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ALBANIA

CONFERENCE REPORT
**TOWARD
MORE TRANSPARENT,
EFFECTIVE
AND ACCOUNTABLE
JUSTICE**
DECEMBER 21 2010

ORGANISED BY:

USAID Albanian Justice Sector Strengthening Project - JuST
Ministry of Justice and the High Council of Justice

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The December 21, 2011 conference in Tirana entitled “Toward more Transparent, Effective and Accountable Justice in Albania”, was organized by USAID, in the framework of the Albanian Justice Sector Strengthening Project (JuST), in collaboration with the Ministry of Justice, and the High Council of Justice.

“This report summarizes the ideas, suggestions, difficulties, and challenges that emerged from conference working group discussions, and includes summaries of project actions as a result of this input.”

PART ONE

INTRODUCTION

On December 21, 2010, the United States Agency for International Development (USAID), in collaboration with the Ministry of Justice and the High Council of Justice, organized a national conference “Toward more Transparent, Effective and Accountable Justice in Albania”. The conference had two objectives. The first was to launch USAID’s new five year Albanian Justice Sector Strengthening Project (JuST). The second was to begin discussions with project counterparts regarding the challenges and opportunities

facing the Albanian justice system. The event brought together for the first time Chief Judges and court chancellors from courts all over Albania, representatives of judicial associations, leaders of the national and regional bar chambers, civil society organizations, the media, and a variety of related justice sector organizations and donors.

This report summarizes the ideas, suggestions, difficulties, and challenges that emerged from conference working group discussions, and includes summaries of project actions as a result of this input.

At the onset of the conference, the USAID Albania Mission Director, Joseph C. Williams, spoke of the goals of the five-year JuST project in strengthening the Albanian justice sector.



PHOTO: ROLAND TASHO

“In his address, Williams affirmed the U.S. government’s commitment to continue assistance to strengthen the rule of law and good governance in Albania.”

PART TWO

OPENING REMARKS

The Minister of Justice, Bujar Nishani, the High Council of Justice Deputy Chair, Kreshnik Spahiu, and USAID Albania Mission Director, Joseph C. Williams, delivered remarks.

In his address, Williams affirmed the U.S. government’s commitment to continue assistance to

strengthen the rule of law and good governance in Albania.

Minister of Justice Nishani and the High Council of Justice Deputy Chair, Kreshnik Spahiu, noted the importance of bringing all key players together to weigh in on pressing issues related to the need for more transparent and efficient functioning of Albanian courts.



After the opening session, participants in the conference engaged in discussions in three working groups focusing on emerging issues for the Albanian judiciary, building better relations between courts, and media and civil society, as well strengthening legal education and the legal profession.

“Discussion topics in the three working groups were selected for the purpose of informing project priorities and perspectives that will be used to guide JuST assistance.”

PART THREE

SUMMARY OF WORKING GROUP DISCUSSIONS AND IMPLICATIONS FOR JuST PROJECT

Conference participants were assigned to working groups corresponding to the three components of the project. Discussion topics were selected for the purpose of informing project priorities and perspectives that will be used to

guide JuST assistance. Discussion group moderators were selected from among respected leaders of the judiciary, civil society, and the bar. Each group appointed a reporter who presented the conclusions and recommendations in the final session of the conference.

GROUP I: EMERGING ISSUES FOR THE ALBANIAN JUDICIARY

Moderator: Chief Judge **Ervin Metalla**, Durrës District Court

Facilitator: **Olta Lolo**, Court Specialist, JuST

Group I was composed of Chief Judges, representatives of the National Association of Judges, the Union of Judges, officials from the Ministry of Justice, the Office for the Administration of Judicial Budget, civil society representatives and international donor projects. The group discussion was organized around the following topics:

- Improving case flow management
- Maintaining verbatim records of court proceedings
- The role of judicial association in improving the judiciary
- The role of judges in improving the efficiency of case processing (i.e., backlog reduction, mediation programs, court room allocations)

IMPROVING CASE FLOW MANAGEMENT

The first topic taken up by the group was court administration and case flow management. Much of the discussion centered on the need for more courtrooms and for better courtroom allocation and usage. Many speakers voiced the view that court proceedings should be open to the public, and pointed to the limited availability of courtrooms as a significant impediment to this basic principle. The Director of the Judicial Budget Administration Office informed the group that newly constructed courts are implementing a standard that calls for two judges for each courtroom. The situation is also improving in the courts that have undergone reconstruction or renovation, but the older courts do not have the conditions for effective courtroom management.

