

Connections

Albanian Justice Sector Donor Quarterly Newsletter

APRIL – JUNE 2014

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JULY – SEPTEMBER 2014

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Dear readers,

In compliance with the requirements of the mediation law, the National Chamber of Mediators (NCM) was established as a public legal entity on July 7, 2013, with the support of the Ministry of Justice and USAID. The Chamber operates independently of the state, with the mission to support the profession of mediators as well as the functioning and strengthening of the mediation process as an effective extrajudicial alternative for solving disputes in less time and cost based on the free will of the parties.

The Chamber has now established the legal framework on the basis of which it operates, as does its membership. In addition to the Statute, this includes, among others, the Mediators' Code of Ethics and the Manual of Mediation Service Fees and Tariffs. The Chamber has also approved standard mediation agreements and mediators have been provided with personalized stamps produced by the Ministry of Interior in adherence to current legislation. Since the establishment of the NCM, according to the Mediators' Registry maintained by the Ministry of Justice, the mediators' number has doubled. The Chamber is now represented in the Mediators' Licensing Commission. On April 4 - 6, 2014, it successfully organized the first initial training on mediation, in accordance with its legal obligation to provide mandatory initial training to those who want to become mediators.

NCM has been involved by the Ministry of Justice in the process of drafting the Justice Sector Intersectoral Strategy and Action Plan. It is also working with the USAID's JuST program to implement two projects for the provision of court-connected mediation services in the Korça and Durrësi district courts. Pursuant to the law, NCM has entered into cooperation agreements with a number of institutions, such as the Probation Service, courts, universities and nonprofit organizations.

In its first anniversary, the National Chamber of Mediators is engaged on one hand to strengthen its organizational capacities, and on the other, to increase public information on mediation. We are grateful to the Ministry of Justice for its support, as well as to the international donors, like IFC, UNICEF, GIZ and USAID, for the assistance given over the years to raise our society's awareness about mediation. We also appreciate the planned intervention by the European Union in this field. All-around cooperation is key for consolidating the mediators' profession in Albania, and for offering parties dispute resolution services through mediation, a win-win alternative for all.

Sincerely,

Drita Avdyli
NCM Chair

APRIL – JUNE 2014 ACTIVITIES

Launching event

The Joint Project of the European Union and the Council of Europe, Support to Efficiency of Justice (SEJ), was launched on May 22, in the presence of H.E. Mr. Bujar Nishani, President of the Republic of Albania; Mr. Christian Danielsson, Director-General for Enlargement, European Commission; Mr. Stephane Leyenberger, Executive Secretary of the European Commission for the Efficiency of Justice (CEPEJ); Mr. Ildir Peçi, Deputy Minister of Justice, as well as high-level officials and representatives of the Albanian judiciary, civil society, academia, diplomatic corps and international organizations. The event goal, inter alia, was to introduce the main concepts and outline of the work to be undertaken within the framework of the joint initiative.

Successful completion

April 2014 marked the successful completion of the 30-month project "Fight against organized crime and corruption: Strengthening the Prosecutors' Network" funded by EU IPA 2010 and implemented by GIZ and CILC. Final activities included a regional training on data protection in Tirana, in the second week of April. It focused on the CoE and EU instruments and mechanisms used for data protection in the field of investigation and prosecution of criminal activities, while particular consideration was given to the rules and practice of data protection in the framework of Eurojust. In addition, the expert contracted by the project, upon the request by the General Prosecutor's Office (GPO), to conduct an analysis of the various models of prosecutorial

supervision over the execution of sentences and detention centers, completed his work. Given the objective of Albanian authorities to deal with corruption inside detention centers, the expert focused on models adopted by the countries of Western Balkans and EU member states, and gave recommendations on the best suitable model for Albania considering the current system, resources and state of play. The report also covered recommendations for the implementation of the model proposed. Finally, in order to facilitate the secure exchange of information in communication between the central authorities and during sensitive operations, the project procured and installed the necessary IT equipment at the GPO. To assure its proper functionality, the project provided its IT staff with adequate training.

