public relations officer		Courts of all levels
External or media relations officer		Courts of all levels
Archives officer		Courts of all levels

In respect to judicial civil servants, the High Judicial Council will list their duties in the standard job descriptions, and the Court Council will approve their job descriptions in accordance with the needs of the court and the job criteria. The Court President will decide on their recruitment (Art.37) and will also collaborate with the School of Magistrates and the High Judicial Council on issues relating to their ongoing professional development and training. From the meetings organised on 14<sup>th</sup> November 2017 and on 17<sup>th</sup> of October 2018 there were several concerns that were raised by the present legal assistants/advisors, as the following:

- There is need to provide the position of legal assistants in the structure of first instance courts, considering that judicial secretaries carry more administrative tasks and do not have same status and competencies for this position;
- Provide job descriptions per each category of staff, especially with the view to concise tasks for the judicial secretaries, (and for the chief secretaries), in order to avoid as much as possible assigning to judicial secretaries tasks that normally a legal assistant would do;
- The current law has reduced in half the number of legal assistants in the appeal courts, instead their number could have been increased;
- More legal tasks could be allocated to non-judge staff with the view to free judges from routine cases such as enforcement cases, payment orders etc.
- Referring to the existing practice legal assistants are assigned to different judges, i.e. up to 13-30 in the administrative courts, which affects a lot their daily routine as they have to cope with different working methods;
- The current procedure starting from the assignment of the case to the judicial assistant until they submit their opinion' report to the judge is not traceable, visible and thereof makes their work not accountable<sup>96</sup>;
- There is need to provide job description for legal advisors in the High Court, and legal assistants in the Appeal Court indicating clearly their tasks;
- The existing regulation did not indicate the body that would be responsible for the supervision of the work of judicial assistants, therefore judicial assistants find themselves in the position of not having a defined supervisor, whether be the Court President, the Chancellor or the Judge;

### **c. Tasks<sup>97</sup> of Legal Advisors and Legal Assistants**

<sup>96</sup>According to the current practice, Court Presidents and chancellors assign the cases to judicial assistants and subsequently report to the judge. Following the usual practice judicial assistants receive no further feedback on their work from judges, Court Presidents or chancellors. This makes the work of judicial assistants hard to trace or measure. There was general consensus on assigning this responsibility to the Court Council, which was considered the best structure to supervise the Judge/Judicial Assistant unit.

<sup>97</sup>Based on the articles 34, 42 of the law no.98/2016 "On the organization of judicial power"

In the Albanian court system there are the Legal Advisors who assume their functions in the Legal Service Unit in the High Court and the Legal Assistants who assume their functions in the Legal Service Unit in the appeal courts. The Albanian legislation assigns more senior duties and tasks to Legal Advisors as compared to Legal Assistants, such as analysis of the case and relevant case law and drafting a summary of the procedure. Conversely, Legal Assistants analyse case law and process low-complexity cases. The criterion for assignment of cases to both categories is based on their professional experience and expertise, ensuring an equal workload between them. More concretely,

## 1. Legal Advisors

Legal Advisors in the High Court will assume their functions in the Legal Service Unit (LSU) to be established within the High Court, which will be under the direct authority of the Court President. This Unit will consist of legal advisors, whereby more than the half of the total number will be assistant magistrates<sup>98</sup>, and the others will be non-magistrates from the ranks of jurists. It will thus carry out primary support to the work of judges for the analyses of cases, procedure and case law and processing the cases during the decision-making of the High Court. The Court President will supervise the LSU, with the remit to assign tasks to the legal advisor. Furthermore, as chair of general meetings of judges, the Court President will set out the procedures for how the LSU should function and the number of legal advisors. The Court Council will subsequently include the Court President's recommendations on the number of Legal Advisors in the draft budget, to be later submitted to the High Judicial Council.

## 2. Legal Assistants

Legal Assistants in the appeal courts<sup>99</sup> will assume their functions in the Legal Service Unit (LSU) that will be established by executive decision of the High Judicial Council. Their tasks consist on the analyses of the case law, process and analyse low complexity cases, and any other tasks that is required by judges during the decision making<sup>100</sup>. The new law "On organisation of Judicial Power" (art 42) provides the reduction in half of the number of legal assistants in that it shall not be higher than half the number of judges per court. Also in the appeal courts, the Court President will not supervise the LSU or set out rules of procedure, but only will assign tasks to legal assistants based on the same criteria as those applied for legal advisors. The High Judicial Council will establish detailed rules on their professional requirements, the nature of their tasks and the type of cases they will be expected to process and prepare<sup>101</sup>.

## 3. Judicial Secretary and the Chief Secretary<sup>102</sup>

Judicial secretaries in the 1<sup>st</sup> instance courts of general jurisdiction exercise procedural duties, provided by the procedural law including also administrative tasks. They keep the seized items, record the hearing of judicial process, administer the registers, the case files, orders and actions of the court and judges, assist for the use of computers, audio means of communication etc. In addition, the Secretary issues authentic copies, extracts documents, maintains the judicial statistics and carries other tasks related to the judicial process.

The chief secretary in the 1<sup>st</sup> instance courts of general jurisdiction, issues certification on the inquiries of parties related to the court registers, signs all procedural acts that acquire notification of parties, such as final judicial decisions, final and intermediary decisions that are sent for execution, extracts or

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<sup>98</sup>Seconded according to the Law 96/2016 "On the status of judges and prosecutors in the republic of Albania", See Article 34 of the law no.98/2016 "On the organization of judicial power".

<sup>99</sup>According to the law 98/2016 "on the organization of judicial power", article 42."

<sup>100</sup>They will prepare procedural documents necessary for the trial/required for trial upon the judge's request. In addition, they will make legal inquiries and prepare written opinions about legal and procedural problems related to the trial.

<sup>101</sup>The HJC will also prepare regulations on the procedure and criteria for how cases are to be allocated by lot, regularly assess the workload of legal assistants and shall ensure an appropriate number of Legal Assistants for each appeal court.

<sup>102</sup>Articles 43, 44 of the law no.98/2016 "On the organization of judicial power"

certified copies of court acts, all other acts that require the signature of the person that has issued them.