Given these realities, participants offered a variety of solutions to address the basic problem of not enough

courtrooms. These suggestions included software tools to assist in the allocation of courtrooms; reorganizing court calendars; and extending the hours of court operations to include afternoon or early evening shifts. The software to manage the allocation of courtrooms was acknowledged as a positive idea provided that such software is incorporated into the standardized case management system ICMIS that is being implemented throughout the courts. Several speakers stressed the importance of proceedings being conducted in public. There appeared to be a consensus that all hearings should be public.

MAINTAINING VERBATIM RECORDS OF COURT PROCEEDINGS

Turning to the need for making a verbatim record of court proceedings, there was considerable discussion on a variety of issues associated with audio recording of trials. The desirability of written transcripts for recorded hearings was discussed. Participants pointed out that there is no need to transcribe every audio recording, especially if the cases are not appealed. The point was made that parties could have a copy of the recording by paying a fee and this could generate some revenue for courts. It was also suggested to post audio recordings on the internet. Overall, it was deemed necessary to organize a training program of the judicial administration on the use of the recorded case management system. Participants agreed that the audio recording would strengthen the integrity of court processes and improve the public perception of judiciary.

THE ROLE OF JUDICIAL ASSOCIATION IN IMPROVING THE JUDICIARY

Speakers noted that both judges associations have been effective, but suggested that there should be a single association in order to draw greater judicial participation.

There was agreement that judicial associations, as the “voice of the judiciary,” play a crucial role in the discussion of issues facing it. Representative of both organizations stated that making the membership more active and integrating the associations into international judicial organizations are the main future challenges. There appeared to be a consensus that judicial associations have a role to play in offering training to judges.

The role of judges in improving the efficiency of case processing (i.e., backlog reduction, mediation programs, court room allocations)

Participants agreed that judges can and should play a key role in controlling the court calendar and reducing the number of needless continuances. Several suggestions were offered by international donor projects to improve the flow of cases through the court system¹. There was a spirited discussion among group members on the concept mediation as a strategy to reduce court backlogs. Speakers agreed that although in large courts, the number of cases resolved through mediation is too small to be significant, mediation is a promising step in the right direction. Judges emphasized the need for increased public as well as judicial awareness about mediation programs and how they work.

IMPLICATIONS FOR THE JuST PROJECT AND NEXT STEPS

The discussions that took place, the points raised and the cautions voiced will be taken into account as the JuST project begins its work to assist Albanian institutions achieve “more transparent, effective and accountable justice.” Specifically, given all the discussion on optimal allocation and usage of limited numbers

of courtrooms, the project will engage an expert to conduct a courtroom usage study in the busiest courts, and will work with the court leadership to implement recommendations.

Given the general support for audio recording voiced within the working group, the project will explore with the Ministry of Justice and the leadership of the courts the various technology options that exist to capture and make available verbatim (including audio) recordings. Particular focus will be given to designing the IT infrastructure to provide the best solution for the future. Public policy issues raised in the group will continue to be addressed along with the infrastructure needs.

The discussion generated many useful comments on ways to improve the flow of cases through the system, with the related benefit of reducing backlogs and increasing the overall efficiency and effectiveness of the courts. Regarding the role of alternate dispute resolution in the justice system, there appears to be a mixture of enthusiasm and skepticism. For the expansion of mediation, judicial leadership and support is crucial, and the JuST project will survey a number of possibilities for building on the program pioneered in the Durrës District Court.

Finally, it should be noted that almost every idea proposed, has budget implications for the judicial branch of government. Some ideas will require new investment. Other ideas have at least the potential for generating new sources of revenue for the courts. Accordingly, JuST intends to work closely with the Judicial Budget Administration Office throughout the life of this project, as the intention is to provide support only where there is a reasonable strategy for sustaining reforms at the conclusion of this project.

