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ALBANIAN CARDS 2006

**EUROPEAN ASSISTANCE MISSION TO THE JUSTICE SYSTEM in ALBANIA
(EURALIUS) II**

Final Report

(July 2010)

Table of Content

Glossary of Abbreviations used in this Report	4
Executive Summary	6
1 Description	9
1.1. Contractor (Beneficiary of Grant Contract)	9
1.2. Name and Title of the Contact Person	9
1.3. Name of partners in the Action.....	9
1.4. Title of the Action	9
1.5. Contract Number.....	9
1.6. Start date and end date of the reporting period (entire implementation period of the Action)	9
1.7. Target country.....	9
1.8. Final beneficiaries &/or target groups (if different) (including numbers of women and men)	9
1.9. Country(ies) in which the activities took place (if different from 1.7)	9
2 Assessment of implementation of Action activities	10
2.1. Activities and results	10
OBJECTIVE 1 Constitutional provisions, judicial reform, division of responsibilities	10
OBJECTIVE 2 Inter-institutional cooperation, improved performance, organic laws	21
OBJECTIVE 3 Planning and resource management of MoJ and Judiciary	28
OBJECTIVE 4 Financial management of the OAJB.....	34
OBJECTIVE 5 Quality of legal drafting, approximation of legislation to EU acquis, advice on legislation and cost analysis of legal drafts	38
OBJECTIVE 6 Prison system, remand system, alternatives to detention and imprisonment.....	51
OBJECTIVE 7 Enforcement system, bailiffs	60
OBJECTIVE 8 Case management and court administration, efficiency of the judicial process.....	71
OBJECTIVE 9 Criminal justice	78
OBJECTIVE 10 Land administration and immovable property rights	91
2.2. Assessment of the results of the Action	97
2.3. Outcome on both the final beneficiaries &/or target group (if different) and the situation in the target country or target region which the Action addressed	97

2.4.	List of all publications produced during the Action.....	98
2.5.	List of all contracts above € 5,000 awarded for the implementation of the action .	101
2.6.	Continuation of the Action	102
2.7.	Promotion of gender equality and disabilities	102
2.8.	Monitoring / Evaluation of the activities	103
2.9.	Lessons learnt from the Action.....	105
3	Partners and other Co-operation	107
3.1.	Relationship between the formal partners of this Action	107
3.2.	Continuation of partnership	107
3.3.	Relationship between Contractor organisation and State authorities in the Action countries	107
3.4.	Relationship with any other organisations involved in implementing the Action....	107
3.5.	Links developed to any other actions	108
3.6.	Ability of this Action to build upon previous actions	108
3.7.	Co-operation with the services of the Contracting Authority	108
4	Visibility.....	109
5	Annexes.....	110

Glossary of Abbreviations used in this Report

AASCA: Agency for the Administration of Sequestered and Confiscated Assets
AFCR: Albanian Foundation for Conflict Resolution and Reconciliation of Disputes
AGMI: Albanian Geographic Military Institute
AHC: Albanian Helsinki Committee
ALBPOS: Albanian Positioning Service
AMS: Albanian Magistrate School
ASP: Albanian State Police
BERP: Balkans Enforcement Reform Project
CoM: Council of Ministers
CoE: Council of Europe
CARDS: Community Assistance for Reconstruction, Development and Stabilisation
CPC: Civil Procedure Code
EBRD: European Bank for Reconstruction and Development
EC: European Commission
ECHR: European Convention on Human Rights
ECtHR: European Court of Human Rights
EJN: European Judicial Network
EUD: Delegation of the European Commission to Albania
EURALIUS: European Assistance Mission to the Justice System in Albania
EUROPOL: European Police Organisation
EU MS: European Union Member States
GDC: General Directorate of Codification
GDE: General Directorate of Enforcement
GDP: General Directorate of Prisons
GDProb: General Directorate of Probation
GoA: Government of Albania
GPO: General Prosecutor's Office
GTZ: Gesellschaft für technische Zusammenarbeit
HCJ: High Council of Justice
IC: International Consortium
IFC: International Finance Cooperation
ICITAP: International Criminal Investigative Training Assistance Program
ICMIS: Integrated Case Management Information System
IOM: International Organisation for Migration
IPRO: Immovable Property Registration Office
ITAP: Institute for Training of Public Administration
LRC: Legal Reform Commission
MoF: Ministry of Finance
MoFA: Ministry of Foreign Affairs
MoI: Ministry of Interior
MoEI: Ministry of Integration
MoJ: Ministry of Justice
MTE: Medium-term expert

NCA: National Chamber of Advocates

NJC: National Judicial Conference

NPISAA: National Plan for the Implementation of the Stabilisation and Association Agreement

OAJB: Office for the Administration of the Judicial Budget

OSCE: Organisation for Security and Co-operation in Europe

OECD: Organisation for Economic Co-operation and Development

OPDAT: Office of Overseas Prosecutorial Development, Assistance and Training

PAMECA: Police Assistance Mission of the European Community to Albania

PRCA: Property Restitution and Compensation Agency

PROSECO: Support to Prosecutors' Network in South-Eastern Europe

RTA: Resident Twinning Advisor

SAA: Stabilisation and Association Agreement

SAO: State Advocate's Office

SIDA: Swedish International Development Cooperation Agency

SIGMA: Support for Improvement in Governance and Management

SMEI: Support to the Ministry of European Integration

SPO: State Publication Office

UNDP: United Nations Development Program

UNICEF: United Nations Children's Fund

UNODC: United Nations Office on Drugs and Crimes

USAID: United States Agency for International Development

Executive Summary

According to the terms of reference it is the objective of EURALIUS II to facilitate, through the building of the required capacities within the Ministry of Justice and the Judiciary, the development of a more independent, impartial, efficient, professional, transparent and modern justice system in Albania, therefore contributing to the restoring of people's confidence in their institutions and to the consolidation of democracy and rule of law in the country. EURALIUS II should facilitate the fulfilment of the Stabilisation and Association Agreement requirements in the field of Justice Reform, by making the leadership of the Ministry of Justice and of the Judiciary fully acquainted with EU practice and standards.

EURALIUS assistance has in a number of important fields of the justice sector contributed to very significant success and progress. This refers in particular

- to gradual and persistent progress in the **prison system** (as to the planning and establishment of pre-trial and penitentiary institutions, improved prison management and progress as to a more humane treatment of detainees including pre-release and integrating measures) and to further development of pertinent laws and regulations, e.g. on alternatives to imprisonment;
- to the establishment of a **probation system** in Albania with a new General Directorate in the Ministry of Justice and four local offices; within one year only, the number of probationers/clients has reached approx. 1400 persons, thereby contributing to a reduction of prison overcrowding and of the prison population in general for the first time since many years;
- to significant improvements in the **budget management** of the Albanian courts and by the Office for the Administration of the Judicial Budget, resulting in modern budgeting standards and economisations, speedy availability of budget data and related standardisations and savings; budgetary management improvements have also been extended to the budget officers of prosecution offices, prisons and the enforcement sector;
- to the **enforcement system** by the adoption of laws for a "double-track" system of (existing) public bailiffs and (new) private enforcement agents aiming at increased efficiency and effectiveness of the enforcement of judicial decisions, including related amendments to the Civil Procedure Code (CPC); implementation of the new system has been very much delayed, however, due to difficulties in the recruitment procedures for private agents and the establishment of an electronic data base of enforcement cases for both service branches;
- to the final preparation of draft amendments to the **Civil Procedure Code** and the **Civil Code**, aiming at measures to speed up civil lawsuits (in particular by introducing payment orders and default judgements) and at increased consumer protection;
- to the introduction of a reliable **IT system for the courts (ICMIS)** with a lottery system for the random attribution of cases to judges, display of cases and trial agendas, internet access, intranet serving e.g. the documentation of judicial rulings, statistics etc.;

- to substantial improvements for the determination of **judges' positions** at the Albanian courts, based on reliable calculations, resulting in a decree by the President of the Republic (and Chairman of the High Council of Justice) on the distribution of judges and in a more balanced workload among courts and judges contributing to a reduction of backlogs;
- to the establishment of a functioning **GPS network** in Albania facilitating exact land measurements in a contemporary reference framework, which among other applications can be used for the cadastre and land registry;
- to the assistance in drafting a new law on the forfeiture of assets suspected of representing the proceeds of organised crime (so-called "**Anti-Mafia-Law**") as well as in drafting a **Law on mutual legal assistance in criminal matters**, supplementary to the Criminal Procedure Code, and subordinate regulations (related to the "Visa liberalisation road map");
- to the elaboration and publication of a second edition of our **Law Drafting Manual**, including an extended part on approximation of the legal system to the EU acquis, as a standard tool for legislative work in the Ministry of Justice and at other institutions;
- to the collection of all multilateral and bilateral **treaties in international civil and criminal legal cooperation** ratified by Albania and their recording in an inventory, put into a CD-ROM which was distributed to all Albanian judges and prosecutors, the Magistrates School and other institutions;
- to the presentation of numerous **studies, reports and recommendations** in all areas of the EURALIUS work plan;
- to providing **advice and comments** on a high number of **laws and regulations**, upon request or spontaneously, by way of participation in working groups, elaboration of written comments or oral advice, often on an ad-hoc basis, primarily to the General Directorate of Codification in the Ministry of Justice, but also to other institutions including the Laws committee and the National Security Committee of the Albanian Assembly;
- to the assistance provided for the High Council of Justice in preparing and adopting a new methodology for the **evaluation of judges**, an essential prerequisite for the promotion of judges to Appeal Courts and Serious Crime Courts.

In a number of other areas, however, results of EURALIUS assistance and progress were limited or deferred for a long time. This concerns in particular the following issues and problems:

- Not seldom **laws** passed by the Albanian Assembly are implemented with considerable delay or **not implemented** at all (examples: the legal aid law which came into force in April 2009 and has not been operative so far; the long delays in implementing the new "double-track" enforcement system adopted by the legislature in December 2008); such may be due to a lack of organisational or financial means, to missing subordinate regulations or orders or to unforeseen difficulties which have not been taken into account properly at the time of preparing and adopting the law;

- Similar phenomena were sometimes observed after **Constitutional Court decisions** which abrogated certain articles of a law when the necessary follow-up measures were not undertaken and a legal “gap” remained (as is the case with a central provision in the Judicial Power Law);
- **Laws requiring a 3/5 majority** in Parliament were not adopted since spring 2009 due to the 2009 elections and the ensuing parliamentary boycott by the opposition; among overdue legal acts of that kind are a new law on the **National Judicial Conference** (electing members of the HCJ) and a **Law on Administrative Courts** setting up separate structures of administrative justice in Albania and providing modern procedural provisions; EURALIUS assisted on both drafts extensively together with other international actors;
- The **reorganisation of district courts** (involving the abolition of eight district courts in rural areas in 2007) did not take access to court requirements of the population in less populated parts of the country into account sufficiently and did not transfer the judges of the dissolved courts to other courts for a long time – disregarding constitutional principles or EURALIUS recommendations;
- The **court fees** to be paid by the parties of law suits were raised twice, not taking into account specific EURALIUS calculations and proposals, again interfering with the right of access to justice;
- The problem of the **two inspectorates for judges** (at the HCJ and the MoJ) has been mitigated by somewhat better cooperation, but not solved;
- **Disciplinary proceedings** against judges are frequently delayed, do not respect the borderline to the merits of cases (to be judged by appeal courts and the High Court exclusively) and are often not conducted in conformity with fair trial principles by the HCJ;
- The most significant problem field in the country is represented by the area of **immovable property rights** (the issues of registration, restitution/compensation and legalisation of properties/buildings) which is regulated in a chaotic way by an ever increasing number of legal amendments; it is a frequent source of legal and personal conflicts, increases the burden of court cases and gives rise to applications for human rights violations at the European Court of Human Rights; EURALIUS provided comprehensive analyses of the situation and organised workshops and a study visit to Strasbourg on related issues, but our basic advice for the development of a strategic approach by the Government involving all stakeholders did not lead to action.

It should be added however that the cooperation with our Albanian counterparts was generally a very good one on all levels and in respect of all institutions, in most cases facilitated by increasing mutual assurance and confidence.

1 Description

- 1.1. Contractor (Beneficiary of Grant Contract)** Austrian Federal Ministry of Justice
in co-operation with:
the Center of Legal Competence (CLC) – Consulting and Research Center promoting legal competence of institutions abroad
- 1.2. Name and Title of the Contact Person** Dr. Wolfgang Fellner, Representative of the Austrian Federal Ministry of Justice
Dr. Roland Miklau, Head of Mission
Dr. Otto Oberhammer, Chairman of the Board CLC, and Mario Thurner, Managing Director CLC
- 1.3. Name of partners in the Action** Deutsche Stiftung für internationale rechtliche Zusammenarbeit e.V. (IRZ)
Dr. Stefan Pürner, Project Leader IRZ
- 1.4. Title of the Action** European Assistance Mission to the Justice System in Albania (EURALIUS II)
- 1.5. Contract Number** Grant No.146-012
- 1.6. Start date and end date of the reporting period (entire implementation period of the Action)** 15 November 2007 – 30 June 2010
(31.5 months)
- 1.7. Target country** Albania
- 1.8. Final beneficiaries &/or target groups (if different) (including numbers of women and men)** Staff of the Albanian Ministry of Justice, the High Council of Justice, the Prosecution Service, judges of the Albanian courts, the Albanian Magistrate School, bailiffs, staff of the Office for the Administration of the Judicial Budget, the prison system, the Probation Service, the Institute for Training of Public Administration, the Property Restitution and Compensation Agency, the Immovable Property Registration Office, the Military Geographic Institute
- 1.9. Country(ies) in which the activities took place (if different from 1.7)** Cp. 1.7 above

2 Assessment of implementation of Action activities

2.1. Activities and results

OBJECTIVE 1

Constitutional provisions, judicial reform, division of responsibilities

Rapporteur: *Christine Lindemann-Proetel*

Expected Result 1.1

Any changes to the Constitution or to the organisation and functioning of the judicial powers have been developed in accordance with a process that is fair, transparent and inclusive, with input from all relevant stakeholders, and have been drafted in accordance with EU practices and standards and are in full respect of human rights and EU standards.

Description

EURALIUS followed closely judicial reform developments in Albania. In this connection numerous meetings were held with judges, chairmen of courts, representatives of judges associations, representatives of the HCJ, representatives of the MoJ and members of the parliamentary subcommittee on justice reform in order to obtain their views concerning the current and future legal reform and processes of constitutional change.

Regarding the constitutional amendments the Assembly passed in April 2008 which slightly affected the justice system, EURALIUS followed, but was unfortunately unable to affect, the swiftly prepared and adopted constitutional amendments. EURALIUS experts analysed the various platforms for the judicial reform prepared by the political parties in 2008 and discussed them with the members of the parliamentary subcommittee on justice reform. We also worked along with the American experts of ODPAT on possible constitutional changes to lift immunity of judges and high state officials. EURALIUS produced a document with concrete recommendations on this issue which was published on our website in November 2008.

Both, the MoJ and the HCJ undertook some legal initiatives in order to implement the Judicial Power Law. The MoJ has drafted a new law on administrative dispute and on the organisation of the administrative justice, which shall also set up administrative courts in Albania, as the Judicial Power Law requires. We have had frequent communication with the SIGMA national and international experts who worked on the draft law on administrative justice three lawyers representing the Socialist Party, members of the Laws Committee, EURALIUS, the Millennium Challenge Project of USAID and representatives from the local USAID office and OSCE representatives. We devoted internal expert consultation to the draft law on administrative justice. Our different comments to this draft were delivered both to the MoJ and the Laws Committee of the Parliament. The law is now pending in the Assembly because it could not be approved before and after the June parliamentary election.

The MoJ did not establish a working group on the draft law on judicial administration, but we were able to make comments to the draft along the HCJ and the National Association of Judges once the draft was approved by the Council of Ministers. The MoJ also drafted a Regulation for the judicial administration staff and a code of ethics. Both drafts were made without taking into account the new draft law on judicial administration. We have analysed all those initiatives very carefully and we prepared written comments emphasising not only the contradiction between all these initiatives and the provisions of the judicial power law but also the imbalanced division of power between the chairman and the chancellor of the court. Unfortunately the draft law on judicial administration failed to address properly and in a comprehensive way the issue of granting civil status to the administrative staff of the courts. The draft law has been pending in the Parliament for almost two years and the regulations have not been approved. EURALIUS followed the developments with regard to Constitutional Court decision on the constitutionality of articles 37/2 and 38 a, b of the Judicial Power Law. The complaint had been brought by the National Association of Judges. In its judgment, issued on 9 July, the Court repealed as unconstitutional the provision of article 38a that stated that the Chancellor was the only one responsible for the appointment and discharge of the judicial secretariat and the administrative staff of the court. The rest of the complaint, supervision of the lot system by the Chancellor and the appointment of the latter by the Minister of Justice, is dismissed. The Constitutional Court took very long to issue its decision. So far the MoJ has not introduced any legal provision to fill the gap regarding the appointment of administrative staff of the courts. We have assessed the situation and it seems that everybody - including also the MoJ – agrees that as a consequence of the Constitutional Court Decision the Regulation of the Minister of Justice No. 1830, dated 3 April 2001 is applicable again, according to which the chairmen have the competence to appoint the administrative staff of the courts.

The HCJ has drafted and approved four decisions in order to implement the Judicial Power Law; decisions on the Solemnity of Court Proceedings, on Delegation of Judges, on the Lot System and amendments to the evaluation system of judges. We have actively participated in the working groups of the HCJ to draft those decisions making both oral and written comments to the drafts. We have worked intensively in order to provide the HCJ with concrete proposals on how establish a point system and permanent list of judges. We recommended the HCJ to draft a decision on the point system assigning different weight to the three factors explicitly mentioned in the Judicial Power Law (seniority, work results, scientific activity), to establish the list of the ordering of judges only with regard to those judges who have applied for appointments to the serious crimes courts and the appeal courts and to list them according to the results of their evaluation. The HCJ working group on these issues established almost two years ago will be revived and will present a finalised draft to the HCJ plenary. In our recommendation we proposed also a total revision of the provisions of the Judicial Power Law and HCJ law covering the appointment and promotion of judges in order to have a comprehensive and harmonised set of rules for the judicial career in Albania.

Achieved Results

- Four decisions were adopted by the HCJ in order to implement the provisions of the Judicial Power Law.

- A concrete proposal on the point system and permanent list of judges for the promotion of judges was submitted to the HCJ.
- The HCJ working group is revived to draft the decisions on point system and permanent list of judges
- The process of drafting the new law on administrative dispute and administrative courts have been going through consultation and discussions including different interested groups and international organisations.

Reasons for divergence: The overall political situation has not allowed for any discussion about constitutional changes and for the adoption of main laws of the justice system.

Assessment

The implementation of the judicial power law is going slowly. The HCJ adopted three decisions on solemnity of judges, delegation of judges, and lot system for distribution of cases. Despite the efforts of the HCJ and the MoJ to draft a decision on the point system and permanent list of judges, as required by the provisions of the Judicial Power Law no result has been achieved yet. After several discussions and research we managed to provide the HCJ with a concrete proposal on point system and permanent list of the ordering of judges. We further proposed to the HCJ and MoJ to revise the respective provisions of the Judicial Power Law with regard to appointment and permanent list of judges.

The process of drafting the law on administrative court and administrative dispute went through a consultation process. However we have provided joint comments together with international projects aiming at improving those provisions which guarantee a smoother transition period once the law is in place.

The issue of the status of judicial administration is not addressed yet. The judicial administration law was not approved by the law committee of the parliament. We have expressed our concern about this law as to the division of powers between the chancellor and chairmen. Moreover the MoJ has not drafted a provision to fill the legal vacuum created by the Constitutional Court Decision repealing the provision of the Judicial Power law providing the right of the chancellor to appoint and dismissed judicial administration.

Recommendations

- We recommend the HCJ to adopt as soon as possible the decision on the point system and permanent list of judges
- We recommend the MoJ to revise the provisions of the Judicial Power and the HCJ law regarding the appointment and promotion of judges in order to harmonize these rules.
- The issue of status of judicial administration must be addressed in order to have a stable solution for their status.

Expected result 1.2

A judicial reform strategy in compliance with the Constitution has been prepared by the Government/Assembly with the input of EURALIUS and other stakeholders, with a plan for its implementation prepared and beginning to be implemented

Description

An overall reform strategy on justice is still missing in Albania. As quoted in the 2008 progress report of the European Commission for Albania, the adoption of a comprehensive strategy on judicial reform, the completion of the legal framework and the provision of sufficient human and financial resources for implementation are needed and would be key elements to plan and monitor the progress of Albania in the justice area.

In order to implement this activity EURALIUS experts have been from the very beginning in close contact with the representatives of the MoJ who were working on updating the Justice Sector strategy feeding into the Government National Strategy for Development and Integration in early 2008. In this respect, close ties with the Secretary General of the MoJ and other specialists, who were mainly charged with the drafting, have been built up. In one of the communication with the MoJ representatives on this issue the MoJ informed us that the competence to draft the strategy had been taken away from the MoJ and was assigned either to the Assembly or the Council of Ministers. We then met representatives of the Laws Committee in the Assembly and the Department of Strategy and Donor Coordination of the CoM and were informed that neither the Assembly nor the CoM have taken or intended to take any initiative in the near future in this respect. No draft strategy was adopted before the June 2009 elections.

In an effort to support the new Minister of Justice in this respect EURALIUS provided a document to the Minister of Justice in September 2009 containing ideas and suggestions for the drafting of an overall reform strategy for the justice sector and for the immovable property strategy. The document is called “Elements for a justice reform strategy and action plan for the Ministry of Justice”. This document is based on a kind of needs and gaps analyses conducted by each expert of the EURALIUS Mission during the course of their work. In December 2009 based on an order of the Minister of Justice a working group was set up to elaborate the justice reform strategy. The working group is updating the justice sector strategy as part of National Strategy for Development and Integration.

We have kept constant communication with representatives of the MoJ in order to find out the state of affairs of the justice sector strategy and at the same time reconfirm towards them our will to assist in this process. In the last Stakeholders Committee Meeting of EURALIUS in March 2010 we were told that by the end of April we were to be provided with the first draft of the strategy. In the meantime we were asked by the HCJ to assist them in drafting their contribution to the justice sector strategy. We took part in the meetings of the working group set up for that purpose and we provided some comments and suggestions which were fully taken into consideration by the HCJ.

However, the drafting of the strategy has apparently been further delayed. By the time of writing this report we have not been submitted a draft.

Achieved Results

- A documents containing elements for justice reform strategy is submitted to the Minister of Justice.

Reasons for divergence: The MoJ has not finalised the draft strategy on justice area. The MoJ did not invited EURALIUS to participate in the working group for updating the justice sector strategy.

Assessment

EU progress reports and EURALIUS have repeatedly encouraged the GoA to come up with a clear strategy in the justice field to be able to monitor efficiently the progress that Albania could be making in this field. Neither the MoJ nor the Government has given any explanation why they did not develop a strategy for the justice sector for several months. It is true that some attempts were made by the political parties in Albania to draft a political pact for the justice area, but this cannot substitute a governmental strategy with a concrete action plan. It is a positive step that the MoJ is updating the Justice Sector Strategy, but there have been long delays in this process. We did not have the possibility to participate in the working group that is working for updating the justice reform strategy because the MoJ, as this was declared also at the last Stakeholders' Committee Meeting, did not invite EURALIUS to be part of the working group but rather preferred sending us a draft at a later stage for review.

The process of drafting the justice sector strategy has not been well organized from the very beginning. It would have been better for the Ministry to have included other justice institutions at a very early stage. All justice institutions should work together in order to have a comprehensive strategy for the justice reform. Their functions are so much interlinked although they might be considered as belonging to different branches of the powers.

Recommendations:

- The Ministry of Justice should finalise as soon as possible the justice reform strategy
- A better coordination and consultation with other justice institutions is needed when such important documents are drafted.

Expected Result 1.3

The organisation of the services of the MoJ and of the Judiciary have been improved and clearly defined in the respective areas of competences in order to ensure a clear and balanced division of responsibilities

Description

Inspection and disciplinary proceedings against judges carried out by both the HCJ and the MoJ have been the main emphases in view of our activities to attain the Expected Result. We have studied carefully the current legislative framework covering inspection and disciplinary proceedings of judges and at the same time we have participated in some of the plenary sessions of the HCJ where alleged disciplinary violations of judges were discussed and also in High Court hearings where HCJ decisions to dismiss judges from duty have been

adjudicated. EURALIUS worked further on this issue and we have provided the HCJ with written and oral recommendations on how to improve the inspection and disciplinary proceedings. With regard to the inspection process we have advised the HCJ to change the legislation and practice in order to avoid any interference with the judge's independence. The issue of inspection has been brought up not only in the workshop organised by us in July in 2009, but also at different roundtables organised by EURALIUS and other donors.

EURALIUS had several meetings with representatives of the MoJ and the HCJ in order to address the problem of the two inspectorates, the one of the MoJ and the one of the HCJ. In this respect, EURALIUS experts have also continued under the EURALIUS II to ensure close cooperation with the Italian – Spanish Twinning project within HCJ. We also established very good cooperation with the Spanish RTA of the Spanish-Italian Twinning project at the General Prosecutor's Office and we informed each other frequently on issues of common interest.

Albania continues to have the unique system of double inspectorates with same competences. EURALIUS has worked closely with the German bilateral project assisting the MoJ and focusing on the internal rules of the MoJ with regard to the inspection and on some recommendations on how to divide the competences between the two inspectorates in order to avoid overlapping of the competences. The final recommendation of the German bilateral project was submitted to the Minister of Justice and EURALIUS has followed its implementation. It remains unclear whether the MoJ is implementing the German expert's recommendations.

We have monitored the inspection procedures and disciplinary procedures against judges. We have attended several plenary sessions of the HCJ where disciplinary proceedings were discussed. Unfortunately due to the poor planning of the Council's meetings the disciplinary proceedings against judges were postponed in several occasions. In this field we also have followed and monitored the decisions of the High Court reversing some decisions of discharge of duty of the Council.

The last action we undertook for this issue was to agree with the HCJ to work on internal rules of the HCJ with regard to inspection and disciplinary proceedings. We have made our own assessment of the HCJ Regulations on the Inspection and Disciplinary proceedings and we have prepared a document including some of the most problematic aspects of these regulations. The HCJ is going to establish the working group for revising these regulations in a very near future.

Achieved Results

- Recommendation on inspection and disciplinary proceedings are drafted and submitted to the HCJ and Ministry of Justice.
- Problematic issues of the current regulations and inspection and disciplinary proceedings are made present to the HCJ
- A working group of the HCJ is established to revise the internal regulations of the inspection and disciplinary proceedings is set up.

Reasons for divergence: The MoJ has not drafted amendments to the HCJ law. The political situation has had negative impact to the process of drafting and adopting organic laws of the justice system.

Assessment

The issue of the two inspectorates (of the MoJ and the HCJ) has not been solved yet. Both inspectorates continue to inspect judges and courts and it is often the case that both inspectorates are investigating the same facts. The HCJ and the MoJ have been provided with several recommendations on how to address the double inspectorate issue. The recommendations provided by the Twining project and the German expert are not completely concurring, but both of them seem to be appreciated by the HCJ and MoJ. It is true that the two recommendations have their pros and cons, but at the end the Albanian institutions should stick to one model which at the same time complies with the European standards and fits with the Albanian justice sector's needs.