#### **d. Concluding remarks on the role of Legal Advisors and Legal Assistants**

Albanian law has different categories of staff for different purposes: legal advisors and legal assistants respective to the level of jurisdiction (high court, appeal court) for legal support to the judge, judicial secretaries and chief secretaries for procedural and supervision work and Chancellors dedicated to the management of courts. Such a delineation of skill sets/prepares the ground for a well-balanced and efficient system. However, this may only be achieved through sufficient recruitment in each category. Indeed, decreasing the judge/assistant ratio could lead to roles and tasks in each category being confused, as courts would look for ways to cope with the workload using all available resources. The SEJ I recommendation 8<sup>103</sup> required the regulation of standard selection procedures, training, promotion and status of judicial secretaries, suggesting at the same time models for micro working units of the Judge-judicial secretary, with the view to improve their roles and activities. The rationale behind this is to reinforce the administrative and procedural assistance to the Judge<sup>104</sup>. In response to these recommendations, the new law clearly upgraded the status of judicial secretaries as judicial civil servants, by stipulating that they will carry judicial services directly supporting judicial activities.

Though, referring also to discussions made during the meeting of 17<sup>th</sup> October 2018, lack of clear job description for each category of staff, has increased the confusion for the division of respective roles, for example, judicial secretaries often find themselves carrying out tasks that correspond to the profile of legal assistants. This kind of practice is inconsistent with the legal provisions of the law on organization of judicial power, which has clearly provided for judicial secretaries and legal assistants different status, skills and qualifications requirements. The only remedy that could satisfy the urgent need to provide legal assistance to the judges in the 1<sup>st</sup> instance courts is the creation of a position of legal assistants in these courts, similar with courts of upper levels.

Indeed, it appears that European countries that chose to relieve judges of part of their judicial workload by transferring it to non-judge staff did so only at the first instance. By definition, cases coming before the superior courts are of a contentious and complex nature which justify that they be tried only by judges. Consequently, legal staff in these courts will see their tasks limited to providing legal assistance and/or legal advice to said judges, especially if the judge/assistant ratio is low. Indeed the courts of first instance deal not only with contentious cases but also with a broad range of routine cases of non-contentious nature. Therefore, in courts of first instance the need to have the categories of legal assistants is eminent, with the view to release judges from the adjudication of these small, routine cases of administrative nature, and have them being focused more on the adjudication of contentious cases.

The current discussions on the judicial map<sup>105</sup> may include these considerations in the deliberation process, with the intention of creating the equivalent of legal assistants in the first instance courts by establishing the position of legal assistants. This would thus entail recruiting brand new staff. The role of legal assistants in the first instance courts could be reinforced with decision-making powers in

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<sup>103</sup>See footnote 89, page 58, 38,39

<sup>104</sup>For this purpose, was recommended to assess the possibility to introduce the tasks that could be assigned to such personnel units (e.g. preparing of summaries of the facts of the cases, preparing drafts of the reasoning of a judicial decision etc.) and of the specific training that should be provided by the School of Magistrates.

<sup>105</sup>The judicial map of court system will be reviewed based on new methods by making use new legal criteria and principles provided by law for the territorial distribution of courts, a competence of High Judicial Council jointly with the Ministry of Justice. Currently, support in this aspect consists of the definition of new methods based on the analyses of measurable indicators. However, the process of decision making has stalled pending the creation of the High Judicial Council and High Prosecutorial Council. Immediately these institutions are established, they will have to decide on the new judicial map.



specific non contentious or routine cases, in order to relieve judges of part of their workload. They would perform these tasks in a fully independent manner according to principles listed in the EUR's *White Paper for a Rechtspfleger and Greffier for Europe*, by adopting accordingly new methods for their training and providing new salaries. Having the information and computer technologies developed in a state-of-the art system would support such delegation of duty to the legal staff, with great benefits in terms of time management.

In view of the above considerations, it is worth mentioning as well that there seems to be consensus and general agreement with representatives of Court presidents and legal staff from Albanian courts, on allocating more legal tasks to non-judge staff. However, such tasks being of a legal nature should be entrusted only to the legal staff implying only to the legal assistants and excluding the idea of placing these tasks to management staff, like the Chancellors, who specialize in the management of courts and are recruited accordingly. A more detailed description of the current tasks may only be established through dialogue with all categories of staff. Such talks could lead to detailed job descriptions for each position, with a view to harmonizing practices<sup>106</sup>. Considering these elements and the current Albanian legal framework, it is possible to introduce Legal Assistants with re-enforced roles and tasks that confer them with independent decision-making power not only in courts of first instance but also courts of appeal and high court, particularly pertaining to:

- a) Non-contentious matters (*family law and custody, inheritance, land and trade registries, sealing of evidence, electoral proxies*)
- b) In criminal matters (*enforcement of penalties, leave to appeal out of time (or beyond the statute of limitation), stagger financial penalties, public prosecution*)
- c) In civil matters (*paying orders, auction of buildings, insolvency proceedings, taxation of costs, sharing proceedings, forced enforcements, hearing witnesses, judicial cooperation, controlling experts, restoring the applicant's rights*)

In addition, it is possible to define more precisely the tasks pertaining to Legal Advisors in the High Court, and Legal Assistants in the appeal courts. The following tasks may be considered as a basis for discussion with all court professionals:

- Signing the execution orders and supervision of enforcement of final judicial decisions
- Drafting pre-trial and hearing reports
- Preparing the deliberation meeting for the judge, including preparing proposals that the judge could present at said meeting
- Participating in the deliberation meeting
- Preparing draft rationale
- Preparing draft decision
- Contacting other legal support staff for other judges on the panel about making proposals for the draft decision
- The examination of the viability of single judge cases by either declaring them inadmissible or authorising them for trial (similar to the non-judge reporter of ECtHR)<sup>107</sup>.

In dealing with the roles of the Legal Assistants and Legal Advisors, other efforts need to be put forward with a view to correct the disparities in individual practice, which in the courts of appeals, such discrepancies may create misunderstandings and tensions that are liable to affect court work. In addition their work needs to be more visible, by making their name appear in the case file. This also facilitates the assessment of their work and avoids issues of accountability. In principle, accountability should consist of judges signing the opinions drafted by judicial assistants immediately on receipt. The Slovenian model is a good example, in which letters prepared by the Legal Assistant and submitted to

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<sup>106</sup>Standardization may also be achieved through the publication of templates for the most common types of court acts. The future regulations -by means of by-laws- could determine the standard format of legal opinions and templates for draft –decisions (*in case it is deemed necessary for straightforward cases*). It would also be preferable to avoid the fragmentary assignment of cases from one judge to another. This would in turn resolve these discrepancies and prevent misunderstandings and tensions that are liable to affect court work.