Active case management at Korça District Court

On the strength of the early results of the active case management project “For justice without delays” at the first pilot court of Kruja, implemented thanks to the joint assistance by the USAID’s JuST project and the OSCE presence in Albania and with the support of the Ministry of Justice and the High Council of Justice (HCJ), in May 2014 work began to expand it to a second district court, that of Korça. In the Kruja Court, by the end of March, i.e. within two months of project start, the number of hearings in criminal cases had dropped from an average of 8.8 to 1.8, whereas non-complex civil cases had been completed on average in 2.4 sessions. The court with four judges, from six in the same period last year, had handled 40 more cases (a 13% increase). Based on the

Kruja example, following a baseline study of judicial processes and a two-day retreat where discussions were facilitated by the Honorable Truman A. Morrison, a senior U.S. judge on the D.C. Superior Court, an action plan was adopted by the Korça District Court judges. On June 13, the court organized two project presentations to local stakeholders. Basic elements of active case management include avoidance of unnecessary continuances, firm trial dates, clear expectations set by the court for attorneys at each event, as well as of what the judge will do if they are not met. What it takes to implement them is the will, good court leadership, and common-sense practices rather than necessarily prescription in the law. The principles are the same in both common law and civil code systems, and examples of substantial improvement in the delivery of justice thanks to their implementation can be found in courts throughout the world.

Focus on judicial ethics

From April 7 through 11, OPDAT-Albania, in partnership with the British and Israeli Embassies in Tirana, organized and sponsored four different events on judicial ethics designed in response to the conclusions approved during the Judicial Ethics Symposium it organized in November 2013. The events were delivered by a panel of three distinguished international guests: The Honorable Loretta A. Preska, U.S. District Court Judge for the Southern District of New York, Justice Elyakim Rubinstein from the Supreme Court of Israel, and Judge Gordon Ashton (retired) from England. On April 7, the week started with a roundtable discussion on ethical challenges and dilemmas with Supreme Court justices. On April 8, the three international guests held an open

lecture at the Tirana University Law Faculty. It focused on ethical issues and advice to future lawyers and was attended by approximately 150 Bachelor and Master students, as well as faculty members. On April 9, the three international guests, together with Judge Valbona Vata from the Shkodra Appellate Court, delivered a training session to 28 appellate judges and HCJ inspectors. On April 11, Judges Preska and Ashton, together with Serious Crimes First Instance Court Chief Judge Sandër Simoni, delivered a training session to 37 trial judges and HCJ inspectors. Both trainings included lectures on codes of conduct and their enforcement; conduct in court and in private life; independence of the judiciary; impartiality; recusal and disqualification; ex-parte communications, etc. The instructors used hypotheticals to engage participants in lively discussions.

New Code of Ethics for Albanian Prosecutors

On June 20, while addressing the annual meeting of the General Assembly of Prosecutors, the Prosecutor General announced the adoption of a new Code of Ethics drafted with assistance from OPDAT- Albania. The Code

replaces a 2005 aspirational statement that didn’t apply to all prosecutors and hadn’t been enforced. The new Code provides clear rules, enforcement mechanisms and an avenue for obtaining ethics advice. Adoption of a new enforceable Code covering all Albanian prosecutors was a recommendation made by GRECO, the CoE’s Group of States Against Corruption.

Conference on social institutions in the justice system

On June 24, the OSCE Presence in Albania jointly with the University of Tirana organized an International Scientific Conference on Strengthening Social Institutions in the Justice System. The Conference was

part of the Presence’s two-year project on developing an interdisciplinary advanced Master program of studies to improve the standards of social services in general, and those offered by the justice system, in particular. The Conference addressed issues related to the social institutions and their impact in the justice system; justice institutions in the fight against crime; penitentiary system, and probation.

