

***Contract Enforcement and Judicial Systems
in Central and Eastern Europe***
Warsaw, Poland, June 2005

Albania

1. What have been your country's (or territories) 2- 4 most successful achievements in the area of judicial reform in recent years, and what were the main factors contributing to that success?

Albania has now established a legal and institutional framework that is almost complete to support fully a well-functioning judiciary.

Recent achievements in the legal, institutional and organizational framework of the Albanian judiciary are the approval of a new law "*On the National Judicial Conference*", amendments to the law "*On the Magistrates School*", and a set of laws in the criminal field contributing to fighting organized crime, a law against the financing of terrorism, a law on protection of witnesses and collaborators of justice, and the signing and ratification of international legal instruments against terrorism, organized crime, and corruption.

Albania has established a consolidated judicial system with other bodies that support the better functioning and effectiveness of the judiciary, such as the High Council of Justice, the Ministry of Justice and the National Judicial Conference.

The judicial budget is separated from that of the executive; it is drafted and administered by the courts themselves. A board of eight chief judges and one representative of the Ministry of Justice, chaired by the Chief Justice of the High Court, direct and supervise the Office for the Administration of the Judicial Budget.

The Magistrates' School is another institution that enjoys administrative, academic and financial autonomy; it is governed by a board chaired by the Chief Justice of High Court and the Prosecutor General, and composed of representatives of judges and prosecutors, of the Ministry of Justice and others. The Magistrates' School assures the initial training of candidates for judges and prosecutors, continuous training for judges and prosecutors on duty, and in the future, it aims also to serve as a scientific center for the judiciary. The recent amendments significantly broaden its role in continuous training.

The progress of this new institution has been evaluated highly, and all the necessary measures have been taken to guarantee its qualitative development and sustainability.

Albania already has the basic conditions required for the judiciary to be independent from political pressure and interference.

The judiciary itself has become better and more able to reflect deeply and to act with its bodies to develop self- accountability, to improve the professional level of its members, and to raise its moral integrity, performance, public trust and confidence. We consider these successful

achievements in the area of judicial reform in recent years, and below are what we consider the main factors contributing to that success:

- positive political will and awareness of the members of Parliament;
- the positive role of the executive branch (*the Ministry of Justice*) in preparing of new draft-laws following the best models of western countries;
- the serious attempts of the judicial branch itself to be an active part of the process of reformation of the system. The National Judicial Conference and the High Council of Justice contribute to protecting the independence of the judiciary and the building up of integrity through the means of self-governance, introspection and democratic internal deliberation;
- a major factor in the progress of reforms has been the continuous assistance of international institutions and organizations.

2. What major problems do you currently face with regard to:

- **judicial independence**
- **judicial efficiency**
- **judicial accountability**

It has happened that politicians have blamed or attacked the judiciary as being entirely corrupted and as a cause for everything wrong that hinders the progress of the country. There is an activism of the Ministry of Justice, also represented in some of the legal framework, to put judicial activity and the work of the judges under its control. This has also been criticized by the European Commission, the Organization for Security and Cooperation in Europe (OSCE) and others, and a proper solution should be found respecting the principles of the Albanian Constitution and international standards.

Ex parte communications with the judges exist, and they should be avoided.

We should improve the standards for evaluating the effectiveness of the judicial system in numerical, functional and scientific directions, both in a medium-term and long-term perspective.

We should continue and speed up the progress made in reconstruction and renovation projects for courthouses and court facilities, in particular IT (information technology) projects.

The modernization and automation of court management and case management, and the dissemination of information for the public about judicial activity, are still in progress, but they will improve the standards of efficiency, transparency and responsibility of the judiciary. This is also expected to have a positive impact in improving the perception of the public.

Albania has adopted western standards for the accountability of judges for their misbehavior and improper conduct, based on the constitutional and legal criteria. This is carried out while respecting the principle of due process of law. Cases against judges of High Court and Constitutional Court are handled by Parliamentary Investigative Commissions and then tried through an impeachment process set out in the Albanian Constitution. Disciplinary proceedings against other judges are, again in accordance with the Constitution, under the authority of High Council of Justice. A major program in this respect (in practice) is a duality between the Inspectorate of the High Council of Justice and a separate Inspectorate of the Ministry of Justice.

The excessive role of the Minister of Justice in this respect has been criticized as threatening the independence of Judiciary.

3. What is your top priority in the coming year for improving the judicial system? How do you plan to address this priority?

We expect the formal establishment of the National Judicial Conference (NJC) in accordance with the new law mentioned above, which was proposed by the Judiciary itself, and its implementation to have a significant impact for improving the judicial system, because:

- It will increase the responsibility of the judiciary in its role of electing nine members of the High Council of Justice (2/3) from the ranks of the judges.
- Through *ex officio* members and elected members, elected democratically and through a geographically sensitive procedure, the NJC will be a source of ideas for the reform initiated by those who are closest to the real life challenges and issues encountered by the judiciary.
- The NJC will play a critical role linking various entities that currently are responsible for judiciary branch matters.
- The Albanian judiciary will rest upon a secure legal foundation that will promote and protect independence and integrity within the Albanian judiciary.
- The furtherance of the ideals of a self sufficient, independent judiciary will:
 - a) enhance democratic values by securing individual rights;
 - b) advance the concept of the rule of law;
 - c) gain the respect of the citizens of Albania;
 - d) and gain respect and prominence within the government.

This law instills a sense of ownership on the part of the judges in the institution of the judiciary and its ideals. It does this across the board, in all regions and across all levels of judges. It fosters a more equal relationship with the other branches and instills more respect for the judiciary on part of the government and equally importantly, on part of the people.

Being able to request its own budget and being in charge of its financial expenditures also improves the independent and integrity of the Judiciary with respect to the Legislative and Executive branches.

Finally, the formal regulation of the NJC improves the ability of individual judges to step up and show courage and independence knowing that they have an institutionalized association of their peers on which they can look for approval and support.

It is expected that this law will have beneficial consequences for Albania as time goes on because:

- judicial independence is certainly critical for further improvement of the Rule of Law in Albania;
- the law should meet strong EU approval and bring Albania one step closer to a Stabilization and Association Agreement; and
- perceived and actual judicial independence creates a stable atmosphere for foreign investments in Albania.

For all these reasons, the full and adequate implementation of the NJC law is one of most important immediate priorities. But it is also necessary to mention that neither this law, nor any other existing law, gives the judicial administration the proper civil service protections and pay

that other employees of the state administration enjoy. For this reason, it will also be a major priority of the Judiciary to secure this treatment for its administration, working with the Ministry of Justice and with Parliament.

In conclusion, considering that an effective fight against the phenomena of corruption is the main challenge to be faced, and one that will continue for a long time, it is necessary for the High Council of Justice and its Inspectorate, the Ministry of Justice and the judges themselves, acting through the National Judicial Conference, to work together, respecting their legal status and competencies, for implementing fully the Code of Judicial Ethic, for effectively investigating and trying cases of corruption, and for respecting the principle of due process of law. The Ministry of Justice and the High Council of Justice should continue to consider it one of their main priorities to improve the process of selecting candidates for the judicial post and to adopt new and better criteria and rules for evaluating the professional skills of judges on duty as the basis for a fair and productive system of the judicial career. These are priorities that the Judiciary cannot address on its own.