Inspection and disciplinary proceedings against judges are not always in compliance with European standards and they often violate the principles set in the Constitution and the jurisprudence of the Constitutional Court. In order to properly address the issue of double inspectorate changes should be made to the High Council of Justice law and to the respective provisions of the MoJ law.

We are happy to see the HCJ responding positively to our proposal for establishing a working group to discuss and improve the current internal regulations on inspection and disciplinary proceedings. We have already raised in our letter to Deputy Chairman of the HCJ Mr. Spahiu some of the issues that must be considered for revision and improvement in the current regulations.

However, we are fully aware of the fact that the substantial improvement with regard to the inspection and disciplinary proceedings against judges can only be achieved through the revision of the above mentioned laws.

Recommendations

- The High Council and the MoJ should consider carefully all the proposals offered to them on the double inspectorates
- The MoJ should revise the HCJ law, MoJ Law and Judicial Power Law in order to clearly define rules and procedures on inspection
- The HCJ should revise the current internal regulations on inspections and disciplinary proceedings.

Expected Result 1.4

The procedures for the selection, appointment and promotion of judges and prosecutors have been made more transparent and impartial

Description

Monitoring the implementation of the evaluation system for the purpose of promotion of judges has been one of the issues we followed carefully. The evaluation system of judges had originally been approved in 2006 but it has never been implemented. Additional slight modifications to the evaluation system were approved in 2008 to facilitate the job of the inspectors. The HCJ had many doubts about the feasibility of the system and had even considered drafting a completely new system of evaluation of judges. In addition, we have held a number of meetings with the Deputy Chairman of the HCJ and representatives of the two judges' associations and discuss possible improvements to the evaluation system of judges. We detected several problems that in our view jeopardised the smooth implementation of the evaluation process. So far the HCJ has not been able to produce the final report on the evaluation of any court in Albania. The system was very complex and it goes through many complicating procedures. Judges and chairmen of the courts are reluctant to make self-evaluations and evaluate colleagues from the same Court. The number of files to be checked by the inspectors continues to be high even after the amendments that tried to reduce it. The total number of judges to be evaluated according to the periodicity foreseen in the Judicial Power Law is too high as well. In order to raise some of the problems regarding the evaluation system in Albania and offer some solution to them EURALIUS dedicated the second day of the workshop held in July 2009. As a follow-up EURALIUS has prepared a document where concrete suggestions and recommendations were given to improve the system and make it feasible. In addition, inspectors of the HCJ requested EURALIUS to organise a study visit to the HCJ of Portugal to learn in more detail about the Portuguese system which in some respects is quite similar to the Albanian one. Based on the request of the HCJ we agreed on a work plan with concrete steps and concrete deadlines to revise the current evaluation system. A working group composed by inspectors and members of the HCJ and EURALIUS experts was established to revise the system. In order to support the HCJ to address properly the changes to the current system we have organised a study visit to the Portuguese High Council of Justice. The main reason to choose Portugal was the similarity of the Albanian evaluation system of judges with the Portuguese one.

The study visit took place between 4 and 7 November 2009 in Lisbon. The main aim of the visit was to study how judges were evaluated in Portugal and also to have detailed information on the internal structure and organisation of the Portuguese High Council of Justice. The study visit was very successful with very fruitful discussions from both sides. We were provided with written materials on the evaluation system of judges. These materials were translated into Albanian with EURALIUS support and they were used by the HCJ for the revision of the evaluation system. As agreed in the work plan, the HCJ finalised the draft new system on the evaluation system during the month of December. In our view the new system introduces changes which simplify the procedures and adds more logical criteria for assessing judge's work, but still needs some amendments. The HCJ approved the new system on evaluation of judges in April 2010. The new system contains rules on expedited evaluation of judges and it foresees that the HCJ will continue implementing the old system as long as all the courts are evaluated.

EURALIUS worked closely with the HCJ on the issue of transferring, promoting and appointing judges in light of the changed numbers of judges' positions at different courts after the President's decree of September 2009. Together with representatives of other international organisations we have participated in a meeting organised by the HCJ where the draft methodology of the HCJ on the transfer of judges was presented. EURALIUS prepared a written document which was submitted to the HCJ containing suggestions on how to conduct the transfer of judges based on objective criteria. We suggested voluntary transfer as a principle and only as a last resort should involuntary transfers occur. The HCJ agreed to take into consideration the recommendations of EURALIUS when carrying out the transfer process of judges. Our initial proposal was the HCJ could start with pending appointments to the appeal courts and continue with parallel transfer in district courts. Once the HCJ approved the new system on evaluation of judges with expedite procedures included, we decided to shift from our initial idea and we have agreed that the HCJ starts with the transfer of judges of the district court and then continues with the appointments to the appeal court. The main reason for such change was to have the HCJ conduct expedite evaluation procedures for the pending appointments to the appeal courts. The HCJ applied our second proposal but ignoring completely the reasons why we shifted from the initial idea which was having and letting the HCJ conduct the expedited evaluation and comply with the provision of the law.

EURALIUS has underlined the importance of having a better organisation and planning of the work of the Council and especially in their plenary meetings following the recommendations of the Twinning Project, but so far the Council does not implement those recommendations in a systematic way.

In our monitoring process we have observed that the Council has sometimes established working groups and that concrete drafts have been presented to be voted in the plenary meetings but this only has been done in a few occasions. The planning and organisation of the plenary meetings is poor and needs to be improved.

Different meetings were organised with the Deputy Chairman of the HCJ to adopt recommendations of the completed Spanish-Italian twinning project which had assisted the HCJ mainly in relation with the internal structure and organisation of the Council. The experts of the Twinning Project had the opinion that both the Judicial Power Law and the Law on the HCJ allow the Council to establish a new internal administrative organisation and internal commissions, adopting Regulations by means of appropriate decisions. The Council does not have the same opinion and has expressed that probably amendments to the Laws on the HCJ and to the Judicial Power Law would be needed to incorporate into the Albanian system all the changes recommended by the Spanish-Italian Project.

The HCJ has adopted its internal regulation during the fall of last year. The regulation reflects to a quite large degree the recommendation of the twinning project as to the directorate to be created and the tasks to be performed. There is not much to be done in this context. However the HCJ has not addressed two of the most important recommendations of the twinning project which are the establishment of the permanent commissions composed of the members of the HCJ and the introduction of the position of the secretary general of the HCJ. We raised this issue frequently with the representatives of the HCJ, and they are all convinced that these proposals can be implemented only by changing the HCJ law.

We have had several meetings with the RTA of the Spanish-Italian Twinning Project at the General Prosecutor's Office and ensured very good information exchange on project level. However, since evaluation and promotion of prosecutors is a core task of the Twinning project, EURALIUS has refrained from taking specific actions in order to avoid duplication of efforts in this respect. For the same reason it is not envisaged to continue with this Activity under EURALIUS.

Achieved Results

- Recommendation on appointment promotion and transfer of judges was submitted to the HCJ
- A new simplified system of evaluation of judges is approved by the HCJ
- Rules on expedited procedures for evaluation of judges were incorporated and approved together with the new system of evaluation of judges.
- Two recommendations on the transfer and appointment of judges because of process of court reorganisation were submitted to the HCJ

Reasons for divergence: The HCJ did not finalise the evaluation of all judges with the old system. The HCJ decided not to apply the expedited evaluation procedures for the pending appointment to appeal courts.

Assessment

The new Judicial Power Law (no. 9877 of 18 February 2008) provides that, at least once every three years, the HCJ performs an evaluation of the professional abilities of each judge under its jurisdiction, in conformity with its approved decision on the evaluation criteria. The spirit of the new Judicial Power Law is to increase objectivity and improve the career path of judges through the evaluation system. However the process of appointing and promoting judges in Albania continues to be problematic. The approval of the HCJ of the new system of evaluation of judges and expedited evaluation rules is a welcome step. The HCJ should implement the new system and try to finalize the ongoing evaluation of judges under the old system. We regret the fact the HCJ did not apply expedited evaluation rules for the pending appointment in the appeal courts. The Judicial power law foresees other instruments to be regarded when judges are promoted such as point system and permanent list of judges. These instruments are not yet in place.

EURALIUS agrees with the assessment made by the Spanish-Italian Twinning Project on the passive role of the members of the HCJ in the decision-making process considering that their activity is limited only to participate in plenary meetings, debating some proposals and voting on them. Working groups were established within the Council for concrete activities but a general rule providing concrete tasks for the member of the Council is missing. In line with the twinning project recommendation we have supported the idea of establishing permanent commissions within the HCJ. The creation of such commissions will enable the smooth and efficient operation of the HCJ.

Recommendations

- The HCJ should finalise the current evaluation of judges based on the old system and start implementing the new system on evaluation of judges.
- The HCJ should apply the expedited evaluation procedures for the appointment to the appeal courts until two evaluation results are in place.
- The Judicial Power Law and HCJ should be revised in order to have harmonised set of rules for the appointment and promotion of judges.
- The HCJ law should be revised in order to foresee a better organisation of the HCJ including the establishment of permanent commissions.

OBJECTIVE 2

Inter-institutional cooperation, improved performance, organic laws

Rapporteur: *Christine Lindemann-Proetel*

Expected Result 2.1

The inter-institutional dialogue and cooperation between the Judiciary, the Ministry of Justice, the General Prosecutor Office, the Ministry of Interior, the Police and related stakeholders has been enhanced

Description

EURALIUS has had meetings with different stakeholders in the judicial system, such as chairmen of courts, representatives of judges associations, the deputy chairman of the HCJ, representatives of the MoJ and members of the parliamentary subcommittee on justice reform in order to obtain their views on justice issues. In collaboration with OPDAT we have organised a roundtable on the ethics and independence of the judiciary. Several judges, representatives of the MoJ and EURALIUS experts attended the roundtable where issues like the immunity of judges, violation of ethics and disciplinary responsibility were discussed.

EURALIUS organised three roundtables to discuss various justice reform issues. On 12 March a roundtable in collaboration with the EURALIUS' Criminal experts was organised on ethics for judges and prosecutors. Representatives and high ranking officials of the main Albanian institutions, such as the General Prosecutor Ms. Rama, Vice chairman of the HCJ Mr Spahiu, General State Advocate, Mr Halimi and international organisations operating in the justice field participated in the event. The roundtable was perceived as being very productive and useful by bringing up very highly sensitive issues of the justice system such as disciplinary proceedings and ethics. Discussion between the high ranking officials took place. They shared their opinions and ideas about ethics and inspection of judges and prosecutors.

On 1 April 2009 government officials, members of the judiciary and prosecutors, donor agencies and international experts participated in a roundtable organized by EURALIUS to improve the fight against corruption. Mr Martin Kreutner, Director of the Bureau for Internal Affairs at the Ministry of Interior of Austria, informed about corruption as a phenomenon and aspects of its prevention, detection and prosecution. EURALIUS emphasised that the general supervision of the courts through general inspections, if carried out in a proper way and on a regular basis, would help to prevent corruption in the judiciary.

In May 2009 EURALIUS in cooperation with the MoJ and the HCJ organised a conference in order to discuss possible amendments to the current law on the HCJ with a view to improve its functioning. Members of the judiciary, representatives of the MoJ and representatives of the HCJ attended the conference. At the conference the representatives of the judiciary generally welcomed the proposals of the Spanish-Italian twinning project which we also support, for example the establishment of commissions within the HCJ. It was stated that the HCJ should have the leading role on the creation of vacancies and transfer of judges and

also that the budget of the Council should be increased in order for the Council to be able to fulfil its legal and constitutional role.

In October 2009 EURALIUS organised a big event on Albanian justice system and its way to European standards. The event gathered the main actors of the justice system, politicians and judges and prosecutors.

EURALIUS organised initial meetings and interviews with members of the National Judicial Conference, National Association of Judges, Union of Judges and the High Council of Justice in order to explore new ways to improve and promote the communication and cooperation between the courts. The Constitutional Court issued a decision in December 2008 declaring the unconstitutionality of the 2005 National Judicial Conference Law. The MoJ has subsequently established a working group to draft a new Law on the National Judicial Conference. EURALIUS was part of the working group and has participated in all the meetings providing also written comments and suggestions to the MoJ for drafting a new law. The working group had a promising start. After the completion of the first draft more comments were prepared and more meetings organised and finally the Ministry prepared a second draft. This second draft was apparently finished in February 2009 but was not handed to EURALIUS. For unknown reasons the MoJ has never called again the working group and the drafting of this law was stopped. In the absence of this law the HCJ could not replace the members whose terms are finished. The National Judicial Conference is supposed to elect judges members of the HCJ. The political situation has also some impact of the progress of this law because the Constitutional Court has pointed out that the NJC law needs 3/5 of the votes to be approved. EURALIUS participated in the events organised by the Chairwoman of the HCJ court on the National Judicial Conference law. There were some attempts from the judiciary to hold a meeting of the NJC without having the law but with no results. We have been of the opinion that a law is needed for the reestablishment of the National Judicial Conference.

Achieved Results

- Roundtables on various judicial reform issues were organised by EURALIUS with the participation of judges, prosecutors, experts, lawyers, representatives of justice institutions and international organisations.
- Written comments on National Judicial Conference draft law were drafted and submitted to the MoJ and other representatives of the judiciary.

Reasons for divergence: The general communication and cooperation between justice institutions continuous to be weak. Our events were attempts to improve communication but the sustainability of these measures is limited. The NCJ law was repealed by the Constitutional Court and all our efforts have been addressed to the issue of drafting and adopting a new law.

Assessment

As already assessed under EURALIUS I, inter-institutional dialogue remains to be one of the central weaknesses of the Albanian reality. The general communications between the actors

of the justice system have varied during the course of the two years. However regular consultations or discussions do not seem take place except in very few cases. There is a clear need to develop trust between the executive and the judiciary. A change of mentality is needed. The MoJ, when dealing with issues related to the judicial system, should regard the HCJ, the National Judicial Conference, the Associations of Judges, Associations of Prosecutors, NGO and other institutions involved in the justice reform process as partners and not as opponents.

The MoJ did finalise the draft law on National Judicial Conference. The quick and urgent drafting of this law is extremely important for the normal functioning of the justice system in Albania. Central constitutional task of the National Judicial Conference is to appoint judges, who shall sit in the HCJ as representatives of the judicial system holding the majority in this body. Some members' terms have already expired and without a law in place it is impossible to appoint new members of the Council. We do hope that the new GoA will tackle this legal vacuum immediately and proceed with it. Despite all the debates surrounding the NCJ we have constantly encouraged the MoJ to finalise the draft Law on National Judicial Conference and to submit it as soon as possible for approval to the Council of Ministers. We regret to close our work without being provided with the last chance to see this draft. We do hope the MoJ will retake this issue as soon as the Parliament starts functioning normally.

Recommendations:

- The inter-institutional dialogue on reform issues of justice system should be strengthened
- The MoJ and government should adopt the new law on National Judicial Conference

Expected result 2.2

Trust and consensus has been improved between political forces in reforming the judicial system and in improving its performance

Description

EURALIUS studied the various platforms for the judicial reform prepared by the political Parties and discussed them with the members of the parliamentary subcommittee on justice reform. The parliamentary ad-hoc subcommittee on justice reform convened only one meeting and remains dormant for all this period. The main political parties did not reach agreements on major laws of the justice reform with some exceptions such as the approval of the amendments to the law on the General Prosecutor's Office and Judicial Power law. We have analysed the comments of the Socialist Party presented at the Laws Committee of the parliament on the administrative justice law and the law on judicial administration. The Stakeholders' Committee of EURALIUS II decided first to suspend this activity for a 6 months period because of the elections and after we closed completely because of the general political situation.

Achieved Results

No specific Results achieved.

Reasons for divergence: The overall political situation has hampered the implementation of this activity.

Assessment

All the political platforms contain very good ideas, but concrete actions are missing. The different platforms identify the main problems of the justice system but there is not a clear strategy in any of them about how to carry out the justice reform process in an organized way. The platforms should be more concrete in their solutions to the different problems and provide timetables to carry out the process. The establishment of the parliamentary subcommittee on justice reform issues was a good initiative for discussing justice reform issues. The pre-election phase and the boycott of the Socialist Party have had negative impact to communication between main political forces.

Recommendations:

- The political forces should find consensus and work together for justice reform issues.

Expected Result 2.3

A standard consultation procedure for legislative drafting has been established

Description

In all the meetings, interviews and working groups that we have participated it has been always highlighted the importance of early and broad consultation with all the persons and institutions affected by the draft law. We have followed closely the legislative process of drafting important laws of the justice system and we have stressed at many occasions the importance of the standardized consultation process where all the parties are involved. In this respect, EURALIUS has completed an assessment on how the consultation process is being conducted by the MoJ. EURALIUS prepared a document with concrete recommendations to the MoJ to create a standardised consultation process and offered assistance for the drafting of a set of instructions to be used by the MoJ.

In our document, under the conclusion and recommendation part, we proposed that it would be helpful to develop in the future a modus operandi or standardised set of rules with the institutions of the justice system. This document could set out procedures for setting up joint or inter-institutional working groups with the concerned institutions, starting from the stage of policy formulation; could specify time-periods for requesting and seeking opinions from other institutions; could specify the co-ordinating duties of the General Directorate of Codification when opinions are requested, round-tables are organised or working groups are established; and could require feedback and response to the proposals of the consulted institutions. This recommendation and also a letter repeating the same ideas were delivered to the MoJ but unfortunately have been no reaction from the Ministry.

Although the MoJ has been quite resistant to proceed further with our proposal to have some standardised rules on consultation, we decided to make another try and provide the MoJ with concrete proposals on these issues. We have drafted our proposal in a form of guidelines for

the consultation with justice institutions and external actors in the field of justice. The proposal can more or less be adopted as it is, but it can also easily be adjusted to special needs, ideas or practices of the MoJ.

Achieved Results

- A Recommendation on standardised consultation procedures was submitted to the MoJ
- A written letter was sent to the General Directorate of Codification of the MoJ offering our assistance in drafting the consultation rules.
- Guidelines on consultation with other justice institutions and external actors in the field of justice were submitted to the MoJ.

Reasons for divergence: The Ministry of Justice has been reluctant to work with us on standardised consultation rules. The Ministry of Justice was convinced that they conduct enough consultation and the Council of Ministers Regulation provides the necessary rules for such consultation.

Assessment

There has been a small degree of improvement in the area of consultation before a law is drafted. In the process of drafting new laws, we have observed that judges and members of different institutions are being invited, but there is still a long way to go to have a standard consultation procedure. In some cases the consultation is done and in some others not, without any objective criteria. Sometimes the consultation process is too late. Our strong belief was that having in the MoJ a set of rules on how to organise the consultation process to draft policy papers or laws, could improve the Ministry's work. The inter-institutional consultation arrangements provided by the Law on the Organisation and Functioning of the Council of Ministers and the 2003 Decision of the Council are reasonably good ones, but they are scarcely implemented by the MoJ. Legal and technical expertise from other dependent and independent institutions is requested at a very advanced stage of preparation of legislation, if at all, and the consulted institutions are not given adequate time to examine legislative proposals and the co-ordination capacities of the MoJ are weak. The MoJ does not make full use of the consultative mechanisms available to it. Given this background, the respective EURALIUS' Recommendation provided concrete proposals to the MoJ for the drafting of a set of internal instructions. These instructions are supposed to help developing in the future a modus operandi or standardised set of rules with the institutions of the justice system.

Recommendations

- The Ministry of Justice should draft and approve its own rules for consultation
- MoJ should apply these rules while consulting other justice institutions

Expected result 2.4

A harmonised package of the organic laws in the justice system (harmonised also with the reform strategy and any constitutional changes elaborated and approved in objective 1) has been prepared and is ready for action by the Albanian Assembly

Description

When EURALIUS II started the Judicial Power law was already approved. A working group was established to review the HCJ law. EURALIUS experts were invited to participate in it. EURALIUS provided written proposals on how to improve the HCJ law. We have held a roundtable devoted to the issue of the HCJ law. The findings of this roundtable were submitted to the MoJ and HCJ. For reasons mainly related to the political situation in the parliament the MoJ has stopped the process of drafting the new law on the HCJ. We have prepared comments and participated in all debates on the draft law on Administrative courts and administrative dispute justice, as well as the draft law on Judicial Administration, the draft law on the National Judicial Conference. Unfortunately none of the above mentioned laws are approved.

The MoJ did take some actions with regard to the reviewing of organic laws. The Ministry invited EURALIUS to assist in writing six policy papers on different issues related to justice reform, like for instance the HCJ law, Constitutional Court law, and High Court law and also to prepare concrete draft amendments to some laws like for instance the Civil Procedure Code and the Criminal Procedure Code. We immediately expressed our readiness to work with the MoJ but we have never been provided with draft policy papers or draft laws. The MoJ is retaking the issue of revising some of the organic laws of justice institutions but according to their legislative plan the work is left for the summer months.

Achieved Results

- Written comments have been provided for different important laws of the justice system and we have participated in the working groups and other events organised for that purpose.

Reasons for divergence: The Ministry of Justice has not finalised the drafting of some of the important laws of the justice system. In the absence of a clear strategy of the justice system a harmonised package of organic laws of the justice institutions cannot be achieved. The process of revising laws by the MoJ continues to be a kind of patchwork.

Assessment

Due to the election period the legislative reform process in the MoJ in general has been slowing down. However in the last month the MoJ has re-taken the initiative to start working on the organic laws of the justice area. According to the MoJ the process of drafting these laws will be preceded by drafting policy papers for each initiative. All mentioned above is generally positive but the Government lacks a strategic planning or vision of the justice issues; therefore it remains to be seen if the good will of the MoJ can lead to coherent action. We regret not having achieved much towards this Expected Result. The general political situation has hampered the implementation of this activity because organic laws of the justice institutions need 3/5 of the votes to be approved. Nevertheless we do not see any particular

reason why the MoJ has not drafted them and discussed them with us earlier. By the time these laws will be revised the Mission will end. Our final remark for the MoJ could be that the Judicial Power Law should be also included for revision. By including this law in the list, the MoJ will not only address the legal vacuum created after the constitutional court decision repealing its provision on the competence of the court administrator as to administrative staff, but also other problematic aspects such as the criteria and procedures for appointment and promotion of judges. There are also other provisions related to inspection and the power provided for the Minister of Justice in the disciplinary proceedings against judges, which need further improvement and clarification. We have made known to the MoJ and the HCJ these concerns on the occasion of working for other issues such as the criteria for point system and permanent list of judges or ideas for improving the inspection and disciplinary practice.

Recommendations

- The revision of the main laws of the justice system should be based on long vision strategy for the justice reform.
- Main laws of the justice system should be revised based on a transparent and inclusive process.
- The MoJ should revise the provision of the Judicial Power Law with regard to the appointment and promotion of judges.

OBJECTIVE 3**Planning and resource management of MoJ and Judiciary**Rapporteur: *Juris Avotins***Expected Result 3.1**

Financial resource management has become more efficient and more transparent in the judiciary and in the MoJ and its dependent institutions

Description

EURALIUS II built on achievements of EURALIUS I concerning increase of transparency and improvement of budget planning and management in the justice system of Albania and developed them further. One of the main achievements in this sector was the continuous increase of transparency in the judicial budget management during the last years. However, we also started to extend gained practices, which we had initially developed with the courts, also to other sectors of the judicial system. The overall positive development under EURALIUS can be considered among other factors as a result of the activities implemented in this sector, i.e. the elaboration of recommendations based on experience gained during activities of EURALIUS I in collaboration with the Office for Administration of Judicial Budget (OAJB) and enhanced knowledge of Albanian judicial budget specialists (budget officers at the courts and employees of the OAJB) through study visits and training courses. In particular the latter measure, the land-wide regional training for budget specialists of local offices with a final central workshop for all budget officers of each sector of the justice system of Albania, has certainly contributed to an enhancement of their planning and budget management capacities. As a matter of fact, in 2010 for prosecution and prison sectors by technical assistance of EURALIUS II budget management quality improvements and increase of financial data transparency were analysed already on first quarter reported data whereas courts with technical assistance of the OAJB are doing efficiency analysis independently since November 2009. For these objective reasons the Albanian courts and the OAJB can be currently considered as the most transparent Albanian budget paid institution as far as the management of public budget means is concerned. In this respect it was exemplary for other budget paid institutions. The prosecutors' offices demonstrated fast implementation of efficiency analysis techniques recommended by EURALIUS II and reached relatively high transparency of budgetary data already one year after first trainings of budget officers had been provided to them, and transparency indicators are close to those exhibited by the OAJB and courts. Prisons and Bailiff's offices also demonstrated continuous increase of transparency of budget data during the last two years; however, in order to reach a similar or equal degree like as for courts and the OAJB it will certainly need more time. Nevertheless all sectors of justice system of Albania increased transparency of budget data significantly during activities of EURALIUS II and we are glad to say that the recommendations given to budget officers and finance specialists of central offices have been indeed implemented completely.

A second major achievement at the end of the project is the availability of guidelines for temporary internal operative expenditure standards, which have been elaborated in collaboration with the budget officers of different sectors of justice system of Albania during the aforementioned training seminars. Courts, Prosecutor's offices, prisons and Bailiff's offices already now are providing standard-based budget planning. These measures have eventually led to a strong economisation in each sector of justice system of Albania.

Achieved Results

- Financial resource management has become more efficient and more transparent in the judiciary and in the MoJ and its dependent institutions; all sectors of justice system of Albania are providing standard-based budget planning; transparency of budget data and degree of expenditure standardisation is continuously increasing; annual economisation due to avoiding overspend risks is significant

No divergence

Assessment

The approach of having originally focused on one specific sector of the judicial system (here – courts and the OAJB) for a detailed efficiency analysis and modelling of temporary, internal expenditure standards under EURALIUS I and to extend the experience to other sectors under EURALIUS II has turned out to be successful. It was also very useful that we had started our training by doing regional trainings of budget officers in small groups and separate round tables with finance specialists of central offices in each sector of the justice system individually. However, by the end of the project the trainees of the different sectors have reached an advanced level of knowledge and practical skills of using analytical techniques, which makes it more reasonable and appropriate for the future to have a unified and centralised annual training system for budget officers of all sectors together since analytical methods are universal now and models of internal, temporary expenditure standards have been unified.

Recommendations

- To create unified training system for providing annual trainings for budget officers and chancellors from all sectors of justice system of Albania

Expected Result 3.2

Necessary amendments to secondary legislation to improve human resource (HR) and finance management in judiciary have been implemented

Description

Building on the experiences from the previous EURALIUS I Mission, we originally assumed that the relatively slow pace of improvement concerning budget management in other sectors (besides the courts) of the judicial system of Albania was to be attributed to incomplete secondary legislation in the country. However, having analysed the legal provisions and used statistical methods of analysis we arrived at the conclusion that the current legal framework does not contain any significant legislative barriers to an improvement of budget

management, increase in the degree of standardisation and increase in the transparency of budget data in all sectors of justice system of Albania. Following this finding, we have rather concentrated our efforts in the final phase of the project on practical setting of expenditure standards and the development of the skills of all budget officers to prepare standards for an independent use of analytical instruments needed for modelling of standards. We can say that amendments in the pertaining secondary legislation aiming at an improvement of human resource and finance management in the Albanian judicial system are currently not needed. All our activities which we have carried out including the setting of operative standards have been done in compliance with the existing frames of the pertinent legislative acts. Therefore, from our point of view amendments to the secondary legislation during the next few years will not be necessary. It is rather important to refine and fine-tune in the practice the elaborated and trained standards in order to reach a sustainable very high degree of expenditure standardisation. Efforts should be rather concentrated on the technical improvement of the models of expenditure standards already created and on the development of new models aiming to reach complete standardisation.

