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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES  
(CCJE)**

**QUESTIONNAIRE FOR 2008 CCJE OPINION  
CONCERNING THE QUALITY OF JUDICIAL DECISIONS**

**Reply submitted by  
the delegation of Albania**

## Part I: Preparation of the judicial decision

### Question 1

**Is there a specific model to be followed in drafting judicial decisions?**

In drafting a judicial decision a judge should bear in mind his/her constitutional and legal obligations. First, The Constitution of Albania provides that any judicial decision should be reasoned, and second The Code of Civil Procedure (CPC) foresees that judicial decision should contain an introduction, a descriptive-reasoning and an ordering part. Thus, the legal framework provides for some guidelines that must be followed from judges in drafting the decision.

In addition, judges that have completed the initial training program at The Albanian Magistrates' School have started to apply a uniform practice in drafting their judicial decision. They, in majority of cases, are following a specific model taught to them during the course "Writing and Legal reasoning", which *inter alia* aims to provide the magistrates with the skill to apply uniform principles in drafting the decisions.

**Can each individual judge choose his own style of drafting his decision?**

Courts at all levels, based on international recommendations, and the above mention legal framework, have established a unified practice in drafting legal decisions. Thus, any decisions, as above stated, should be divided in three parts as follows:

- introduction
- descriptive-reasoning
- ordering

This is a model that every judge should follow during the drafting process of a decision.

### Question 2

**Where the court is composed of more than one member, do judicial decisions have to be taken unanimously or a majority decision is equally effective and binding?**

When a case has to be heard and adjudicated from more than one judge in a panel or as the case of The Supreme Court in Civil/Penal or joint-colleges, decisions may be taken both unanimously or in a majority way. A majority decision is equally binding and effective, and judges that are in minority have the right to deliver a dissenting opinion

**In a two or even more member panel, does the president or most senior judge have a second or casting vote?**

None of the Albanian legal provisions provide a case where the presided judge is empowered with a second or casting vote. Even in the case of The Supreme Court, the Chief Justice whether in the role of the Chairman of the Civil College, or in the role of the Chairman of Joint-Colleges, has a voting right equal with that of all the Supreme Court justices

### Question 3

**Do judicial decisions have to deal with all points raised by the parties or their lawyers or is a synthetic or concise approach considered sufficient?**

Under Article 28 of the CPC the court must express its opinion on all the claims presented in the lawsuit, without surpassing its limits, and based on the right and on the principle of impartiality. Thus, courts in delivering a judicial decision should take into consideration and settle all the claims presented by the parties.

#### **Question 4**

**In general terms, how is a first instance judicial decision drafted? (For example, does the decision state first the factual background, followed by the evidence, its evaluation and finally the application of the legal principles to the accepted facts?)**

The Code of Civil Procedure foresees in a relevant provision the elements that a judicial decision must have. Thus, it provides that every decision should contain an introduction, a descriptive-reasoning and an ordering part (Article 310). More particularly, the court should state, in the introduction, the name of the court which has tried the case; the adjudicating body and the secretary; the time and place of the issuance of the decision; the parties, indicating their identity and their position as plaintiff, defendant, third party as well as their representatives; the subject of the lawsuit; the final requests of the parties. While, in the descriptive-reasoning part the court should state the circumstances of the case, as they have been assessed during the trial, and the conclusions made by the court; the evidences and reasons, and the legal provisions on which the decision is based. The ordering part must state what the court has decided, and the party that has the obligation to cover the court's expenses.

**How in general terms is an appeal /supreme court decision drafted? Is the appeal in your country by way of rehearing the case or not?**

Since the above mention provision is foreseen by the CPC, it is binding for the Appeal Courts. The decision of these levels should be drafted with an introduction, reasoning and ordering part, with the elements stated in the previous question.

When the appeal is made before the court of appeals, the latter can repeat, on the request of the parties or on its motion, the whole or part of the judicial investigation, by reading the same acts as in The District Court or by taking new evidences.