CEPEJ tools and guidelines road show

The road show event to raise the awareness of stakeholders in Albania on the tools and guidelines developed by CoE’s CEPEJ took place in Tirana, on June 10. These are practical tools (e.g. Time Management Checklist or Handbook for Conducting Satisfaction Surveys, etc.) assisting the courts in reducing undue delays, ensuring effectiveness of the proceedings, or helping to analyze and evaluate the work carried out within the courts with a view to improving the quality of public service they deliver. The half-day event was an opportunity to inform the judicial public at large about the methodology to be pursued by the EU / CoE Support to Efficiency of Justice project (SEJ), throughout its implementation. The presentation was delivered by CEPEJ experts: Mr. Jacques Buhler, Mr. Jon Johnsen and Ms. Helene Jorry.

Court coaching program for Albanian courts

The Court coaching program on SATURN tools took place at the Supreme Court, Vlora Appellate Court, Elbasani District Court, Tirana First Instance Administrative Court and Serious Crimes First Instance Court, from June 9 to 13, marking the start of the implementation of this component of the EU / CoE SEJ project. The aim of Court coaching is to share knowledge on the use of judicial time management tools, particularly those developed by the SATURN Centre, and to enable the courts to make an analysis of the situation regarding relevant judicial timeframes, and develop strategies and plans to address these issues. The project intends to promote the SATURN tools to all courts in Albania.

Roundtable on the situation of judicial archives in Albania

On June 26, the OSCE Presence in Albania and the Ministry of Justice organized a roundtable on judicial archives with the participation of chancellors and archivists from all first instance and appellate courts. Its purpose was to assess the current situation of judicial archives in the Albanian courts. The Presence gave a presentation on best practices in judicial archives and provided an overview of the current Albanian legal framework on archives built with USAID assistance in 2009. In conclusion, the Ministry of Justice and the courts committed to identify further necessary initiatives to enhance the efficiency of judicial archives in cooperation with international partners.

Cybercrime training

The training on “Albanian and Italian experience in investigation and prosecution of cybercrime”, within the framework of PAMECA IV work plan, took place at the General Prosecutor’s Office and the Albanian State Police (ASP), on June 10 and 11. Prosecutors, judges and judicial police officers participated in day one. Distinguished experts, including Italian prosecutors and representatives from the Postal and Communication Police Service, as well as an Albanian prosecutor, played an important role as trainers and speakers to bring the Italian and Albanian experience on

the investigation and prosecution of cybercrime. The experts introduced international legal instruments on cybercrime, such as the CoE Convention and the EU Directive 2013/40; trends of the cybercrime phenomenon; investigation techniques on different typologies of cybercrime, and digital evidence. Best practices on cybercrime investigations were illustrated by case studies. The second day of the training was more technical and operational, and it was designed for the staff of the ASP’s Sector against cybercrime. It served to share mutual experiences on cybercrime investigations from a practical point of view and obtain additional knowledge from the Italian colleagues.

Annual Arbitration Conference

The traditional annual gathering of world experts in the field of arbitration took place in Belgrade again this April. The topics discussed in this sixth Arbitration Conference revolved around two defining factors of the efficiency of arbitration proceedings: arbitrators’ powers and party autonomy. The first panel dedicated to the former dealt with the questions of the role and powers of emergency arbitrators; the power of arbitrators to apply mandatory rules; the role and powers of the arbitral tribunal in respect to misconduct by parties and counsel; the power of the arbitral tribunal to freeze the assets of a party, and arbitrators’ powers in taking evidence. During the second panel, the discussions focused on party autonomy and consent to arbitration in

light of two recent decisions of German courts on the questions of party autonomy; limitations to party autonomy in arbitration agreements; party autonomy in choosing the applicable substantive law, and limits to party autonomy during arbitral proceedings. The conference gathered more than 250 participants from 30 different countries, including Albania. It was made possible also with the support of German Institution of Arbitration (DIS) and GIZ ORF-LR. Following the conference, on April 5, the latter organized in Belgrade a roundtable on the Code of Ethics in Arbitration with partners and experts from the Western Balkan countries, Representatives of ArbitralWomen and DIS. The roundtable was part of GIZ ORF-LR activities to promote Alternative Dispute Resolution in the region.