Another task we concentrated on in this respect was to provide technical assistance to the establishment of human resource policies in the judiciary and the MoJ of Albania. First step was to create recommendation in form of guidelines containing theoretical basis, EU experience and practical examples taken from justice system of Albania. This step was provided by STE who submitted recommendation to the MoJ and institutions of judicial system of Albania. Furthermore we also organised a round-table where aspects of his guidelines were discussed and the STE had the possibility to explain details of his suggestions for a human resource policy. Although it had originally been planned to concentrate in his recommendation only on two sectors, due to the good collaboration with Albanian partners, it was possible to obtain the necessary data from all institutions and likewise issue recommendations for a strategy on each institution. Furthermore, in the final stage of the project, based on the guidelines we submitted a further Recommendation concerning the creation of a unified training and motivation system for all budget officers working in the institutions of the Albanian judicial system.

Achieved Results

- Improvement of human resource and finance management in judiciary has been realised successfully in existing frames of legislative acts. Legislative barriers for improvement of human resource and finance management practically do not exist. Currently changes of secondary legislation are not needed.

No divergence

Assessment

The definition of human resource management policies and drafting of strategy papers in this area are new challenges for the MoJ and Albanian judicial institutions. Therefore the examples which were provided by the STE for each sector are a very important output. The MoJ has now the necessary tools at hand to draft a strategy which considers the elements we had provided in the guidelines. However, this strategy still has to be drafted. Given our experience we are a bit concerned whether the implementation of these guidelines and their

materialisation in a concrete strategy can be done by our project partners without further coaching by international experts.

Recommendations: No specific recommendations

Expected Result 3.3

A real estate management body for the Albanian judicial system (if not for other sectors also) has been established

Description

The original recommendation to launch a State owned Real Estate Development Company for the entire judicial system of Albania had already been provided under EURALIUS I. Main purpose of this vehicle should be to achieve economisation of significant budget resources which are currently spent for investments in this sector. However, this experience coming originally from Nordic countries is a completely new approach and, legally as well as technically, a complex and complicated issue.

Under EURALIUS II a working group was set up by order of the Minister in order to draft in cooperation with different experts of the MoJ and the EURALIUS expert a concept paper and draft statutes for such a company. When the working group had finished its work, draft documents were submitted to the Minister already at the end of 2008 which, despite several urges by EURALIUS, have until now not been considered. We suggested that before further processing the documents should undergo detailed legal and technical scrutiny and shared with other stakeholders as well.

However, after submission of the documents to the Minister no further action has taken place.

Achieved Results

- Draft concept paper and statutes for such a Real Estate company have been drafted and submitted to the Minister of Justice

Reasons for divergence: the entire topic is a very complex and complicated issue which needs in-depth scrutiny and compliance with the Albanian framework. Although works originally got well underway with the working group, there seems to be not sufficient political willingness to carry out this reform of investment planning in the judiciary for the time being

Assessment

Contrary to the improvements we reached over the last years concerning the management of *operative* expenditures and the tangible economisation in field of providing services, it has not been possible to achieve any significant reform steps concerning the way how long term investment planning is being carried out in Albania for the judicial system. This is to be regretted since investments contain a significant potential for budget resource economisation.

Recommendations

- Continue the idea of establishing this management unit

- Consider retaining foreign consulting for this step

Expected Result 3.4

A specific court service entity for the maintenance and provision of logistics for the Albanian judicial system has been established

Description

Like the idea of establishing a real estate management unit, also the recommendation to launch a specific court service entity for the maintenance and provision of logistics for the Albanian judicial system was based on a concept which had already been proposed under EURALIUS I. Main idea of this service entity was that, once established, it should bring about an economisation of significant budget resources currently spent with low efficiency partially for investments and partially for expensive services in this sector. The approach, like in the case of the real estate entity, is a completely new one for Albania making it difficult to implement it in practice. Although the legal issues pertaining to the creation of such a service entity are from a legal point of view not as complicated as for the Real Estate Development body, they still require changes in laws and thus to the legal framework, which following the present political situation seems to be hard to achieve.

Given the fact that there was apparently not sufficient willingness to set up this service unit as a separate unit we rather pursued the idea to assign the functions attributed to this entity rather to central offices of each sector and increase their knowledge about pertinent issues than creating new structures in a new separate entity. In response to this changed approach we altered our training modules and incorporated topics such as energy performance of buildings, replacement of expensive energy providers by cheap alternative energy sources, optimisation of IT system maintenance and optimisation of logistic system in the our training courses which we provided in final stage of EURALIUS II. Our changed training curricula were perceived very well by the trainees. This has evidenced to us that our flexibility to change the approach was not only a good one but was also the only viable way under the present situation.

Achieved Results

- The most significant functions of specific court service entity for the maintenance and provision of logistics for the Albanian judicial system has been transferred to existing central offices of different sectors of justice system

Reasons for divergence: Low political willingness to improve service providing in the judiciary and to make economization of budget resources in judiciary institutions by choosing cheaper service providers

Assessment

Initially different models were discussed for new specific service entity. However, launching any of them would have brought about amendments to the current legal framework which were not likely to be approved by the Assembly in the current political situation. Therefore changing the approach to consider delegating these functions to central offices (or in some

cases also to local offices) appeared more appropriate and understandable for budget specialists and chancellors of institutions of justice system of Albania. One of the advantages of the new proposal is the very low or absence of any state budget input as this has been evidenced by other similar examples in other European countries.

In order to have clear evidence about the effects that this system could bring to the Albanian judicial budget we recommend to set up a pilot project in one selected institution, which could demonstrate already in the first year of its activity great economisation of budget resources and fast internal return of investments.

Recommendations

- Launch Pilot Project (which details are described in annexes of the Handbook) in selected institution to demonstrate efficiency of specific services

OBJECTIVE 4

Financial management of the OAJB

Rapporteur: *Juris Avotins*

Expected Result 4.1

Assistance in the optimization of planning and management of operative expenditures of the judicial system by means of setting an expenditure limit system, and improvement of expenditure regulation and control procedures in courts

Description

With regard to this Expected Result much of the work had already been done under EURALIUS I. Under EURALIUS II we simply continued our efforts and mainly provided numerous regional trainings for budget officers on optimisation of planning and management of operative expenditures of the judicial system by means of defining an expenditure standard system and improvement of expenditure regulation and control procedures in courts. After the trainings were completed in cooperation with OAJB we prepared templates on reporting and self-evaluation of budget management quality firstly for courts, but later also for other sectors of the justice system of Albania. As it turned out the budget officers at the courts in the meantime are so well prepared that they are ready to present data basically at any time and to do the analysis of budget data by themselves.

Achieved Results

- Optimisation of planning and management of operative expenditures of the judicial system by means of setting an expenditure limit system, and improvement of expenditure regulation and control procedures in courts have been done

No divergence

Reasons for divergence: No divergence observed

Assessment

Our activities were the final stage completing the creation of efficiency analysis and standard setting system in courts where the most important objective was the preparation of budget specialists in courts in order to enable them to use the prepared instruments independently beyond the completion of the EURALIUS project. As a result of our multi-annual cooperation we have to say now that the local budget officers are well prepared and obtained very good practical skills for applying the prepared semi-automated templates. Being at the end of the project we can assess that the standard based budget planning system in courts of Albania and the OAJB is in place; most important issue in future is to ensure sustainability of the improvements during independent providing of analysis by the OAJB.

Recommendation: No recommendations

Expected Result 4.2

Enhancing the capacity of human resources by training experts of the OAJB using the train-the-trainers approach on how to implement recommendations aiming at the economization of judicial budget resources

Description

Under this Expected Result we provided several advanced training courses and coaching to 5 finance specialists of the OAJB in order to prepare them to become trainers for local budget officers at the courts.

We are glad that one finance analyst has been recruited in the OAJB and since October 2009 the OAJB and courts provide efficiency analysis and modelling of internal, temporary standards independently demonstrating continuous increase of standardisation degree of operative expenditures in courts.

Technical assistance of EURALIUS in last step of this activity was focused to modelling of standards for complicated expenditure articles containing energy-intensive dimension.

Achieved Results

Capacity of human resources by training experts of the OAJB using the train-the-trainers approach has been enhanced. Recommendations aiming at the economization of judicial budget resources have been implemented. Five trainers of trainers in budgetary office have been prepared

Reasons for divergence: No divergence observed

Assessment

Collaboration with the OAJB appeared the most successful example for EURALIUS activities concerning budgetary issues. During all period of EURALIUS II budget management quality was continuously improved in courts and the OAJB.

Willingness to improve budget management quality in courts and the OAJB allowed reaching relatively high transparency of budgetary data, significant annual economisation of budget resources and standard based budget planning which is continuously improved during all period of activities of EURALIUS II.

The good examples we obtained from working with the courts and the good experience of training techniques were applied also to the training of budget officers of other sectors of justice system of Albania. Moreover, examples of internal, temporary standards taken from courts were successfully applied as models in cases of absence of sufficient quality of budget data in other sectors showing that all sectors of justice system of Albania already now are using unified methods for efficiency analysis and internal, temporary expenditure standard modelling. Budget officers in all sectors have been trained in the application of one and the same techniques allowing to identify risks of overspends in each local office and in each expenditure article as well as to make comparison of expenditure standardisation degree in all institutions of justice system of Albania, a fact which is also demonstrated in the general Volume V of the Handbook for budget officers. It means that it is not necessary to create some new training mechanisms but institutions of all sectors of justice system of

Albania need to continue improvement of budget management quality by use of unified instruments, technology and semi-automated templates submitted to each budget officer by EURALIUS.

Probably the creation of a unified budget analysis and planning system originally in only one sector and its subsequent rollout to other sectors of the justice system of Albania has to be considered as one of the most significant achievements under this component. Currently instruments for unified controlling and standard based planning system in whole justice system of Albania have been created, all budget officers have been trained and trainers-of-trainers have been prepared ensuring sustainability of the system. What still needs to be done is to identify one entity from the existing structures which should be responsible for the co-ordination and management of future trainings in the entire justice system.

Recommendation

- Authorise the OAJB, some unit of the MoJ, the School of Magistrates of Albania or some other entity to be responsible for the coordination and management of unified annual trainings for budgetary officers in whole justice system of Albania

Expected Result 4.3

Reporting system on budget expenditures in courts has improved

Description

A functioning frequent budgetary data reporting system is one of the cornerstones of a transparent budget management system. In the course of our working with the OAJB and the courts we have eventually reached relatively good frequency of data exchange by weekly reports and communication mechanism. In order to approach to the establishment of a daily reporting system the introduction of IT support and software will be necessary. However, this step will require additional investment for the purchase of such software, which given the current financial conditions might take more time. In order to bridge the gap until the introduction of such a software tool and thereby ensure the sustainability of the achieved improvement we prepared semi-automated template for a budget data reporting system based on standard PC software applications and created by simple formulas. In order to facilitate a proper application by the users, i.e. the budget officers at the courts and specialist of the OAJB, we drafted in the final stage of the project a detailed user's manual for this semi-automated template. The user's manual was attached to the general Volume V of the Handbook for budget officers of the justice system of Albania.

Apart from these activities we also initiated the creation of a long-term improvement strategy providing regular investment efficiency analysis and regular reporting of results of analysis. Concerning our other activities investments in energy performance of buildings and computerisation of courts have been described in a separate paper and added to general Volume V of the Handbook as an annex.

Achieved Results

Reporting system on budget expenditures in courts has improved

No divergence

Assessment

Our positive experiences gained under this Expected Result wraps up our generally very positive assessment with regard to the cooperation with the OAJB and the budget officers at the courts. We are very glad that we have achieved so many positive results during the many years we have cooperated with them. Budget management quality in general and budget data reporting system in particular have significantly improved over the last years. One of the main conclusions we make is that there is a direct proportion between the accomplishment of reaching targets and the strength of collaboration, openness, degree of understanding and willingness of partners to improve the system. In case of the OAJB and courts all these components were present over the entire project implementation period and likewise the results we reached in working with them outstand all other activities, in particular those ones under Objective 3.

Recommendations:

- Create long-term investment strategy in court sector;
- Start providing investment efficiency analysis linked with energy performance of buildings.

OBJECTIVE 5

Quality of legal drafting, approximation of legislation to EU acquis, advice on legislation and cost analysis of legal drafts

Rapporteur: *Kathleen Imholz*

Expected Result 5.1

The legal drafting process has been improved, in particular through training of the personnel of the General Directorate of Codification and other drafters in accordance with the Law Drafting Manual developed under EURALIUS II and through the provision of expertise and advice on Albanian legislation.

Description

This part of the EURALIUS activities under objective 5 was completed successfully and in full, except that as noted in our periodic reports throughout EURALIUS II, the MoJ chose not to reconstitute the Legal LRC and therefore we could not follow up on the suggestions and recommendations for improvement of the LRC's operations that we had made during EURALIUS I.

One of the major activities under this component, leading to a good result, was our close work with the GDC in the MoJ to improve and update the Law Drafting Manual prepared during EURALIUS I. The Manual sets out the principles and practices followed by the GDC in its own drafting activities. We also worked closely with the MoEI and the SMEI 1 and 2 projects (CARDS/IPA) operating there, in order to improve the component of the Manual that deals with techniques for transposing acts of the *acquis* in accordance with the guidelines developed by SMEI 1 and being carried further by SMEI 2. The Manual was finalised right after the Lisbon Treaty went into effect (December 2009) so we were able to include up-to-date information on the changes made by the Treaty. It also includes the latest information about the status of Albania's EU integration processes.

Perhaps the most important thing about the Manual is that it is becoming a benchmark throughout the Government for all drafters and for many other persons involved in the legislative process. We have promoted this in various ways. One of them is through four comprehensive training activities, each of them four days long, which we conducted at the ATIPA, pursuant to a letter agreement between EURALIUS and ATIPA. These trainings were held in May, October and December 2009 and in March 2010. In each of the trainings we went through general drafting principles, specific issues as discussed in the Manual, case studies and a special section devoted to approximation with the *acquis*, including detailed information about how to prepare the tables of compatibility with the *acquis* (required by the CoM Rules since 2006, but poorly understood) and how to identify approximated *acquis* with a footnote containing the CELEX number of the acts (required by the CoM Rules since 2009, but virtually never complied with). After the revised Manual was published in February 2010, we made sure the participants in the first three ATIPA training sessions were able to receive this later copy. We also distributed the Manual at a reception held in the MoJ in April 2010.

Another outreach aspect relates to the fact that, as EURALIUS became better and better known for the work we were doing on the legislative process, we were asked by other ministries and projects operating in those ministries to give “guest lectures” on aspects of the legislative process. Thus, we spoke on the approximation of the *acquis* at a workshop in the MoEI held by Internationale Weiterbildung und Entwicklung GmbH Capacity Building International, Germany – InWEnt and the Institute for European Policies (IEP); we spoke on the legislative process in general at a joint event, a government-wide workshop, on the 'Corruption Risk Analysis of Draft Laws' held with the Council of Europe Project Against Corruption in Albania (PACA) (working with the CoM's anti-corruption unit); and finally, we gave two presentations, one on the legislative process and the explanatory statement of draft acts in general, as required by the CoM Rules, and later on the technical aspects of the approximation process as related to the tables of compatibility in the explanatory statement of draft acts and related matters, at a week-long workshop on Regulatory Impact Assessment/Monitoring & Evaluation given by the World Bank BERIS Project (“Business Environment Reform and Institutional Strengthening”). While BERIS operates primarily in the Ministry of the Economy, Trade and Energy, the workshop was government-wide.

Not only do we receive requests for the Manual almost on a weekly basis from various people throughout the government, as well as those in the academic community who are teaching legislative drafting at different institutions of higher education, but we were pleased to see that the Government's National Strategy for Development and Integration (NSDI), a document first issued in 2008 and applying across the government, specifically calls for implementation of the manual and associated training of the legal structures.

The most time-consuming part of our work under Objective 5 has been the day-to-day advice given to the GDC at its request on various legislative initiatives prepared in the Ministry of Justice, in accordance with the normal procedure under the CoM Rules, as well as following up on this advice. In this activity, the EURALIUS team in the MoJ working under this objective also coordinates and cooperates with and supports the rest of the EURALIUS team. We devote considerable time to fact-finding and seeing that accurate texts are distributed as appropriate, and we further follow the draft acts as they move through the parliamentary process. When enacted legislation is attacked before the Albanian Constitutional Court, we follow and report on that too. Thus, we have identified the need to deal with laws or parts of laws that the Constitutional Court has struck down in the past four years.

In the course of EURALIUS II, we have worked on literally dozens of laws, in some cases quite intensively. This has always been done in cooperation with the GDC, but has often included the parliamentary process as well. There have been a number of cases when the time pressure has been extreme, which is sometimes but not always the fault of our counterparts; as we have stressed throughout EURALIUS, the legislative process is often attended by urgency. This happens even more frequently in Albania, where outside determinants (such as the recent “visa liberalisation” process) sometimes produce unreasonable or unrealistic timetables. Nonetheless, we have worked hand in hand with the GDC to try to meet the timetables and in general this has been done.

It is hard to measure “success” so far as this activity is concerned. In some cases, particular improvements suggested by EURALIUS may be identifiable in enacted legislation. However,

this is less frequent, and less important, than an overall spirit of cooperation and a good working relationship that in our opinion has developed over the years of the EURALIUS project and which has been an intangible benefit to the process of developing the particular act in question. Another aspect of cooperation and coordination to which we have devoted substantial efforts throughout both phases of EURALIUS is that with other international projects and governmental bodies outside the MoJ.

These points can be illustrated by four laws, two of which have been enacted and two of which have not: the so-called anti-Mafia (civil forfeiture) law, the law on jurisdictional relations with foreign authorities in criminal matters (mutual legal assistance law), the draft law on the National Judicial Conference (NJC law) and the draft law on the organisation and functioning of administrative courts and the adjudication of administrative disputes (administrative court law).

The civil forfeiture law and the mutual legal assistance law were considered by the Government to be part of the “visa liberalisation” process mentioned above and were done in great haste, even though an MoJ work group had been set up for the mutual legal assistance law that had had many meetings over more than a year (all attended by EURALIUS representatives). Working with the head of EURALIUS and the criminal law expert on both of these laws, the EURALIUS team in the MoJ participated extensively in coordination activities as well as in drafting advice. For the civil forfeiture law, we coordinated with the adviser in the Council of Ministers (who oversaw that law), provided comments rapidly to him, to the GDC and, after the civil forfeiture law was in Parliament, to the Laws Committee; we also worked closely with the OSCE and the US OPDAT programme to assure that the final law dealt with their concerns. For the mutual legal assistance law, we provided comments rapidly on several drafts, attended all Laws Committee hearings on this law and interceded for sufficient time to reflect Council of Europe comments that had been requested by the MoJ itself; we participated in marathon drafting sessions at the MoJ and transmitted last minute comments as best we could.

On the NJC law, which became a priority after the 2005 law on the same subject was declared unconstitutional by the Constitutional Court in December 2008, we participated actively and from the beginning in a work group set up in January 2009 in the MoJ to redraft this law, supplying detailed comments. In this case, there were two special features of the process. One was that substantial coordination with the judiciary was required, which we promoted (coordinating with High Court personnel and the judges’ associations for their input, as well as attending both meetings of court chairmen and others called by the Chief Judge of the High Court in this connection). Secondly, when the failure of the opposition to participate in Parliament made it impossible temporarily to achieve the needed qualified majority to pass this law, we encouraged all parties to work on the draft law nevertheless and not to hold a meeting of the National Judicial Conference without a law. After producing a second set of detailed comments on the GDC’s next draft later in 2009, we constantly called on the MoJ to move the draft law to the Council of Ministers, arguing that if it were passed there and sent to the Assembly, the return of the opposition would make its rapid passage possible. Although we did not succeed for a long time, the MoJ is finally moving again, and the High Court has been asked to review the final draft, incorporating EURALIUS comments and comments of the judiciary. The opposition has indeed returned to the Assembly, and we

can look forward to the passage of this law soon and the return of the NJC to normal functioning.

In the case of the draft law on administrative courts, the EURALIUS office in the MoJ has been very much involved in coordination functions. This important law was primarily drafted outside the MoJ by SIGMA (the Paris-based OECD/EU governance project) and its local consultants, in conjunction with an MoJ work group also including EURALIUS. Substantial comments by the judge members of the EURALIUS Mission (in particular our expert on court administration, who is an administrative judge in Germany) were of importance for the final draft that was filed in the Assembly, but once again the failure of the opposition to participate in the process in the Laws Committee, and later in the plenary session of the Assembly, made passage of the law impossible before the Assembly adjourned for the June 2009 elections. Nevertheless, EURALIUS participated actively at this stage in the Assembly, trying to assist in the incorporation of opposition concerns in the draft. After the elections, with a total boycott making passage of this law (which also needs a 3/5 or qualified majority) temporarily impossible, we actively promoted a joint work group including EURALIUS, the OSCE and the USAID Millennium Challenge project to prepare a number of comments that will enable the administrative courts to function better when they are finally established as well as dealing with issues involving the transition to administrative courts that had not been treated in the law as finally approved before the June 2009 elections by the Laws Committee. Thus, we have laid the groundwork for final changes that can now be made in the Laws Committee, and, with the end of the parliamentary boycott that has just taken place, this draft law too may soon be passed in a better form than would otherwise have been the case.

Every draft law has its own story, and these four examples are only illustrative; but we can say that despite the sometimes unrealistic timetables, we have enjoyed a good working relationship with our counterparts, in particular with the GDC and the Laws Committee, in part as an inevitable by-product of the long years of working together.

Based on all of this experience, in a comprehensive report finalised at the end of EURALIUS II, we have analysed the legislative process in detail as we have seen it over the course all of the EURALIUS project. In this assessment, we concluded that the actual drafting of legislation, as the principles and practice have been developed (and which are spelled out in the Manual), are not where the problem lies. It is a better disciplining and organisation of the legislative process as a whole that is needed in Albania. We make 19 specific suggestions or recommendations in this connection, identifying the problem areas that we have observed.

Just as the completion of the Questionnaire, with answers to the supplemental questions being delivered by the Government to the EU in June 2010, supplies a baseline about the overall situation in Albania, the legislative assessment with which we conclude EURALIUS II gives a baseline about the condition of the legislative process, from the earliest policy development stage, throughout all aspects of drafting and review, to final enactment of legislation and, more importantly, with a view to implementation of the enacted legislation. To single out just one of our recommendations, implementation will be promoted if ministries (and of course, not only the MoJ) begin to perform some kind of *ex post* analysis of enacted legislation. Much has been accomplished, but much remains to be done.

Achieved Results

- The new version of the Law Drafting Manual, a joint production of EURALIUS and the GDC of the MoJ, has been published and widely distributed.
- Four comprehensive training sessions have been held by EURALIUS trainers at the Albanian Training Institute for the Public Administration (ATIPA).
- A module containing the Manual, the power point presentations of the two EURALIUS trainers and other materials has been left with ATIPA, which plans to use it for future legislative drafting training activities.
- A detailed assessment of the legislative process in Albania has been prepared, analysing all aspects of the process as EURALIUS has seen it over both phases of the project.
- The comments of EURALIUS have been supplied on all draft legislation as requested by the GDC, with on-going work to see that the problems arising with specific drafts have been dealt with.

No divergence

Assessment

All expected outputs and results have been accomplished, but the legislative process is a complex and evolving one, and work to improve it cannot end here. The 19 suggestions and recommendations in the legislative assessment all involve problem areas that can be addressed in a number of ways. As there pointed out, the MoJ itself is not in a position to make the needed changes, or most of them; a government-wide approach is necessary. Follow-up projects would also be able to deal with one or more of those areas, working hand-in-hand not only with the MoJ but with the other parts of the government involved in the particular areas of the recommendations.

It is also important that the MoJ build on the success of the Manual. This should include putting it on the MoJ web page, which as of the date of writing this report has not been done. In addition to electronic copies of the Manual (in Albanian as well as in English), we will leave the undistributed printed copies of the Manual with the GDC, for further distribution.

Recommendations

- While no need is anticipated for updating the Manual again in the near future, it might be considered to do so at a time when some of the problem areas in the legislative process have been addressed with changes in the CoM Rules or otherwise, pursuant to the suggestions in the legislative assessment.

Expected Result 5.2

- A method for continuous assessment of the implementation of the National Plan for the Implementation of the Stabilisation and Association Agreement (NPISAA) is in place and has begun to be applied.

Description

It became clear over the course of the EURALIUS II project that it would not be possible for EURALIUS alone to develop a method to assess the implementation of the NPISAA. There were several reasons for this, one of which was that this task (of developing that method) had been assigned to the SMEI projects operating in the MoEI. It made no sense to us to develop a methodology that applied only to the MoJ.

In the first phase of EURALIUS, we had already made ties with the SMEI 1 project and communicated frequently with them, and we also held a workshop in the MoEI to highlight the complementary roles of the MoJ and the MoEI in the legislative process including the process of approximation of laws to the EU *acquis*. We had also identified the weakness of the MoJ contribution to the NPISAA (indeed, the MoJ was the only line ministry that did not participate in the SMEI/MoEI workshop on the preparation of the needs and gaps analysis underlying the integration process and, ultimately, the NPISAA itself).

Therefore we stepped into the breach and worked with the various heads of the integration unit in the MoJ over the years of EURALIUS II, in order to help them learn more about the Stabilisation/Association Agreement, the integration process and the process of coordination with the MoEI in general, and in particular, with the preparation of the MoJ contribution to the NPISAA.

Another serious problem that has hindered the MoJ from assuming its proper role vis-à-vis the NPISAA has been the excessive turnover in the integration unit, especially the director. These units were created in 2006 in every line ministry (except the MoEI) by a CoM decision issued in February of that year and were strengthened by an amended decision in January 2009, following an MoEI working group in which EURALIUS participated. The purpose of the units was, and is, to be units within the line ministries that coordinate with the MoEI on all aspects of the integration processes, including the NPISAA.

When EURALIUS began its first phase, even before the CoM decision setting up integration units, the MoJ had a directorate in the GDC charged with integration, but the director of the unit had only one specialist in the directorate and he himself left the MoJ after about a year. Following the CoM decision of February 2006, this directorate assumed the role of the MoJ integration unit, but, again, it was never fully staffed and it has been without a director much of the time.

In the two and one half years of the EURALIUS II project, there have been four different directors of the integration unit (not counting the original director, who resigned during EURALIUS I), three of whom had no previous experience in matters of EU integration. In a reorganisation in February 2010, the residual integration unit in the GDC was disbanded, and the specialist who had been working on integration matters since 2005 (the one mentioned above, in connection with the first director of the unit) lost her job and was put on the waiting list; a completely new unit was set up in a newly created General Directorate of Support Services and Integration. In less than four months, it has already had two directors.