When the appeal is made before the Supreme Court by way of recourse, the latter has the right to adjudicate the case only after a hearing legal problems presented by the representatives of litigants. The Supreme Court decision is drafted by stating the factual background, as accepted by the lower courts, claims of litigants' representatives, content of the recourse, and evaluating the application and interpretation of the legal principles and provisions of the accepted facts.

#### **Question 5**

**Is there a difference in the way a judgment is drafted according to the subject matter (civil, criminal, administrative)?**

There is no difference, according to the subject matter, regarding the drafting of a judicial decision.

#### **Question 6**

**Could you describe precisely how the decision is transmitted to the parties?**

Under Article 308 of CPC the court, in complex cases, may deliver to the parties, during the conclusive session, only the part of the decision that settles the case, that is "the court order", and within ten days it should transmit to the judicial secretary the reasoning of the decision, or may postpone the announcement of reasoning of the decision up to five days.

When the parties are present in the courtroom the decision is directly communicated to them by the Court. In case of default a judicial decision is transmitted to the parties in accordance with article 130 and 131 of the CPC. More precisely, in Article 130 it is foreseen that notification is made by the court clerk who has the responsibility to deliver a copy of the act to the person defined as receiver anywhere in the territory of the court's jurisdiction. When the person refuses to receive the notification the court clerk should make the appropriate notes in the writ and, when possible, certifies it with the signatures of two present witnesses.

While, when it is not possible to make the notification in conformity with the above provision, it

should be sent to his/her domicile or residence the receiver or in his/her office or place where he/she exercises handicraft, industrial or commercial activity. In cases when the person could not be found in any of these places, the notification is delivered to a person of the family who has attained sixteen years of age and, when no one of them is present, the notification should be handed over to neighbours who accept to deliver it by hand to the person summoned, to his office or place of work, except when the person summoned is a minor, under sixteen years of age, or does not have capacity to act.

In addition, when it is not possible to make the notification in accordance with latter requirements, it is delivered to the doorman of the dwelling, the office or the place of work. Nevertheless, in all these cases the person who receives the notification should sign the original or its copy undertaking the commitment to deliver it to the person summoned. In the copy held by the clerk of the court it should also be noted the relationship of such person with the person to whom the notice is addressed.

**Is the judicial decision binding only on the specific litigants or does it affect the public in general?**

Every final judicial decision, as provided in Article 451/a of the CPC, is binding between the parties (*inter partes*), for their inheritors, persons who take rights from the parties, for the court which delivered the decision, and for all the other courts and institutions.

**Does your country acknowledge a difference in judicial decisions in personam and in rem?**

The Albanian legal framework does not acknowledge a difference in judicial decisions that have *in personam* or *in rem* effects.

**Question 7**

**How is a judicial decision enforced in your country? Does your country allow for contempt proceedings against a litigant who does not comply with a decision/order of the court?**

In order to enforce a judicial decision the party who won the case (the creditor) should lodge a request in the court who delivered the final decision for the writ of execution. The latter is transmitted to the bailiff who first should proceed on voluntary execution, and in cases when the debtor is unwilling to fulfil the obligations he should proceed on mandatory one.

The Court may decide to expel from the courtroom or to impose a fine of 30.000 leke (250 Euro) on every person who disobey, or holds an unacceptable behaviour toward court's orders during its sessions (Article 168 of CPC)

**Question 8**

**Are judicial decisions handed down/announced in open court? Always or can the public/journalists be excluded - If so on what grounds?**

As a general principle the court sessions are open to public participation. Exception to this principle is allowed only in specific cases, provided by Article 173 of the CPC, where the judicial proceedings can be held behind closed doors. The grounds foreseen in this article are: public morality; public order; protection of classified information or national security; when it is necessary to protect the interest of minor, or private life of the participants and their representatives; when trade, invention secrets are mentioned, publication of which would affect interests protected by law; when the court deems that in particular circumstances public participation may prejudice justices interests.

Nevertheless, in all those the cases the judicial decision must be publicly announced.