<sup>107</sup>Article 24 of ECHR

the Judge are signed by both. Further bylaws may provide for the signature of legal opinions by legal assistants.

Additionally, there was support for the idea of generally harmonising Legal Assistants<sup>108</sup> practices with those of the Legal Advisor in the High Court, which appear to be more uniform and robust. Referring to the practice of Legal Advisors, the online case management system allows the integration of the Legal Advisors' opinion, via an attachment to decisions published for each case. Legal Assistants in appeal courts would thus prefer this model as the right one with the view to increase the visibility of their work as well as their accountability. In this regard, Legal Assistants seem willing to consider the High Court rules of practice as a basis for discussion of their own tasks.

## V. Recommendations

### 1. Recommendations on the role of Court Presidents

**Recommendation 1:** Considering the power of Court President over the evaluation of judges, legal and transparent safeguards should/could be put in place to ensure impartiality and factual based assessment of judges by the Court President, in respect of the principle of internal judicial independence.

**Recommendation 2:** If Court Presidents will be involved/play a role for setting out priorities necessary for the differentiation of most complex cases, which are to be handled by judges, then guidelines with pre-established criteria based on the cases' urgency, priority, weight (in line with the ECHR standards<sup>109</sup>), need to be put in place.

**Recommendation 3:** Pre-established criteria (based on the nature of cases, specialization required) need to be in place for the case assignment, whenever the Court Presidents are involved in the procedure, i.e. assignment of "*the most urgent cases*" to judges<sup>110</sup>, assignment of cases to legal advisors or judicial assistants etc. In carrying out these tasks it is important that Court Presidents take decisions strictly on the basis of pre-established criteria that clearly indicate which category of cases falls in "*the most urgent cases*"<sup>111</sup> also following a transparent procedure.

**Recommendation 4:** Court Presidents are encouraged to use meetings with judges to promote legal certainty and sharing knowledge about legal issues and the jurisprudence of the court. These meetings could also benefit from peer review of cases between colleagues, having thus organized within sections "quality groups" of judges where they discuss on decisions about certain cases. Additionally, Court Presidents may invite in the general meeting of judges, other colleagues from the upper courts (appeal court, high court), encouraging discussions *fora* of judges on their own rulings, decisions of another court of the same level, decisions of the appeal courts, or unified decisions of the High Court, decisions of the Constitutional Court, even decisions of the international courts. Subject of discussion could be in particular the quashed or overruled decisions. These discussions could be organized also in the form of round tables, seminars etc.

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<sup>108</sup>Judicial assistants in the Tirana administrative appeal court is the term used in Albania equivalent to Legal assistants

<sup>109</sup>Flexibility can also help to avoid unreasonable delays caused by transfer of judges (CEPEJ (2006)15, p. 30)The regulation should clearly define the priority cases based in the criteria set out by ECtHR (*including applicant's state of health, exercise of parental authority, concession of alimony, the applicant's age, dismissal proceedings-employment cases, length of prison sentence served by the applicant, individual civil status capacity, investigation of complaints of assaults by law enforcement officers, compensation of damages suffered by the applicant etc*).

<sup>110</sup>At the beginning of year, according to a list that is updated whenever needed by alphabetical order on the basis of surname

<sup>111</sup>See article 2 of the law no.98/2016 "On the organization of judicial power" where urgent case is defined a case which has to be decided within a period shorter than 14 days from the date of its registration in the court.

**Recommendation 5:** The Court Presidents should/could attend a specific initial training program, and then periodic specific seminars on issues that may emerge as training needs. Court Presidents from the various courts may thus get together periodically to share ideas, discuss issues at stake, propose seminars, workshops and study tour to improve their know-how on court management. It is recommended that, based on the topic to be addressed, some training initiative could be carried out with Court Presidents and other court personnel (e.g. chancellors)<sup>112</sup>.

## 2. Recommendations on the role of Chancellors

**Recommendation 1:** Chancellors after having first consulted the Court President are competent for the supervision of work carried out by judicial civil servants and also have exclusive competence for the supervision of the court employees. The future rules of procedure may entitle Chancellors for the organization of meetings on periodical bases with court staff to channel the communication with each category of staff, and strengthen the co-operation between the court departments.

**Recommendation 2:** Based on the general directions of High Judicial Council the Court Council may authorize Chancellors to hold regular meetings with court users, provided they are key players for the management of court services. The governing rules may indicate the relevant users (litigants, lawyers, public prosecutors, probation officers, interpreters, experts, child protection board, the media), and the scope and objectives of these regular meetings, as the following:

- Discuss the improvement of judicial services
- Receive complaints of court users that concern to the access in the legislation, court judgments, and legal texts via free internet websites and on the minority language, and reflects them in the priorities of the court' management strategies
- Ensure rapid interpreting service
- Provide update information on the functioning of the court
- Adopt a charter on court users' rights and obligations
- Provide information desk for visitors
- Ensure the transparency of costs /fees for the court proceedings
- Ensure treatment with dignity during the court proceedings
- Increase the efficiency of the public complaint procedure
- Evaluate public trust on regular bases and make public the results
- Provide access to information for the court users on the stage of proceedings, disciplinary proceedings etc.

**Recommendation 3:** Based on the general directions of High Judicial Council, Chancellors may play a role for the administration of information related to court performance and its use for internal and external purposes. More concretely, they may supervise the recording, collection, analyses and publication of judicial statistical data, and grant the due access on these data whenever it is requested by High Judicial Council and Ministry of Justice. Also they may administer the information collected based on other sources such as: recording of meetings with judicial civil servants and court employees, court staff' satisfaction evaluation, judicial satisfaction surveys, recording of meetings with court users etc. All information collected could be continually analyzed and used for the purposes of monitoring and improving court performance according to statistics. The results could also be shared with the Ministry of Justice and the HJC in the courts' annual reports. In consultation with Court Presidents, Chancellors also may decide on the classification of information intended for the internal use of the court staff only and the information that could be shared and become public for the use of external stakeholders, including parties and the general public.

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<sup>112</sup>Trainings could be also joint gatherings among court presidents and chancellors.