EURALIUS has helped all the directors and employees of the MoJ integration unit, as best we could, over the years. It is positive that the latest director (in her job here for about a month) comes from the MoEI, where she had worked for many years. But needless to say,

with such turnover, lack of continuity and lack of selection of experienced personnel, it has been impossible for the process to move forward significantly in the MoJ.

Based on all our experience, in April of this year we completed an evaluation of the 2009 contribution of the MoJ to the NPISAA, including concrete recommendations for improving the contribution in the future. This evaluation has served, among other things, as a useful basis for discussions with the new director in the process of preparing the MoJ's contribution to the 2010 NPISAA (a process as to which, having missed the deadlines established in the MoEI methodology, the MoJ had only a few days time to put its contribution in order). We are also assisting the integration unit at its request in training the other parts of the MoJ on these matters and are distributing the evaluation and recommendations more broadly to them.

We can at least say that during EURALIUS II we have helped lay some groundwork for a better approach in the future. It is, as so many other things are, a two-way street: the MoEI should be working with the MoJ's integration unit even more to see that the defects of the past are repaired.

Achieved Results

- An evaluation of the contribution of the Ministry of Justice to the National Plan for the Implementation of the Stabilisation/Association Agreement (NPISAA) and recommendations for improving this contribution in the future has been prepared and distributed to those with an interest in it
- Based on the principles there set out, EURALIUS has worked with the newly constituted integration unit in the MoJ to improve the contribution for 2010

Reasons for divergence

- Rapid personnel turnover in the integration unit of the MoJ
- Assignment of NPISAA monitoring methodology to other CARDS projects (SMEI 1 and SMEI 2) and failure of those projects to complete the methodology
- Lack of coordination between the MoJ and the MoEI and within the MoJ

Assessment

It is clear the Albania's future work on real EU integration (including the negotiation of chapters of the *acquis*) will be very difficult unless and until there are real improvements in the way this entire area is handled, not only in the MoJ but elsewhere in the Albanian Government. We have dealt with this in detail in the legislative assessment. The high personnel turnover and lack of selection of employees with experience in the area is only the first of the problems to be addressed in the context of the integration unit and NPISAA compliance. Since the newly created unit is now, finally, fully staffed, it should be permitted to operate and build up expertise.

Recommendations

There is much room for attention to be paid to the NPISAA, but it should not be broken up between the MoEI and the MoJ or the MoEI and other line ministries. A comprehensive treatment is needed – a recommendation that applies to this and many other problem areas that we have identified throughout the legislative process.

Expected Result 5.3

The awareness of the EU *acquis* in the General Directorate of Codification at the MoJ has been raised, and coordination with the other units in the Government involved in this process has been developed

Description

We have devoted our efforts under this sub-objective to improving awareness of the EU *acquis* in the key area of jurisdictional relations with foreign authorities. This is of particular importance in criminal matters, as shown by the “visa liberalisation” roadmap which, among other things, called for the better implementation of the existing international agreements that Albania has ratified in this area. For this reason, the MoJ devoted substantial efforts to a new law on jurisdictional relations with foreign authorities in criminal matters, a law prepared with our assistance, as detailed above under expected result 5.1. This law was approved by the Assembly of Albania on 3 December 2009 and went into effect in February 2010. While this is a contemporary law, based originally on a model newly adopted in Bosnia and Herzegovina, it is to be stressed that neither the visa liberalisation roadmap nor the need for better functioning of the criminal justice system called for a new law; it is rather the implementation of all the parts of the system, working together, that is called for. This requires, to start, an identification of what those parts of the system are, that is, an accurate inventory of the laws and international agreements applicable in the field.

At a meeting organised by EURALIUS in the MoJ in July 2008, attended by the Chief of Staff of the Minister of Justice, one of the leading specialists in the MoJ’s then-directorate of foreign jurisdictional relations, other MoJ personnel, the director of the Official Publication Centre and others, it was determined to proceed first by obtaining a comprehensive inventory from the archives of the Ministry of Foreign Affairs and then double checking with the MoJ and with the Official Journal (or Official Gazette, as the official publication of laws has been called at different times in Albania’s history). The need was also identified to have easily available the reservations and declarations made by other countries to multilateral agreements, such as the extradition convention. We agreed in principle that EURALIUS would produce one or more CD ROMs containing the relevant documents. The hope was also expressed that when the process was completed, it would be possible for the Official Publication Centre or another source to publish the documents in hard copy booklets. Finally, the problem of badly translated conventions was raised, and we agreed to revisit this issue after the inventory had been prepared.

The process of doing the inventory and the double-checking took longer than expected, primarily for bureaucratic reasons, but it has been satisfactorily completed. The CD ROM has been prepared and is in production this week. (EURALIUS has approved the sample from the company with which we contracted; 1000 copies will be produced in all).

The CD ROM covers both civil and criminal agreements, since the number of applicable agreements in the civil field is relatively small and all the agreements fit onto a single CD ROM. However, civil and criminal instruments are contained in separate folders (with instruments relating to both included in each folder). On opening the CD ROM, the user sees an introduction with an index (a PDF document), which gives general information about the

area and its importance for European integration, instructions about how to use the CD ROM and other information, such as the identification of useful links to European networks of civil and criminal judicial cooperation. The user will also see three separate folders on opening the CD ROM: criminal instruments, civil instruments and memoranda of understanding. The index is keyed to them.

The index breaks the civil instruments and criminal instruments into three basic subdivisions: national laws (in the case of civil instruments, the relevant part of the Civil Procedure Code and the 1964 law on the civil rights of foreigners; in the case of criminal instruments, the relevant part of the Criminal Procedure Code and the December 2009 law on jurisdictional relations with foreign authorities in criminal matters, mentioned above); bilateral agreements; and multilateral agreements. In the case of multilateral agreements, we have included Internet links to the web pages of the sponsoring organisations that contain the official list of reservations and declarations by all adhering countries.

The introduction also cautions the user to check developments subsequent to May 2010. For example, a draft on private international law is under development in the MoJ, which will affect jurisdictional relations with foreign authorities in civil matters, but it will not be sent to the Assembly for some time and we could not wait for its approval to include it in the CD ROM. As another example, a bilateral agreement with Belgium on the transfer of prisoners has just been approved in principle by the Council of Ministers, but ratification by the Assembly is some weeks away; all we could do was note this in the introduction. In the case of older bilateral agreements, especially with countries that have dissolved such as Yugoslavia, the Soviet Union or Czechoslovakia, we caution the user to check with the MoJ, since in some cases the successor states have agreed to continue to be bound by these agreements and in other cases they may not have.

The CD ROM will be introduced at a small event during the last week of EURALIUS, and we have agreed with the General Prosecutor's Office and the Magistrates' School for the distribution of the CD ROMs to all the judges and prosecutors of the country. We will, of course, leave the CD ROM with the MoJ and the GPO as well.

We saw in our work on the new law on jurisdictional relations in criminal matters how problematic cooperation has been between the MoJ and the GPO in this area, but we can report that we received excellent cooperation from both institutions in our work on this project. We have devoted equal attention to seeing that both institutions are supplied with all the information they need in this connection and believe, as called for in our expected result above, that coordination between them will be promoted by the work that we have done.

Achieved Results

- A complete inventory has been done of all international agreements (bilateral and multilateral).
- A CD ROM has been prepared that will enable judges, prosecutors, MoJ personnel and others to identify all applicable international agreements involving jurisdictional relations with foreign authorities in criminal and civil matters, including the reservations and declarations made by Albania and other countries to multilateral conventions.

Reasons for divergence

- No divergence, so far as concerns the project of preparing a CD ROM with all the international agreements entered into by Albania in the field of mutual legal assistance.
- Time and budgetary constraints have not permitted the publication of these agreements in hard copy or work on improved translations.

Assessment

We are pleased to have finished this rather complex but important project, and we can say that we have learned from it (for example, how badly the process of publishing ratified international agreements worked before the 1998 Constitution). The project calls out for further development, such as training prosecutors in using the criminal instruments, how to check the reservations and so forth.

We are especially concerned that the MoJ put the contents of the CD ROM on its web page (as with the Law Drafting Manual referred to above) and that attention be paid by the MoJ in the future to updating the contents. It was a long and complicated project to get everything together, but it will not be complicated to update the materials. It would be good to obtain a commitment from the MoJ that they will review, on an annual basis, the instruments (laws and agreements), at least in the form that is on the web page, and update them.

Two other related projects can and should also be carried out in the future: as originally planned by EURALIUS and the MoJ, the Official Publication Centre or another entity could publish a book containing at least the major agreements and applicable laws. Secondly, a review of the translations of these instruments, especially the important bilateral ones, is in order; users have reported many mistakes. We included the instruments in the original languages (primarily English) on the CD ROM along with the Albanian translations so that persons who know English can check in a case of doubt; but it is obviously better to have good translations. We hope that, having collected all these instruments in one place, we have facilitated the beginning of this process. The specialist in the MoJ who has worked with these agreements for many years has assured us of her desire to follow through on these projects, and we hope she is able to do so.

Recommendations

- It will important to update the content of this inventory on a regular basis
- Follow the suggestions given above under the Assessment section

Expected Result 5.4

Methods have been developed for ensuring that the costs of proposed legal acts are adequately and accurately analysed and that the acts can realistically and effectively be implemented, before the acts are approved.

Description

The decision to focus on this activity arose out of our experiences in the first phase of the EURALIUS project, during which we had observed how detailed the Council of Ministers Rules are on the subject of the financial effects of laws (not to speak of the constitutional

requirement for this) and how they are routinely not complied with. Indeed, explanatory statements to draft acts, instead of following the detailed requirements of the CoM Rules in this respect, do not even summarise them, but often ignore any mention of financial effects at all.

Our first step was to explore the current situation, in which connection we retained a short-term expert who had long years of experience in the Ministry of Finance and had, indeed, been budget director for some time during the 1990s. He interviewed many people, including former Prime Ministers, the current General Secretary of the Government and of several line ministries, and others, producing a report that concluded that the legislative structure is adequate, although it is not well known, and that the role of the general secretary (as a function of the public administration) should be strengthened in order to facilitate the supplying of information by all of the relevant directorates within a ministry – something that may seem obvious and simple, but which is not, under Albanian conditions.

Next, we retained an Austrian short-term expert to do a comparative report on practices in other European countries. We had already learned that the Albanian CoM Rules are actually quite detailed on the subject of financial effects, even compared to most other European countries.

Meanwhile, the General Director of Codification, aware of the research we were doing, requested a training in the MoJ on this subject, which pleased us because it showed the recognition by the GDC of the importance of a clear focus on the financial effects of proposed legal acts. The date of the training was delayed because of delays in the finalisation of the international short-term expert's report; the local short-term expert helped us again to help us prepare for the training, at which he also gave a presentation. The training was held with success in April 2010.

Through the local expert, we had asked the current treasury director in the Ministry of Finance (MoF) to provide an MoF participant at the training, since we thought that it was important to get a dialogue going on this issue between the MoF and the line ministries (in this case, the MoJ). We already knew, from other MoF personnel with whom we had spoken, that they are not used to getting financial analyses from line ministries as part of the legislative package that they routinely review under the standard Albanian legislative procedure of the CoM Rules. Some did not even know that it was a requirement of those Rules for the line ministries to provide such analyses.

At our training, it became clear how useful the participation of the MoF was and that, based on audience questions and comments and MoF answers, getting this dialogue started would be useful to both sides: to the MoF with its overall responsibility for the government's financial expenditures and to the line ministries with their need or desire to have particular legislative initiatives enacted.

After the training, we prepared a module containing the materials used in the training, including the initial reports of the local and foreign short-term experts, along with a critique of the training prepared by the short-term expert. This module, which will be left with the MoJ and the MoF, can be used in the future for similar training activities.

Achieved Results

- Working with an experienced local short-term expert economist, we have produced a baseline report on the existing legislation and practices in dealing with the analysis of the costs of proposed legal acts.
- An experienced Austrian short-term expert economist has produced a comparative study of European practices (best-practices and others) in this field, which is on the EURALIUS web page in English and Albanian.
- A training has been held in the MoJ, with participants from across departmental lines within the MoJ and from the Ministry of Finance, for a discussion of the practical issues.
- A module has been prepared with materials from the training, as well as conclusions from it, that can be used in the future for similar training activities.

Reasons for divergence

There is no substantial divergence, because module contains the needed information about these methods and the CoM Rules are also sufficient; but because of a lack of time, it was not possible to prepare a circular with specific hands-on guidance on using the methodology, and this would be useful.

Assessment and Recommendations

As with a number of the activities mentioned in this final report, we have ourselves learned from going deeper into a subject that at first glance seemed quite simple: Albanian laws are often not implemented, and the requirements of the Constitution and the CoM Rules regarding a financial analysis of the costs entailed are not complied with; the latter must be a reason for the former.

To a certain extent this is true, but one of the things we learned is that the relationship between the financial analysis of laws and their implementation is more complex than that. Further, hardly anywhere in Europe are the financial effects of proposed legal acts analysed in real depth by the drafters of the acts.

Our work convinced us that Albania has an adequate legal and subordinate legal structure in this connection, but we have two additional and practical recommendations, which arose out of the training at the Ministry of Finance. First, a circular or booklet of guidelines should be prepared, in conjunction with the Ministry of Finance, to explain in practical terms how those preparing new legislative acts (or amendments of existing acts) can find the general information that would be useful in order to enable them to comply with the CoM Rules; and secondly, the training should be repeated in other line ministries, based on the module. The training would be even more useful if the circular or guidelines have been prepared, at least in draft, to test their usefulness to those in charge of day-to-day legislative drafting activities.

As we concluded in the legislative assessment mentioned under Expected Result 5.1, it is the overall discipline, planning and coordination of the legislative process that is missing in Albania, not (in most cases) flaws in the legal framework. As part of planning and discipline, line ministries should have a sense of the financial impact of the laws they are proposing, using the CoM Rules at least as a guide (and following up on these laws ex post facto is

another way to obtain useful information in this area); as part of the coordination process, however, they should feel more free to call counterparts in the Ministry of Finance, or other appropriate places in the government, to find the information they need. The entire process, and not just the financial analysis of laws, will benefit thereby.

OBJECTIVE 6

Prison system, remand system, alternatives to detention and imprisonment

Rapporteur: *Peeter Näs*

Expected Result 6.1

A probation system in Albania has been established

Description

Concerning the provision of support to the establishment of the probation system EURALIUS started with counselling of development of the legal basis for the probation system. We supported preparing the amendments to the Law No. 8331 “On the execution of criminal decisions” and Law No. 7895 “On the Criminal Code of the Republic of Albania”, the Regulation “On the standards and procedures of supervising the execution of alternative sentences and the organisation and functioning of the probation service”, the Regulation “On cooperation of probation service with NGO-s and mediation service”. We also provided technical assistance to the experts of the MoJ and later, after the unit was established, the General Directorate of Probation, for example with regard to the preparation of the necessary structures of the new General Directorate of Probation and local probation offices. We prepared in cooperation with the OSCE Presence the draft framework for recruitment, training and selection of probation officers, draft curricula for probation officers’ training and several other draft documents (templates of probation reports, individual treatment programme, order on territorial competences, content of the probation registers, cooperation agreement between the probation service and other institutions) which were used as examples.

We attended all subject-related institutional meetings (such as meetings of the Probation Advisory Group), where activities for establishment and development of the probation service were discussed. We also participated in the relevant roundtables (such as regional forum “Implementing alternative measures in penal cases” and roundtable on “The effects of the Probation Service in the implementation of criminal justice”) on alternatives to imprisonment and probation services.

Amendments to the laws were passed by the Assembly on 27 November 2008 and entered into force on 15 January 2009. The Regulation “On the organisation and functioning of the probation service and the standards and procedures of supervising the execution of alternative sentences” was approved by the Council of Ministers in March 2009. The Regulation “On cooperation of probation service with NGO-s and mediation service” was approved by the Minister of Justice in July 2009.

The structure of the probation service prepared by the MoJ in cooperation with EURALIUS was approved by the Council of Ministers in April 2009. The General Directorate of Probation and four local offices (in Tirana, Durres, Shkoder and Fier) were formally established under the MoJ in May 2009 and were staffed over June to August. We provided the General

Director of Probation with continuous counselling about the activities necessary for making the probation service operational.

A further major initiative which we undertook was to provide training for the newly recruited employees of the General Directorate and local probation officers. All training seminars were organised in cooperation with the OSCE Presence. An introductory training seminar about the implementation of alternatives to imprisonment was delivered in June 2009. Two basic training seminars for all employees of the local probation offices and newly recruited officers of the General Directorate of Probation about the implementation of alternatives to imprisonment were prepared and delivered in September 2009. Two international short-term experts were contracted to support the delivery of this training. In November/December we prepared and delivered hands-on probation coaching in the local probation offices. The same international short-term experts, who delivered the previous training, were contracted as probation facilitators. The experts stayed one week in each local probation office and helped to develop the daily routines and work procedures as probation facilitators. A study visit to EU MS Estonia and Finland was prepared and carried out in October 2009. The management of the General Directorate of Probation was made acquainted with best practices concerning the management and development of both, a newly established (in Estonia) as well as an old national probation service, with long traditions (in Finland). The participants were introduced to the reforms and developments regarding the development planning for the probation system, division of responsibilities between headquarters and local offices, managing the local offices, risk assessment and sentence planning of probationers etc.

A specialised training seminar for employees of the General Director of Probation and local probation offices about substance misuse, working methods with substance-addicted offenders and modalities of psychosocial interventions was delivered in April 2010. Two international STE were contracted to support the delivery of this training. Also participants from three NGO-s (Aksion Plus, Emmanuel Community and Stop Aids) participated in the training – in order to promote further cooperation between the probation service and NGO-s.

The General Directorate of Probation has also signed cooperation memorandums (based on templates which EURALIUS and the OSCE Presence prepared) with the General Directorate of Prisons and with four NGO-s: Free Legal Aid, Aksion Plus, Legal Clinic for Minors and AFCR (Albanian Foundation for Conflict Resolution) for implementation of alternatives to imprisonment. The General Directorate of Probation has also prepared draft memoranda of understanding with 20 local governments for cooperating in executing the alternative sentences of community service in the regions.

Achieved Results

A probation system in Albania has been established

Assessment

As of June 2010 the probation service is fully functioning in Albania. Four local offices supervise up to 1500 probationers (offenders on probation). All probation officers have been trained by EURALIUS. Cooperation between probation service and prison service is functioning normally, which has contributed to a reduction of the total number of prisoners in

Albania (4600 in June 2010, compared with 5000 in January 2009). Probation service has also established cooperation with NGO-s and municipalities.

However, as the number of probationers (offenders under probation supervision) has been increasing the workload of probation officers in some local offices has increased to the critical level. For example in Tirana local office one probation officer is supervising more than 50 offenders. There is a very clear necessity for opening the new local offices at the district courts as the legislation foresees. This can lead to further decrease of the number of prisoners and budget savings. Based on experience of the EU member states probation supervision is 10 times cheaper than imprisonment and annual costs of a fully developed probation service do not exceed costs of a medium-size prison. Establishing additional local probation offices is also a conditionality for the twinning project “Support to the Albanian Penitentiary Reform”, to be started in the end of 2010.

Recommendations

- New local probation offices should be established in the regions of Albania as soon as possible

Expected Result 6.2

Penitentiary legislation has been brought in conformity with international standards (in particular with European Prison Rules, CPT standards)

Description

Under this heading in the course of project implementation EURALIUS has prepared in total 10 sets of comments on various draft legal acts. Most of these acts have been amended/enforced, for example amendments to the Law No. 8328 “On the rights and treatment of convicts and detainees”, Law No. 10 032 “On Prison Police”, Decision of the Council of Ministers “General Regulation of Prisons”, “Rules and procedures for the working relations, training, career development and disciplinary measures of prison police”.

Some of the prepared drafts (like “Rules of procedure of the General Directorate of Prisons”, “Prison police regulation”, “Rules of procedure of the Kavaja Institution of Juveniles” and rules of procedure of other penitentiary institutions), however, are still pending in the MoJ. Reasons of the slow progress of some drafts have probably been understaffing the GDC in the MoJ as well as some other urgent tasks (such as answering the European Commission Questionnaire). However, there is a possibility to finish reviewing of all secondary penitentiary legislation during the coming months.

EURALIUS supported also activity of the Trade Union of the Prison Police Service, both with technical advise as well as supporting the conference of the Trade Union in December 2008.

Achieved Results

Penitentiary legislation has been brought in conformity with international standards (in particular with European Prison Rules, CPT standards)

Assessment

Amendments to the Law No. 8328 “On the rights and treatment of prisoners” and new “General Regulation of Prisons” were important steps in approximating the penitentiary legislation to the European standards, for example main principles of the pre-trial detention have transferred to the law.

As Albanian penitentiary legislation generally accords to the European standards (Recommendations of the Committee of Ministers of the Council of Europe, standards of the CPT (European Committee for Prevention of Torture), case-law of the European Court of Human Rights) then necessity and content of any possible further amendments (especially which restrict the existing rights of remanded or sentenced prisoners) should be very carefully analysed.

Recommendations

- In drafting the new penitentiary legislation or amendments to the existing legislation the drafting process should include analysis of effects, costs and capacity of penitentiary institutions to effectively implement and enforce the legislation.

Expected Result 6.3

The capacity of the General Directorate of Prisons at the Ministry of Justice to bring the Albanian penitentiary system up to EU standards has been strengthened

Description

With regard to this Expected Result we started our initiatives with supporting the strategic planning for the prison system. EURALIUS provided the GDP with a sample prison strategy document and supported the GDP in preparing the “National Strategy for Prisons”. The strategy has been approved and published on the web page of the GDP. Based on the strategy the annual work plans of the GDP for 2009 and 2010 were prepared, where the tasks for each structural unit of the GDP were foreseen.

Following an in-depth assessment of the status-quo situation of the prison infrastructure through a number of site visits and numerous meetings with a large circle of informed persons, EURALIUS elaborated and provided to the MoJ and the GDP an analysis including recommendations about possibilities to improve the infrastructure of existing prisons. Further, on the request of the General Directorate of Prisons we provided the GDP with a sample analysis of the prisons’ infrastructure and with a draft plan for development of infrastructure of Albanian prisons and remand centres. The purpose of the plan is to analyse the infrastructure and location of Albanian prisons and remand centres and suggest measures for renovating, opening or closing of the existing or new institutions for the next 10 years. The plan will be basis for the long-term budget planning for the prison system.

EURALIUS continuously supported the implementation of the 2004 Master Plan for the Albanian Remand System. We prepared and submitted to the GDP an assessment report on the implementation of the Master Plan in 2008. We provided the MoJ, the GDP and the projector of six new penitentiary institutions (in Berat, Elbasan, Gjirokastër, Fier, Kukës and

Shkodër) – “iC consulenter” – with sample building and design specifications for a modern prison. On the request of the MoJ two study visits were organised and carried out to Estonia (May 2008) and Austria (July 2008) to support the projecting. During the projection period we provided the company with technical assistance and expert opinion on several architectural and logistic issues. By the end of the EURALIUS II the projection of the new penitentiary institutions has been completed and contractors for the pre-trial detention centres in Elbasan and Berat have already been selected. During the implementation period we also supported implementation of other Master Plan measures, like reviewing of the penitentiary legislation etc.

We consulted the Director of the Internal Control Service of the prison System about ways how to make the internal control activities more efficient and provided the Internal Control Service with some sample materials about investigation procedures, which could be used as example for developing/reviewing the relevant procedures in Internal Control Service.

We prepared a summary of the legal acts regulating the prison service. The summary has been made available as a teaching material for the Training Centre for Prisons. We also supported the GDP to prepare a publication describing situation and main achievements of the prison system in 2009.

During the implementation period we provided the GDP with advice and recommendations about developing the prison system in numerous meetings with General Director and other officials. We prepared an assessment study on the penitentiary management system including recommendations for practical interventions to develop the penitentiary management system. Study visit to EU MS Estonia and Finland (October 2008) and Denmark (May 2009) were carried out and the management of the GDP was made acquainted with best practices of managing and developing prison systems in both new and old member states.

During the implementation period EURALIUS held close ties with other international projects/organisations active in this field and with local NGO's contributing to the prison management. We provided assistance to the CARDS 2004 project for the training of prison officers “Managing Prisons in a Humane Way”, implemented by AHC. We counselled the European Institute of Tirana in preparing the “EIT 2009 Monitoring Report on the Pre-trial Detention System in Albania”. We participated in the relevant roundtables (e.g.. “Improving the Pre-trial Detention System in Albania” in 2009) where development of prison management was discussed. We supported PAMECA STE in preparing the reports on pre-detention facilities and processes in Albania.

Achieved Results

- National prison strategy has been elaborated
- 3 new penitentiary institutions have been opened and 6 penitentiary institutions projected
- Inspection over the activity of prisons has been strengthened
- New recruitment system of prison police officers together with new basic training system has been introduced.

- Recommendations about developing the penitentiary management and penitentiary infrastructure have been prepared and delivered

No particular divergence

Assessment

Reports prepared by the EU (Albania 2009 Progress Report), Council of Europe institutions (CPT 2008 Report) and human rights organisations (AHC Annual Report 2008) have confirmed progress in penitentiary reform. Landmarks of the strengthened capacity of the GDP are recently opened new penitentiary institutions, reduction of the number of prisoners, development of the penitentiary legislation, new recruitment system of prison police officers together with new basic training system, improved inspection over activity of prisons etc.

Characteristic for Albanian penitentiary management has been strong centralisation. The further development of the prison system should go alongside with the delegation of more routine tasks, responsibilities and competences to the prison directors. The first steps towards the decentralisation have been done, for example with the latest amendments to the law “On the rights and treatment of prisoners and detainees” several decisions were delegated to prison directors. However, there are still some tasks of Director General (for example preparing and developing the employment projects for prisoners), which could also be delegated to the prison directors. The delegation of more responsibilities should be accompanied with regular and proper supervision over the activity of prisons. Supervision over the activity of penitentiary institutions should be further strengthened. In order to meet the recommendations of the European Prison Rules the GDP should conduct a full inspection of every prison at least once in every 2 years and submit a written report to the Minister of Justice. To ease this task, the concrete and detailed modalities for the evaluation of the work of individual prisons should be elaborated.

For sustainability of the reforms there is a need to develop further the training system for prison officers (especially for middle and high management) together with the Training Centre. It is important to prepare the setting up of new penitentiary institutions, which are financed by international donors, in a proper manner and in due time. Opening of the new institutions should concur with closing some old outdated institutions, what would free resources for developing the probation system and for strengthening the rehabilitation of prisoners. This would result in an efficient and cost-effective penitentiary system, where human rights of prisoners are respected.

Recommendations

- Further development of the prison system should go alongside with the delegation of more routine tasks, responsibilities and competences to the prison directors
- Supervision/inspection over the activity of penitentiary institutions should be further strengthened. For this purpose concrete and detailed modalities for the evaluation of the work of individual institutions should be elaborated.
- Training system of prison offices should be further developed and role of the Training Centre strengthened

- Opening of the new penitentiary institutions being constructed with EU financial support should be prepared in a due time and proper manner

Expected Result 6.4

Harmful effects of detention and imprisonment have been reduced by the development of employment and rehabilitation activities for prisoners

Description

Concerning development of employment and rehabilitation activities for prisoners EURALIUS hold during the implementation period close ties with other international projects/organisations operating in this field and with local NGO's contributing to the prisoners' rehabilitation. We also liaised with the RTA of a Twinning project led by Spain, which targeted the issues of education and social rehabilitation of prisoners.