### **Question 9**

**To what extent do judicial decisions in your country take into account personal data protection legislation (i.e. publication of litigants' names, other personal details etc)?**

Courts, based on the provisions foreseen in Law No. 8517 dated 22.07.1999 "On personal data protection", and the minimum standards established by The European Case-Law on Human Rights, are bound to take into consideration the personal data of litigants, and to limit their publication whenever it is required by these provisions.

### **Question 10**

**Are judicial decisions available to persons or authorities other than the litigants themselves? If so on what terms and prerequisites?**

Judicial decisions are available not only to the litigants but to the public at large. Every person who is interested to be provided with a judicial decision should make a request, stating the number of the act, generalities of the parties, at the secretary of the court who delivers the decision, and by paying a fee that covers only the cost of photocopy

### **Question 11**

**Are judicial decisions published/available on the internet? If so, are all decisions available or only appeal or supreme court cases?**

Judicial decisions are available on the internet. The Supreme Court publishes all its decisions in the official website <http://www.gjykataelarte.gov.al/>, under the directory "Vendimet e Gjykates". Every person can find The Supreme Court decisions, along with those which have unified the judicial practice since 1999.

So far, district and appeal courts are taking measures to build their official website, in which decisions will be accessible to the public. Some of the district courts have already their website such as The District Court of Tirana <http://www.gjykatatirana.gov.al/>, The District Court of Fier <http://fier.gjykata.info/>, The District Court of Shkodra, <http://shkoder.gjykata.info/>, The District Court of Vlora <http://vlore.gjykata.info/>, The District Court of Kavaja, <http://kavaje.gjykata.info/>.

## **Part II: Evaluation of the judicial decision**

### **Question 12**

**Is a system of evaluation of quality of justice in force in your country?**

The High Council of Justice, based on The Constitution of Republic of Albania, Law No. 8811 dated 17.05.2001 "On the organization and functioning of The High Council of Justice", Law No. 8436, dated 28.12.1998 "On the organization and functioning of judicial power in Republic of Albania"(as amended), has approved Decision No.193, dated 11.05.2006 amended by Decision No.207/2 dated 07.02.2007 "The System of Professional and Ethical Evaluation of Judges", international standards, and evaluation systems foreseen in countries with consolidated democracy, has the competences to make an evaluation of the quality of justice in Albania

The evaluation system in force has been established by taking into account several international acts such as: The Joint-Declarations of Council of Europe's experts on the assessment of the system of evaluation of professional skills of judges, Opinion No. 3 of the Consultative Council of European Judges, comments of The Council of Europe and European Union's experts, and references to the Italian, French, Belgium, Spanish systems of evaluation and professional skills of judges. In drafting the system in force consideration has been given to balance the objective and subjective criteria of evaluation, in order to make an appropriate evaluation bearing in mind the complexity and fragility of judicial activity.

### **Question 13**

**Does this evaluation include/envisage the evaluation of the quality of judicial decisions?**

The System of Professional and Ethical Evaluation includes also the evaluation of the quality of judicial decisions. The High Council of Justice, for this purpose, has approved Decision No. 199/3 dated, 15.09.2006 "On the criteria evaluating judicial activities", which is part of "The System of Professional and Ethical Evaluation". In point 1 and 4 this decision foresees that:

#### **Point 1**

*The effectiveness of the judge may also be obtained by the evaluation of the fulfilment of orientating standards of the qualitative, quantitative and time aspects of judicial activities. These standards may be re-evaluated.*

#### **Point 4**

*The qualitative standard of work implies the quality of adjudications that a judge makes within a calendar year compared with their judicial review performed by higher courts, in which the number of infringing decisions must not exceed the 30 % of appealed decisions.*

### **Question 14**

**If your country does evaluate the quality of judicial decisions by means of a specific system, could you specify the latter:**

- legal basis:

