



ALBANIAN COURT LEADERSHIP CONFERENCE CONCLUSIONS

**ORGANIZED ON APRIL 20, 2012, IN TIRANA,
IN THE FRAMEWORK OF THE ALBANIAN
JUSTICE SECTOR STRENGTHENING PROJECT – JuST**



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INTRODUCTION

On April 20, 2012, the USAID's Albanian Justice Sector Strengthening Project (JuST), in partnership with the High Council of Justice and the Ministry of Justice, and in cooperation with the OSCE Presence in Albania organized in Tirana the Albanian Court Leadership Conference focused on initiatives to improve court operations in Albania. The Conference brought together chief judges of Albania's district and appellate courts; justices of the Supreme Court; members of the High Council of Justice; high representatives from the Ministry of Justice, General Prosecution Office, National Chamber of Advocates, Constitutional Court, School of Magistrates, and Office of the Judicial Budget; directors of civil society and media organizations active in the justice sector; as well as international partners.

U.S. Ambassador in Albania, Mr. Alexander A. Arvizu; Minister of Justice, Mr. Eduard Halimi; Chief Inspector of the High Council of Justice, Ms. Valbona Vata; Chair of the Civil College of the Supreme Court, Mr. Besnik Imeraj; Head of the EU Delegation to Albania, Ambassador Ettore F. Sequi; and Head of the OSCE Presence in Albania, Ambassador Eugen Wollfarth, delivered the keynote speeches at the conference opening.

The Conference was organized in three sessions which focused on: Court Audio Recording, Case Flow Management and Courts' Relationship with the Public.

SESSION 1: COURT AUDIO RECORDING

The objectives of the panel on court digital audio recording included emphasizing the value of producing an accurate and complete record of court proceedings and sharing early implementation experience with the technology in Albania. The panel consisted of Ms. Fjoralba Prifti, Chief Judge of Lezha District Court; Ms. Valbona Vata, HCJ Chief Inspector; and Mr. John Carver, JuST Chief of Party.

Key points highlighted during this panel discussion included:

- Installation of such technology increases the ethics, solemnity, professional behavior of the judges and also the transparency and accountability in the Albanian Courts.
- Currently the courts keep computerized summaries of the minutes of the court hearing, easing the transition to digital audio recording. Very few courts continue to keep hand-written summaries of the minutes of the hearing. Parties, attorneys, prosecutors have traditionally complained about the lack of accuracy of the minutes, a complaint which should be eliminated with the advent of digital audio recording technology.
- The installation of the digital audio recording technology assures a verbatim record of what has happened in the courtroom and protects judges from allegations that relevant information is not properly reflected in the minutes of the hearing.
- This technology makes it possible for the judge to hear only those parts of the proceedings that are in its interest using the "Log Notes". Log Notes can be considered the index to the digital audio record. They contain relevant case information, along

with the ability to produce time-stamped summaries linked to specific segments of the audio recording.

- The Instruction on usage of the audio recording to be approved by the Ministry of Justice will soon provide for clearer steps to be followed in using such technology. Initiatives by the courts to manage this aspect of their work efficiently by issuing internal regulations are advisable as well.
- The current legal framework supports the use of digital audio recording. The Code of Criminal Procedure requires courts to use recording technology if it is available. The Civil Procedure Code does not have a similar mandatory provision, but neither does it forbid the use of recording technologies. In the future, the provisions of the Civil Procedure Code regarding the production of a verbatim record should be harmonized with the more explicit provisions in the Criminal Procedure Code.
- The Ministry of Justice and High Council of Justice are willing to support all the necessary changes and additions in the current legal and sublegal acts.
- The technology is very simple to use. With the ICMIS integration already achieved, court secretaries need not do “double data entry” or extra work in order to make full use of digital audio recording technology.
- The technology works as a “stand-alone” application in courts that do not yet use ICMIS.
- The current practice with Lezha District Court demonstrates the value of such technology and improves also the solemnity and the behavior of all the parties in judicial system.
- All judges who would like to see the technology in operation have a standing invitation from Chief Judge Prifti to come to the Lezha District Court.
- The installation of the digital audio recording system from the USAID's JuST project is scheduled to proceed based on a work plan which foresees its expansion in all the courtrooms of the district, appellate and serious crimes courts by December 2013.

SESSION 2: CASE FLOW MANAGEMENT

The discussions in the Session 2 devoted to “Case Flow Management” were organized in two parts.