We provided the General Directorate of Prisons, the Albanian Helsinki Committee and the Children's Human Rights Centre of Albania (CRCA) with a list and description of the social rehabilitation programs which could further be used in Albanian prisons with the help of NGO-s. We provided the GDP also with sample materials about the risk assessment of prisoners. The materials will be basis for developing the proper risk assessment tools for the Albanian prisoners. Further the GDP and the General Directorate of Probation were provided with a Manual of a rehabilitation program "Anger management" for prisoners. The Manual will support the development of corresponding rehabilitation programs for the Albanian probationers and prisoners. We also participated in relevant roundtables (such as a workshop on "Integration of juveniles in conflict with the law" and a roundtable organised by AHC about the treatment of special groups of prisoners, both in 2009); issues of rehabilitation of offenders were discussed.

We also have to note positively that the participation of prisoners in educational and social rehabilitation programs has increased. While only 234 prisoners had participated in 2 available social rehabilitation programs in 2007, the number of available social rehabilitation programs has increased to 11 by the end of 2009 with 889 prisoners benefiting from them during the year. While in April 2008 the educational process was followed only by 14 prisoners in two penitentiary institutions, in the academic year 2008/2009 (after concluding the cooperation memorandum between the MoJ and Ministry of Education and Science) 93 prisoners graduated from the basic (9 years) education and in academic year 2009/2010 110 prisoners started their studies in five institutions. Following the cooperation memorandum signed between the MoJ and Ministry of Labour, Social Affairs and Equal Opportunities 131 prisoners received professional formal education and 224 passed professional non-formal courses.

We supported the GDP and MoJ in drafting the legal framework for prisoners' employment. These issues are regulated in the new "General Regulation of Prisons", which were enforced in April 2009. The Permanent Commission of Evaluation of the Work Activity in Prisons, foreseen in the "General Regulation of Prisons", has been established and started functioning. We provided the General Directorate of Prisons with expertise about the cost

calculation methodology for the planning of prisons' budget regarding the daily costs of working prisoners. Concrete projects for developing prisoners' employment and social rehabilitation were demonstrated during the study visits to Estonia, Finland and Denmark referred under the Expected Result 6.3. Number of working prisoners in Albanian penitentiary institutions has increased. While, according to the information given by the GDP, 593 prisoners were working in Albanian prisons as of April 2008 then by April 2010 the number of working prisoners has reached 685.

Achieved Results

- General Directorate of Prisons and NGO-s have been provided with sample materials for developing the social rehabilitation projects, number of available rehabilitation projects in Albanian penitentiary institutions has increased
- Legal framework for prisoners' employment has been enforced
- Number of prisoners who work or are treated with social rehabilitation projects has increased, which has reduced the harmful effects of detention and imprisonment

Assessment

Number of prisoners undergoing educational and rehabilitation programs and working in the prisons has been increased. This has resulted with reducing the harmful effects of detention and imprisonment. Extremely important achievements were agreements between the Ministry of Justice and Ministries of Education and Science and of Labour, Social Affairs and Equal Opportunities for providing the general education for detainees/convicts and for developing the vocational training system for prisoners.

However, the rehabilitation system of prisoners should be developed further. Basic principle of the European Prison Rules (Recommendation Rec(2006) 2 of the Committee of Ministers to the member states) states that "All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty." It means that social rehabilitation of a prisoner is not a single activity and prison authorities should not concentrate only on specific re-socialisation activities, but should review the overall prison regime of all prisoners to see that it is targeted towards the re-socialisation of the prisoner. A target should be involving all prisoners in sentence planning and different pre-release activities, starting with their risks/needs assessment. The elements of risk assessment are foreseen in the General Regulation of Prisons. The formalised standards for the risk assessment and classification of prisoners as dangerous should be developed further, taking into consideration the originality of the Albanian prison population. The risk level of a prisoner should be reviewed at regular intervals as the sentence is served.

Developing different rehabilitation activities, including work, should be a key target for the GDP for next years. To increase prisoners' engagement with work and social rehabilitation projects it is advisable for the GDP to set relevant measurable targets for all penitentiary institutions in their yearly work plans. Prisons should cooperate with the probation service as widely as possible and available social rehabilitation projects should be linked with early release from prisons.

Recommendations

- Risks/needs assessment system of prisoners should be further developed
- Individual sentence plans should be prepared for all prisoners and all prisoners should be involved in the pre-release activities
- Plans should be elaborated for each penitentiary institution in order to increase prisoner's access to recreational, educational, therapeutic and occupational activities, taking into consideration the conditions of each institution

OBJECTIVE 7

Enforcement system, bailiffs

Rapporteur: *Kimmo Juhani Vikman*

Expected Result 7.1

Bailiffs can gather information from debtors more easily.

Description

The implementation of activities targeting this expected result started in autumn 2008. Based on a request by advisor to the Minister of Justice, EURALIUS created a study “criterion for information and intelligence needs of the bailiffs; - a comparative presentation of enforcement legislations in Albania, Estonia and Finland”. For efficient enforcement it is imperative for the bailiff to know the economic situation of a debtor in a comprehensive manner. EURALIUS also organised a fact-finding study visit to Finland in order to make officials of the GDE and local bailiffs acquainted with how a centralised IT system with access to register information of debtor’s assets functions in practice and which benefits it brings about. Among the Albanian participants was the advisor to the Minister of Justice, the Head of IT Department of the MoJ and the Director General of the GDE. A centralised IT system with access to register information of debtor’s assets is playing a key role in the effectiveness of an enforcement system, especially with regard to seizures of salaries and attachments of bank accounts, which are the most common forms of enforcement means in modern legal systems.

As a positive result of this study visit and the very close collaboration between the MoJ and EURALIUS, the idea of a centralised IT system (article 516a of the CPC) and debtor’s declaration (article 517 of the CPC) were enshrined in a law containing some amendments and addenda to the CPC, which was approved by the Assembly in December 2008. Also regulations relating to the collection of information from third parties were amended facilitating inter-institutional exchange of information in line with the law on personal data protection. It was an important step forward that these legal tools concerning the collection of information of debtor’s assets were incorporated in the Albanian Civil Procedure Code, notwithstanding the fact that their implementation later turned out to be more complicated than originally contemplated.

The draft law on privatisation, or better, liberalisation of the enforcement service was also approved in December 2008. According to the Council of Europe recommendation on enforcement (2003/17) states are free to determine the professional status of their enforcement agents, public or private. In most European countries enforcement is carried out by public bailiffs or private enforcement agents. In Albania, however, like in Bulgaria the policy decision, which had already been taken before the respective EURALIUS commenced his activities in the country, foresaw the establishment of a so called two-track system, having public and private enforcement agents operating side by side. The official reasoning of the GoA was based on the assumption of increased competition between the enforcement agents in order to make enforcement more effective. Given this precondition, it is vital that

rights and means to collect information of debtor's properties are equal in procedural legal framework in order to guarantee a fair competition between bailiffs, private or public.

As said, the establishment of a centralised IT system for bailiffs turned out to become a complicated undertaking. In order to be able to provide specialised assistance to our Albanian counterparts concerning the establishment of a centralised IT system with access to register information of debtors assets (e.g. population register, commercial register, vehicle register, land registry, banks, tax administration registries etc.), EURALIUS retained a STE at the beginning of 2009. The STE paid in total four visits to Albania in 2009 assisting the head of the IT directorate of the MoJ in the creation of the so-called SRS (software requirements specification) and the preparation of necessary project documents in order to be able to apply for IPA 2010 funding.

Unfortunately until today it has not been possible to set-up an IT system which has been endorsed by the MoJ and put into use. Being one of the central cornerstones of the enforcement reform, it has also caused a delayed implementation of the entire enforcement reform. This is to be regretted. Almost all vital elements needed for the implementation of the enforcement reform have been put on hold awaiting the setup of a centralised enforcement register. Firstly, lack of state budget funding was an obstacle and secondly the request for IPA 2010 funding was rejected in Brussels in spring 2010. The third setback was that the Dutch funded pilot software for a simple e-register was not functioning in a proper way during the testing period (February-April 2010) and further programming and development of that programme was closed. Fortunately in April 2010 the CoM approved a 50.000.000 LEK (370.000 Euro) fund earmarked for the enforcement service reform, mainly for IT development.

Achieved Results

- Legal provisions have been amended so that bailiffs can gather information from debtor's more easily
- The idea of a centralised IT system is recorded to the Civil Procedure Code
- The idea of debtor's declaration is recorded to the CPC as well. When asked by a bailiff, a debtor must disclose all his assets in writing. Debtor's declaration is a useful tool to increase transparency between the parties and diminish possibilities for corruption.

There is only a divergence with regard to the IT system. The main reason for delay in implementation has been lack of monetary and human resources to create a centralised IT system.

Assessment

Modern professional way of working is based on analysed information collected from various sources, not from the debtor's side only. The importance of the use of modern information technology for improving the efficiency of enforcement is also highlighted in Council of Europe recommendation on enforcement (2003/17). The role of a debtor's declaration is vital as well. Based on the analysis of the debtor's profile, it is fundamental to identify at an early stage of the proceedings the cases which are collectable. Cases hampered by "lack of means" and "whereabouts unknown" should be written off in order to avoid claims of non-

enforcement. It is vital to notice that a state cannot be held responsible for a private debtor's lack of means but delays in enforcement proceedings are unacceptable and may cause further proceedings in the European Court of Human Rights.

Even if implementation of provisions is challenging it is very positive that the idea of a centralised IT system, debtor's declaration and developed regulations of inter-institutional exchange of information are now incorporated in the CPC.

It is very positive that the CoM has approved in April 2010 a 50.000.000 LEK fund for enforcement service reform, mainly for IT development. The local solution for funding is an obvious indicator of full commitment and ownership of IT development to exist.

Recommendations

- The centralised IT system should be established as soon as possible in order to fully comply with the legal provisions
- We think that the provision of technical assistance is more efficient if it coincides with the provision of funds at the same time.

Expected Result 7.2

The deficit in the balance of the overall income generated by the enforcement service compared with the overall expenses for the enforcement service is reduced.

Description

Taken into consideration the establishment of a two-track system in Albania, works under this Expected Result focused on a fee system, which would be applicable for private and state enforcement agents alike. In spring 2009 EURALIUS retained an experienced STE from Estonia to assist the Albanians concerning the creation of a new fee system. EURALIUS STE, Mr. Priit Kama, had been the officer in charge in Estonia at the time of privatization of the enforcement service there in 2001. Our proposal was forwarded to the MoJ at the beginning of May 2009 after a very close side-by-side mentoring with the GDE working group, the EURALIUS STE, LTE and Mr. Jos Uitdehaag, one of the leading experts of the Balkans Enforcement Reform Project (BERP), a bilateral initiative by the Dutch Government. The proposal included an idea of equal fees for both, the state and the private enforcement systems, foreseeing as an only exception a VAT supplement.

A new fee system for private enforcement agents was approved in October 2009 by the Minister of Justice and the Minister of Finance. The final draft was mainly based on a EURALIUS proposal. One of the major demands was that apart from the need to define a new system for private enforcement agents the fee system for state bailiffs should be amended and aligned as well. At the beginning of October we were informed that the Ministers of Finance and Justice had approved the new fee regulation for the private enforcement agents. In spite of our expectations that the state enforcement fee system would be aligned accordingly, we had to learn that they were not and that there was no imminent intention to do so. As a reaction we re-raised our concern of a compelling need for equal fees on both tracks in order to avoid any further delays in implementation of the law on private judicial enforcement service.

Some selected examples of enforcement fees according to the current legal framework:

A = in case of successful completion the debtor is responsible of the fee.

B = in case of unsuccessful collection the creditor is responsible of the fee.

S = State Enforcement Service

P = Private enforcement Agents

13833	LEK	AS 277	BS 277	/	AP 7000 + VAT	BP 5200 + VAT
90000	LEK	AS 1800	BS 1800	/	AP 14000 + VAT	BP 5900 + VAT
1000.000	LEK	AS 20.000	BS 20.000	/	AP 50.000 +VAT	BP 20000 +VAT

Achieved Results

- A new fee system for private enforcement agents has been approved. Higher income for private enforcement agents is beneficial in fight against corruption. The price of privatisation is increased fees due to the lack of state budget allocation.
- State enforcement fees were amended at the beginning of 2009 in a better direction. Previously, fees were not equal to natural persons (3%) and legal persons (7%) – at present the fee is 2% to natural and legal persons no matter if collection is successful or not.

It is difficult to estimate whether there is a divergence because when this Expected Result was created there was no indication of a double track system

Assessment

The income level of private enforcement agents is very attractive due to the new fee Regulation for private enforcement agents. Privatisation in general is seen to be a tempting solution for countries in transition due to the fact that state budget allocation is not needed any more and higher income levels for private enforcement agents are believed to lower corruption risks.

The key element still needed before the private agents could start their activities is to increase state enforcement fees to the same levels of their private competitors as approved in October 2009 (only a VAT exemption is acceptable). A creditor should not be in a position to select a higher fee to be paid by the debtor in case of successful enforcement, which might be a result based on article 516a of the CPC. According to CEPEJ guidelines (December 2009) for a better implementation of the existing Council of Europe's recommendation on enforcement, the state should avoid any discrimination in terms of the costs for the debtor between enforcement agents of different status, private or public. Taking also into account that fees should be reasonable in the country, there is in general only one reasonable solution available –enforcement fees should be equal for both the services, public and private, with the VAT difference only. Another solution would be that a creditor should pay the difference of a higher fee. However, increased state enforcement fees would give a positive impact to state budget, which was Expected Result 7.2. As said before, a full privatisation would guarantee a zero effect in budget but it is also possible to make a state enforcement service self-sufficient by increasing enforcement fees.

However, increased fees may constitute an obstacle concerning access to justice (=enforcement) if fees are not reasonable. According to CEPEJ guidelines a state should guarantee access to enforcement for creditors covered by legal aid. The Estonian solution is that fees are not charged at all in cases of unsuccessful enforcement (as a result of competition between the bailiffs there). Finnish solution is that a fee to be paid by a creditor based on an unsuccessful collection attempt is always less than 10 euro and access to enforcement is guaranteed.

Recommendations

The abovementioned assessment is seen as a recommendation as well.

Expected Result 7.3

The enforcement parties are more content with the work of the enforcement services; The enforcement parties ask the bailiffs less frequently for basic information on enforcement procedures; the transparency of the procedures is improved.

Description

Fortunately the pertinent Albanian legal framework provides enough decision-taking authority for bailiffs to seize and sell seized property without any time-consuming collaboration with courts. According to the Croatian professor Alan Uzelac, the unfortunate lack of decision-taking authority vested in the bailiffs has caused a “ping-pong” effect between Courts and enforcement service in Croatia as well as in Slovenia.

In the current Albanian enforcement system the role of courts after the final decision is taken is of minor importance. In fact the links between bailiffs, judges and prosecutors in Albania appear to be so rare so that the establishment of closer collaboration is not necessary. Therefore we decided to emphasize the importance of public awareness of the enforcement reform including the main creditors and state authorities.

EURALIUS for example supported the counterparts in a media campaign regarding the introduction of the new double-track system in autumn 2008. We also helped the General Director of the GDE in writing a comprehensive memorandum of the main reasons for establishment of a double track system in general with an analysis of some fundamental functional realities of the system.

The establishment of the Chamber for private enforcement agents, foreseen according to the new legal framework, has been delayed. One of the main functions for the Chamber is to lobby with state authorities and increase goodwill of the members by providing transparent communication in the media.

In general, transparency in enforcement proceeding is related to creditor-debtor-bailiff relationship and working methods only. Enforcement proceedings are not open to the public.

Achieved Results

- Major creditors are informed of the reform

- Public awareness has increased due to media visibility (press, TV news, the MoJ web page)

Assessment

In Albania the establishment of the two-track system is based on the idea of increased competition between the enforcement agents in order to make enforcement more effective. The future competition between the state enforcement service and private enforcement agents should increase not only effectiveness but the level of customer service as well. Visibility is expected to increase due to the fact that the Chamber is supposed to be active towards the media.

As mentioned before, the application of debtor's declaration is a very appropriate tool to increase transparency between the parties and to diminish possibilities for corruption. It should be frequently used by the bailiffs.

Recommendations

- Consider announcing compulsory sales through public communication means (e.g. website of the MoJ, local radio and TV) which would increase the transparency of enforcement proceedings
- Application of the debtor's declaration in practice

Expected Result 7.4

The bailiffs are familiar with new legal provisions and are able to apply them in a coherent way; newly appointed bailiffs are well prepared for the tasks of their job.

Description

Throughout the entire project implementation period the establishment and implementation of the new two-track enforcement system has been in the main focus of attention (IT system, new fee system, entry exams etc). As much as training for bailiffs is concerned, we devoted a lot of time to meetings with our counterparts in the GDE but also international partners like BERP to set-up the framework for continuous training of bailiffs. An important achievement in this respect was also the inclusion of the School of Magistrates in these preparations and its readiness to cooperate and provide facilities for initial and ongoing training for bailiffs. The attitude of the Director of the AMS has always been very positive although she initially raised reservations about the training for private entities, which were outside of the scope of mandate of the AMS. However, in the meantime this obstacle has been overcome since the AMS could be convinced that following a Council of Europe recommendation on enforcement (2003/17), according to which states were basically free to determine the status of their enforcement agents, private or public, the nature of the function of enforcement agents always remains a public one and that private enforcement agents simply use public power vested in them by the state. In the following, a letter emphasising the same issues was sent by the MoJ to the AMS.

In spite of these achievements, due to delayed implementation of the private enforcement system, systematic training activities have not taken place under this framework. It will be

one of the major challenges for the follow-on mission to implement this important component of vocational training.

However, we also organised a one-time training event in the course of this project. In cooperation with the GDE we provided three identical regional training courses in Shkoder, Tirana and Vlora for state bailiffs and private enforcement agent candidates (those 6 who had successfully passed the written exam at this time). The topics were amendments and addenda to the CPC, the law on the private judicial enforcement service, enforcement related provisions of the so called Anti-mafia law (see also Objective 9), modern working methods as centralised IT system with access to register information of debtor’s assets and the application of debtor’s declaration. The team of trainers consisted of a local jurist experienced in the field of enforcement law drafting, Mr. Enid Minarolli, who as a former advisor to the Minister had been centrally involved in the drafting of the enforcement reform, a local bailiff, Mr. Eduard Semini and EURALIUS LTE Mr. Kimmo Vikman. Unfortunately Ms. Elin Vilippus, a private bailiff from Estonia whom we had retained as a STE, could not arrive to participate in the training due to the volcanic ash cloud. Her mission was re-scheduled and she finally came to Tirana for a two-day mission at the end of May 2010 in order to provide in a one-day training information on her practical experiences and tips on how to start and run private bailiff activities. Although this was a one-time event only organised in Tirana, the turnout and interest of bailiffs from all over Albania was enormous.

For the training mentioned above handouts had been prepared for the participants. We believe that these handouts represent also a useful manual for the bailiffs. The idea was to collect the most essential legal framework in a user-friendly format focusing on practical enforcement actions and procedural regulations. At least preparation for the future testing of the private enforcement agents should be easier for the candidates by having the most essential material available easily.

Although not being considered a training in itself, it shall be mentioned here that EURALIUS and BERP organised a study visit for four Albanian representatives of the GDE to attend an international seminar on “Enforcement, Enforceability and Effectiveness of legal Protection” in Dubrovnik, Croatia, in late May 2009.

Achieved Results

- The state bailiffs and private enforcement agents are familiar with new legal provisions and are able to apply them in a coherent way; newly appointed bailiffs are prepared for their tasks.
- 3 one-day regional joint training courses have been provided for the existing state bailiffs and the private enforcement agents
- A one-day seminar was held in Tirana focusing on practical experiences on private enforcement agent activities

Assessment

Training is one of the key areas to be highlighted in order to fulfil the requirements of the Council of Europe recommendation (rec. 2003/17) to member states: “enforcement agents should undergo initial and ongoing training according to clearly defined and well-structured

aims and objectives. Even if the enforcement system is privatised, a state cannot anyhow get rid of this responsibility. According to international experiences training is also seen as a corner stone to make enforcement efficient balancing the competing rights of creditors and debtors. In the future the Chamber of private enforcement agents is foreseen to take a role in organising training for the members of the Chamber and private enforcement agent candidates as well.

We believe that for the future it will be essential for the success of continuous to take AMS on board as a well-known and highly reputed institution in the provision of vocational training in Albania. The training should be targeted at state bailiffs as well as private enforcement agents. It is further recommended that ToT programmes will be established for private and state enforcement agents, which partly cover the same needs but also differ with regard to specific requirements to a private business (private enforcement agents would specifically need training in management, bookkeeping, customer service, feedback reporting and business planning). It is also important to foresee training for inspectors, supervisors and managers of state bailiffs and private enforcement agents.

Recommendations

- Establish continuous training curricula for state bailiffs and private enforcement agents, consider establishing a ToT module
- Do training also for inspectors, supervisors and managers of bailiff offices
- Make sure that the AMS stays on board and supports the training with their facilities and training knowledge

Expected Result 7.5

The internal workflow in the bailiff offices has improved; the work organisation is more efficient and effective; the file management has improved; bailiffs are more motivated, manage their work time more productively and execute more cases.

Description

With a view to reaching this Expected Result, EURALIUS has undertaken a lot of activities to support our counterparts in the daily operation of an enforcement office. This included numerous trips to several bailiff offices throughout the country where we also provided on the spot assistance on organisational and technical issues.

As said already above, assistance to the liberalisation of the bailiff service has been the main focus of attention under this Objective. However, in continuation from the findings made under EURALIUS I, EURALIUS II held discussions with specialist of the GDE, provided comparative studies of academics at European level and practical professional experiences from other countries. As a specific measure, we already submitted in 2008 an action plan on how to make the enforcement system successful in Albania to the Deputy Minister of Justice, which was perceived very well.

EURALIUS has continuously assisted the GDE on various implementation issues for the new enforcement system. One of the concrete issues worth mentioning is the elaboration of a Code of Ethics for state and private bailiffs.

The EURALIUS Enforcement expert also actively participated in a round table in November 2009 organised by EURALIUS under Objective 10 and gave an account on the widespread problem of “state as a debtor” in Albania. Unpaid dues by the state owed towards private parties remain to be very complicated and unpleasant cases for bailiffs since in these cases bailiffs are not only exposed to undue pressure but also lack the necessary legal tools to perform successful enforcement activities. Based on the discussion at this roundtable we drew up a document on this issue and forwarded it to the respective project partners in the MoJ.

Achieved Results

- The state enforcement service appears to be better prepared for the future competition with the private enforcement agents

Reasons for divergence: since the private enforcement system is not operative yet, it is difficult to assess exactly how the efficiency of the offices will be in comparison with the state and private enforcement agents. A further problem is that lack of reliable statistical data.

Assessment

We appreciate the fact that we had such good collaboration with our counterparts at the GDE and the MoJ which resulted not only in regular meetings every week but also gave us the possibility to help in daily operations of the GDE and local bailiff offices. The liberalisation process of the enforcement service is considered indispensable by the MoJ. Correspondingly, EURALIUS' main emphasis was focused on providing assistance to the creation of a new draft law on Liberalisation of the Enforcement Service. The cooperation with the working group drafting the legislation necessary for the reform of the enforcement system was exemplary. One of the driving forces was the chairman of the working group, Mr Enid Minarolli, then advisor to Minister of Justice, who had put great personal efforts into this legal initiative and to good working with us.

There is no final decision yet whether the double-track system was established for a transit period or if the model is permanent. This decision will apparently be based on statistical comparison and experiences in general. Therefore a role of the indicators of effectiveness and improved statistical data will be emphasised.

Expected Result 7.6

The administration of sequestered and confiscated assets in criminal proceedings has improved; an appropriate body (agency) has been established and is fully functioning.

Description

In autumn 2008 EURALIUS started with an assessment of the situation at that time in this field through own research and discussions with representatives of the Agency for the Administration of Sequestered and Confiscated Assets (AASCA) and the GDE. Contrary to

the original perception which had prevailed when the EURALIUS II project had been contemplated the role of bailiffs in this system is currently of insignificant importance. We also determined that the whole issue was rather complex and was already covered – at least to some extent – by two ongoing initiatives, namely the Twinning Prosecution project and OPDAT.

According to the EURALIUS II Grant Contract (page 29), EURALIUS, as a first step, should help to get a clear picture of a situation, namely how often properties are confiscated in normal criminal proceedings and how often they are administrated in practice. We had to learn that AASCA does not have any role in normal criminal proceedings. The Agency had been established in July 2008 to deal with assets sequestered based on the Terrorism Finance and the Anti-Mafia laws under the supervision of the Ministry of Finance.

At the Steering Committee Meeting in October 2009 we raised the issue that due to the legal framework there was no specific role foreseen for bailiffs; thus, specific activities were not to be undertaken under Activity 7.6.1. However, following a request by the EU Delegation we have not closed the Activity but kept it open until the end of the project.

In January 2010 due to the introduction of the new anti-mafia law (cf. Objective 9), bailiffs were granted a new, though minor role concerning the listing of properties. Following this development the respective EURALIUS enforcement expert became to a certain extent involved in the internal discussion on the role of the bailiffs under the new legal provisions. As said before, State bailiffs and potential private enforcement agent candidates were trained in April 2010 of the new enforcement related provisions of the amended Anti-mafia law.

Achieved Results

- The administration of sequestered and confiscated assets in criminal proceedings has improved; an appropriate body (agency) has been established and is fully functioning. In fact we learned in autumn 2008 that the Agency for the Administration of Sequestered and Confiscated Assets (AASCA) was already established in July 2008.
- So called Anti-Mafia law was amended in late 2009 and entered into force in January 2010. EURALIUS was involved in the internal discussion and cooperation with the working group related to the new legal provisions.
- In April 2010 the new enforcement related provisions of the amended Anti-mafia law were handled in training courses for state bailiffs and potential private agent candidates.

Assessment

According to the Criminal Code of Albania, bailiffs should be involved in normal criminal sequestration cases if such cases exist. According to our findings in the current system, bailiffs, with extremely rare exceptions, are not involved in criminal sequestration / confiscation cases, which is a reliable indicator to show that proceeds of crime are not traced in normal criminal pre-trial investigations in Albania.

A lot can be done by emphasizing the importance of asset tracing and collection of evidence of the real ownership of properties in pre-trial investigations and enforcement proceeding by focusing on family members and companies related to a suspect. All information together should be able to show the legal source of their properties. In fact the amended Anti-mafia

law could be used in enforcement cases, in which debtor has tried to hide his property by using family members or companies -cross-agency exchange of information is in a key role.

However, the topic seems to be rather far away from bailiff activities in Albania. At least at some extent this topic is covered by two ongoing initiatives, namely the Twinning Prosecution Project and OPDAT. Moreover, PAMECA has organised some individual activities with regard to investigation tactics and techniques in this respect. Finally, the remedy for the current situation can be found at the level of pre-trial investigations but not at the level of enforcing decisions.

Recommendations

See above under Assessment section

OBJECTIVE 8**Case management and court administration, efficiency of the judicial process**Rapporteur: *Wilhelm Treiber***Expected Result 8.1**

The case management in the Albanian courts operates fully electronically.