Balkan Regional Workshop on human trafficking

On June 17 - 19, OPDAT-Albania’s Resident Legal Advisor Michael Vaccaro and Legal Specialist Alba Ibrahimli hosted a Balkan Regional Workshop on combating international and domestic human trafficking for approximately 40 participants from Albania, Kosovo, Macedonia, Montenegro, and Italy, which included prosecutors, investigators, police, national coordinators against trafficking in persons, and representatives from government and NGO run shelters. U.S. Ambassador Alexander Arvizu, Albanian Deputy Prime Minister Niko Peleshi, and Deputy Minister of Interior Elona Gjebrea headlined the workshop. U.S. guest speakers: Jessica Ginsburg and Marcus Busch from the Department of Justice, Rebecca Mermelstein, Assistant U.S. Attorney in the Southern District of New York, and Mark Lasser, Senior Justice Advisor from the U.S. Embassy in Macedonia, traveled to Tirana to lead the workshop. They were joined by Italian experts: Dario Scalletta, Deputy Head of the Italian Prosecution Office in Palermo (Sicily), and Michele Incani, Human Trafficking

prosecutor from Cagliari (Sardinia). These experts provided participants with information about human trafficking conventions, criminal statutes, and current trends. They also addressed investigative techniques and challenges; identification of human trafficking victims; victim support mechanisms; using victims as witnesses; international law enforcement strategies; using confiscation of assets from trafficking cases to assist compensating and repatriating victims, and presented U.S. and Italian case studies. Representatives from all four Balkan countries each made presentations on the current human trafficking situation in their country and domestic structures in place to combat human trafficking, the government strategies to promote awareness and prevention of human trafficking, and a case study. Workshop participants noted that the regional platform on this subject was something that was needed to foster better cross-border relationships with their regional colleagues, as well as transnational cooperation. The Balkan Regional Workshop was a follow-up of the OPDAT-sponsored Albanian National Human Trafficking Workshop that took place on March 11 - 13.

Italian study tour

From May 20 to 23, OPDAT-Albania and PAMECA IV organized and co-sponsored a study tour for Albanian serious crimes judges, prosecutors, and judicial police officers to Palermo and Trapani, Italy. The tour started with a meeting at the Anti-mafia Investigation Department, a regional unit of representatives of various police forces set up based on Giovanni Falcone’s ideas about the need for coordination in the fight against mafia. The study tour participants had meetings also with anti-mafia prosecutors, judges and officers from various police forces, both in Palermo and Trapani. The meetings focused on the history of the Sicilian mafia, anti-mafia legislation and investigative techniques and tools, with strong emphasis on preventive measures through sequestration and confiscation of assets. A number of case studies were also presented. The tour ended with participation in the activities held by the Foundation Giovanni and Francesca Falcone in commemoration of the 22nd anniversary of Giovanni Falcone’s murder.

Continued promotion of Alternative Dispute Resolution

GIZ ORF-LR subproject “Gender oriented implementation of ADR instruments in Western Balkans” supported the participation of the teams from the region in this year’s Belgrade Open Pre-moot competition, which hosted more than 500 participants, and gathered teams from 56 universities in 26 countries, making it the world’s biggest preparatory event for the Willem C. Vis International Commercial Arbitration Moot, one of the largest and most prestigious moot competitions, held annually in Vienna, to foster the study of international commercial law and arbitration for the resolution of international business disputes. The Albanian team with University of Tirana law students performed well. With support from several law firms, it participated this year for the first time at the Vis Moot.

Probation Service awareness raising

On May 28, the OSCE Presence in Albania, in cooperation with the Probation Service and the Regional Durrësi Education Directorate, organized a roundtable with about 30 representatives of education institutions in Durrës. The aim was to raise awareness of the work of the Probation Service and the special role that educational institutions can play in the implementation of alternative sentences. Since its establishment in May 2009, about 1,700 juvenile offenders have been supervised by the Probation Service in Albania.