1. The OSCE representative described three justice sector recommendations that their Rule of Law project plans to propose. First, they will recommend that some form of “default judgment” be authorized when parties fail to appear at trial. The aim would be to strengthen the ability of the judiciary to control the court calendar. Second, they will propose that preliminary hearings be restructured to permit greater exchange of written information that pertains to the case in order to expedite the process. Finally, they will recommend a system to improve the notification of the parties of changes in scheduling. Adding to this list of suggestions, the OPDAT representative suggested that the power of judges to control the court calendar should be augmented with some form of contempt powers, as is done in many other countries to ensure that lawyers take seriously their obligation to appear on time. OPDAT is working on the reform of the Criminal Procedure Code, and intends to rely on the JuST project to coordinate initiatives and dialog with court leadership regarding ideas and suggestions for improvement.

GROUP II: BUILDING BETTER RELATIONS BETWEEN COURTS, AND MEDIA AND CIVIL SOCIETY

Moderator: **Juliana Hoxha**, Director, “Partners Albania”

Facilitator: **Entela Pinguli**, Civic Engagement Component Leader, JuST

The second working group was composed of representatives from the courts, mostly chancellors, as well as NGOs and media representatives.

DISCUSSIONS:

The group discussions began with a brainstorming session based on the following questions:

- What is the public perception on judiciary work?
- How does the public understand the Court procedures?
- What is the current state of the relations between Courts and Civil society, between Courts and the Media, and how can they be improved?

The brainstorming was followed by a group exercise giving alternative suggestions for improvements.

Group II participants clearly stated that there is a negative public perception of the judiciary in Albania, due to the high level of corruption and bad management of the court proceedings. Several public surveys on the state of judiciary confirm the problems and challenges of the system and identify different problems related to the lack of professionalism of the judges, corruptive practices and politics, lack of judicial transparency towards public, lack of judicial monitoring bodies etc. Nevertheless, the group shared the view that there are positive models among the courts, judges and chancellors, and that progress can be led only by such examples. Additionally, the group recognized the importance of the civil engagement for increasing the public pressure for better courts and better justice in Albania.

MAIN CONCLUSIONS

Speakers agreed that the judges should make the court proceedings more transparent by using the newly-promulgated regulation on court relations with the public. This regulation foresees the establishment of information kiosks in the courts, which should deal with public information and services. Future assistance should work in parallel to build the court capacities in implementing the regulation, and making the NGO and media representatives aware of their role in monitoring this process. Group II discussions highlighted the crucial role of the media in quality investigative reporting, and especially in presenting success stories in the justice system. Such skills should be further promoted through more structured and independent media outlets. Some of the outcomes of the discussions can be addressed through different components of the JuST project, especially the ones related to the capacity building of the NGOs and media to better monitor and report on the justice system more professionally. Speakers suggested that courts should do more to ensure court transparency and judicial independence by building “monitoring” mechanisms in cooperation with the civil society and media; making the necessary legislative changes to remove the judicial immunity; and enhancing the application of the international conventions in drafting the decisions.

RECOMMENDATIONS TO COURTS

Suggestions of the group participants on the alternative solutions on how the courts can improve the public understanding of the court rules and procedures included:

- Courts should work on implementing the newly promulgated Ministry of Justice regulation on the court relations with the public;

- Capacity building on media outreach and information should take place for judges, chancellors and PR personnel;
- Public information kiosks should be maintained and expanded by ensuring human and financial resources.
- Public information kiosks should provide the up-to-date calendar of the court hearings and information on court proceedings. One person should be assigned as responsible to deal with the public.

RECOMMENDATIONS TO NGOs AND MEDIA

Suggestions regarding the role of the NGOs and media to improve public understanding of the court procedures included:

- Informing and educating the public on court procedures through projects and outreach campaigns;
- Educating the young generation through preparing the school legal education curricula (about civil rights and obligations) in collaboration with the Ministry of Education and Ministry of Justice, and making legal education part of the nationwide educational program;
- Monitoring court proceedings on specific cases, including the process, hearings, time frame, decisions etc.;
- Monitoring, investigating and reporting specific civil law cases related to issues which affect people the most (such as property rights), which do not always capture media attention.