Description

EURALIUS activities under this heading, mainly attributed to supporting the installation and functioning of the ICMIS at all Albanian courts, were characterized for years by significant delays caused by a lack of a positive working climate between the MoJ and the Contractor of the respective ICMIS contract, the Albanian company Datech. Due to these very adverse circumstances it was only possible in recent months to make positive headway in the right direction. Before that, in particular during the first year of EURALIUS II, the degree of acceptance and ownership of the ICMIS was very low on the side of the MoJ and the court chairmen/-women. The lack of functioning websites of the courts, uneven work load results of the electronic case assignment, the lack of internet connection for some courts and to the incomplete statistical data reports ranged among the main complaints besides many performance problems which to some part were not only related to the software itself but as well to low router and server capacities. Six courts continued operating with another case management system (ARK-IT). The legal base for the use of ICMIS was frequently disputed by the courts. Communication between the MoJ IT Department and the court IT staff, Datech and the HCJ unfortunately remained to be very weak. Instead of trying to find ways how to resolve problems together in a constructive way the MoJ IT Dept., which under its previous head remained very obstructive to the entire system, simply complained in general about a lack of performance by DATECH without expressing and specifying what it expected Datech to do. A general source of mislead expectations was the fact, that neither the Ministry nor the courts did seem to have the right understanding about Datech's contractual role, which was just obliged to make the websites operational, to take care of the central connection of the courts to the High Court server, to extend the case management software from the civil courts to the criminal courts and to maintain the system but not to redesign the software according to all change requests of the courts. Against this background the EU in January 2009 granted a partial provisional acceptance to Datech based on recommendations provided by EURALIUS. This partial acceptance was however not counter signed by the MoJ, because the previous Minister considered ICMIS entirely dysfunctional and requested an immediate termination of the contract with Datech announcing at the same time plans to create a completely new software. This resulted, unfortunately without notifying the EU and EURALIUS, in the fact in spring 2009 the Ministry entered into a project with USAID envisaging the creation of a completely new case management system for the future administrative courts. This distracted much of the attention of the MoJ IT Department from the ICMIS. In June 2009 however the Minister consented to EURALIUS retaining a Mid Term

IT Expert who made one-week missions to Tirana every month during a period from September 2009 until April 2010. With his assistance we were able to identify four main problems and developed solutions by changing the software respectively in close, fruitful and smooth cooperation with DATECH and with the Durres District Court staff. Only after the previous Head of the IT Dept. had been replaced in the MoJ and a new advisor on IT matters to the Minister had been appointed in February 2010 cooperation between EURALIUS, the MoJ IT Dept. and Datech improved and provided tangible results. Since the beginning of 2010 most of the open issues could be solved. Therefore by the cut-off date of this report the system is functioning.

Achieved Results

- The new version of the amended ICMIS enables the courts to enter information on their websites with the help of a newly designed text editor function. A respective manual has been produced and disseminated to the courts.
- The website module of the courts is operational: Court decisions and trial schedules are available up to date on the website of the respective court.
- The newly designed lottery module enables the courts to assign cases automatically to judges in compliance with the requirements of the HCJ Decision (Dec.2008) on “Drawing the Lot” and provides a random selection but at the same time equal distribution of workload among judges.
- The statistics report module of the new version of the ICMIS produces all statistical reports required by the MoJ and the HCJ.
- The MoJ has published a tender for contracting a computer company in order to continue the maintenance support for the courts, further develop the ICMIS according to courts change request and provide initial training on the new ICMIS version to the staff of the courts using ARK IT and fresh up training for the other courts.
- A draft regulation on the use of ICMIS, the responsibilities (duties and tasks) of the involved actors, data security and data protection has been prepared and handed over to the MoJ

Reasons for divergence

Until 12 January 2010 (end of the contract between Datech and its subcontractor Abissnet) a major part of the courts replicated its data in real time to the central server at the High Court. Some were not connected due to own failures or because Abissnet was unable to connect them. Due to the failure of the MoJ IT Dept. to launch the tender early enough the internet/-intranet connection for the courts does not exist any longer since 12 January 2010 (except for the District Court of Durres). The risk of data loss exists since then until a internet provider is chosen within the tender proceeding.

Assessment

It has been extremely difficult to make headway with regard to the introduction of an electronic case management system at the Albanian courts. Although there were problems on both sides we have to address here a clear complaint to the previous head of the IT Department in the MoJ. Before the latest personnel changes mentioned above, the relations

with him and the Department had been characterized by constant delays, unkept promises, complete lack of commitment and total passiveness.

Recommendations

- What still needs to be done in the future is to assist the MoJ IT Dept. with compiling and formulating in detail change requests in order to insert them into the text of the contract once the tender proceeding is finished and a computer company has been chosen.

Expected Result 8.2

The organisational structure within the Courts system has improved towards clear definitions of responsibilities and organisation of the court system.

Description

When EURALIUS II started there was a gross workload imbalance among some heavily overburdened courts with an insufficient number of judges (like the District Courts in Durrës and Tirana) and other courts with rather comfortable caseloads. Therefore EURALIUS in October 2008 at the request of the Ministry gave critical comments on study of the MoJ concerning the number of judges and outlined methods of a more rational determination of the number of judges needed at each court. Unfortunately the position of the General Director of the Directorate on Justice Matters became vacant and remained so since the end of 2008, leaving EURALIUS for a long time without a direct counterpart to discuss this issue further. For this reason EURALIUS, at the beginning of 2009, focused on cooperating in a working group with the HCJ and the Advisor to the Minister of Justice, in order to discuss and develop methods concerning the identification of vacancies and calculation of needed number of judges, which also took into account the HCJ decision on the different manageable workload per judge and year according to different case types. The working group members accepted these methods.

In spring 2009 EURALIUS at the request of the HCJ gave advice on the issue to which courts 10 graduates from the Magistrate School should be appointed. The cooperation with the HCJ was fruitful and the subsequent appointments at least partly followed the EURALIUS proposal. In summer 2009 EURALIUS at the request of Directorate of Codification assisted with drafting a proposal for a presidential decree on the determination of the number of judges at each court. The President of the Republic finally in September 2009 issued such a decree, which to a large extent ranged within the framework of the figures calculated by EURALIUS. In effect, the decree increased the number of judges at the overburdened court and reduced the number of judges at some courts with a low caseload. Although not showing an explicit calculation table this decree was obviously based on the number of incoming cases and took into account the future prognosis and the average number of several years. Compared with the MoJ study on the number of judges from August 2008 this can be rightly called an improvement in the methodology used. The calculation did however still not take into account the workload figures for different case types and workload reductions as prescribed by the respective HCJ decision. At the request of the HCJ which was subsequently tasked with filling the newly created organic judge positions EURALIUS in

autumn 2009 prepared a Recommendation on criteria for appointment, promotion and transfer of judges. Partly following these recommendations the HCJ publicly announced the new vacancies and refrained from just transferring all judges without consulting them first.

With regard to court administration EURALIUS in autumn 2008 commented the draft legal framework prepared by the MoJ (draft Law and draft Regulation on Court Administrative Staff, draft Law on Amendments to Judicial Power Law, draft Code of Ethics for Court Administrative Staff). As the Constitutional Court had held a trial in December 2008 on the constitutionality of some articles of the Judicial Power Law, the MoJ did not pursue its work on the draft texts. Based on a series of court visits EURALIUS prepared an assessment on the needs and gaps of court administration staff in February 2009. In summer 2009 EURALIUS sent a study on the roles, rights and competences of the chancellor and the chairman of the court to the MoJ in order to give some basic guidance about international and European standards on court administration. By its decision from summer 2009 the Constitutional Court finally revoked one of the challenged articles of the Judicial Power Law which gave too much power to the chancellor of the court (employment of court administrative staff without consultation of the chairman). However, the MoJ so far has not resumed its work on the legal framework for the court administration staff.

With regard to the consequences of the reorganisation of the district courts EURALIUS discussed the situation during visits of the involved central courts and prepared an assessment in February 2009. In summer 2009 EURALIUS learned however that the MoJ, without prior consultation with EURALIUS, had already terminated in January 2009 all judicial operations at the branch court buildings. In result, the central courts which had absorbed the small courts in the remote areas did not hold trial sessions any more at the (branch-) court buildings of the small regional district courts which had been dissolved.

With regard to court fees the MoJ in September 2008 asked EURALIUS for a study on the intended increase of court fees, but without consulting EURALIUS already issued a new order on courts fees in February 2009, before receiving the study. EURALIUS finalized its study and included the new order in its deliberations. Although the study clearly pointed out that some changes would be needed to avoid violation of access to justice the MoJ, once again without consulting EURALIUS first, increased the court fees in March 2010 and quadrupled the fees. With regard to the draft Law on Administrative Justice EURALIUS accompanied the drafting process and gave various comments to the MoJ on the different versions until the final version was presented to the Assembly in April 2009. Since the political situation before and after the election has hampered any progress with finally passing this law EURALIUS in spring 2010 prepared joint recommendations with the OSCE and USAID on how to amend the draft text and discussed these proposals with the DP members of the law commission. But so far the law has not yet been passed.

Achieved Results

- A presidential decree has been issued based on EURALIUS advice determining the number of judges at each Albanian court, ending the workload imbalance between courts and opening the possibility to reinstate the judges who lost their position as a result of the reorganization of district courts and of the abolition of the military courts.

- Rational Methods and Calculation Tables have been prepared, explained and basically been accepted by the MoJ and HCJ on how to calculate the needed number of judges for each court
- 10 graduates of the Magistrates School have been appointed and assigned to different courts partly following EURALIUS recommendations.
- To fill the newly created judges positions the HCJ has partly followed EURALIUS recommendations, published vacancies and refrained from transferring all judges without prior consultation.
- Recommendations on how to amend the draft regulatory framework on the court administration staff have been prepared by EURALIUS.
- A study on gaps and needs with regard to court administrative staff has been prepared.
- Recommendations on how to amend the Draft Law on Administrative Justice have been given to the MoJ and the Law Commission.
- A calculation on the needed number of the future administrative court judges has been prepared for the MoJ.
- A recommendation on how to amend the new Court Fee Order has been prepared aiming at avoiding problems with the principle of equal access to justice

Reasons for divergence

- No method was developed on measuring the average judges working time for different case categories as the HCJ in 2006 has already determined the different workload per judge and year according to different case types (Decision 199/3, dd. 15.3.2006) and none of the visited chairmen/-women has objected the feasibility of the determined figures.
- No clear organisational charts and description of jobs and responsibilities have been developed due to the absence of a counterpart in the MoJ Directorate of Justice matters.

Assessment

In this work field cooperation with the MoJ has not been fully satisfying, which to a certain extent was due to the lack of a counterpart in the Department for Justice Matters. Additionally the Ministry in two cases undertook steps in significant fields of our commonly agreed work plan without informing or consulting EURALIUS first and impaired the principle of equal access to justice for remotely living and rather poor citizens. What has been really achieved is mainly a solution for the workload imbalance among the courts and the partial adoption of a better method on assessing the needed number of judges at each court. Apart from this EURALIUS has prepared all recommendations in order to enable the MoJ to finalize the legal framework for the court administrative staff and the administrative courts.

Recommendations

- For the near future it is highly recommended to finally fill the vacant position of the Department for Justice Matters in the MoJ and to tackle all the urgent issues which so far have been left undone.

Expected Result 8.3

Efficiency and transparency of court proceedings and the judicial system has improved practically and in the view of the public.

Description

Based on talks with court chairmen/-women during numerous court visits conducted during the first half year of activities and based on their answers to a questionnaire on the feasibility of previous EURALIUS Recommendation EURALIUS in February 2009 prepared a proposal for a priority list of measures to shorten the long duration of court proceedings. Due to the fact that the position of the Head of Directorate of Justice Matters at the MoJ, as said, was vacant since the end of 2008 it was not possible to further pursue this issue and start implementing concrete steps. In March 2009 the CARDS Twinning Project on Commercial Justice left proposals for amendments to the Civil Procedure Code and the Civil Code on the table for the MoJ which included most of the proposals for legislative measures from the previous EURALIUS recommendation on measures to shorten the duration of court proceedings. After this issue was not tackled by the MoJ under the previous Minister until the Elections in summer 2009 it was finally possible for EURALIUS to convince the current Minister of the necessity of legal reform in the field of the Civil Procedure Code. With his approval EURALIUS in close collaboration with the Advisor to the Minister and with Austrian STE, who came several times to Tirana during the period from September 2009 until February 2010, prepared texts of draft laws on amendments to the Civil Procedure Code and to the Civil Code, which have been handed to the Deputy Minister of Justice in charge of codification. Adopting these draft laws and implementing them in practice will enable the courts inter alia to counter the frequent absence of defendants and their lawyers by handing down default judgements in favour of the plaintiff and by applying payment order procedures in the case of uncontested claims. In order to prepare the Albanian judges in advance for these upcoming changes of the procedural law and to make them acquainted with new procedural tools EURALIUS not only organized a workshop in spring 2009 on measures to shorten the duration of court proceedings, discussing these tools, but additionally conducted a study visit to Vienna for Albanian judges in order to show them in practice the efficient procedures under Austrian law, which served as a model for the proposed amendments to the Albanian Civil Procedure Code. It turned out that judges do not object having new procedural tools, although some hesitations with the default judgement could be sensed, due to the fact, that problems with serving court summons and other written correspondence still exist as long as the project to establish an address system in Albania has not yet successfully concluded.

With regard to facilitating public access to court related information EURALIUS prepared an assessment of the public relation efforts of the Albanian Judiciary based on the numerous court visits and talks with chairmen/-women. Furthermore a study visit for representatives of Albanian Justice Institutions (Courts, Prosecution, State Police) to Germany and France was organized in May 2009 which demonstrated to the participants best practices and European standards of public relation activities of justice institutions of these two countries. Additionally a workshop on tools of public relation activities was organized in June 2009 for court chancellors as spokespersons of courts. In December 2009 a roundtable was organized in

cooperation with the OSCE Media Department which facilitated an exchange of views among courts and the media and provided valuable insight into the mutual expectations and criticisms. Finally EURALIUS in June 2010 produced and disseminated to all Albanian Justice Institutions but mainly to the courts a *Manual on Public Relation Activities* of courts which in detail describes the legal background and in particular the tools for successfully informing the public about the court activities and granting access to information.

Achieved Results

- Texts of Draft Laws on Amendments to the Civil Procedure Code and Civil Code are now on the table of the MoJ which are ready to be submitted to the Council of Ministers providing a lot of procedural possibilities for the courts to significantly shorten the long duration of proceedings.
- Representatives of the Albanian Judiciary are now informed about best practices on conduction of efficient trials and about the basic functions of the upcoming new procedural tools (default judgment, payment order, restrictions to presentation of facts and evidence at Appeal Court level) by a workshop, a study visit and the discussion of a questionnaire on the feasibility of those methods as well as by a questionnaire on their needs and experiences with court proceeding delays.
- A considerable number of representatives of the Albanian Judiciary are aware now of the best European practices on public relation efforts of courts and have seen this in practice. They have been instructed and trained by workshops, study visits, roundtables and a manual on such activities.

Reasons for divergence

- Enhancing the managerial capacity of the General Directorate for Justice Matters of the MoJ was significantly hampered by the continuous vacancy of the position of the Head of this Directorate since end of 2008.

Assessment

We are glad that by the end of the project we have not only a catalogue of recommendations ready, but have moreover elaborated fully worded amendments to the CPC and the Civil Code including explanatory memoranda which are ready for approval by the CoM. The amendments consider not only our own suggestions but also the ones of other projects and other international organisations. We are very confident that the measures, if approved by the Assembly, will be able to shorten court proceedings and increase the efficiency of trials.

Recommendations

- Once the laws are adopted all efforts must be taken to implement them, to inform the practice about them and to train judges and lawyers on the new procedural tools as well as to prepare necessary form papers in order to facilitate this process.
- All basic trainings and guidance has been given to many actors within the Albanian Judiciary to enable them to implement modern practices in informing the public. In the upcoming time period all efforts should be taken now to implement them in practice by the MoJ, the HCJ and the AMS.

OBJECTIVE 9

Criminal justice

Rapporteur: *Marina Thode*

Expected Result 9.1

A law amending the Criminal Code, Code of Criminal Procedure and related criminal justice legal framework has been elaborated

Description

Amending the criminal justice legal framework is always an activity which is to a large extent politically sensitive. However, in the course of EURALIUS II we have been involved in a number of drafting initiatives. In many cases the process of law drafting was a topic of public discussion and the process of law drafting was generally very time consuming. In the following a short overview about the most important laws we worked on shall be given.

The Draft Law on the State (National) Information Service (NIS) was the most sensitive one. Although this draft law has not been drafted by the MoJ nor is part of the EURALIUS work plan we participated in February 2010 in a round table on the draft chaired by Prime Minister Berisha, in the presence of the Minister of Justice, Mr Nishani, Ambassador Lohan and the Spanish Ambassador Montobbio, as a representative of the country holding the EU Presidency at that time. As a result EURALIUS was asked for comments by the Minister of Justice on behalf of Prime Minister Berisha. In our comments forwarded to the MoJ in March 2010 we highlighted that the amendments cannot be considered a significant step forward to bring the NIS Law in line with the modern and developed European Standards. In our view a more comprehensive, consistent overhaul of the current NIS Law would be advisable to find an adequate Albanian solution taking into account the European legal framework. By the time of the project's end no further activity has taken place and the draft Law on NIS has obviously been put on hold.

Apart from this example the following five laws, drafted by the MoJ in close cooperation with EURALIUS, are in force:

The law "On organisation and functioning of Prosecution Office in Republic of Albania", No 8737, dated 12.02.2001, as amended by Law Nr 9102, dated 10.07.2003, was amended by Law No 10051, dated 29.12.2008, and went into force 12.01.2009. The law drafting process was characterized by an intense discussion on the status and the independence of the GP protected by the Constitution. Initially the new amendments contained, among other issues, new provisions on the suspension of the GP in a way, which was strongly opposed by EURALIUS and OPDAT alike. However, by the end of the drafting process the concerns expressed by EURALIUS and OPDAT began to bear fruit and the amendments were mitigated in a positive manner.

The new law 10 039 dated 22.12.2008, "On legal aid, went into effect 14 April 2009. Upon request of the MoJ, EURALIUS provided comments on the draft law in October 2008. Main conclusion was that the law in its present form has to be considered an intermediate step

towards general European legal aid standards. Albania is one of the last countries in Europe, where no legal aid is provided by the state to persons in non-criminal matters. As the financial means of the Albanian state to support such an innovation are restricted, the new law should have been a big improvement. For unknown reason there have been mayor problems to nominate the representatives of the new State Commission, although the necessary financial means are in place. Until the end of the project no legal aid will be granted based on the new law.

The law No 9205, dated 15.3.2004, “On the protection of witnesses and justice collaborators” is abrogated by the law with the same title, no. 10173, dated 22.10.2009, which entered into force on 1 December 2009. EURALIUS participated in the meetings of the Witness protection Working Group of the International Consortium and submitted substantial comments to the draft law. We attended as well two meetings of the Laws Committee when the draft law was discussed in the Assembly. Unfortunately our main concern highlighted in our comments concerning the legal quality of the protection agreement was not taken into consideration for the final version. The protected person or his or her successors thus cannot request enforcement of this agreement in court or compensation if it has not been respected or the person has suffered damage.

Law No.10192, dated 3.12.2009, “On preventing and striking at organised crime and trafficking through preventive measures against assets”, went into effect on 24 January 2010. It replaces the Law no. 9284, dated 30.9.2004, “On preventing and striking at organised crime” (generally known as the “anti-Mafia” law) and improves the procedures in a substantial way. Throughout August until November 2009 EURALIUS was strongly involved in assisting the MoJ and the Albanian Assembly to draft and revise the amendments. The drafting process at the MoJ became urgent in October because of visa liberalisation deadlines and led to the law being sent to the Assembly before it was ready. In order to achieve crucial last-minute changes, EURALIUS together with OPDAT sent a joint letter to the Chairman of the National Security Committee in the Albanian Assembly giving its suggestions regarding the articles of the law. As a consequence EURALIUS was invited and participated in an article-by-article review of the draft law in the National Security Committee and the Laws Committee of the Assembly. Furthermore we participated in various meetings both with Laws Committee personnel and with other Government personnel (including the Minister of Justice and the Deputy Prime Minister).

In January 2010 EURALIUS and OPDAT organised a round table on the new “anti-Mafia” law at the Serious Crimes Court with the aim to ensure that there is a good understanding by prosecutors, judges, police and AASCA personnel about the new provisions of the law and their differences compared with the old law.

The new law No 10193, dated 03.12.2009, “On jurisdictional relations with foreign authorities in criminal matters”, went into force 8 February 2010. The draft of this law due to the visa liberalisation deadlines was sent to the Assembly in a hasty and unfinished manner as well. For this reason EURALIUS participated in a lengthy drafting process in the Assembly (See 9.7).

A draft law “On pardon” which will repeal Law no. 6299 dated 27.03.1981 “On pardon” was sent to the Assembly in May 2010. The new law will be a step forward to European

standards. Most of our comments have been taken into account, especially on the procedure.

EURALIUS has also provided comments on the drafts “On mediation” (please see 9.3) and on the Law “On judicial police” (please see 9.7).

Furthermore, at the end of the project in May 2010, EURALIUS forwarded comments to the MoJ on a draft law containing some addenda and amendments to the Criminal Code on the basis of a formal request by the Minister of Justice. The amendments deal with infringements of patent rights and trademarks in the industrial property field, corruption offences and the declaration of assets. The amendments related to infringements of industrial property rights could have considerable positive consequences for trade and commerce in Albania, if implemented in a proper and comprehensive way.

Achieved Results

- Several important Laws in the criminal justice field have been passed, mostly in close cooperation with EURALIUS, and are in force bringing about an improved legal criminal law framework
- A much improved draft law “On pardon” is in the Assembly and will be discussed soon Several other legal initiatives are being discussed containing improvements to the present legal framework (including amendments to the Criminal Code, amendments to the law on judicial police and on mediation in disputes resolution)

Reasons for divergence: A law amending the Criminal Code and the Criminal Procedure Code has not been elaborated due to the boycott of the opposition

Assessment

Albania has done some remarkable steps on the way to European standards as five new or at least amended laws have been elaborated.

Recommendations

- A complete overhaul of the Criminal Code and Criminal Procedure Code should be taken into account (see as well 9. 5).
- A complete overhaul of the law On the National Information Service should be seriously considered.

Expected Result 9.2

Tangible improvements in the cooperation of prosecutor’s offices and criminal police have been accomplished, which has resulted in an enhanced efficiency of investigations and pre-trial proceedings and an increase in the prosecution and adjudication of criminal cases, in particular concerning serious and organised crime. Police co-operation with prosecutors and the criminal justice system has been strengthened, and the quality of cases prepared for and transferred to the prosecutors' offices and the courts has been improved.

Description

The organization and the functioning of the judicial police is a major problem in Albania. For this reason in May 2008 the MoJ, the Mol and the GPO established a first working group on the revision of the Law on Judicial Police by a joint order, which was suspended after three meetings. A new joint order was issued in October 2008 establishing a second working group which was tasked to revise the Law on Judicial Police as well as the provisions concerning the judicial police in the Criminal Procedure Code. The second working group started its work in November 2008. EURALIUS prepared a paper for the working group about the historical sources of the problems, titled “Investigatory organs in Criminal Proceedings in Albania from the communist times until today”. As the members of the working group were not able to find a common approach to amend the laws, EURALIUS undertook an initiative and organized for selected members a study visit to Germany and France at the end of 2008 in order to inform them about the provisions in the laws of Germany and France about judicial police and about models of good cooperation. Despite the efforts of EURALIUS to improve the discussions of the working group by a memorandum, based on the results of the study visit, the operations of the working group were suspended once again.

In January 2009 EURALIUS convened representatives of two other EU projects, PAMECA and the Twinning Project providing assistance to the GPO creating a small working group to come up with a common paper and a new strategy and/or approach to the judicial police issue. In this connection, EURALIUS, PAMECA and the GPO Twinning Project participated in a meeting in February 2009 between the General Prosecutor, Ms. Ina Rama, and the Director of the ASP, Mr. Ahmet Premçi. In March 2009 EURALIUS presented the common paper to the MoJ, revised and shortened in the view of a meeting with OPDAT.

Due to the elections the second working group remained dormant. In October and November 2009 EURALIUS, PAMECA and the representative of the Twinning Project in the GPO met with the new MoJ, Mol GP and the Head of the ASP to present a revised common paper “Recommendations for consideration by members at the next meeting of the Judicial Police Working Group”.

In December 2009 the MoJ established a small internal working group which finalised a “Policy paper” on the revision of the Law on Judicial Police in January 2010. In February and March 2010 the third working group with the participation of foreign experts, including EURALIUS, held meetings discussing draft provisions prepared by the MoJ. On the basis of discussions the MoJ prepared a new draft of amendments to the Law on Judicial Police including three alternative solutions for three open questions. This draft is still under internal discussion in the MoJ and not yet forwarded to the members of the working group.

Apart from working jointly with the twinning project we also cooperated and supported this project on other issues, among others EURALIUS with regard to the establishment of an IT system for the prosecution especially by participating in the meetings of the IT working group at the GPO and by presenting the German IT system for prosecutors web.sta.

Achieved Results

An internal draft law of the MoJ “On judicial police” with three open questions has been elaborated

Reasons for divergence: Although works have proceeded for many years it has still not been possible to put an improved legal framework for the judicial police in place. Main reasons for this are lack of political decision on the organisation and functioning of the judicial police and fundamental lack of mutual trust.

Assessment

We regret that for example no prosecutor followed the invitation to the National Community Policing Conference on 4 February 2010 although we had encouraged them to do so. This tiny example indicates that the dialog between prosecutor's offices and police needs to be improved. Without a clarification of the basic question, the role of the judicial police which is linked to the role of the prosecutors and the independence of the General Prosecutor, this improvement will not be possible. Furthermore there is a fundamental lack of mutual trust. Until now, at least in the working group meetings, each side blames the other one, especially for delays during the investigations.

Recommendations

- If there is no political decision to be taken soon we recommend drawing up a questionnaire with questions proposed by prosecutors and police employees, to be filled out by these target groups in order to find out which are the real problems in the daily cooperation to reach a higher grade of acceptance for legal changes on both sides
- Based on the results of the questionnaire a fourth working group to revise Law on Judicial Police, Law on ASP and Criminal Procedure Code should be established
- Common roundtables of prosecutors and police employees on ethics and corruptions on the basis of the EURALIUS Evaluation (see 9.5) should be held.

Expected Result 9.3

Legal improvements for diversion have been supported

Description

The topic diversion for adults in relation to mass offences was touched in the framework of the study visit to Germany and France in December 2008 (see 9.2). The Albanian participants were very interested in the subject and discussed it thoroughly. For this reason a research has been done on some EU countries that provide diversion systems in their domestic legislation to give further information to the MoJ. The Albanian Criminal Procedure Code does not provide for the application of the "diversion principle" as a general alternative to punishment.