Constitutional reform

Given the political, social and legal developments of these 16 years since the adoption of the Constitution, the Open Society Foundation for Albania (Soros) is encouraging the launch of a public debate about the country's primary need for a radical constitutional reform. This initiative was introduced at a public event on May 26, with the participation of high officials of state institutions, political leaders, and representatives of the judiciary, civil society and international actors. Some of the arguments supporting this initiative are the shortcomings of the 1998 Constitution that have resulted in weaknesses of independent institutions in the face of the influence of the political majority in the parliament and government; repeated crises in the relations of the parliament with the General Prosecutor, for the election of the Ombudsman or in the process of appointing members of the

Supreme and the Constitutional Courts; and the inability of the parliament to exercise effective oversight over the executive. Another argument is the need to review the constitutional amendments of 2008 in order to correct the unintended side effects of the changes in the election of the President and the motion of confidence of the government. In addition, amending the Constitution becomes even more important in the context of EU membership as the next step after obtaining the candidate status, which entails automatic inclusion of EU law in our legal framework. According to the Foundation, the amendment of the Constitution is a complex and delicate process and requires active involvement and contribution across the political spectrum (inside and outside the parliament), from the civil society and groups of interest. The leading principles of this process should be inclusiveness and transparency. By addressing current challenges, its implementation creates stability,










because it protects institutions from political interference and strengthens the rule of law.

Legislative support

During the second quarter of 2014, the OSCE Presence in Albania provided comments on draft amendments to the Criminal Code upon the request of the Assembly's Laws Committee. In addition, it gave legislative support on the Albanian State Police draft law. Moreover, the Presence prepared comments on the draft law "On Inclusion of and Accessibility for Persons with Disabilities". Furthermore, the Presence submitted considerations on amending the current legislation on the Probation Service following the Albanian government initiative to improve the legal framework regulating the activity of this institution.

UPCOMING EVENTS: JULY – SEPTEMBER 2014

- Launching events in several local chambers of advocates and law faculties of the "Vademecum for Lawyers", a practical guide for lawyers on Civil Proceedings, OSCE Presence in Albania in cooperation with the NCA, July 7 - 24, 2014
- Developing an Offender Assessment System for Juveniles and training of probation officers on this system, OSCE Presence in Albania, July 15 - 18, 2014
- Fifth Regional Court Leadership Conference on the usage of audio recording, USAID JuST, Gjirokastra, July 25, 2014
- National survey to measure the perception of judges, prosecutors, lawyers, academics and representatives of civil society on the need for constitutional reform, OSFA, July 2014
- Focus group discussions with judges and prosecutors about the process of revising the Constitution, OSFA, July 2014
- Study visit at the European Court of Human Rights with the participation of judges and legal officers from the Albanian Constitutional Court and the Supreme Court, EU / CoE SEJ project, July 2014
- SEELS Regional Conference "Administrative law and its impact on the process of public administration reform and integration into the European administrative space of SEE countries", GIZ ORF-LR, Zagreb, Croatia, September 4 - 5, 2014
- High-level launch ceremony of the project "For justice without delays" at the Korça District Court, organized with the support of USAID JuST and the OSCE Presence in Albania, Korçë, September 10, 2014
- Capacity building activities on Administrative Court Law for lawyers, court staff and public administration officials, OSCE Presence in Albania, September 2014
- Start of Continuous Legal Education year III courses in six regional chambers of advocates, National Chamber of Advocates and the regional chambers of Durrësi, Vlora, Fieri, Korça, Shkodra and Tirana, supported by USAID JuST, September 2014
- Continued Court coaching, EU / CoE SEJ project, September 2014
- Serious Crimes Prosecution Office Financial Crimes and Money Laundering Workshop, OPDAT-Albania, September 2014
- Open Call for academic papers to gather expert opinions and generate new ideas to improve the Constitution, OSFA in collaboration with ALTRI Center, July - September 2014

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