CURRENT STATE OF THE RELATIONS BETWEEN COURTS AND CIVIL SOCIETY, COURTS AND THE MEDIA, AND HOW THEY CAN BE IMPROVED

The group concluded that media and NGOs should assist the courts to be more transparent, and listed some steps which they can take in order to be able monitor the quality of the judiciary (court proceedings, procedures, documentations, decisions). In order to assist, NGOs should build their capacities to better understand

court procedures, gain better knowledge of the legal framework, as well as identify the progress indicators necessary to measure the quality of their services towards the court and towards the public. NGOs should develop strategies on how they (NGOs and Media) inform the public of the outcomes of their monitoring work, and should assess court services continuously.

The group recognized the need for building links and ongoing exchanges between the court spokespersons, chancellors and judges, on one hand, and NGOs and the media, on the other.

The collaboration could start by identifying common interests; clarifying respective roles and responsibilities; facilitating continuous public pressure towards the judiciary, as well as serving as interpreters of court messages towards the public. Besides public outreach and information, the group pointed out that media should do more to enhance the investigative reporting capacity through more training on investigative but ethical journalism.

In addition, media should not only criticize but also bring to public attention positive examples where justice prevails. This would be very inspiring and help in building the credibility of the media and other involved key players among the public.

Participants agreed that journalists should do more professional reporting in independent media outlets. The group also remarked that the role of the two judges associations could be reinforced by strengthening their common voice for more open courts. The establishment of a center for investigative journalism free of political influence was highly recommended.

IMPLICATIONS FOR THE JuST PROJECT AND NEXT STEPS

The JuST project benefited greatly from the extensive group discussions, particularly the consensus generated on the need for more transparent and community-oriented courts, the constructive role of the NGOs and

media in monitoring the courts, and the education of the public on the operation of the judiciary. JuST will work to make courts more open using (where applicable) the recently-promulgated regulation of the Ministry of Justice (MoJ) as a platform for better cooperation between courts, the public in general, and NGOs. JuST will also

bolster the capacity of NGOs to better understand the courts and monitor them more effectively. Finally, JuST subscribed to the conclusion on the need for establishing an independent investigative reporting center, and will work to elaborate the details of such a center, and make it an alternative venue for investigative journalists.

GROUP III: STRENGTHENING LEGAL EDUCATION AND THE LEGAL PROFESSION

Moderator: Maksim Haxhiaj, President National Chamber of Advocates

Facilitator: Roland Gjoni, Legal Education Component Leader, JusT

The group consisted of leaders and of the National Chamber of Advocates (NCA) and regional chambers as well as law professors and judges.

The discussion focused on the future of the legal education system in public and private law schools, as well as the current status and challenges of regulating the legal profession in Albania, based on the following topics:

- The current state of legal education in Albania;
- The role of the National Chamber of Advocates and regional chambers in regulating the profession;
- Improving the Continuous Legal Education program for lawyers.

THE CURRENT STATE OF LEGAL EDUCATION IN ALBANIA

DISCUSSIONS

Members agreed that the proliferation of public and private law schools has adversely affected the quality of

law graduates. Given the shortage of law professors and not so rigorous procedures on licensing and accrediting of private law schools, the law students graduating from private law schools demonstrate poor educational performance.

About six thousand law students will graduate in the summer of 2011 in fifteen public and private law schools. This is bringing into the legal profession a large number of law graduates with severe educational shortcomings as out of six thousand graduates, at least two thousand intend to take the bar exam and eventually practice law.

The uncontrolled and unprofessional cadre of law graduates poses a plethora of problems to the legal profession. Firstly, the great number of students makes their placement into the one year mandatory law practice during which they are supposed to work with a licensed advocate, very difficult to manage.

Secondly, the National Chamber of Advocates is finding it increasingly difficult to administer the bar exam for the interested candidates. Although only 35-40% of the applicants pass the national bar exam, the majority of those who fail intend to retake the exam in the coming years. Thirdly, the lack of the initial and continuous legal training offered by NCA and local chambers of advocates fails to address, at least in part, the shortcomings of

lawyers even after they are licensed to practice.