The legal base which legitimates the evaluation of judicial decisions' quality is: The Constitution of Republic of Albania, Law No. 8811 dated 17.05.2001 "On the organization and functioning of The High Council of Justice", Law No. 8436, dated 28.12.1998 "On the organization and functioning of judicial power in Republic of Albania"(as amended), Decision No.193, dated 11.05.2006 amended by Decision No.207/2 dated 07.02.2007 "The System of Professional and Ethical Evaluation of Judges", and Decision No. 199/3 dated 15.09.2006 "On the criteria evaluating judicial activities" enacted by the High Council of Justice

- identification of the agencies that are responsible for the process:

The High Council of Justice is the authority responsible for this process based on Article 45 of the Law No. 8436, dated 28.12.1998 "On the organization and functioning of judicial power in Republic of Albania"(as amended), which provides that:

The High Council of Justice shall make, not less than once in two years, an evaluation of the judges' professional competency, based on the quality, load and swiftness of case-trying, reputation and published legal works, as follows:

1. Very good
2. Good
3. Acceptable
4. Incapable

- parameters that are evaluated:

The High Council of Justice after an implementation of a pilot project on "The System of Professional and Ethical Evaluation of Judges" in the Appeal Court of Durres, District Court of Durres, and District Court of Elbasan made an assessment of the inadequacies of the criteria evaluating judicial activities, and decided to approve Decision No. 199/3 dated 15.09.2006 in which it stresses the fulfilment of the trinomial standards' orientation quantity, quality and time of judicial activity, for the determination of judicial efficiency. More concretely:

**The quantitative standard** of work implies the realization of a minimum work load by the judge within a calendar year as follows:

- a. *The judge of first instance court of the criminal chamber, as a relater, no less than 100 adjudications on criminal cases (crimes and criminal infringements).*
- b. *The judge of first instance court of the civil chamber, as a relater of the commercial section, no less than 100 adjudications on cases concerning commercial disputes.*
- c. *The judge of first instance court of the civil chamber, as a relater of the administrative section, no less than 150 adjudications of cases concerning administrative disputes.*
- d. *The judge of first instance court of the civil chamber, as a relater of the family section, no less than 200 adjudications of cases concerning family disputes.*
- e. *The judge of first instance court of the civil chamber, as a relater of the general section, no less than 120 adjudications of cases concerning disputes among opposing parties.*
- f. *The judge of first instance court for serious crimes, as a relater, no less than 10 adjudications of criminal cases.*
- g. *The judge of first instance court which is not organized into sections, as a relater, no less than 200 cases, criminal (crimes and criminal infringements) and civil concerning disputes among opposing parties.*
- h. *The judge of the court of appeal of the criminal chamber, as a relater, no less than 150 adjudications of criminal cases.*
- i. *The judge of the court of appeal of the civil chamber, as a relater, no less than 200 adjudications of civil cases.*
- j. *The judge of the court of appeal for serious crimes, as a relater, no less than 20 adjudications of criminal cases.*
- k. *The chairperson and the deputy chairperson of the court in the function of a judge, implies the realization within a calendar year of a minimum work load of respectively 40 % and 60 % of the minimum work load of the judge of that court.*

**The qualitative standard** of work implies the quality of adjudications of a judge makes within a calendar year compared with their judicial review performed by higher courts, in which the number of infringed decisions must not exceed the 30 % of appealed decisions.

**The time standard** of work, implies the realization of the adjudications by the judge within a maximum deadline from the day the case was registered in the court as follows:

- a. *Criminal adjudications in the first instance court, no later than 2 months, when it is proceeded on criminal infringements; no later than 9 months when it is proceeded on crimes receiving up to 10 years of imprisonment and no later than 12 months when it is proceeded on crimes receiving, minimally no less than 10 years of imprisonment or life imprisonment.*
- b. *Adjudications of commercial disputes in the first instance court, no later than 6 months.*
- c. *Adjudications of administrative disputes in the first instance court, no later than 1 month.*
- d. *Adjudications of family disputes in the first instance court, no later than 3 months.*
- e. *Adjudications of civil disputes of a general character, no later than 6 months.*





- **efficiency of ministry of justice services in general?**      yes **x**      no
- **quality of legislation?**      yes       no **x**