Part 1. Solemnity of Proceedings: The Importance of Holding Sessions in Courtrooms

The objectives of the first part on “The Solemnity of Proceedings: The Importance of Holding Sessions in Courtrooms”, were two-fold: a) motivate and encourage increased usage of courtrooms instead of private offices; and b) provide concrete ideas about how to achieve greater utilization of courtrooms in the courts. The panelists were Mr. Artan Zeneli, Mr. Ervin Metalla and Mr. Admir Belishta, respectively the Chief Judges of Tirana, Durrës and Korça District Courts, and Ms. Susanne DiPietro, USAID JuST Court Advisor.

Key points highlighted during this panel discussion included:

- From JuST study on the usage of the courtrooms in two courts it turns out that in one court only 2% of the hearings are held in a courtroom, in the other court only 23% of the hearings are held in the courtrooms. (Copies of the study can be downloaded from: <http://albania.usaid.gov/JuST>.)
- Various reasons are cited by the judges for such practice: they are not sure when a courtroom can be available; the court does not have a method for reserving a courtroom; the matter does not need to be held in a courtroom; it is burdensome to take the files in the courtroom; the computers in the courtrooms do not function well, etc
- Holding hearings in the courtrooms directly affects the solemnity of the process;
- Holding all the sessions in the courtrooms is a legal requirement for all cases held in a court. As a rule the hearings should be held in the courtrooms and only when such a thing is impossible should they be held elsewhere.
- Many judges have concluded that for hearings related to the issuance of an execution order or hearings related to inheritance certification, there is no need for these kinds of proceedings to be held in a courtroom.
- Chief Judges should take a more active role in increasing the usage of the courtrooms in their courts, by using clear and easy calendaring methodologies (preferably electronic calendaring) in order to have the courtrooms in their courts in use during working hours.

Part 2. The Benefits of Active Case Management: Theory and Practice

The objectives of the second part on “The Benefits of Active Case Management: Theory and Practice” were: a) to introduce the idea of active case management by judges, particularly as a tool for delay reduction; b) motivate judges to actively manage all aspects of their cases; c) provide examples of how to manage a case; d) promote the implementation of the Mediation Law. The panelists were Mr. Jo Faafeng, Senior Judicial Officer from the OSCE Presence in Albania; Mr. Julian Haxhiu, Tirana District Court Judge; Mr. Admir Belishta, Korça District Court Chief Judge.

Key points highlighted during this panel discussion included:

- From a third to a half of all sessions are postponed. In a quarter to one half of the sessions, a key player is missing (a judge, an attorney, one of the parties, an expert). This statistics result from the studies conducted by JuST, OSCE, and other observers.
- Based on an OSCE study whose publication is forthcoming, the average ratio of non-productive hearings: 47.7 %. This means that no argument was made, no written document or written pleading circulated, no evidence taken and no request made. Reasons typically include parties absent although notified; a party was not properly summoned; lawyer or judge occupied in another trial or training; allowing parties to get familiar with the expert's report.
- The recent ruling of the Constitutional court in its decision no. 12 dated 05.03.2012 (V – 12/12) emphasizes the fact that the Albanian Constitution (article 42) as well as the European Convention on Human Rights (article 6), establishes the obligation for the organization of the legal system of the country, in such a way, for the courts to fulfill the requirements of the standards for a due process of law, including the trial of the

case within a reasonable time. At this point the courts have the duty to assure, that all the subjects that participate in the process behave in such a way so as to avoid any unnecessary delay. Such duty of the court is also expressed in civil procedural provisions and exactly in the Article 4 of the Civil Procedure Code pursuant to which *“the court takes care for holding a due judicial process. On this reason, based in the powers given by this code, establishes the time limits and orders the undertaking of necessary measures”* and in the article 171/a of the Civil Procedure Code pursuant to which *“the courts exercise all the rights foreseen in this Code, which are necessary for better holding the judicial process. The court establishes the sessions and the time limits within which the parties and other persons summoned from the court should perform the procedural acts and the actions required from it”*.

- Active case management generally requires, at a minimum: a written preparatory phase; a pre-trial planning meeting; and a court actively ensuring that all parties are summoned.
- Only a year ago a new law on mediation was approved and it is currently in force the law No. 10385 dated 24.2.2011 “On the Mediation for the Resolution of Disputes”. The current law on mediation in articles 13 and 14 provides for the procedure of mediation in civil and penal cases and a requirement that judges refer these cases to mediation. The process of licensing the mediators has started and soon the lists of mediators operating in the jurisdictional territory of each court will be available to all judges. Currently, two court-connected mediation offices are operating in Korça and Durrës with the assistance of JuST.
- Mediation as a dispute resolution alternative offers several advantages. These include quick, cost effective and confidential proceedings without formalities and without publicity through processes tailored to the needs of the parties. Despite the advantages to the parties, mediation remains an under-used instrument in Albania.
- A few amendments in the legal and sublegal acts have been discussed as possible solutions to promote the use of mediation. For example, there could be established a mechanism whereby the Chief Judge sends the case directly to mediation if the case can be solved through mediation; the parties that agree to solve the case through mediation should not pay the court fee; the law may foresee that the judge “sends the case to mediation” and not “invites the parties to solve the case through mediation”, etc.

SESSION 3: COURTS' RELATIONSHIP WITH THE PUBLIC

The third panel of the Court Leadership Conference was devoted to courts' relationships with the public, including the media. The objectives were a) to convey the benefit of maintaining good relations with the public and the media; and b) to promote best practices in managing court public relations.

Six panelists made engaging presentations, namely on the courts' web portal, by Mr. Agim Kasaj, Ministry of Justice IT Director, and on different aspects of the courts' relations with the civil society and media, including best practices, by Ms. Aurela Anastasi, Executive Director of Center for Civic Legal Initiatives; Ms. Iris Luarasi, media expert; Mr. Niko Rapi, Pogradec District Court Chief Judge; and Mr. Gent Ibrahim, legal expert.

The key points highlighted during these presentations included:

- The development of the courts' web portal, soon to be available at www.gjykata.gov.al, provides an opportunity for courts to make easily available core information that people most frequently inquire about. This allows courts to utilize their personnel resources more efficiently, reduce redundant visits by members of the public to the courts, and provide required information more promptly.
- It is up to the court to ensure that the portal is an effective tool by requiring that information input into the courts' case management system, ICMIS, is complete and accurate.
- Civil society organizations are natural partners of the courts when it comes to increasing public access to justice. As such they can be of great assistance in providing legal assistance to parties in need, and representing them in court; gathering public feedback on court operations through monitoring; offering expertise, training and court staff capacity building support as needed; undertaking projects and advocacy in areas that the courts find beneficial; as well as building public awareness and confidence in the judiciary.
- The relationship of the courts with the media is certainly not easy. Yet, it is a relationship that when understood and managed well, provides great benefits for the courts in terms of reaching the public and improving its image. For this relationship to work, the courts must engage the media proactively and help mitigate excesses arising out of the lack of judicial knowledge and professionalism among media representatives. USAID JuST is working to provide assistance in this respect by organizing a "Law School for Journalists".
- Positive examples in managing well courts' public relations point to the use of technology to provide ample access to key information, making public services and public access to court sessions well structured and predictable, building court personnel awareness, responsibility and capacity to work well with the public, being proactive in reaching out to audience groups and the media, and being responsive to the media needs to do their job.
- The regulation on court public relations approved by the Ministry of Justice stakes the high ground. It goes without saying that it gains value to the extent they it is implemented in practice. Initiatives by the courts to manage this aspect of their work efficiently by issuing internal regulations are commendable. Best practices are essential in informing regulatory initiatives, whether in standardizing work processes to manage daily court public and media relations, as well as in establishing common infrastructure standards in court public service and information.
- In the final analysis, a well-managed public relations program is of great benefit in building confidence in the judiciary. Public confidence, along with independence and effectiveness, are the three pillars supporting a strong judiciary.

IN CLOSING

USAID JuST is deeply thankful to panel speakers and Conference participants. Copies of the Conference materials are available online at: www.justforumalbania.org.

Given the Conference success, USAID will support the periodical organization of such a gathering in order to discuss about the challenges and opportunities facing the Albanian judiciary. USAID remains engaged in providing assistance to support reforms towards more transparent, efficient and accountable justice in Albania. //

The five-year USAID Albanian Justice Sector Strengthening Project (JuST), begun in October 2010, aims at increasing court transparency, fairness and efficiency; bolstering watchdog and anticorruption roles of civil society organizations and media; and strengthening the legal profession and legal education in Albania.

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