Therefore, the number of poorly trained lawyers is increasing every year and no adequate mechanisms exist in the legal education and the bar to stem this influx.

MAIN CONCLUSIONS

Participants agreed that a more robust public law school and more stringent procedures for licensing and accrediting the private law school would help increase the quality of law graduates who come into the legal profession.

The majority of participants also concluded that the National Chamber of Advocates has an indispensable role in managing the one-year mandatory law practice for law graduates more effectively, as well as establish initial training programs prior to the bar exam, and CLE for the licensed lawyers.

RECOMMENDATIONS

- More stringent rules and procedures for licensing private law schools should be applied by the Ministry of Education;
- The curricula, professors' credentials and examination rules should be more thoroughly scrutinized when private law schools apply for licenses;
- The accreditation system should be more elaborate, extensive and rigorous;
- A well-funded and staffed legal clinic at the law school should be established to address the lack of law students' practical skills;
- In addition to the legal clinic, the law school should offer meaningful internship opportunities to senior law students;
- After the graduation, the one-year mandatory law practice of recent law graduates should be managed

better and more closely scrutinized by the National Chamber and law firms where students are attached;

- The law graduates should not be allowed to take the bar exam before being evaluated during the one-year mandatory law practice and following a number of mandatory legal courses as a part of the initial training curricula;
- A national legal training center may be established to organize the initial training before the bar exam in order to filter the increasing number of law graduates wishing to take the bar exam; and
- Continuous legal training program should be established in order to address the knowledge gap of licensed lawyers, and update the lawyers with new legislative developments.

THE ROLE OF THE NATIONAL CHAMBER OF ADVOCATES AND REGIONAL CHAMBERS IN REGULATING THE PROFESSION

DISCUSSION

The NCA President, who was also the group III moderator, made a brief summary of the activity of the bar highlighting the fact that the lawyers are now registered, have IDs and uniforms (robes) provided by NCA.

The National Chamber has adopted a Statute, a Code of Ethics and a Disciplinary Committee. NCA has managed to protect itself from political interference, and is now legally and practically a self-regulated and independence organization.

There are more than two thousand licensed lawyers and about 1200 are actively practicing law. Out of 1200 practicing lawyers, approximately 80% are paying annual membership dues of 100 Euros.

NCA President also pointed out that the Chamber has recently established a Training Department to oversee and organize training programs for lawyers. NCA is now an observer of Council of Chambers and Law Societies of Europe (CCBE) and participates in international events regarding legal profession.

However, except for Vlora, Durrës and Tirana, most regional chambers are weak and have no office space to meet, deliberate and decide.

No chamber has a single full-time paid staff member and only Vlora's chamber, which recently purchased adequate premises, is in the process of hiring full-time staff members. Some members criticized the international assistance projects for focusing on judges, prosecutors and police, and providing very little assistance to the legal profession.

Speakers also talked about the ethics and the need for a more active disciplinary committee of the National Chamber, but the topic did not generate sufficient discussion. Participants agreed that many lawyers who are not registered and do not pay taxes are breaching the rules of fair competition towards other lawyers.

They suggested that judges can play a role in addressing this issue by following the experience of Kavaja District court where the chief judge requested from the Tax Administration a list of lawyers who have failed to pay taxes in order to disallow their appearance before the court.

The possibility of making legislative changes to disbar members who fail to pay taxes or breach rules of professional conduct was also discussed.

Financially, NCA is solid and should identify and buy office space for all regional chambers and also activate its training, publication and ethics departments. The leadership at national and local level expressed concern about the severe lack of academic research and writing amongst lawyers.

MAIN CONCLUSIONS

There was broad consensus among group III members that the NCA should establish and finance the initial and continuous legal education programs. The majority of participants agreed that both the national and local chambers should be more active in implementing the Code of Ethics and ensuring discipline in the profession.