Nevertheless the diversion of cases involving juveniles subject to penal proceedings where alternative approaches of solutions through restorative justice are applied has become a well-known practice in Albania although the legal basis for this practice needs to be improved. For this reason EURALIUS regularly attended the Legal Reform Working Group Subcommittee Juvenile Justice and followed carefully the legislative reform in this field. Up to

now no inter-ministerial working group on Juvenile Justice has been set up to amend the Criminal Procedure Code in this respect.

The MoJ has arrived at the conclusion that in the field of restorative justice there is a need to amend at least Law no. 9090, dated 26.06.2003 on “Mediation in Disputes Resolution”. In this context, a working group of Albanian experts supported by the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR) and in cooperation with IFC and UNICEF drafted amendments to the existing law which were discussed in three intensive round tables with national and internal experts, including EURALIUS participation. As a result of the roundtables the MoJ decided to elaborate a new draft on the basis of the above mentioned amendments. In an attempt to assist the MoJ EURALIUS has prepared recommendations on the revision of the Law containing also an outlook on diversion in criminal cases.

In the course of preparation of these extensive recommendations, EURALIUS met, among others, with Mr Artion Beqiraj, an attorney at law and mediator in the mediation office attached to the Durres District Court. This meeting was an important prerequisite to get a realistic picture on the functioning of meditation in practice in Albania. In addition, meetings with foreign experts on mediation were held to get more information about the international practice on mediation.

In our recommendations mentioned above we proposed as one of the next steps for expanding diversion in Albania to establish participation in awareness raising driving courses as alternative sanction. This alternative sanction would improve the public awareness on road safety in line with the action plan of the new Albanian Coalition for Road Safety – Mendohu mire - , partnered by ten national and international organizations, among them the Albanian State Police, the Ministry of Public Works, Transport and Telecommunication, the United Nations in Albania, World Vision and PAMECA. For this reason this proposal will be discussed in the new subcommittee on road safety of the International Consortium’s Community Policing/Crime Prevention Working Group.

Achieved Results

We provided recommendations on the revision of the Law and thereby supported legal improvements for diversion

No significant divergence

Assessment

The visa liberalisation deadlines did not apply to legal improvements for diversion and mediation. Due to the political situation, in the last months, especially since the parliamentary boycott started, there was no political will and no sufficient time to draft the necessary amendments to the Codes and to amend the law “On “Mediation in Disputes Resolution”.

Recommendations

- Establish a working group in the MoJ to draft a new law on “Mediation in disputes resolution” by considering our recommendations

- Establish an inter-ministerial working group on Juvenile Justice to amend the Criminal Procedure Code or to draft a new Procedure Code for Juvenile Justice
- Participation in the new subcommittee on road safety of the International Consortium's Community Policing/Crime Prevention Working Group

Expected Result 9.4

Awareness of human rights issues involved in criminal investigation and prosecution has been enhanced, inter alia by including more aspects of professional ethics and human rights in routine training programmes.

Description

In March 2009 EURALIUS organised a roundtable with the theme "European Standards on Ethics and Disciplinary Responsibilities". EURALIUS in cooperation with the RTA of the Spanish twinning prosecution project gave an overview of the current Albanian legal framework and practice of disciplinary proceedings of judges and prosecutors and emphasised that the current situation needs to be improved. Ms Krix, former Vice-President of the District Court Itzehoe, Germany, and lecturer on ethics at the German Academy for judges and prosecutors, made a presentation on judicial ethics from an international perspective and reported on the discussion in Germany. Furthermore she presented the German educational film for trainings on ethics for judges and prosecutors "5 Minuten im Gericht" ("5 Minutes in Court"). The OSCE Presence in Albania in cooperation with EURALIUS transcribed the dialogues of the film and translated them into English and into Albanian. In February 2010 the DVD and the translations were handed over to Ms Mariana Semini, the Director of the AMS, to be part of the lessons on ethics for judges and prosecutors.

At a roundtable in April 2009 with the theme "Corruption-How to face it" Mr Martin Kreutner, the Director of the Bureau for Internal Affairs in the Ministry of Interior of Austria, gave a presentation on "Corruption – a phenomenon and aspects of its prevention, detection and prosecution". The then EURALIUS expert on Justice Organisation Mr Iruretagoyena spoke about general supervision in the judiciary and the way corruption affects it.

As a follow-up to the study visit to Germany and France in December 2008 EURALIUS organised In June 2009 a workshop on "Fighting corruption by anonymous information". The EURALIUS expert on Criminal Justice Ms Thode and Mr Kulenkampff, former State Secretary of the County Hessen, Germany, and temporary advisor of the MoJ and gave two presentations regarding the German experience on this topic. In the opinion of the police, in contrast to the situation in Germany, in Albania the system of anonymous information is not efficient because in most of the cases the prosecutors are reluctant to open an investigation based on the information provided by anonymous informants. Purpose of the workshop was to give a platform to the Albanian counterparts for exchanging their different opinions on the meaning of material evidence with regard to anonymous information.

EURALIUS supported Mr Kulenkampff to give proposals for rules of procedure and for practical measures of improvement in the inspectorate of the MoJ of as well as additional proposals in the interest of a preventive fight against corruption within the judiciary.

EURALIUS arranged and participated in several meetings of Mr Kulenkampff with judges, prosecutors, attorneys at law and Mr Frank Dalton, Head of Rule of Law Department at the OSCE Office.

On 22 October EURALIUS carried out a full-day conference with the theme “The Albanian Justice System on its way to European Standards”. Main idea of this event was to provide support to the incoming new government with regard to necessary steps that should be undertaken during the next years in order to bring the Albanian Justice system closer to European Standards. The event was co-organised by EURALIUS, the German Foundations “Friedrich Ebert Stiftung” and “Konrad Adenauer Stiftung”, and the German Ministry of Foreign Affairs. Approximately 200 participants, high level officials, ministers, chairmen of the courts, heads of prosecutorial offices throughout Albania and high representatives from civil society and international organisations which contribute in fostering justice institutions in Albania participated in this conference. In the interest of sustainability of the results of the conference EURALIUS sent a letter to all invited persons accompanied by the presentations and minutes of the Conference.

Achieved results:

- Awareness on ethical topics and corruption risks has been increased, inter alia by carrying out two roundtables and a workshop
- A major conference for most of the stakeholders of the justice system addressing ethical issues has been carried out
- The educational film “5 Minuten im Gericht” (“5 Minutes in Court”) with English and Albanian translation has been provided to the AMS and will be incorporated into the regular training curricula of the AMS on ethics

No divergence

Assessment

The conference “The Albanian Justice System on its way to European Standards” was the most comprehensive event we have ever organised and was very important for discussions in Albania about the (non-)implementation of laws in force and the responsibility of the Judiciary and the GoA for a consolidated legislative and institutional justice system, firstly in the interest of the Albanian society, and only secondly, in the interest of the visa liberalisation process.

Furthermore the discussions in the conference, the roundtables and the workshop enhanced the general interest in professional ethics and human rights.

EURALIUS is pleased to have been able to provide the AMS with its first educational film, as showing educational films is part of the work plan of the AMS.

Recommendations

- Ensure that the educational film is regularly used as part of the lessons on ethics at AMS

- Workshop of students at the AMS, prosecutors, judges and advocates about the Albanian and German educational films
- Workshop on professional ethics of judges, prosecutors, advocates and police employees on necessary changes of professional ethics

Expected Result 9.5

An in-depth analysis of needs and gaps in the criminal justice system in Albania has been established on the basis of questionnaires

Description

The original Expected Result 9.5 “A lawyers’ platform for information and discussion of issues and problems of criminal procedure has been established” was changed to the present title following a meeting with Mr Maksim Haxhia, the Chairman of the NCA in February 2009. In this meeting Mr Haxhia expressed his opinion that advocates were confronted with a lot of problems since most of the articles of the Criminal Procedure Code were not respected by judges and prosecutors, especially the articles with relation to remand orders. In this respect, Mr Haxhia proposed to EURALIUS the preparation of a questionnaire which would allow evaluating the professional behaviour of judges and prosecutors in order to identify the needs, gaps and problems during criminal proceedings. This questionnaire should be disseminated in digital form by the NCA to 1300 practising advocates. EURALIUS agreed to this proposal and decided to add questions on the performance of police employees.

In the EURALIUS Steering Committee Meeting in March 2009 the title of the Expected Result was changed to the present one, but it was decided to have also a second questionnaire which should give the other side the possibility to evaluate the performance of advocates.

In the following months EURALIUS spent much time and efforts to liaise with different institutions including the MoJ, the HCJ, the General Prosecutor Office and the Ministry of Interior to notify them about the initiative and collect their contributions to the questionnaire. In spite of initial difficulties the said institutions provided their contributions and showed general interest in the initiative. On the contrary, apparently disagreeing with the approach to have two questionnaires, the NCA in the following months did not cooperate with EURALIUS on this initiative. In spite of repeated requests for example it has never been possible to receive the promised questions.

Notwithstanding this setback, we continued our efforts and, in order to increase the professionalism of the questionnaires, retained a STE, Ms Susanne Kirchner, a sociologist with long-standing experience in the compilation and evaluation of opinion polls, who helped us to summarise the questions in an appropriate form and to prepare the analysis by using specialised data analysis software called SPSS Statistics 18.0.

The questionnaires were eventually delivered to the addressees. Although we were originally promised the names of 1300 practicing advocates in Albania, the NCA eventually provided us with only 63 email addresses of practising advocates to whom the questionnaire was forwarded. We finally received only 13 answers from advocates.

Furthermore we delivered the second questionnaire to 227 police employees all over Albania, all District and Appeal Courts and all prosecutorial offices. We were satisfied to receive 227 questionnaires from the police in due time as result of the good cooperation with Mr Agron Nuredini, the Director of the Professional Standards Directorate in the General Directorate of the ASP who had forwarded them to his colleagues. Until January 2010, 104 judges and 142 prosecutors responded as well.

Due to the lack of a sufficient amount of answers from the lawyers a representative evaluation of the answers to the first questionnaire was not possible. For this reason EURALIUS entered only the answers of judges, prosecutors and police employees to the second questionnaire into the specific software.

On the basis of the results of the questionnaire EURALIUS elaborated a comprehensive evaluation of the questionnaires to judges, prosecutors and police, including 75 recommendations with regard to civil and penal proceedings and the behaviour of advocates and general comments *and* recommendations with regard to the fight against corruption.

Achieved Results

- Evaluation of the questionnaires to judges, prosecutors and police on the performance of advocates, civil and penal proceedings and the fight against corruption

Reasons for divergence: The total lack of commitment by the NCA and its members to contribute to the questionnaire on the performance of judges, prosecutors and police did not allow for a comprehensive analysis of all aspects

Assessment

We do regret that this and other instances have clearly indicated to us that it is impossible to cooperate with the NCA on any initiative. This finding seems to be shared by many other international organisations which have made similar experiences. However, despite the missing commitment of the NCA the comprehensive evaluation paper we compiled at the end of the project has to be considered an in-depth analysis of needs and gaps in the criminal justice system in Albania. The quality of the proposed questions as well as the number and quality of answers indicates the professional and ethical principles of judges, prosecutors and police in investigating and prosecuting crime, including human rights aspects.

Recommendations

- Further evaluation of the questionnaires to judges, prosecutors and police on the performance of advocates, civil and penal proceedings and the fight against corruption¹
- A complete overhaul of the Criminal Code and Criminal Procedure Code should be taken into account (see as well 9.1).

¹ A roundtable organised by EURALIUS has taken place on 15 June 2010.

Expected Result 9.6

An improved and expanded legal aid system has been established

Description

The new law “On legal aid” went into effect 14 April 2009 but until now it is not yet implemented.

Upon request of the MoJ, EURALIUS provided detailed comments on the draft law in October 2008. Main conclusion was that the law in its present form has to be considered an intermediate step towards general European legal aid standards.

Obviously there have been mayor problems to nominate the representatives of the new State Commission, although the necessary financial means are in place. Until the end of the project no legal aid will be granted based on the new law. We have repeatedly raised this issue on all levels but have not received any satisfactory answer.

Achieved Results

The new law on legal aid went into 14 April 2009 but until now it is not yet implemented.

Reasons for such a long divergence are unknown.

Assessment

Albania is one of the last countries in Europe, where no legal aid is provided by the state to persons in non-criminal matters. As the financial means of the Albanian state to support such an innovation are restricted, the new law could have been a big improvement.

Recommendations

- Ensure the implementation of the new law on legal aid
- Roundtable on the implementation after legal aid has been granted based on the new law to assess its functioning in practice.

Expected Result 9.7

An improved and expanded mutual legal assistance system has been established.

Description

The area of Mutual Legal Assistance as such had not been foreseen in the original log frame of the project. However, the inclusion of this topic and the new Expected Result 9.7 was inserted in the course of the Stakeholders’ Committee Meeting on 2 September 2008 as the importance of this topic has been repeatedly stressed in meetings with the Minister of Justice and the General Prosecutor.

Initially, we analysed the domestic legislation foreseeing mutual legal assistance and international legislation such as Conventions and Treaties. Title X of the Albanian Criminal Procedure Code contains provisions on jurisdictional relations with foreign authorities, but only concerning Extradition (Chapter I), International Rogatory Letters (Chapter II) and the Execution of Foreign Criminal Decisions and the Enforcement of Albanian Sentences Abroad

(Chapter III). The new methods of mutual legal assistance established in the EU MS during the last few years, however, are missing, for example there are no provisions concerning videoconferencing and joint investigation teams. Albania has ratified a number of important Conventions on mutual legal assistance. According to Art 122 of the Albanian Constitution, any ratified international agreement constitutes part of the legal system after it is published in the Official Journal of the Republic of Albania and in general is directly applicable. Based on this first assessment and upon explicit request by the MoJ, we began to work on a policy paper on a new law on Mutual Legal Assistance.

In addition to this analysis EURALIUS facilitated the participation of one representative of the MoJ and one representative of the GPO, accompanied by EURALIUS experts, as a study visit in the 30th Plenary Meeting of the European Judicial Network (EJN), held in Slovenia between in June 2008. Main topic of the Plenary Meeting was the introduction of the systems of Mutual Legal Assistance in Slovenia, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia. The study visit was an excellent possibility for the Albanian delegates to get acquainted with the laws of the neighbouring countries on mutual legal assistance as possible models for the new legislation in Albania.

An order on setting up the working group to draft the law on “International Judicial Cooperation” was issued by the Minister of Justice in February 2009. EURALIUS collected models of Mutual Legal Assistance Laws to facilitate the work of the MoJ on the preparation of the new draft law, participated in the meetings of the working group and provided several comments and proposals. We recommended to repeal Title X of the CPC “Jurisdictional Relations with Foreign Authorities” and to create a separate new law on this topic.

Between February and October 2009 EURALIUS experts participated in ten meetings of the working group. In October 2009 the MoJ decided to finish the first draft and end discussions. Due to the boycott of the opposition in the Assembly and the absence of a qualified majority required to change a Code this draft did not foresee to repeal Title X of the CPC but to create a new law in addition.

In view of the visa liberalisation process the draft law was hastily approved by the CoM on 21 October with virtually no time for anyone from the work group to review the draft carefully. The draft was discussed and revised in the Parliamentary Laws Committee with the participation of EURALIUS in several lengthy meetings in October and November. In December 2009 the new law “On jurisdictional relations with foreign authorities in criminal matters” was approved in the Assembly and went into effect on 8 February 2010.

In order to implement the new law properly, two necessary instructions were drafted by the MoJ in close cooperation with EURALIUS. The instruction of the MoJ “On the manner and procedure of registration of convictions rendered against Albanian citizens by foreign judicial authorities” went into force on 25 May 2010. Main focus of this instruction is to create an electronic register for convictions outside Albania against its citizens. The joint instruction of the MoJ and the General Prosecutor “On designating rules on the form of letter requests and the procedure and translation of acts”, is still to be endorsed by the MoJ.

EURALIUS established also good contacts with the project “Support to Prosecutor’s Network in South Eastern Europe (PROSECO) funded by the CoE and with ILECUS, a twinning

project dealing with the establishment of International Law Enforcement Coordination Units in the Balkan countries.

Achieved Results:

- A new Law On jurisdictional relations with foreign authorities in criminal matters is in place
- Concerning the necessary by-laws for implementation one of them is in force, the other one is still pending

No divergence

Assessment

The new law and the instructions are to be welcomed as important steps to improve and expand the Albanian mutual legal assistance system.

Recommendations

- Organise further trainings for prosecutors, judges and police on the new legal framework
- In 2011 an ex-post analysis should be undertaken to find out whether the new legal framework works in practice or whether it is too complicated and should be unified, either in the Criminal Procedure Code or in the new law.

OBJECTIVE 10**Land administration and immovable property rights**

Rapporteur: *Christoph Kopecky*

Expected Result 10.1

A land wide network of permanent GPS stations in Albania is established and functioning

Description

Under the previous EURALIUS I project, following an explicit request by the Albanian side, EURALIUS had retained STEs to define in close cooperation with the Albanian partners the ToR and technical specifications of a project funded by the EU, which would facilitate the establishment of a permanent GPS network in Albania. As it had already been described in the final report of EURALIUS I, one question particular attention was paid to during the definition of the project was the question of local ownership. Finally, after long and intense scrutiny of the Albanian legal framework, the Albanian Military Geographic Institute as the main beneficiary together with IPRO and the Polytechnic University formed a consortium and signed a Memorandum of Understanding, which until now has been the basis for the project.

At the beginning of EURALIUS II the tender for the project was finally launched. EURALIUS main STE, Mr Guenter Stangl, a very experienced geodetic expert from Austria in cooperation with the local EURALIUS property department has continuously provided invaluable support throughout all stages of the project, from the conception to the current implementation phase. In this respect, Mr Stangl was also on the evaluation panel when the contract was finally awarded to Trimble International B.V., one of the international leading companies concerning GPS equipment and installation. The implementation of the project began at the end of 2008.

One of the important measures we urged and throughout the project continuously provided assistance to, was the preparation and organisation of regular (every 4 – 6 weeks) progress meetings on the project. These steering meetings have turned out to be very important in order to ensure that the numerous project partners receive regular updates about the project's progress and have the same level of information. EURALIUS has actively attended all meetings, so did the representatives of the Contractor and the main beneficiary; unfortunately not always all other consortium partners and the EU Delegation representative participated.

The contract foresees the implementation in two-phases; in the first phase, the installation phase, all the necessary equipment should be shipped to Albania, installed at the predefined sites, put into operation, be tested and Albanian persons should be trained. The installation phase should last one year followed by a one-year maintenance phase during which subsequently the Contractor should undertake the operation and maintenance for one year.

During the installation phase the project encountered numerous problems, most of them of technical nature. Among the most crucial problems was the lack of availability of previously defined locations due to changed environment at the sites, significant electricity problems

due to absence of a proper electricity network, outdated equipment but also intentional power interruptions and, unfortunately, lack of commitment especially on local level. In particular the last issue was a major obstacle to a faster pace of implementation for the set-up phase. Eventually, a short extension for the first phase had to be requested.

The system was finally put into operation at the end of 2009. During the installation period Mr Stangl made a few mission to mitigate problems. He also substantially contributed to the organisation of the testing which was finally carried out in February 2010. Although some technical problems still persisted, the testing evidenced that the system was operative and provided very satisfactory results with the accuracy required by the contract. The beneficiaries therefore endorsed the completion of the first phase. At the same time, Ms Zeka, the Director of the Albanian Military Topographic Institute, made great efforts to set up a national tender financed by budget resources of the Military in the course of which necessary equipment to stabilise electricity problems at the peripheral sites and the Control Centre in Tirana were purchased. In times of financial crisis and budget restrictions we consider this is an outstanding achievement. In the meantime all equipment has been installed at its places of destination.

In summary it can be said that by the end of EURALIUS II the system is established and functioning. Incidental problems persist but the major problem currently rather lies in the active use of the system. Although EURALIUS is going to retain Mr Stangl for a final mission at the very end of the project, the acceptance of the system by potential users and the system's sustainability will remain the main challenges for the future.

Achieved Results

A land wide network of permanent GPS stations in Albania is established and functioning

Assessment

The institutional set-up of this project in Albania is complicated. EURALIUS had devoted much time and attention to the question of local ownership but given the legal framework we could not recommend another solution than the present one which incorporates the most important institutions for this system bound by an MoU. Inter-institutional cooperation, however, as also evidenced in several other occasions, is extremely difficult in Albania. It would also be better in the long-term to entrust the system to a civilian institution by keeping the same core staff. However, the current Director of AGMI has made outstanding efforts against all odds considering the difficult situation she and the military is in Albania.

Trimble is a well-known company in the international geodetic society and very experienced, but we were surprised to see how much technical knowledge has apparently been outsourced by this company. Mr Stangl's expertise was at many points the decisive driving force and without him it would have been impossible to accomplish for example all preparatory works for the testing in Albania. Mr Stangl's efforts and commitment, even when not being in Albania, were exemplary and indispensable for the progress achieved today. However, we are concerned about the level of attention and commitment by Trimble to the second phase of the project. It must be ensured by all means that Trimble (or its subcontractors) will undertake to second adequate human resources to the Control Centre at AGMI as the contract prescribes.

The Albanian side must do more to promote the system among potential users, and more importantly use it actively by themselves. Despite some training there is still a low level of knowledge about the use and benefits of this system by the beneficiaries. Here in particular the university is challenged which should possess the adequate knowledge to expand their knowledge to other users as well and train future users. A final corresponding appeal was made in the course of Mr Stangl's last visit.

Recommendations

- Continue to have regular project progress meetings beyond the scope of the EURALIUS II project
- Ensure close monitoring concerning Trimble's compliance with its contractual obligations, in particular with regard to the seconding of experts for the maintenance
- The involvement of the local beneficiaries must increase. Means to promote the system should be jointly explored, discussed at the progress meetings and implemented
- Closer cooperation between the main beneficiary and the EUD Project Manager to identify and report problems more quickly

Expected Result 10.2

The three main processes registration/restitution (compensation)/legalisation are handled in a coherent and transparent way taking into account a fair balancing of conflicting property interests following the requirements of the rule of law

Description

At the end of EURALIUS I the previous project provided a comprehensive analysis on the situation of property rights with a particular focus on the state of play at that time of the three main processes, i.e. registration, restitution / compensation and legalisation. The report was a result of an explicit request raised by the then Minister of Justice, Mr Bumçi, in summer 2006.

The report, which besides an analysis of the status quo also contained proposals for potential further EC assistance in the course of EURALIUS II and other projects, was submitted to the MoJ at the beginning of EURALIUS II and was the basis for EURALIUS II intervention. Being very conscious about the enormous complexity of the property situation in Albania, the main aim was to offer assistance with regard to the definition of a viable strategy of the GoA which would attempt to harmonise the legal framework and practice striking a fair balance between the different interest groups in respect for Human Rights. Until now the Government's cross sector strategy on immovable property rights has not been set-up, although by the time of writing this report it is said that the MoJ is working on a draft strategy which were to be sent out in the near future.

One of the central proposals in this respect was the setting up of roundtables organised by the MoJ and EURALIUS and supported by STE mission in order to discuss certain topical issues of the Albanian reality and find ways to solve them. A central emphasis in this respect

would have been to discuss approaches to restitution / compensation and legalisation by taking examples of other countries. Several attempts to organise this kind of activity failed in 2008. We even liaised with the local UNDP office, which in 2009 tried to come to terms with the GoA on a project envisaging a following-up of a previous ILD project, which had analysed the situation of the informal economy in Albania. In connection with this project it was planned that EURALIUS would support activities of this kind, in particular roundtables on the issues mentioned above. However, also this initiative did not bear fruit and UNDP did not come to terms with the GoA before the elections in summer 2009. The project until now has not started.

After these failures we shifted our focus and started to look at the complexity of property problems from a Human Rights point of view angle. This shift was also triggered by the fact that the number of applications of Albanian citizens against the state under the ECHR have significantly increased. An analysis of the judgements issued by the ECtHR against Albania clearly showed that the majority of cases deal with issues related to property, mostly in connection with lack of enforcement and multiplicity of proceedings. Purpose of our intervention was to raise the awareness of the significance of the jurisdiction of the Court in Strasbourg on the national legal system and the consequences which might stem from these judgements requiring an alignment of domestic legislation and judicial and administrative practice. Our main counterpart in this respect was the SAO.

By pursuing this aim we did not only hold a study visit to the Court in Strasbourg in June 2009, which allowed the participants to attend a seminar on Individual Applications to the Court, but more importantly, organised one information seminar and two workshops in November 2009 and May 2010. For the first seminar EURALIUS even managed to bring 3 experts from the CoE and the ECtHR to Tirana and provide first-hand information about role and significance of the Court and its jurisdiction on Albania. As a result of both workshops summaries of the main conclusions and findings were drawn up and sent to the participants. Of particular relevance was the workshop in May where in the presence of experts of the SAO, the PRCA and one advisor of the Constitutional Court not only general issues of the property protection system under the Convention were discussed but also very specific problems of Albania, for example the issue of tenants living in houses subject to restitution versus the right to property of those having restored these houses under the restitution process. As said, conclusions were drawn up and submitted to the SAO.

A further attempt to provide assistance on a more technical level with regard to property rights were our attempts to carry out a workflow analysis of the internal working of the PRCA. Originally envisaged in a complimentary manner with the OSCE Presence, which itself was to provide assistance with regard to the establishment of a Geographic Information System at the PRCA, we had several meetings and undertook several attempts to formulate a project. However, this intervention was jeopardised by unexpected developments occurring in the fall of 2009 when the GoA decided to change the institutional set-up of PRCA and centralised the office by abolishing all local offices. Due to the changing environment and an obvious prioritisation of the Agency on other issues, this project was not pursued either.

Finally, EURALIUS decided to update the 2008 EURALIUS property report and issue a new report analysing the legal developments which have occurred in relation to the three main processes in the last 2.5 years. This report is to be issued at the very end of the project.

Achieved Results

- Awareness of employees of the public administration (especially of the PRCA and SAO) on the jurisdiction of the ECtHR and its significance on the domestic system has been increased
- The SAO, as the Albanian authority representing Albania before the ECtHR, has more information now at hand to deal better with cases against Albania

Reasons for divergence: the overall goal cannot be achieved in the period of one project. Property issues are the most complicated and complex problem Albania currently faces. It needs a real strategy with a concrete meaningful action plan, which itself will require substantial political willingness to do a real change. The MoJ is not in the position to steer this initiative. It will need new governmental structures to come up with a meaningful strategy.

Assessment

The property situation is quite chaotic in this country and it will take decades before legal certainty and rule of law will fully prevail in this conflict laden situation. By the end of EURALIUS II we have looked into many issues and we can say that property disputes do not only put an enormous burden on the civil law courts but are also one of the main motives for capital crimes and internal family conflicts in Albania. The recent judgements coming from the Court in Strasbourg speak a clear language and have pinpointed systemic problems of the Albanian system – many of them prevailing particularly in property cases.

Unfortunately we have been unable to provide significant contribution to a better harmonisation of the three processes. A detailed analysis and justification will be contained in our 2010 EURALIUS property report. We have always held close ties with other international donors and actors in this field and we see that every project in this area, if it ever started, runs into a myriad of problems and struggles to achieve any tangible results.

However, we think that having changed our approach and having looked at the problem from a Human Rights perspective during project implementation was the right move at the right time. We encountered a high interest and had the impression that the limited assistance we could provide in this area was well perceived. Our conclusions and findings hopefully will provide some incentives to make changes in the future and will hopefully be considered when the GoA will finally come up with a meaningful strategy to tackle the manifold problems in proper sense. Having looked at the situation over the last years we can see that until now there has been strategic approach to the property question but rather individual solutions serving particular interests of certain groupings.