**Recommendation 4:** In consideration of the acute need for the active management of the duration of judicial proceedings, only if and when the electronic case management system will be functioning normally for the production of statistical data in real time, Chancellors may monitor the timeliness of the intermediary steps of proceedings, with a view to detecting any delays and signal them to the responsible actors (i.e. the judge, lawyers etc). Chancellors however, could not be held accountable for delays caused by reasons (e.g. duration of cases) or actors (e.g. judges, lawyers) over which they have no control. On this account, courts need to develop their Electronic Case Management System in a state of art IT technology that allows for the retrieval of data on the most important steps in the judicial process, such as:

- instigation of proceedings
- service of process upon the other party
- receipt of the response by the other party
- making of procedural orders by the court
- the use and timing of preparatory conferences or preliminary hearings
- beginning of the trial stage<sup>113</sup>
- existence and duration of technical expertise
- duration and number of hearings on the merits of each case
- conclusion of the trial stage
- decision-making in the first-instance<sup>114</sup>
- announcement and delivery of the first instance decision to the parties
- launching of legal remedies (appeal etc.) and their impact on the duration of the proceedings
- appellate hearings and decisions
- preliminary decisions and orders in higher courts
- recourse and results of the appellate and other proceedings<sup>115</sup>
- other extraordinary stages and remedies<sup>116</sup>
- effectiveness of the enforcement of court decision.

**Recommendation 5:** In its future decisions, the Council of Ministers may consider granting Chancellors a salary consistent with their increasing responsibilities. This would allow courts and chancellors themselves to easily accept their leadership functions on the management of court. A salary system based on rank and not on the occupied position could also be considered to foster a quality career public service.

### 3. Recommendations on the role of Legal Advisors and Legal Assistants<sup>117</sup>

**Recommendation 1:** Aiming for the Legal Assistants the facilitation of their work' assessment and ensure effective mechanisms for their accountability, it could be suggested to give more visibility to their work, for example by mentioning in the judgment the name of the legal assistant who prepared the draft or by having them co-sign the administrative documents they prepared (e.g. letters to parties or authorities) with the judge.

**Recommendation 2:** Considering the existing issues related to the work practices of Legal Assistants in the appeal courts, more efforts could be put forward to harmonise their tasks with the work practices of Legal Advisors, which seem to be more robust and uniform. Therefore the tasks currently performed

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<sup>113</sup>First oral hearing on the merits

<sup>114</sup>Preliminary decisions, partial judgments, final judgments

<sup>115</sup>e.g. reversal of a decision or sending the case for re-trial

<sup>116</sup>e.g. re-opening of a case or constitutional review

<sup>117</sup>The term Legal Assistant is the European term used here *in abstract* to equivalent to the Legal Advisors in the High Court, the Judicial Assistants in the Appeal courts (general jurisdiction/administrative), and sometimes capturing accordingly the notion of legal assistants that could be suggested in the future for the first instance courts.

by Legal Assistants and legal advisors could be harmonised through the publication of detailed job descriptions for each type of position. The following tasks could be considered:

- Signing execution orders independently
- Drafting pre-trial and hearing reports
- Preparing the deliberation meeting for the judge, including preparing proposals that the judge could present at said meeting
- Participating in the deliberation meeting
- Preparing draft rationale
- Preparing draft decision
- Contacting legal staff who support other judges on the panel about draft proposals

**Recommendation 3:** Considering that Legal Assistants work with different judges (up to 13) there is need to correct issues coming from the fragmentation of their working methods which are then reflected in their daily routine. To fix this problem there is need to consider reintroducing the rule according to which each Judge must work with one Legal Assistant.

**Recommendation 4:** Consider having legal assistants in courts of first instance as the only remedy to fix a fair distribution of the court workload, meaning that judges would be gradually released from the adjudication of routine cases of technical nature, and there would be clear tasks for judicial secretaries and legal assistants accordingly.

**Recommendation 5:** The measures advocated by the Council of Europe's Committee of Ministers Recommendation n° R (86)12 and the EUR White Paper for a European *Rechtspfleger* should/could be implemented. Transferring independent decision-making power in the following areas could be considered if they fall within the remit of the courts:

- Family matters: guardianship, decisions about civil status, trust administration of children
- Inheritance
- Associations
- Trade Registry
- Insolvency proceedings
- Civil registry
- Payment orders
- Legal aid
- Legal information (e.g. to the victims of crimes)
- Decisions on court and lawyers' fees
- Appointment of arbitrators
- Decisions relating to expert reports (appointment, monitoring, payment of fees...)
- Decisions on inadmissibility
- Enforcement
- Mediation

**Recommendation 6:** Team building concepts need to be encouraged between judges and legal assistants in order to strengthen the judicial team and improve collective efficiency.<sup>118</sup>

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<sup>118</sup>See Joint Project on "Strengthening the Court Management System in Turkey" (JP COMASYT) "Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States, Marco Fabri, 18 September 2013, pages 34-40.



## Annex 1 – Albanian Legal frameworks for the roles of Court Presidents<sup>119</sup>

**The selection and appointment process of Court Presidents in Albania:** According to the law in its present form<sup>120</sup>, the High Judicial Council advertises the vacancy, determines whether candidates meet the recruitment criteria for the position of Court President, assesses and ranks the applicants based on a) the results of two previous evaluations b) referring to relevant professional experience c) their seniority as magistrates. The Court President of a court or a prosecution office with the right to re-election may apply for a second term. Peers need not be consulted during the selection for judges of first instance courts and appeal courts<sup>121</sup>. A prospective Court President appointee has the right<sup>122</sup> to appeal against a decision about the assignment to a position, but the appeal does not suspend the implementation of the decision.

**Skills required becoming a Court President:** A magistrate<sup>123</sup> can be promoted<sup>124</sup> to the position of Court President of a court or Prosecution Office of First Instance or appeal, if she/he has: Seven years' experience as a magistrate (four years at the same level, including experience as a seconded magistrate); Organisational and management skills; Has not been a member of a council, in the previous three years. The following are other criteria that could be relevant to the promotion of magistrates to the position of Court President: a) experience as a deputy Court President, press magistrate or member of the HJC b) inspector at the office of the High Justice Inspector, c) insights into certain organisational set-ups and management styles for example. Education and training in management is not an explicit requirement for becoming Court President.

**Term of office:** In Albania the term of office for the Court President is 3 years with a limit of only one renewal of contract in the same court<sup>125</sup>. The Court president of High court has no right to re-election<sup>126</sup>.

**Remuneration:** In Albania the magistrate receives a further 10% of their initial gross salary if they take on the function of Court President of a court or a prosecution office. In addition, a magistrate, the Court President of the High Court and the General Prosecutor receive a supplementary state pension and other benefits. The salary and other benefits of a magistrate cannot be reduced.

**Removal:** In Albania, the Court President of the court can only be dismissed as a result of a disciplinary offence for incorrect use of the case management system, or failure to notify the HJC when there is a conflict of interest for a magistrate.

**Performance evaluation of Court Presidents:** The law makes the Court President of the court subject to performance evaluation according to leadership organisational, and communication skills. The High Judicial Council then will decide how to organize the evaluation, based on the self-appraisal of Court Presidents and other sources.

**The end of mandate for Court Presidents:** The law in Albania<sup>127</sup> provides that a Court President's mandate shall end immediately upon the expiry of the period for which s/he has been appointed. Otherwise, it will conclude upon the end of their status as magistrate or upon applying for the position of High Judicial Council' member. The decision made by the HJC in this respect assumes that the Court President continues the function as magistrate at the relevant court or prosecution office.

<sup>119</sup>Law 96/2016 "On the status of judges and prosecutors in the Republic of Albania"

<sup>120</sup>Article 52 of the Law 96/2016

<sup>121</sup>However, their opinion will be required by vote for the election of Court President of the High Court during the general meeting of court judges. The same goes for the deputy Court President at all levels of jurisdiction, who gets elected by vote during the general meeting of judges.

<sup>122</sup>According to Articles 52 and 41/2-4 of the law 96/2016

<sup>123</sup>Article 2 of law 96/2016 defines that "Magistrate" means a judge, except for judges at the Constitutional Court, a prosecutor and the chairpersons

<sup>124</sup>According to Article 47 of the law 96/2016

<sup>125</sup>Article 52 of the Law

<sup>126</sup>Article 51 of the Law

<sup>127</sup>Article 63 of the Law 96/2016

## Annex 2 - Albanian Legal framework for the status and role of Chancellors<sup>128</sup>

**The selection and appointment:** When there are vacant chancellor positions, the HJC is responsible for initiating a recruitment procedure to appoint candidates<sup>129</sup>. The candidates for Chancellors shortlist are to be selected from the School of Magistrates which decides based on the following: (1) their ranking on the list of candidates; (2) any specialist knowledge or experience (3) total years of professional experience in the justice sector or in management positions. Decision is published on the HJC's official website, and all the candidates who are not selected shall have the right to appeal against the HJC's decision at the relevant court where the vacancy is opened.

**Skills required:** The law/regulation has highlighted that Chancellors' qualifications need to be compatible with the general requirements for admission into the civil service. The candidates should first meet the following criteria<sup>130</sup>: (1) have a Masters' level/postgraduate degree in law or economics (2) have no less than eight years' professional experience, including at least three years in a management position or at least five years in the judicial system. The High Judicial Council will adopt detailed rules for any additional criteria and procedures according to the Chancellor's job specifications (Art.83).

**Term of office:** The law does not provide the term of office for Chancellors but indicates that the termination of the Chancellors relationship ends by decision of the High Judicial Council based on the criteria of the law "On civil servants", including also other criteria provided in article 80 of this law when they may be appointed in other duties<sup>131</sup>. Whereas, the Council of Ministers is responsible<sup>132</sup> for determining the duration of their work, holidays and leaves, overtime work and its compensation, as well as the compensation of expenditure for the performance of duty outside the working place<sup>133</sup>.

**Remuneration:** The High Judicial Council shall determine by vote the three categories of chancellors, in compliance with the workload and level of each court. The highest level salary for a Chancellor is equal to the "salary per function" of a Director of a Directorate-General, the average level is equal to the "salary per function" of a Director of a Directorate and the lowest level is equal to the "salary per function" of a Chief of Sector at ministry level. The Council of Ministers shall decide on more detailed rules regarding salary structure and progression, as well as overtime and reimbursement of any additional costs incurred whilst carrying out professional duties beyond the work environment. Equivalent civil service practices are to be taken into account.

**Removal:** The Court President is responsible for initiating disciplinary proceedings against Chancellors and the High Judicial Council is authorised to determine disciplinary sanctions against them (Art.69). The list of possible disciplinary offences for chancellors is based on those used for judicial civil servants. Throughout the disciplinary proceedings, they will have the right to contest the allegations, as well as the right to appeal against the eventual decision (Art.78).

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<sup>128</sup>Law 98/2016 "On the organization of judicial power"

<sup>129</sup>Art.58

<sup>130</sup>Art 55-56

<sup>131</sup>Art 80 of the law provides i.e when they are appointed in the position of minister, deputy minister, official appointed by the Assembly, by the President of the Republic or the Council of Ministers or cabinet functionaries.

<sup>132</sup>See article 64, point 4 of the law

<sup>133</sup>This practice is the same in most European countries, apart from Germany where the role of court manager is a lifetime appointment and in Italy, where the set term of office is four years.



**Performance evaluation of Chancellors:** The performance of Chancellors shall be periodically evaluated at least every two years, starting from the date she/he takes up their duties. They will be assessed based on their professional knowledge and technical skills, job commitment, and their work ethic. The Court President shall notify chancellors when the evaluation/assessment process has started and request him/her to write a self-evaluation<sup>134</sup>. The Court President drafts the evaluation report and the Court Council then decides the grade. The Chancellor may only appeal against this decision, if they receive an evaluation grade that is less than 'good'.

### **Annex 3- Albanian Legal framework for the status and role of Legal Advisors and Legal Assistants<sup>135</sup>**

**The selection and appointment:** The High Judicial Council is the authority responsible for appointing the legal advisor and judicial assistants based on a shortlist issued by the School of Magistrates. It is based on any specialist knowledge or experience the candidate might have and their number of years of professional experience in the justice sector or in management positions. The High Judicial Council shall publish the decision and the results on its official website. All candidates shall be notified of the reason for the decision. Candidates who are not selected shall have the right to appeal at the relevant court<sup>136</sup>.

**Skills required becoming a legal advisor:** The admission exam for legal advisors or legal assistants in the School of Magistrates requires that the candidates meet the general requirements for admission into the civil service (art 55)<sup>137</sup>. The non-magistrate legal advisors shall be appointed by the High Judicial Council as regulated by provisions of this Law. The candidate must meet the following criteria: a Masters/postgraduate university degree in law or equivalent in accordance with the higher education legislation; professional experience of no less than 10 years as a senior employee in the judicial or prosecutorial system, in public administration, legal professions, lecturing in law faculties, or equivalent position in the private sector or international organisations; knowledge of the jurisprudence of national and international courts; very good knowledge of at least one language of the European Union Member States; legal writing and reasoning skills; must have no outstanding professional disciplinary action; has written articles and scientific publications in the field of jurisprudence (Article 34)

**Skills required becoming a judicial assistant:** Candidates for the position of legal assistant in the Court of Appeal should meet the following criteria: Masters/postgraduate university degree in law or equivalent in accordance with the higher education legislation; Professional experience of no less than five years, including at least three years in a court-related role (art.56).

**Term of office:** The law does not provide the term of office for legal advisors and legal assistants. The High Judicial Council shall be responsible for the termination of a judicial civil service contract for a legal advisor and legal assistant based on the same criteria provided on the law "On civil servant" (Art.80). Whereas, the Council of Ministers will decide on the rules for the duration of their work, holidays and leaves, overtime work and its compensation, as well as the compensation of expenditure for the performance of duty outside the working place.

**Remuneration:** The Council of Ministers shall decide the following regulations on the salary structure and progression for judicial civil servants. Legal Advisors chosen from the shortlist of jurists shall benefit from a salary that is equal to the "gross starting salary" of a court of first instance judge, albeit without the other financial benefits<sup>138</sup>. Upon appointment, legal assistants shall benefit from a salary equal to the "salary per function" of a Director of a Directorate in a Ministry.

<sup>134</sup>Shall describe the activities, identify training needs, suggest improvement to work conditions and measures for his/her professional development, identify weaknesses and strengths in regard to each evaluation criterion

<sup>135</sup>See Law no.98/2016 "On the organization of judicial power"

<sup>136</sup>Law no.115/2016 "On Governance Institutions of the Justice System in the Republic of Albania"

<sup>137</sup>According to the Law no.152/2013 "On Civil Servant" and the special requirements of this law

<sup>138</sup>In accordance with the Law 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania"

**Removal:** The Court President is responsible for initiating disciplinary proceedings against legal advisors and legal assistants, and the High Judicial Council is authorised to determine disciplinary sanctions against them (Art 69) based on the law “on civil servant”, but also taking into account the criteria provided in Article 75 of this law. Throughout the disciplinary proceedings, legal advisors and legal assistants will have the right to contest the allegations, as well as the right to appeal against the eventual decision (Art.78).

**Performance evaluation:** The Court President is the relevant authority *to propose disciplinary sanctions* for legal advisors and legal assistants<sup>139</sup>. The High Judicial Council decides based upon this proposal and the Court Council does the same for the other judicial civil servants.<sup>140</sup> The judicial civil servant concerned as well as the relevant authority shall both have the right to appeal any disciplinary outcome (art.78).The performance of judicial civil servants will be periodically evaluated at least every two years, based on professional knowledge and technical skills, commitment, and work ethic. The right to appeal may only arise if an evaluation grade is less than ‘good’.

#### Annex 4-Table on the role of Court Presidents in the framework of CCJE (Opinion 19)

Role of Court Presidents	CCJE Opinion no.19	Regulation in Albania	European practices
<b>Selection and appointment</b>	<p>Procedures for the appointment of Court President and judges should follow the same path.</p> <p>It would be preferable that in the process judges could be involved, taking the form of a binding or advisory vote</p>	<p>The High Judicial Council deals with:</p> <ol style="list-style-type: none"> <li>1) announcing the vacancy</li> <li>2) assesses whether the candidates meet the promotion criteria for the position of Court President</li> <li>3) Ranks the applicants based on the results of: a) two previous evaluations b) the specific professional experience; c) and the seniority as magistrates.</li> </ol> <ul style="list-style-type: none"> <li>- The right of appeal against a decision on assignment to a position is guaranteed</li> <li>- The competent court shall decide within two weeks as of the appeal day and its decision shall be final</li> <li>- The appeal does not suspend the implementation of the decision</li> <li>- The Court President of a court or a prosecution office with the right to re-election may apply for a second term.</li> <li>- The opinion of the peer judges is not required during the selection for the judges of 1<sup>st</sup> instance courts and appeal</li> </ul>	<p>From the European practices,</p> <ul style="list-style-type: none"> <li>- the right to appeal of these decisions has proved possible in theory but very rare in practice</li> <li>- Exception of Spain which had about 30% of "appealed" decisions and Italy.</li> <li>- In Norway they can only request for compensation damages.</li> </ul>

<sup>139</sup>The Court President shall keep legal staff informed of when the evaluation/assessment process has started and request him/her to write a self-evaluation. The Court President of the court shall arrange a draft evaluation report and notify legal assistants of their right to a) access the evaluation file and b) to object to the findings of the report. The Court Council will then decide the evaluation grade<sup>139</sup> and will inform the legal assistants.

<sup>140</sup>The provisions on disciplinary regulation as set out in the Law/regulation “On Civil Servant” shall also apply mutatis mutandis to judicial civil servants, unless otherwise provided by this Law (art.69).

		<p>courts</p> <ul style="list-style-type: none"> <li>- Exception is the election of Court President of High Court by the vote of the judges in the general meeting of the judges of the court.</li> </ul> <p>The same goes for the deputy Court President at all levels of jurisdiction, who gets elected by the voting in the general meeting of judges.</p>	
<b>Skills</b>		<p>Promotion in the position of Court President :</p> <ol style="list-style-type: none"> <li>1) Seven years of experience as magistrate (four years at the same level, including the experience as a seconded magistrate)</li> <li>2) In the previous three years has not been a member of a council.</li> <li>3) Experience in leading positions in the public or justice administration, or experience as member of a Council, which has expired at least three years ago;</li> <li>4) Insight in different organizational set ups and management styles, as a magistrate in a mobility scheme or inspector at the Office of the High Justice Inspector.</li> </ol>	<p>Examples in European countries:</p> <ul style="list-style-type: none"> <li>-In Norway and Spain apply a certain seniority</li> <li>-in Germany applies the managerial expertise in previous positions, flexibility, self-criticism, capacity to address criticisms,</li> <li>-in France applies the legal knowledge, managerial attitude, dialogue capacity.</li> </ul>
<b>Term of Office</b>	<p>Finding an adequate balance for the term of office of Court President,</p> <ol style="list-style-type: none"> <li>1) <b>Perspective of a long term</b> :enables the Court Presidentto gain sufficient experience and offer better services to the court users</li> <li>2) <b>Perspective of a short term: is</b> a way to avoid the routine that could harm the innovation of new ideas.</li> </ol>	<p>In Albania the term of office for the Court President is 3 years with the right of renewal only once.</p>	<p>In European countries:</p> <p>The term of office for Court Presidents of the Court varies within a wide range:</p> <p>From 2 to 7(years), where a renewal is possible after a new competition.</p>
<b>Performance evaluation</b>	<p>Performance of Court Presidents</p>	<p>The Court President of the court is subject of performance evaluation according to their:</p>	

	<p>is subject to evaluation in the <u>same way as the work of ordinary judges</u>, with all the necessary safeguards to be respected.</p>	<p>1) leadership and organizational skills, 2) communication skills.</p> <p>The High Judicial Council decides for the grade of evaluation</p> <p>Decision is based on the self-evaluation of Court Presidents and other sources.</p>	
<b>Remuneration</b>	<p>Extra salary for the position of Court President depending on the court level and sometimes size.</p>	<p>The magistrate receives 10% additional salary above his initial gross salary</p> <p>In addition the Court President of the High Court and the General Prosecutor shall receive a supplementary state pension and other benefits.</p> <p>The salary and other benefits of a magistrate cannot be reduced.</p>	
<b>Removal</b>	<p>Safeguards of <i>irremovability</i> from office should apply equally for the judge and the Court President of the Court.</p> <p>Court President can be removed only after a disciplinary proceeding for poor managerial performance e.g. Turkey, Hungary, and Netherland</p>	<p>The Court President of the court can be dismissed as result of a disciplinary liability :</p> <p>1) in case of failure to ensure the use or the mode of utilizing of the case management system, 2) Failure to notify the HJC when there is a case of incompatibility of a magistrate with the duty.</p>	
<b>End of Mandate</b>	<p>The pre-term removal of Court President</p> <p>Exception from the general rule</p> <p>Procedures should be transparent excluding any risk of political influence that might come from the participation</p>	<p>The mandate of a Court President shall end immediately upon the expiry of the period for which he/she has been appointed. Otherwise,</p> <p>1) the mandate of the Court President ends upon the ending of his status as magistrate 2) or upon applying for the position of a Council member</p> <p>HJC is the competent authority to decide in this respect.</p> <p>The Court President continues the function as magistrate at the respective court or prosecution office.</p>	

	in this process of executive authorities, e.g. the Ministry of Justice.		
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## Annex 5

<b>Workshop “Categorisation of roles for the Court Presidents, Chancellors, and legal advisors/assistants in the Albanian courts”, 14<sup>th</sup> November 2017</b>	<ul style="list-style-type: none"> <li>- <b>Feedback from the discussions with the Chairpersons and chancellors of courts (1<sup>st</sup> instance, appeal courts and administrative courts)</b></li> </ul>
<p>Moderators: Mr. Marko Fabri and Mr. Jon Johnson , Mr. Vivien Whyte</p> <p>Mrs. ErjonaHaxhia, CEPEJ national consultant</p> <p>Mrs. BlerinaBulica, CEPEJ national consultant</p>	<ul style="list-style-type: none"> <li>- New law has changed the competences of the Chairperson</li> <li>- Most of the former competences has been transferred to the Court Council, which is chaired by the chairperson anyway</li> <li>- Some other competences has been transferred to the High Judicial Council</li> <li>- The power has been centralized and concentrated to the HJC</li> <li>- The management of human resources will be decided by the HJC which will determine the number of the court staff, judicial and non judicial staff</li> <li>- The function of judicial assistants beside the Appeal court used not to be regulated properly, as they lacked a job description</li> <li>- They used not to prepare opinions for the decision making of judges, but now with the new law this situation can change</li> <li>- Therefore it is crucially important to be determined and properly defined the functions and the tasks of the unit for the legal service beside the appeal courts</li> <li>- The role for the unification of rules of practices used to be of Ministry of justice but now the new law has transferred this competence to the HJC</li> <li>- In this framework HJC has to adopt standards formats for use of all courts in relation to the administration and procedural aspects of courts activity</li> <li>- Thus it is important to assist HJC with an orientating document on which could be the right chronology for actions to be undertaken</li> <li>- Worth emphasizing is the fact that the</li> </ul>

Chairperson will decide on the status of judicial civil servants

- However, the Court Council plays a decisive role as well, which is very convenient since it saves the Chairperson from an overburden of responsibilities
- One suggestions could be that setting up the plenary meetings for a smaller group of court judges, rather than all the judges of the court would be much more effective and productive
- These groups could be formed by the head of sections that assume the major responsibilities for the organization of their sections
- The chairperson of Tirana district court has adopted new rules of practice which was entered into force in 2017
- Concerning the CMS, the current one ICMIS is not functional and no recommendation for resuming its administration would be welcomed, otherwise a new CMS system will be set out
- Major managerial roles have been transferred to the Court Council (budget, human resources, CMS, case assignment, court divisions and sections etc)
- The role of the chancellor as member of Court Council is not decisive but rather is influencing in this decision making
- Some tasks (*of administrative-managerial nature*) should be delegated to the chancellor such as the management of environment for the parties attorneys or court security matters
- Many tasks assigned to the chairperson should be transferred to the chancellor, as for e.g matters of the court security, the general meeting with the judicial civil servants etc
- Should be born in mind although that before the legal changes, the administrative court staff including the chancellors did not have any training so far, different from the judges
- The office of MoJ on statistics was a complete failure which has changed by the new law; now on it will be the HJC that will monitor the judicial statistics
- Until now due to lack of the right technology, the current CMS was incapable to produce data, therefore it is important to replace the manual

data with electronic ones

- The court decisions on particular cases or those in the counseling chamber could not be integrated within the CMS
- Should be generally accepted that ICMIS is a total failure and Ark-it should be the one that needs to be unified in all the courts but also in state police offices, or prosecution offices
- The new amendment of the CPC has determined the time limits for the reasonable duration of judicial proceedings at each level of jurisdiction, which requires that the courts must be equipped with the right number of judge and non-judge staff to afford the yearly workload
- The 1<sup>st</sup> instance courts have no unit for legal service like the appeal courts and supreme court have
- The distribution of human resources should be consistent depending on the workload and population
- There are many non contentious cases such as requests for the execution orders which require a decision within 5 days, and take a large place on the workload of the court (in 2017 there were registered 14,000 requests)
- MoJ has been asked to remove these requests from the court' jurisdictions
- These cases could be dealt by the chancellor instead of judges by themselves
- Judicial secretaries of the 1<sup>st</sup> instance courts have no legal tasks, therefore their job description should be upgraded similar to the judicial assistants
- There is need to establish an office for the statistics within the court' structure, and hire statisticians for the collection and analyses of judicial statistics
- Judicial statistics is crucially important as a medium to monitor the problems and find solutions
- The role of judicial functions is better to be transferred to legal advisors or judicial assistants rather than to chancellors, since it would create a confusion on the division of roles
- The chancellor has administrative competences but could have managerial competences as

	<p>well, such as the management of hearings, delegation of the budget assessment, workload of the court and judges (the law does not provide these competences but the HJC can delegate these tasks by way of interpretation)</p> <ul style="list-style-type: none"> <li>- the fair distribution of human and financial resources with a much lesser cost, is the prime factor calling for the improving the balance of legal tasks to the role of legal advisors, judicial assistants and judges</li> <li>- Focus should be placed on the case management system and the IT system as relevant to the time management and costs of the court proceedings</li> </ul>
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## Annex 6

<b>Main results from the meeting organized in Tirana, as of 17<sup>th</sup>October 2018 “Categorization of the roles of Court presidents, chancellors and legal assistants”</b>	<b>Feedback from the discussions with the Chairpersons and chancellors of courts (1<sup>st</sup> instance, appeal courts and administrative courts)</b>
<p>Moderators: Mr. Marko Fabri and Mr. Vivien Whyte  Mrs. Laurela Muca, Project Manager  Mrs. Blerina Bulica, CEPEJ national consultant</p>	<ul style="list-style-type: none"> <li>- The assignment of cases to judges for the most urgent cases should take into account the priority cases according to ECtHR case law</li> <li>- The volume of cases assigned to judges should not be determined as a fixed % of cases adjudicated by judges, but instead should fall within a certain margin as to allow more flexibility for the judicial functions of judges depending to a range of factors such as the size of the court, the level of jurisdiction etc</li> <li>- Offer more interpretation of the respective roles for each category in the framework of the legislation based on concrete examples</li> <li>- The role of legal assistants should be reinforced not only in the 1<sup>st</sup> instance courts, but also should be upgraded in the superior levels of jurisdictions (appeal court, high court)</li> <li>- The salary of the chancellor has been connected in the framework of the regulation for the salary of public civil servants, according to three levels of category for chancellors. For each level of Chancellor the salary varies to the equivalent of chief sector, head of department, and head of</li> </ul>



general directorate in the public service. From the other side, the vetting for chancellors requires the conduction of an exam which will be carried by the school of magistrates. The results will be evaluated by the Vetting Commission altogether with their assets and their figure. This provision, has not been made for the magistrates that surpass the vetting, also it does not appear even in the law for the status of civil servants. Therefore, it seems that the approach of salaries according to the civil servants status scheme is not consistent with the other requirements for the confirmation of civil servants in the duty.

- This fact is seen with great concern, especially considering the fact that the roles and responsibilities of chancellors have been increased by law as compared to the former practices. Therefore, they consider illogical the increase of expectations on the role of chancellors if their salaries are to be decreased significantly lower than those accorded to judges.
- Moreover in the law has been provided that the salary of chancellors will be regulated further by the Council of Ministers with the view to provide progressive incentives. It is not clear what is meant by progressive increase of salaries (e.g. higher salaries for judicial civil servants that those provided for the public civil servants?) Considering that the regulation of salaries for the court staff is a matter of administrative nature, having the executive authorities interfere in the decisions of such nature might be considered as are in detriment of the principle of division of three powers:: executive, legislative and judiciary. If there would be some good models of the financial treatment for chancellors would be very welcomed.
- Scandinavian model, each court decides for the salaries of chancellors, in France the financial treatment of chancellors is equivalent with those provided for the public service.
- It would be welcomed if the report clearly indicates who does what, e.g. who has the authority to assigned a judicial secretary to a certain judge
- Relations Chairperson/Chancellor is sensitive at

the current state, and it is quite difficult to imagine that chancellors could decide autonomously on certain issues which before were clear prerogatives of the Chairperson. We would welcome the model of Belgium and Netherland that indicates the role and competencies of Court Council.

- The recommendation on the active role of chancellors for the time management of intermediary steps of proceedings seems quite impossible to be implemented in practice. For example in the Tirana district court the rate of judicial sessions per day is in average 500 sessions/day. Monitoring each of the individual cases is difficult due to issues facing the case management system that is not able to provide data in real time. It is not possible to monitor the time between the sessions. It could only be supervised the summoning of parties, the notification of acts, the defense declarations. Chancellors may play a role in evidencing the postponement of sessions due to negligence of the defense lawyer. In such a case they may only signal the relevant actors with a view to correct the issue for the future arrangement of proceedings. However, Chancellors may not be held responsible for such delays. Issues for the notification of parties charge the judges with the due responsibility according to the law.
- A major issue that impedes the monitoring of intermediary steps of proceedings is also lack of a case management system that is incapable to produce statistical data. In an ideal situation, when the workload per court is low and the CMS produces the statistical data, this role would be very easy to be handled by Chancellors.
- Another issue relates to the competence of chancellors for the delivering of the decision to the judge. The titular delivers the files to the judge based on a letter signed by chancellor. The law provides that chancellors must supervise the delivering of the decision to the judge. However this is evasive as it is not clear what he has to report and to whom?
- Distribution of tasks by chancellors and by judges needs further clarification

- A disclaimer paragraph need to be inserted in the first page of the report to make clear the purpose of the report, in that it is beyond the prerogatives of the SEJ to make recommendations on determining what is to be done by whom. Such power partakes to the High Judicial Council (art 94 of the law on the judicial governance institutions). The report is limited to recommendations whose scope is to orient judicial authorities in making a well informed decision for the preparation of the rules of practice and other relevant strategic documents, policies at national level for the Albanian courts.
- The indication of what is expected to be concretely done by each category of staff, would require an empirical study that is possible only based on an empirical observation in the field of the court staff, reaching plausible conclusions on their roles.