RECOMMENDATIONS

- Lawyers should all be registered and pay taxes;
- Regional chambers should be better organized and start to operate more autonomously once they have offices premises and adequate personnel;
- Immediate action should be taken on initial and continuous legal program; and
- An academic publication of legal profession should be established.

IMPROVING THE CONTINUOUS LEGAL EDUCATION PROGRAM FOR LAWYERS

DISCUSSION

The majority of participants shared the view that the initial and continuous legal training should be viewed in connection with each other and addressed comprehensively.

The discussions focused around the possibility to use the Magistrates School as a venue for training of lawyers. Most members proposed the establishing of a separate school or center for training lawyers financed by NCA based on the Italian experience of Scuola Superiore dell' Avocatura.

Several members said that regional chambers could set up and organize the CLE themselves but they lack adequate premises and funding.

Most members agreed that the lawyers would be willing and able to pay a certain portion of training fees (up to 30%) themselves, particularly if the CLE is introduced as a mandatory program.

Otherwise, very few people would sign up for the CLE and sustainability will suffer.

The need to introduce a credit system and incentivize the CLE was also debated.

Most members agreed that the CLE should not be optional but it should be weighted towards licensing, academic achievement or professional promotion, if the lawyers are later categorized.

It was also suggested that notwithstanding the organizing body (National Chamber or regional chambers) the rest of the cost of implementing the CLE could be incurred by the national chamber and USAID's JuST project.

MAIN CONCLUSIONS

Group III members unanimously identified the establishment initial and CLE as a priority area where assistance should focus immediately.

Another conclusion was that the initial and CLE should be made mandatory by amendments to the law or the statute to the national chamber.

RECOMMENDATIONS

- The National Chamber should appoint a Working Group on CLE;
- The WG should decide how the CLE should be organized and structured;
- The possibility of sub-contracting specialized training institutes/entities should be explored;
- WG should also identify and start raising funds for the CLE;

- CLE should be preceded by a training needs assessment;
- CLE should be evaluated and certified;
- CLE trainees should undergo an examination, and a grading system should be introduced;
- CLE should apply for accreditation in order to be more robust and sustainable.

IMPLICATIONS FOR THE JuST PROJECT AND NEXT STEPS

Although, many of the problems identified by the working group members are supposed to be addressed by other institutions, such as the public law school, Ministry of Education, Tax Administration, there are several aspects of the legal education and legal profession which are within the ambit of the JuST project.

With regard to the need to strengthen the public law school, JuST will work on creating clinical educational opportunities to cope with the lack of practical legal skills for law students, and coordinate a more substantial and extensive internship system for them.

NCA can provide significant contribution to both the establishment of the clinical education program, and providing internship opportunities to law students.

With regard to the legal profession, JuST will immediately develop an action plan with NCA leadership on creating the Bar Journal and establishing the CLE program.

The action plan should be part of a Memorandum of Understanding between NCA and USAID, outlining the assistance of USAID to the legal profession, and the commitments and obligations of the parties.

In the closing plenary session of the conference, rapporteurs from each of the three working groups, presented the highlights of the discussions that took place.



PHOTO: ROLAND TASHO

“The JuST team intends to make such a conference a periodic gathering of all the actors of the justice system.”

PART FOUR

FINAL REMARKS

The JuST project was very pleased with the high attendance of the conference, and particularly the broad participation of all the key players who can make the justice system work more effectively.

The conference enjoyed also extensive media coverage on both TV and print media, marking a successful first contact of the project with the Albanian public in general.

JuST benefited greatly from the spirited but constructive discussions in the three working

groups on important issues of the justice system, and will incorporate all the relevant recommendations in future action plans of the project components.

Furthermore, the JuST team intends to make such a conference a periodic gathering of all the actors of the justice system.

Future conferences will be organized to serve as a platform for dialogue and cooperation and as a mechanism for evaluating the progress of the JuST project and the justice-sector reform efforts in the coming years.

PROJECT DURATION: October 2010 - October 2015

The five-year USAID Albanian Justice Sector Strengthening Project (JuST) aims at increasing court transparency, fairness and efficiency, bolstering the watchdog and anticorruption role of civil society organizations and media, as well as strengthening the legal profession and education in Albania.

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