Recommendations

- The first and most important step is to achieve national consensus among the political forces to actually start tackling the issues by contemplating a comprehensive strategy on property rights. Political willingness to make a change is the crucial issues in this respect
- Set-up a meaningful property strategy with a concrete action plan

- Consider institutional changes to streamline the institutional framework in order to make it more coherent, efficient and appropriate

2.2. Assessment of the results of the Action

Chapter 2.1 contains a detailed description of the assessment of the results of the Action.

2.3. Outcome on both the final beneficiaries &/or target group (if different) and the situation in the target country or target region which the Action addressed

- Gradual and persistent progress in the **prison system** (as to the planning and establishment of pre-trial and penitentiary institutions, improved prison management and progress as to a more humane treatment of detainees including pre-release and integrating measures) and to further development of pertinent laws and regulations, e.g. on alternatives to imprisonment;
- Establishment of a **probation system** in Albania with a new General Directorate in the Ministry of Justice and four local offices; within one year only, the number of probationers/clients has reached approx. 1400 persons, thereby contributing to a reduction of prison overcrowding and of the prison population in general for the first time since many years;
- Significant improvements in the **budget management** of the Albanian courts and by the Office for the Administration of the Judicial Budget, resulting in modern budgeting standards and economisations, speedy availability of budget data and related standardisations and savings; budgetary management improvements have also been extended to the budget officers of prosecution offices, prisons and the enforcement sector;
- Regarding the **enforcement system** adoption of laws for a “double-track” system of (existing) public bailiffs and (new) private enforcement agents aiming at increased efficiency and effectiveness of the enforcement of judicial decisions, including related amendments to the Civil Procedure Code (CPC); implementation of the new system has been very much delayed, however, due to difficulties in the recruitment procedures for private agents and the establishment of an electronic data base of enforcement cases for both service branches;
- Preparation of final draft amendments to the **Civil Procedure Code** and the **Civil Code**, aiming at measures to speed up civil lawsuits (in particular by introducing payment orders and default judgements) and at increased consumer protection;
- Introduction of a reliable **IT system for the courts (ICMIS)** with a lottery system for the random attribution of cases to judges, display of cases and trial agendas, internet access, intranet serving e.g. the documentation of judicial rulings, statistics etc.;
- Substantial improvements for the determination of **judges’ positions** at the Albanian courts, based on reliable calculations, resulting in a decree by the President of the Republic (and Chairman of the High Council of Justice) on the distribution of judges and in a more balanced workload among courts and judges contributing to a reduction of backlogs;

- Establishment of a functioning **GPS network** in Albania facilitating exact land measurements in a contemporary reference framework, which among other applications can be used for the cadastre and land registry;
- Assistance in drafting a new law on the forfeiture of assets suspected of representing the proceeds of organised crime (so-called “**Anti-Mafia-Law**”) as well as in drafting a **Law on mutual legal assistance in criminal matters**, supplementary to the Criminal Procedure Code, and subordinate regulations (related to the “Visa liberalisation road map”);
- Elaboration and publication of a second edition of our **Law Drafting Manual**, including an extended part on approximation of the legal system to the EU acquis, as a standard tool for legislative work in the Ministry of Justice and at other institutions;
- Collection of all multilateral and bilateral **treaties in international civil and criminal legal cooperation** ratified by Albania and their recording in an inventory, put into a CD-ROM which was distributed to all Albanian judges and prosecutors, the Magistrates School and other institutions;
- Presentation of numerous **studies, reports and recommendations** in all areas of the EURALIUS work plan;
- Provision of **advice and comments** on a high number of **laws and regulations**, upon request or spontaneously, by way of participation in working groups, elaboration of written comments or oral advice, often on an ad-hoc basis, primarily to the General Directorate of Codification in the Ministry of Justice, but also to other institutions including the Laws committee and the National Security Committee of the Albanian Assembly;
- Provision of assistance to the High Council of Justice in preparing and adopting a new methodology for the **evaluation of judges**, an essential prerequisite for the promotion of judges to Appeal Courts and Serious Crime Courts.

2.4. List of all publications produced during the Action

The following recommendations, comments, statements and studies have been produced within the Action:

	Nr. ²	Name of Document	Rapporteur	Date	Activity
Semi-annual Progress Report No1	77*	A comment relating to enforcement of court rulings and enforced collection of tax debts in Albania	Kimmo Vikman	21.Jul.08	7.1.1
	78*	Study Visit to the 30th Plenary meeting of the EJM in Slovenia (8 - 10 June 2008)	Marina Thode	-	9.7.1
	79	Comments on the draft “National Prison Strategy”	Peteer Naks	23.Mai.08	6.3.1

² The numbering of the publications continued from EURALIUS I.

	Nr. ²	Name of Document	Rapporteur	Date	Activity
	80	Assessment report of the implementation of the Master Plan	Peteer Naks	24.Jun.08	6.3.3
	81	Comments on the draft "General Regulation of Prisons"	Peteer Naks	25.Jun.08	6.1.1, 6.3.3
	82	Comments on the draft amendments to the Law No. 8331 "On the execution of criminal decisions" and Law No. 7895 "On the Criminal Code of the Republic of Albania"	Peteer Naks	14.Aug.08	6.1.1
	83*	Additional comments on the draft "General Regulation of Prisons"	Peteer Naks	20.Aug.08	6.1.2, 6.3.3
	84	Report on training course "Modelling of internal temporary standards and use of self evaluation method for efficiency analysis of operative expenditures", School of Magistrates, 3 April, 2008 (examples 2005-2006)	Juris Avotins	03.Apr.08	3.1.1
	85	Report on training course "Modelling of internal temporary standards and use of self evaluation method for efficiency analysis of operative expenditures", General Directorate of Prisons, 13 June, 2008	Juris Avotins	13.Jun.08	3.1.1
	86	Report on training course "Modelling of internal temporary standards and use of self evaluation method for efficiency analysis of operative expenditures", School of Magistrates, 3 July, 2008 (examples – 2007)	Juris Avotins	03.Jul.08	3.1.1
Semi-annual Progress Report No2	87*	Comments on the Draft law on the private judicial Enforcement Service, 8 October 2008	Kimmo Vikman Elvana Thaci	08.Okt.08	7.5.3, 7.1.1
	88*	Report on the status of the implementation of the ICNIS Case Management System in the Albanian Courts in September 2008. (Short-term Expert Johannes Schimpelsberger 15-19.09.2008)	Johannes Schimpelsberger	09.Okt.08	8.1.1
	89*	Comments on the draft-law on Legal Aid	Marina Thode Meri Papakostandini	28.Okt.08	9.6.1
	90*	Comment on the "Study on the number of Judges in Albania"	Wilhelm Treiber	28.Okt.08	8.2.1
	91*	Comments on the Draft law on "Adjudication of administrative disputes and the organisation of administrative justice"	Roland Miklau Kathleen Imholz Juan Manuel Iruetagoiena Aida Bushati Wilhelm Treiber	05.Nov.08	8.2.1
	92*	Report on Study Visit to Estonia and Finland, 19 - 26 October 2008	Peeter Naks		6.3.4

	Nr. ²	Name of Document	Rapporteur	Date	Activity	
	93*	Comments on the Draft Regulation on the organisation and functioning of the judicial administration and the draft code of ethics of the judicial administration	Kathleen Imholz Juan Manuel Iruetagoiena Aida Bushati Wilhelm Treiber	12.Nov.08	1.1.1, 1.3.1	
	94*	Comments on the roles and competences of the chairman and the Chancellor of the court	Wilhelm Treiber	27.Nov.08	8.2.2	
	95*	Study Visit to Estonia and Finland by Representatives of the Albanian Ministry of Justice, 19 - 23 October 2008	Kimmo Vikman Odeta Hyseni	12.Jän.09	7.1.1, 7.5.2	
	96*	Study Visit to Bulgaria by the representatives of the Albanian Ministry of Justice 9 - 12 December 2008	Kimmo Vikman Odeta Hyseni	11.Feb.09	7.5.3	
	97*	Recommendations on the possibilities to improve the infrastructure of prisons	Peeter Naks	13.Jän.09	6.3.2	
	98*	Comments on the draft law on the Private Judicial Enforcement Service (8 October 2008)	Kimmo Vikman Elvana Thaçi	08.Okt.08	7.1.1	
	99*	Comments on the draft law on Some Amendments and Addenda to the Civil Procedure Code of the Republic of Albania	Kimmo Vikman Elvana Thaçi	09.Okt.08	7.1.1	
	Semi-annual Progress Report No3	100	Study on Recommendation and Court Fees	Wilhelm Treiber Roland Miklau	25.Mär.09	Extra
		101*	Report on Training Course "Modelling of Internal temporary standards and use of self evaluation method for efficiency analysis of operative expenditure" March 2009	Juris Avotins	19.Mär.09	3.
102		The Consultation Process in the Preparation of Legislation in Albania (focusing on legislation in the area of justice), February, 2009	Juan Manuel Iruetagoiena Aida Bushati Kathleen Imholz Elvana Thaçi	26.Feb.09	2.3.1, 5.1.2	
103		Recommendations on the disciplinary responsibility of judges and disciplinary proceedings at the High Council of Justice_(Inspection)	Juan Manuel Iruetagoiena Aida Bushati	12.Mär.09	1.3.1	
104*		Comments on the draft-law "On the protection of Justice Witnesses and collaborators"	Roland Miklau Marina Thode Meri Papakostandini Wilhelm Treiber	23.Apr.09	9.1.1	
105*		Report on the Study Visit to Denmark 10-16 May 2009	Peeter Naks	11.Mai.09	6.3.4	
106		Report of the workshop on the High Council of Justice Law	Juan Manuel Iruetagoiena Aida Bushati	15.Jun.09	1.4.2	
107*		Seminar on "Enforcement, Enforceability and effectiveness of legal protection" Dubrovnik Croatia 25 - 29 May 2009	Kimmo Vikman Odeta Hyseni Roland Miklau	26.Jun.09	7.	
108*		Report on preliminary analysis of budget indicators of bailiffs' offices in Albania	Juris Avotins	30.Jul.09		

	Nr. ²	Name of Document	Rapporteur	Date	Activity
	109*	Report On study visit in Sweden and Finland 31 May -7 June 2009	Juris Avotins	July 2009	3.1.1, 4.3.1
	110*	Report "On the study visit to Germany and France by the representatives of Albanian Justice Institutions"	Wilhelm Treiber Evis Xhaxha	July 2009	8.3.3
	111*	Comment on the Draft Decree on the Number of Judges	Wilhelm Treiber	August 2009	8.2.1
SAPR No4	112*	Study on the relationship between the increase of transparency indicators and increase of salaries for judges and prosecutors	Juris Avotins	23 Oct 09	
	113*	Comment on a state as a debtor dilemma relating to the round table discussions on 20 November 2009	Kimmo Vikman	18 Jan 2010	7
SAPR No5	114	Law Drafting Manual: A Guide to the Legislative Process in Albania	Kathleen Imholz	April 2010	5
	115	Handbook for trainers-of-trainers for budget officers in judicial institutions of Albania, Volume I - IV	Juris Avotins	June 2010	3
	116	Evaluation of the questionnaires to judges, prosecutors and police on the performance of advocates, civil and penal proceedings and the fight against corruption	Marina Thode	15 June 2010	9.5
	117*	Final Assessment Report on the Situation of Property Rights in Albania	Christoph Kopecky	28 June 2010	10.2.1

All Deliverables have been made available on the EURALIUS Mission website (www.euralius.org.al) unless marked with *. Those which have not been published on the website have just been disseminated confidentially to the addressees mentioned in the respective document and are not subject to any further dissemination due to their sensitivity. The website of EURALIUS was closed at the end of the project. Please see at 4. Visibility.

2.5. List of all contracts above € 5,000 awarded for the implementation of the action

The following long-term contracts (works, supplies, services) above 5,000 € were awarded for the implementation of the Action (all contracts were signed by CLC for the Contractor).

Company	Description of service	Total amount
INVESTNDERTIM TIRANA / Torre Drin	Lease contract for Office no. 31 (373 m ²), Garage no. 1 and Garage no. 30	133,555 €
Infosoft Systems	Maintenance of EURALIUS IT system	13,950 €
Infosoft Office	Commodities/Stationery	approximately 18,000 €
ABCOM	Internet Provider	8,190 €
AMC	Mobile phones	approximately 17,500 €

Albtelecom	Land lines	approximately 11,300 €
ALPET EKO A2 SHPK	Petrol and Diesel Supply for a supply of 1000 litres of “Petrol 95 oktun Unleaded” and 1000 litres of “Eurodiesel”	6,225.63 €
"DUDAJ Group"	printing of EURALIUS 5 publications (Manuals and Brochures)	5,663.98 €
Interfides	Auditing costs	30,000 €

2.6. Continuation of the Action

EURALIUS II will be followed-up by an IPA 2009 Grant on “Consolidation of the Legislative and Institutional Justice System” (EuropeAid/129784/L/ACT/AL) which is under procurement at the time of elaboration of this report.

The global objective of this Action will be to bring the Albanian Justice System closer to EU standards through technical assistance drawn from EU Member States. The specific objectives of this Action are:

- To improve the transparency, efficiency and effectiveness of all parts of the Albanian justice system pursuant to the clear and comprehensive reform strategy developed by the Albanian Ministry of Justice (MoJ) and the other actors in the system.
- To improve the organizational, administrative, technical and resource management capacities, as well as the case management capabilities of the Judiciary in order to make the courts more efficient and transparent.
- To bring the criminal justice system in accordance with EU standards.
- To support and assist the improvement of the enforcement proceedings in Albania by modernizing the working methods of the public and the private enforcement agents. Based on better access to register information of debtor’s assets, developed cross-agency exchange of information and establishment of debtor’s declaration / enforcement inquiry.

2.7. Promotion of gender equality and disabilities

In total, 10 international long-term experts have been involved in the project. Thereof 3 were female and 7 were male. Of the total of 19 national long-term experts employed during the implementation period, 9 were female and 10 were male. But the ratio in terms of duration of employment was 217 project months for females and 145 project months for male national long term-experts.

The working days of international short-term experts spent on the project were distributed as follows: Out of a total of 245 working days spent in Albania, 15.5 working days or 6.33 % were implemented by female international short-term experts. In addition to this the project

managers working in Vienna for the implementing partner CLC and in Bonn for the junior partner IRZ were female.

The percentage of female experts who contributed as specialised experts to the project on the part of the Albanian partners can be considered as very high though no figures exist. It holds as an example that the President of the Albanian High Court, Ms Shpresa Beçaj, is female.

In addition all experts involved in the project were informed on gender-sensitivity, so that barriers to gender equality can quickly and timely be identified, and proposals for new laws will bear inherently the principle of gender equality.

Special consideration was given to prevent that women are discriminated in the legal texts that have been elaborated within this project.

2.8. Monitoring / Evaluation of the activities

Within the Framework Contract Commission 2007 Lot nr. 4 – Contract Nr. 2009/231495 an evaluation of CARDS/IPA Projects in Albania took place. The draft Final Report of June 2010 presents the findings of the evaluation of five CARDS/IPA projects in Albania: (i) Assistance to the State Police of Albania: PAMECA-III; (ii) Assistance to the Justice System of Albania: EURALIUS-II; (iii) Assistance to the Ministry of Public Works, Transport and Telecommunications in the field of Transport; (iv) Assistance to the Ministry of Economy, Trade and Energy in the field of Accreditation, Standards and Certification, (v) Assistance to the Ministry of Environment and Institutions involved in Environmental Monitoring aimed at Strengthening of the Environmental Monitoring System in Albania.

The rating received was as follows:

Relevance and Quality of Project Design	+ 2	Satisfactory
Efficiency of implementation	+ 2	Satisfactory
Effectiveness	+ 3	Highly satisfactory
Impact	+ 2	Satisfactory
Sustainability	+ 2	Satisfactory

The evaluator advised that the start of a follow-on project may remain conditional on:

- Full commitment of the Leadership of the Main Beneficiaries – Stakeholders, in particular named the High Council of Justice, to a follow-on project.
- Full commitment of the Leadership of the Main Beneficiaries – Stakeholders to develop a Justice Reform Strategy and Action Plan (Strategic Plan – Legislative Plan – Implementation Plan) for the whole "Administration of Justice"-Arena. Part of this Justice Reform Strategy Plan should be the issue of "Division of Competences Ministry of Justice, M.o.J., – High Council of Justice, H.C.J.". The evaluator shares the opinion, that there is no evidence of tangible collaboration at the institutional level Ministry of Justice – High Council of Justice.
- Accommodating the Project Team within the premises of the Main Beneficiaries – Stakeholders.

Conclusions	Recommendations
<p>Drawbacks in the Field of Legislation</p>	<p>Necessary: Adoption of draft Administrative Justice Law, Reform of Civil Procedure Code, Implementation of the Law on Legal Aid, Reform of Code of Criminal Proceedings (based, inter-alia, on 2006 OSCE analysis and recommendations).</p>
<p>Efficiency of the Justice System; Introduction of Information and Computer Technology in the Judiciary</p>	<p>Need for developing Master Plan I.C.T. in the Judiciary 2011: Evaluation present applications running → development "Integrated I.C.M.S. Prosecution – Courts (First Instance and Second Instance) – link with Police"; Criminal Records System; Legal Database System.</p>
<p>Need of Justice Reform Strategy</p>	<p>Development Justice Reform Strategy and Action Plan (Strategic Plan – Legislative Plan – Implementation Plan) for the whole Arena of the "Administration of Justice". Part of this Justice Reform Strategy Plan should be the issue of "Division of Competences Ministry of Justice – High Council of Justice". High commitment of Leadership of both Ministry of Justice and High Council of Justice and of the Supreme Court is needed.</p>
<p>Need of Technical and Legal Framework on Land Administration and Property Rights. Complex and chaotic situation. Transparency of system is missing. Present situation creates high level of legal insecurity.</p>	<p>Development Technical and Legal framework in the area of Land Administration and Property Rights. Need for National Cross-Cutting Strategy Plan (Strategic Plan – Legislative Plan – Implementation Plan).</p>
<p>Enforcement System (Bailiffs)</p>	<p>The introduction of a two-track system would benefit from a study on best practices in E.U./C.o.E.-Member States.</p>
<p>Quality Project Design</p>	<p>Prerequisite in project design is conduct of thorough needs assessment. Needs assessment will clearly identify and in-depth elaborate the objectives of the project, consistent with the recipient country's needs, as well as profound elaboration of the Expected Results.</p>
<p>Not adequate involvement Management Beneficiaries</p>	<p>Prerequisite for follow-on project: high commitment/high involvement of Leadership of Main Beneficiaries in design of Project as well in its implementation, i.e. significant presence of Leadership.</p>
<p>Accommodation Project Team</p>	<p>For follow-on project: accommodation of Project Team within the premises of Main Beneficiaries recommended.</p>

2.9. Lessons learnt from the Action

- Lack of overall strategy and consistency in the justice system and at the same time over-centralised decision making

This is illustrated by the justice reform strategy: In early 2008 both the DP and the SP drafted justice reform pacts, which were actually quite similar and contained reasonable general principles. The DP strategy could have been a model for the government (MoJ), or the parliamentary justice reform sub-committee could have become active; but no moves of that kind followed.

- Under-developed inter-institutional cooperation, consultation and coordination habits, lack of mutual confidence between justice institutions (MoJ – HCJ, MoJ – GPO, MoJ - courts, prosecutors – judicial police/ASP)
- Often insufficient internal and external communication, lack of transparency, lack of feedback and follow-up information
- Divergent experiences with the preparation of legislative drafts:

positive (cooperation with GDC, GDP and GDProb; ad hoc consultations by MoJ; Law Drafting Manual)

mixed, but overall satisfactory (preparatory working groups, cooperation at Assembly/committee level)

opposing problematic provisions in drafts equally important as recommendations (examples: Prosecutors Law/suspension of GPO, salaries at GPO; Judicial Power Law/appointment of court chancellor and staff; HCJ/"rotation" and transfer of judges; "liberalisation" of the profession of notaries)

negative (unclear policy direction; insufficient consultation of interested parties and practitioners; sometimes unnecessary haste and time pressure; occasionally standstill of work for unclear reasons; lack of normative consistency; delayed implementation of and follow-up to Constitutional Court decisions)

lack of standard consultation procedures and insufficient implementation of the pertinent CoM Rules; lack of attention to the prospective financial impact of draft laws, both direct (budgetary) effects and indirect (societal, business community) effects

long outstanding laws (National Judicial Conference, administrative court staff, Administrative Courts Law, HCJ Law)

extreme piecemeal legislation (immovable property)

sometimes problems of financing (legal aid, IT system for "double-track" enforcement system)

- Long delays with and insufficient attention to the implementation of – new or amended - laws (Judicial Power Law, legal aid law, enforcement service/private agents) and delays with subordinate legal regulations

- Generally positive experience with technical assistance and trainings (budget management, prison and probation sector, ITAP, bailiffs, GPS stations project)
Delays and problems, but progress achieved: IT system for courts (ICMIS)
- Positive experience with timely, well-planned and focussed study visits to EU MS (prison management, probation system, budget management, HCJ/evaluation of judges, civil procedure innovations, criminal prosecution system, judicial public relations, enforcement system)
- Problems related to frequent turnover or dismissals of staff (MoJ)
Insufficient absorption capacity (human resources at the policy and technical level) and financial resources of beneficiary institutions
- Court reorganisation; appointment, promotion, evaluation and discipline of judges:
Progress: President's decree on distribution of judges to courts, new evaluation system
Delays: evaluation of judges; reorganisation or coordination of the two inspectorates (MoJ/HCJ); disciplinary proceedings
Serious shortcomings: Lack of transparency and professionalism in the appointment processes for Constitutional Court and High Court; promotion of judges by HCJ without evaluation; reorganisation of district courts without planning and without attention to access to justice; disciplinary proceedings: undue interference with the merits of judicial rulings, proceedings extremely delayed and not in line with fair trial principles; insufficient preparation of HCJ meetings
- Lack of prioritising the obligations and requirements coming from the EU integration process and poor policy coordination in that respect
Lack of a consolidated integration unit in the MoJ, resulting e.g. in difficulties of coordination with the MoEI
Deficiencies in the understanding of the institutional and legal framework regulating the integration process
Failure to follow the methodology for preparing the justice section of the NPISAA and to follow through on the NPISAA commitments and priorities
- Positive elements of working structures of the EURALIUS project:
Flexibility in the work plan; mixture of international and national experts; mixture of LTEs, MTEs and STEs; offices in the MoJ building; information exchange and cooperation with other projects

3 Partners and other Co-operation

3.1. Relationship between the formal partners of this Action

The co-operation with the Albanian counterparts was:

- generally very good with the Minister of Justice, especially with the present one, Mr Nishani, the Ministry of Justice, GDC, GDE, GDP, GDPProb, High Council of Justice, Courts, GPO, OAJB
- sometimes varying or impaired: e.g., vacancy of GD Justice Matters since 18 months; overly hierarchical or delayed decision making (e.g. MoJ/Gen.Secretary)
- partly or completely lacking with regard to the National Chamber of Advocates, MoJ/IT department under former head
- was significantly influenced in all sectors by the proactive communication efforts of EURALIUS experts and the generally very good understanding between the local and EURALIUS interlocutors on a personal level

3.2. Continuation of partnership

Please cp. at 2.6 above.

3.3. Relationship between Contractor organisation and State authorities in the Action countries

Please cp. at 3.1 above.

3.4. Relationship with any other organisations involved in implementing the Action

The Contractor implemented the project together with the Deutsche Stiftung für internationale rechtliche Zusammenarbeit e.V. (IRZ) based on a consortium agreement. Co-operation was at all times smooth and without any problems.

The final beneficiaries and target groups included the staff of the Albanian Ministry of Justice, the High Council of Justice, the Prosecution Service, judges of the Albanian courts, the Albanian Magistrate School, bailiffs, staff of the Office for the Administration of the Judicial Budget, the prison system, the Probation Service, the Institute for Training of Public Administration, the Property Restitution and Compensation Agency, the Immoveable Property Registration Office, and the Military Geographic Institute.

3.5. Links developed to any other actions

In continuation from EURALIUS I also EURALIUS II continued to hold close ties with other projects and interventions of the EU and other international organisations. In particular, with regard to the EU financed projects, EURALIUS II had regular contacts and information exchange with the PAMECA project especially regarding the implementation of activities under Objective 9, with the completed projects having supported the HCJ and the GPO in Albania, the regional ILECU and PROSECO projects, the projects assisting the MoEI (SMEI 1 and 2) and many others. In other areas, for example the prison sector, EURALIUS II also strongly cooperated with international programs sponsored by OSCE (regarding the establishment of the probation system) and UNICEF.

3.6. Ability of this Action to build upon previous actions

The activities proposed for achieving this Action's specific objectives' results were designed in order to specifically address the concrete needs and constraints identified in detail in the course of the implementation of the Albania CARDS 2002 Grant European Assistance Mission to the Albanian Justice System, EuropeAid/120726/C/G/AL (EURALIUS I) for both, the beneficiary country's justice system and the project beneficiaries, target groups and final beneficiaries.

3.7. Co-operation with the services of the Contracting Authority

EURALIUS II has been holding close ties with the EU Delegation in Tirana throughout the project's entire lifespan. The cooperation has been very smooth and fruitful and was in particular characterised by a very good understanding between the Head of the EU Delegation and the EURALIUS Team Leader on the one hand and very good collaboration between the Delegation's programme manager in charge and EURALIUS II management on the other. In addition to the monthly progress meetings held between the latter parties in the presence of top officials of the MoJ, regular ad-hoc meetings were set up to discuss pending project issues or inform on relevant developments. Apart from this regular information exchange was ensured by email correspondence as well as personal and telephone communication.

4 Visibility

Several measures were undertaken to ensure the visibility of the EU contribution.

First of all, EURALIUS II continued to run the bilingual (English – Albanian) website www.euralius.org.al, which had been established under the previous EURALIUS project. The website continued not only to provide information about the objectives, activities and set-up of the EU financed project, but remained also the main tool to publish many of the working results of EURALIUS II staff by giving users the possibility to download the published EURALIUS II deliverables in English or Albanian language. By this method EURALIUS II could address as many people as possible raising their awareness of the results of the project and the EU's contribution.

All publications like information brochures and manuals, which were printed by using project budget funds, were drawn up in accordance with the respective EU visibility guidelines. At public events organised and paid by EURALIUS II reference to the EU sponsorship was always made. Banners always carried the respective EU flag. All such activities were previously cleared by the EU Delegation regarding their compliance with the visibility guidelines.

The three EURALIUS vehicles were equipped with EURALIUS banners carrying the EU flag at least on the two front doors of each vehicle.

5 Annexes

Annex 1: CD-Rom with Final Report, Final Financial Report and all project deliverables

Annex 2: Audit Verification Report including the Final Financial Report

The Contractor agrees that this report is published on the EuropeAid Co-operation Office website

Contact person for the Action: Dr. Wolfgang Fellner
Representative of the Austrian Federal Ministry of Justice

Location, date:

Signature:

Date report due:

Date report sent: