



**Organization for Security and Co-operation in Europe  
Presence in Albania  
Rule of Law and Human Rights Department**



**FAIR TRIAL  
DEVELOPMENT PROJECT**

**INTERIM REPORT**

*October 2003 – July 2004*

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## A. INTRODUCTION

Corruption is widely seen as a major impediment for the judicial system in Albania. Different studies and analyses of the judiciary have shown that courts are widely perceived by the public to be affected by this phenomenon. This is suggested by surveys carried out by the Southeast European Legal Development Initiative (SELDI), according to which corruption encompasses all actors in the judicial system, namely judges, prosecutors, administrative staff and lawyers. Moreover, the weakness of the judicial system is one of the main points of concern of the international community and therefore impairs Albania's progress in the Stabilization and Association Process, which has been declared as a top priority by the government.<sup>1</sup> The purpose of this study is not to determine whether there actually is corruption in the Albanian judiciary, but rather to take note of the fact that public confidence is low and make suggestions on how courts can function more effectively in order eventually to increase this confidence.

This need to increase public confidence in the judiciary and related institutions was a reason for the OSCE Presence in Albania to initiate the Fair Trial Development Project. The mandate of the Presence calls - *inter alia* – for a focus on legislative and judicial reform. In connection with elements of the mandate calling for the promotion of good governance and for anti-corruption activities, a part of the work of the Rule of Law and Human Rights Department is to facilitate the capacity building of legal sector institutions, in particular to encourage institutions to develop rules to promote higher levels of transparency. In compliance with the aforementioned commitments, the purpose of the Fair Trial Development Project is to increase transparency in court practices and to raise trial standards.

The two-year project has been divided into two phases. During the first phase of the project, the procedures of serious crimes cases (i.e., homicides, trafficking offenses, and armed robbery) of the first instance were initially observed at the Tirana District Court and subsequently at the Tirana-based Court for Serious Crimes, which started working operations on 1 January 2004. In the second phase, the project will expand in order to consider cases related to human rights (e.g., domestic violence, juvenile justice, minority rights) and other cases of importance for the development of democracy (e.g., abuse of duty, bribery). This phase will require observing cases not only in Tirana, but also in Durrës, Vlora, Gjirokastra, Shkodra and Kukës. Standardized templates to be filled out by the observers after the completion of each trial, written court verdicts, and additional interviews carried out with judges, prosecutors and defense lawyers are the basis of the analysis carried out by the Fair Trial Development Project. The findings are summarized in court observation reports drafted

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<sup>1</sup> The Stabilisation and Association Report 2004 on Albania of the European Commission states that “of particular concern are issues central to the rule of law. These include the fight against organised crime and corruption and the functioning of the judicial system.” The U. S. State Department's Bureau of Democracy, Human Rights and Labor concludes in its country report on Albania for the year 2003 that “because of political pressure, intimidation, endemic corruption, bribery and limited resources, much of the judiciary was unable to function independently and efficiently”. Due to the “increased prevalence of state capture” caused by links of organised crime with public officials, Freedom House in its Nations in Transition 2004 report, decided to downgrade Albania's corruption rating from 5.00 to 5.25. Health services, customs and the judiciary are mentioned as those sectors, in which corruption is most widespread.

every six weeks. Apart from this interim report, a final report will be compiled after the second phase of the project has been completed. This report will have the aim of providing a broader analysis of the administration of justice, including an assessment of the qualifications and functioning of judges, prosecutors, lawyers and other law enforcement personnel and to serve as a tool to provide input to the Presence's legal reform strategies.

## **B. SUMMARY**

The observation of serious crimes cases has been carried out for a period of nine months and therefore does not claim to give a complete picture of the implementation of fair trial standards in the Albanian judiciary. This applies even more, as only Tirana-based courts were targeted during the first phase of the project. Nevertheless, the analysis reflects the main problems the judiciary in Albania is currently facing.

One of these problems relates to the right to a public trial. First of all, sessions are not always carried out in the courtroom, but sometimes take place in the judges' chambers. This practice effectively restricts the number of observers able to follow a court hearing. Although observers were not in principle denied access to court hearings, the inability to keep the schedule due to various delays, coupled with a lack of information on the part of the court staff, makes it difficult to follow a case from the beginning until the end.

A big portion of the delays is caused by insufficient transportation arrangements for defendants held under the precautionary measure of imprisonment on remand. Despite of the ongoing transfer of responsibilities from the Ministry of Public Order to the Ministry of Justice, so far no notable improvements in transportation arrangements can be reported. The consequences of mounting waiting hours for the participants of the trial are wide-ranging. Prosecutors and defense lawyers lose working hours, which could be dedicated to other cases, witnesses have to bridge the time under uncomfortable conditions because of the lack of a waiting room –and also may be exposed to reprisals or threats from persons affiliated with the defendant.

Defendants judged on their own recognizance cause postponements, as proof of a proper summons is difficult due to the lack of a complete and updated civil registry system. The proper delivery of a summons is indispensable for the court declaration of the defendant's absence in order to proceed with the case and to ensure that co-defendants, especially those held in pre-trial detention, are tried within a reasonable time. Additional adjournments are caused by witness absences, which often stem from a non-function subpoena process. As there is normally a gap of approximately ten days between the sessions conducted in the framework of one trial, the duration of a trial can easily reach several months. As the sessions are usually relatively short, many sessions are needed, thus adding to the total duration of a trial. The most lengthy proceedings are those concerning charges of drug trafficking and trafficking in human beings. These often involve several defendants, a fact that makes them susceptible to the usual postponements together with the time-consuming mutual legal assistance procedures made necessary because such criminal activity extends beyond borders.

A trial in the absence of the defendant, or rather a portion of the defendants, is carried out frequently and thus the right of the defendant to be present at the trial is undermined. It is conspicuous that especially in high profile cases, the main perpetrators frequently are not

sitting on the dock, but minor suspects charged with assistance activities are. Given this fact, a statement by Minister of Public Order Igli Toska on 23 September, according to which the achievements of the State Police in recent years include the capture of perpetrators of serious criminal offences, seems contestable, as those acting behind the scenes apparently have collaborators within the police ranks making it possible for them to escape in time from criminal proceedings.

Most defendants tried *in absentia* have a defense counsel hired by the family, rather than using a court-appointed attorney. Indeed, defense counsels generally rarely are appointed by the court. Court-appointed defense attorneys have shown less effort in the presentation of their cases than did those chosen by the defendants or their families. The professional performance of former so-called “six-month judges” who have become lawyers has proved extremely weak.

The high number of proceedings carried out in the framework of an accelerated trial is questionable when it concerns defendants who are minors or mentally disordered, as these defendants may not have a clear idea of the consequences of choosing this kind of procedure, which involves a reduction in hearing evidence and consequently a limitation of defense strategies. It is recommended, therefore, that these types of defendants be excluded from special trials.

Settings in courtrooms do not meet the needs of the participants, particularly regarding spacial conditions in trials with a high number of defendants and therefore of defense lawyers. The seating arrangements make communication between defendants and defense lawyers during the session almost impossible. Moreover, the witnesses’ position during questioning impairs the principle of equality of arms.

Witness protection measures basically are not implemented, apart from the occasional accompaniment by a judicial police officer at trial if the prosecution office has requested it. Besides the lack of a waiting room mentioned above, there is also no separate entrance/exit for witnesses. When the panel engages in consultation, witnesses generally are left in the courtroom face-to-face with the perpetrators. Furthermore, magistrates’ questioning of witnesses considered “problematic” due to their low level of education, mental disorders or traumas sometimes reveals a lack of sensitivity and consequently the necessary evidence cannot be gathered. Finally, the unlimited coverage of court cases by the media, including disclosure of witnesses’ names, recording of statements given and publishing of pictures endanger the witnesses’ safety as well as that of other trial participants (especially police and prosecutors). Moreover, it impairs the truth-finding purpose of the court. This is aggravated by the low professional standards of journalists in conjunction with their incomplete follow-up of cases leads to the sessions not always being portrayed accurately.

Due to the lack of secondary legislation as well as gaps in communication between the courts and the police, unified security standards are not applied. The thoroughness of the entrance control of the audience attending a trial as well as the attention paid to public order in the courtroom depends essentially on the personality of the police officers on duty. Media representatives, despite frequent disregard of security instructions, are usually treated with leniency due to friendship ties. This even led in one case to an open clash between the presiding judge and a policeman, the latter ignoring the instructions of the court.

The security-related dangers in the court environment due to these problems with the police staff are exacerbated by the lack of or failure to use devices like metal detectors, video cameras and safes for storage of files and material evidence. Everybody basically has access to the offices of the court staff, where documents are not locked and therefore easily can be lost. Notwithstanding the recent installation of a metal detector and video cameras at Tirana District Court, these devices, although apparently functional, are not in use.

Regarding the right to a trial before a competent, independent, and impartial court established by law, it must be noted that requests for the recusal of judges have been made extremely rarely. The most common request made by the defense concerns incomplete access to the file, aimed at a postponement in order to gain time for studying it. The court tends to approve such requests, with the consequence that proceedings are delayed.

Additional delays also result from the lack of experts. With the introduction of new, sophisticated investigative methods as well as an increased demand for psychiatric and psychological expertise due to amendments in the juvenile justice legislation and a growing number of persons addicted to drugs, there are not enough specialists available to carry out the necessary examinations in due time.

As currently there is neither a special law nor a unified sub-statutory act, specifying how cases are assigned,<sup>2</sup> different courts have different methods. Thus, manipulations can be carried out easily so that cases are assigned to judges who will issue opinions favourable to one of the parties. Consequently, the principle of impartiality is jeopardised.

Finally, a part of the written verdicts fails to reflect how the court reached its conclusions. This specifically relates to the consideration of evidence, which is sometimes reduced to a mere enumeration of the different means of evidence, and an assessment of the penalty. The penalty assessment should take into consideration relevant mitigating and aggravating circumstances, not only related to the criminal act itself, but also the situation of the offender and the purpose of the punishment. As a matter of fact, the two latter factors are rarely elaborated, meaning an individualised punishment is not constituted.

## **C. FRAMEWORK OF THE PROJECT**

### **I. The judicial system in the Republic of Albania**

Although the Law on the Major Constitutional Provisions<sup>3</sup> replaced the last Communist Constitution, the basic organizational structure and activities of the courts remained unchanged except for provisions which caused inconsistencies to the new legislation. However, Law No. 7561, dated 29 April 1992, "On some Amendments and Additions to Law No. 7491, dated 29 April 1991 'On the Major Constitutional Provisions'" amended the transitional constitution in important ways in areas related to the judicial system. For example, the Constitutional Court and the High Council of Justice, an executive body supervising the lower courts, were created. Further laws were enacted in the aftermath of the 1997 unrest and the first postgraduate school for training magistrates, the so-called School of Magistrates was established.

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<sup>2</sup> Such a law is in fact required by article 15 of Law No. 8436, dated 28 December 1998, "On the Organization of the Judicial Power in the Republic of Albania."

<sup>3</sup> Law No. 7491, dated 29 April 1991 "On the Major Constitutional Provisions".

The 1998 Albanian Constitution guarantees the separation of powers among the legislative, executive and judicial branches. Article 42, section 2, of the Constitution states that everyone has the right to defend themselves if charges are brought against them, and to protect their freedoms and interests before an independent and impartial court specified by law. The Constitution provides for a three-tier system of courts, which are First Instance Courts, Appellate Courts and the High Court.<sup>4</sup> In accordance with the number of judicial districts in the country, 29 regular first instance courts<sup>5</sup> and six regular courts of appeal exist.<sup>6</sup> The latter hear appeals from the first instance courts under their jurisdiction. Appellate cases are examined by a panel of three judges, whereas in first instance courts, both civil and criminal cases are heard either by one judge or by a panel of three judges, depending on the type of the case.<sup>7</sup> In total, between 276 and 295 judges are assigned to the First Instance Courts and 49 or 50 to the Appellate Courts.

The only High Court in Albania has original as well as review jurisdiction. Cases of original jurisdiction are charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, members of the Parliament, judges of the High Court and the Constitutional Court and, finally, cases submitted by judges in case of removal by the High Council of Justice. In other cases, the High Court has appellate jurisdiction and deals only with appeals on matters of law. Such decisions are generally taken by a panel of five judges, though judges do sit *en banc* for unifying decisions and in certain other cases. There are 17 judges at the High Court.

Besides the ordinary courts, special courts have been created. These are the military courts and, more recently<sup>8</sup>, the Courts for Serious Crimes and the Electoral College. The former try cases under the Military Criminal Code and appeals are heard by the Military Court of Appeals.<sup>9</sup> The Courts for Serious Crimes have jurisdiction related to the establishment of an armed gang, the establishment of criminal organisations, the leading of criminal organisations, crimes committed by these groups, robbery with the use of weapons and any crimes punishable by no less than 15 years of imprisonment.<sup>10</sup> Such cases are appealed to the Court of Appeals for Serious Crimes. Both courts are located in Tirana, but cover the entire territory of Albania. Currently, 11 judges<sup>11</sup> serving renewable 9-year terms have been appointed to the Court for Serious Crimes<sup>12</sup> and 8 judges<sup>13</sup> to the Court of Appeals for Serious Crimes.<sup>14</sup>

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<sup>4</sup> Art. 135 – 147 of the Constitution

<sup>5</sup> President's Decree No. 2110, dated 29 May 1998: Tirana, Kruja, Kurbin, Mat, Mirdita, Bulqiza, Dibra, Durrës, Kavaja, Elbasan, Librazhd, Gramsh, Shkodra, Lezha, Puka, Tropoja, Kukës, Korça, Pogradec, Kolonja, Vlora, Fier, Skrapar, Lushnja, Berat, Gjirokastra, Saranda, Përmet, Tepelena.

<sup>6</sup> Tirana, Durrës, Shkodra, Korça, Vlora, Gjirokastra.

<sup>7</sup> Art. 13, section 3 of the Criminal Procedural Code states that the district and the military courts try in panels consisting of three judges, when felonies are involved and, by a judge and two assistant judges when misdemeanors are involved.

<sup>8</sup> The Courts for Serious Crimes started working operations on 1 January 2004. Art. 11, section 1, Law No. 9110, "On the Organisation and Functioning of the Courts for Serious Crimes".

<sup>9</sup> Art. 9, 10 of the Law No. 8436 "On the Organisation of the judicial power in the Republic of Albania".

<sup>10</sup> According to art. 5, sec. 1 of the Law No. 9110 "On the Organization and Functioning of the Courts for Serious Crimes", dated 24 July 2003 in conjunction with Art. 75a of the Criminal Procedure Code

<sup>11</sup> Including the chairman and deputy chairman

<sup>12</sup> An expansion in the near future is planned, see point F.

<sup>13</sup> Including the chairman and deputy chairman

<sup>14</sup> Article 3 of the Law No. 9110 "On the Organization and Functioning of the Courts for Serious Crimes".

The Electoral College was established within the framework of a new electoral code adopted in 2003 in order to handle electoral matters. Art. 163 of the Electoral Code provides a lottery among appellate judges throughout the country for the purpose of determining who will serve in the Electoral College.

The Constitutional Court is a special court outside the regular judicial system competent to decide on the constitutionality of laws. It also provides remedies in certain individual cases, namely claims of violations of the constitutional right to due process of law. Only after all other legal remedies have been exhausted, can an individual petition be filed with the Constitutional Court.

## **II. Statistics**

With regard to the quality of statistics, it must be noted that due to the entry into force of the Criminal Code and Criminal Procedural Code in 1995 and the subsequent changes in penal legislation and changes in the statistical indicators related to the prosecution of offenses, figures cannot be compared directly.

Nevertheless, the registered criminal proceedings at the Office of the Prosecutor General decreased from 14,641 in 1993 to 7,472 in 1998. With the exception of the year 2000, the number of cases then continuously rose to 11,173 in the year 2003. About half of the new cases registered, i.e., 5,794, were sent to court. In 2000, 423 serious crimes cases as referred to in article 75a of the Criminal Procedure Code were reported to the Ministry of Justice; 445 were reported for 2001 and 262 for 2002. It should be noted that the information provided by the Ministry of Justice is inconsistent with the figures of the Office of the Prosecutor General. The Office of the Prosecutor General reported 510 serious crimes court cases for the year 2000, 487 for 2001, 578 for 2002 and 407 for 2003. The caseload of the courts throughout the country differs considerably, e.g., Permet registered 34 penal proceedings in 2002, whereas Shkoder registered 373.

Notably, only 81 indictments were filed with the Court for Serious Crimes of the first instance during the first half of 2004, which would mean a considerable reduction in the number of serious crimes cases. Therefore it warrants close scrutiny, whether this reduction is due to changes within the organizational setting, i.e., the establishment of serious crimes bodies within prosecution and judiciary, or a result of shifts within the distribution of offenses. The fact that 200 cases were investigated by the Serious Crimes Prosecution Office in the first six months of the year 2004 speaks for the former assumption.

## **D. DESCRIPTION OF THE PROJECT**

The Fair Trial Development Project was initiated in summer 2003, based on the findings of deficiencies in the Albanian criminal justice system identified in the course of the preparation of the Presence's Legal Sector Report.<sup>15</sup> Briefly, these concern the method of appointment of judges to senior positions, case management within prosecution offices and courts, the lack of a regular and systematic publication of court decisions, the insufficient system of internal

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<sup>15</sup> The Legal Sector Report describes the legislative framework and organizational status of key legal sector institutions in order to assess its current status. Based on the recommendations given, judicial reform strategies in the shape of projects are to be developed. See Organization for Security and Co-operation in Europe, Presence in Albania, *Legal Sector Report for Albania* (Tirana: OSCE, 2004).



control of the performance and ethical conduct of judges and prosecutors, as well as the limited prosecution of serious crimes.<sup>16</sup>

The project comprises two phases,<sup>17</sup> of which the first has been concluded. It was carried out from October 2003 to July 2004. After the court's annual summer holiday, the second phase of the project began in September 2004. The project will last until December 2005 when the final report is due to be issued.

Due to the limited availability of human and material resources of the OSCE Presence, a qualitative approach has been taken. This means that only a selected number of proceedings have been observed, but these have been followed from the opening session until the pronouncement of the verdict. The selection criteria are: the importance of the case ("high profile cases", organized crime) measured to a decisive extent by the amount of publicity it generates, the type of offense (in order to get a representative sample), legal or factual specialties (e.g., mutual legal assistance, witness protection, special investigative measures), and human rights-related sensitivities (e.g., minor defendants, mentally ill defendants or defendants who are members of ethnic minorities).

During the period of observations, which were carried out between October 2003 and March 2004<sup>18</sup> at the Tirana District Court, a total of 204 sessions linked to 38 proceedings were observed.

Between the first session at the Court of Serious Crimes which took place on 10 February 2004 and the last session before the summer holidays on 23 July 2004, a total of 142 sessions were followed by the observers in the framework of 20 proceedings. Of these, seven were concluded. Four of the total number of cases were homicides, another six trafficking cases<sup>19</sup>, four robberies with the use of weapons and four related to the creation of criminal organisations. Two of the criminal organisations were involved in drug trafficking and one in child trafficking; another was charged for murders.

After the completion of each proceeding under observation, a questionnaire was filled out by the observers. The questionnaire is designed to be a comprehensive examination of the procedural aspects<sup>20</sup> and of the merits of the case. It has been adapted to the features of Albanian legislation and common practices. In order to ensure a more thought-provoking analysis, additional sections concerned with the characteristics of the individual case were provided. As the Presence's Memorandum of Understanding with the Albanian government does not allow unlimited access to documents and hearings at the pre-trial stage, the focus is on the trial phase.

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<sup>16</sup> See page 6 of the European Commission's Stabilisation and Association Report 2004

<sup>17</sup> For more detailed information, see point A.

<sup>18</sup> The first case tried at the Serious Crimes Court, the murder of the Chief of Commissariat in Kruja, Gani Malushi, and his driver, Gjovalin Ndreu (later on referred to as the "Malushi case") started on 10 February 2004. Apart from one case of pre-meditated homicide beginning a fortnight later, other cases followed in March 2004. Therefore the observers concentrated on the Court for Serious Crimes from March 2004 and in January and February 2004 also continued observing ongoing cases at the Tirana District Court.

<sup>19</sup> Three cases comprising the charge of trafficking of women for prostitution, two of trafficking of children and one of trafficking of human beings.

<sup>20</sup> Including an evaluation of the efficiency of prosecution and defense, prosecutorial and judicial misconduct etc.

The authors of this study also created a database of the decisions related to the imposition of the precautionary measure of imprisonment on remand and of written verdicts requested from the court. This database aims to systemize the information collected in the course of the project. Completed questionnaires, written verdicts and additional interviews carried out with prosecutors, judges and defense lawyers form the basis of the Court Observation Reports which are drafted every six weeks. The reports point out human rights violations by collecting, analyzing and synthesizing facts, but also take rule of law perspective into account.

This combined approach is intended to provide accurate information on Albania's legal system, especially regarding gaps between current practice and international and domestic standards. Therefore, the emphasis is on observed trends rather than on isolated shortcomings within the system. Practical recommendations are meant to identify areas where judicial procedures could be amended, and in which training or legislative reform are required. Concerning high-profile cases of particular interest,<sup>21</sup> special reports have been compiled.

In the second phase, the Field Station personnel in charge of the observation at the district courts will be briefed on domestic legislation pertaining to the judiciary system, the prosecution offices, participant roles during investigation and trial stages<sup>22</sup>, witness protection, juvenile justice, minorities, trafficking in human beings, international human rights and fair trial standards, trial monitoring techniques as well as principles for trial observers regarding conduct, confidentiality and reporting. In order to become familiar with the template forms, Field stations have been following court sessions previously on an occasional basis.

## **E. LEGAL ANALYSIS**

### **I. Sessions**

#### **1. Settings**

Despite the EU earmarking 5 million Euro<sup>23</sup> for the construction and establishment of a Court for Serious Crimes within the framework of the CARDS National Action Program Albania 2003, construction work has not yet started. The new courthouse is to be located close to the prisons in the suburban area of Tirana. Meanwhile, due to complaints on the part of court officials regarding the lack of space, an interim solution has been found, which provides for the reconstruction of a building next to the location of the future premises. Details, including timelines, are not known yet, but it seems that the move will not take place until mid-2005.<sup>24</sup>

The first instance Court for Serious Crimes is currently sharing premises with the Tirana District Court, whereas the Court of Appeals for Serious Crimes has been accommodated at the Tirana Court of Appeals. Therefore, arrangements between the chairmen of the District and Appeals Court and of the Court for Serious Crimes regarding the provision of office

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<sup>21</sup> For example in the "Groni case", a case of organised drug trafficking, or the "Malushi case", the murder of the Chief of Kruja Commissariat and his driver.

<sup>22</sup> I. e., police, defendant, defense counsel, prosecutors, judges.

<sup>23</sup> According to the project proposal, this amount includes the installation of "basic court equipment". It is not specified what items are considered to fall under this category.

<sup>24</sup> See also point H.

space, use of courtrooms, transfer of furniture and other office equipment, as well as security measures have been necessary.

So far, satisfactory results have not been achieved in any of the above-mentioned areas. Since only part of the third floor of the Tirana District Court building has been given to the Court for Serious Crimes, the office space for staff is limited so that there are three or four persons per room. Even the chairman has to share an office with his secretary. In case of confidential meetings, the secretary has to leave the room and consequently cannot work at her desk at the same time.

The chancellor has his office on the same floor, but in the other part of the building, where the courtrooms are also located. If the chancellor wants to communicate with other staff or to make a copy or send a fax, he can only use the direct entrance to the part of the building with the offices if there are no trials ongoing, as he has to pass through a courtroom used by the Tirana District Court. Otherwise he has to go downstairs to the ground floor, then use the public entrance and ascend the stairs again to the third floor.

Naturally this procedure is very time-consuming, especially because the chancellor as the chief of administration has to communicate a lot with the staff. Apart from that, the office of the chancellor is extremely small and there is not enough space for storing all the books, files and other materials needed for his work. Shelves, cabinets, desks, tables and chairs have been borrowed from other institutions (mainly Tirana District Court), but more furniture is needed. This relates particularly to fireproof safes in order to store the files and material evidence. Currently, these are not locked away, therefore cleaning ladies, workers or even visitors entering the offices can have a look at these documents and could even take them away in a moment of distraction of the people in the offices.

Furthermore, no security checks are carried out at the entrance of the court building<sup>25</sup> and the entrance to the third floor,<sup>26</sup> therefore weapons easily can be brought in to threaten or attack court personnel. One member of the Court for Serious Crimes even stated that a visitor had entered the office of a judge once and behaved very aggressively. Court clerks have not been trained for such situations and in the majority of sessions (i.e., sessions with defendants in pre-trial detention) there are no policemen present for the purpose of guarding the judges' chambers, although article 9 of the Law on the Organization and Functioning of the Courts for Serious Crimes<sup>27</sup> states that the judges of the Courts for Serious Crimes enjoy special personal, family and property protection as well as close physical protection; and Art. 10 of the aforementioned law provides that within three months of this law coming into force<sup>28</sup>, the Council of Ministers is charged with issuing the necessary secondary legislation in connection with - *inter alia* - securing the special protection of the work premises. Notwithstanding the fact that the deadline passed nearly one year ago, such regulations have not been passed.

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<sup>25</sup> In the summer break, a metal detector was installed at the entrance of the building accommodating the courtrooms.

<sup>26</sup> Only one guard (an elderly man who is not armed) is posted near the office of the chair to ensure that nobody gains admission without permission. This surveillance is not continuous, as the guard is sometimes busy with other duties, has chats with colleagues or has to answer requests of visitors.

<sup>27</sup> Law No. 9110, dated 24 July 2003.

<sup>28</sup> Law No. 9110, dated 24 July 2003.

So far, all sessions<sup>29</sup> have been conducted in two courtrooms, which have been assigned to the Court for Serious Crimes for its exclusive use. One courtroom is on the ground floor; it is the biggest in the Tirana District Court and the only one with a metal fence separating the defendants from the other participants and observers. The other one is located on the third floor. Usually sessions with a larger number of defendants/defense lawyers, as well as defendants under the security measure of imprisonment on remand, take place in the high security courtroom on the ground floor.

Nevertheless, even this room is not set up for trials with more than three defense lawyers, as the desk only provides space for three. In trials with more participants, the court clerk usually brings in additional chairs, which are either placed in a second row or in extension to the desk already placed there. Consequently in the first case, those defense lawyers who are sitting behind their colleagues have a restricted view of witnesses as well as restricted possibilities of communication with the defendants. Given that for their colleagues in the first row it is already difficult to speak with the defendants because of the placement of the cage perpendicular to their row, whereas the desk of the defense counsel is parallel to that of the judges, it is almost impossible for defense lawyers even farther away.

Moreover, witnesses called to testify are expected to stand on the left side of the courtroom instead of the middle between prosecution, defense and the court,<sup>30</sup> i.e., they are placed close to the prosecutor's desk. As a witness may be the only means of evidence and therefore decisive for the outcome of the proceedings, even glances or gestures might be important for an assessment of his/her credibility. Such an assessment is *de facto* impaired by a reduced view and moreover the principle of equality of arms is endangered. This principle, which applies to both civil and criminal proceedings, means that everyone who is a party to proceedings must have a reasonable opportunity of presenting his/her case to the court under conditions that do not place him/her at a substantial disadvantage vis-à-vis his/her opponent.<sup>31</sup> Notably, in the smaller courtroom on the third floor witnesses give their testimony in the middle of the room in front of the panel, i.e., from a position between prosecution and defense. The desks of both of them are set up perpendicularly to the court, which means that both are able to study the witnesses' faces.

If it is decided to extend the lawyers' desk instead of placing some lawyers in a second row, there would be no direct way to pass between public entrance and the personnel entrance for court clerks and policeman, which raises security concerns. It is also questionable from the security point of view that the courtroom on the third floor is equipped with easily movable furniture, a fact which pre-destines this furniture for use as a weapons or obstacles in case of an escape planned by a defendant.

Another problem is the acoustics in the courtroom on the ground floor. The microphones installed for judges, prosecutors and defense lawyers do not work most of the time. Defendants and witnesses do not even have a microphone at their disposal. As the witness is seated in the corner of the courtroom opposite to the secretary, it is difficult for the latter to follow the proceedings in order to take minutes. The situation is made worse by the constant

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<sup>29</sup> Apart from one session which was postponed anyway, because the prosecutor was missing. This session was conducted in the neighbouring courtroom on the third floor.

<sup>30</sup> Seen from the public entrance.

<sup>31</sup> *Condron v. the United Kingdom*, 2 May 2000

high level of noise in the courtroom due to the entering and exiting as well as chatting of the public and media.

In contrast to this, the courtroom on the third floor is not even half the size of the one on the ground floor, so that no acoustical problems have occurred. On the other hand, the courtroom on the third floor does not even provide a desk long enough for all of the judges to sit.<sup>32</sup> Nonetheless, since not the whole panel takes notes, the situation is bearable. Notes are usually taken by the presiding judge and by other members of the panel who have been designated as *rapporteurs* prior to the beginning of the trial.

With regard to the courtrooms, there are quite often discrepancies in the court's schedules. These are frequently caused by delays of sessions, which require new arrangements for the assignment of the courtrooms for subsequent sessions. As the court clerks are not always familiar with the latest developments, they provide the observers with wrong information concerning the venue of the trial. For instance, it has happened that the observers awaiting a trial with eight defendants were directed by the court clerk to the third floor, although the one on the ground floor was not occupied at that time. When the observers were at the point of entering the courtroom on the third floor, some journalists and family members of the defendants were about to move in the opposite direction, as they had been informed that the trial would be carried out in the courtroom on the ground floor (which was indeed the case).

Contrary to Tirana District Court, the Court for Serious Crimes only had one session that was held in the office of the chair. The session in question<sup>33</sup> was scheduled during the court's annual summer holiday,<sup>34</sup> but from the beginning it was clear to the participants that it would be postponed, as the results of the examination had not been made known to the court. At Tirana District Court, the majority of trials were carried out in the judges' chambers. Basically, only trials with defendants under the security measure of imprisonment on remand or with more than two defendants (or rather defense attorneys) took place in the courtrooms.

The reasons for staying in the office seem to be of a practical nature. First of all, it is more convenient for the secretary in charge to take minutes, as she can directly type into the computer, print out the document, hand it over to the parties for a final check and, should the need arise, make necessary corrections immediately. Secondly, the judges themselves save time, as they do not have to move to another part of the building. Thirdly, the office provides a more pleasant environment, as it is heated in the winter and cool in the summer, whereas in the courtrooms, neither heating nor air conditioning or fans have been installed. The situation has only changed recently concerning the courtroom on the ground floor, as it was equipped with an air conditioner shortly before the summer break. The reason given on the part of the judges for the use of their offices, namely that there is a lack of courtrooms, has to be considered as pretense, as the observers never noticed that **all** courtrooms were occupied. As

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<sup>32</sup> According to article 6, section 1 of the Law No. 9110 "On the Organisation and Functioning of the Court for Serious Crimes" the Court for Serious Crimes as well as the Court of Appeals for Serious Crimes judge in a judicial body composed of five judges, whereas Art. 13, Section 2 of the Criminal Procedural Code related to the District Courts and Military Courts states that both of them try in a panel consisting of three judges, when crimes are involved and, by a judge when criminal contraventions are involved. Art 14 of the Criminal Procedural Code foresees a panel of three judges for the Appellate Courts (including Military Court of Appeal) as well.

<sup>33</sup> Due to the urgency of the matter, as the juvenile defendant who was supposed to be examined by an expert was in a bad psychological state - also referred to in point 2. b)

<sup>34</sup> Namely for 23 July 2004 at 10:00.

a matter of fact, at any time during the observation period at the Tirana District Court, most of the courtrooms were not in use.

The obvious consequence of trials being conducted in offices is that the number of people able to attend a trial is limited. Sufficient space is available for a maximum of three to four observers. Therefore the right to a public hearing<sup>35</sup> is violated. This right has two components: Courts must make available information about the time and venue of the oral hearings<sup>36</sup> and provide adequate facilities, within reasonable limits, for the attendance of interested members of the public. It is “an essential safeguard of the fairness and independence of the judicial process, and a means of protecting public confidence in the justice system”.<sup>37</sup> Remarkably, within the course of the observation, the policy with regard to the venue of trials changed, particularly after the start of working operations of the Court for Serious Crimes. The Court for Serious Crimes, due to the high number of defendants in pre-trial detention in its proceedings and the increased size of the panel<sup>38</sup> was practically obliged to use the courtrooms. Perhaps this served as a good example for the District Court as well.

## 2. Access to information

### a) Trials

#### *aa) preface: conditions of work*

As this report<sup>39</sup> covers Tirana District Court as well as the Court for Serious Crimes, an examination of the jurisdictional activities of both courts includes a comparative analysis. In this regard, the highly different working environment of the two courts has to be considered.

Tirana District Court is the only court in the country that is substantially computerized. This has been done within the framework of the pilot project “Automatisation of Tirana District Court” carried out by the Open Society Foundation for Albania in 2000-01. The project was implemented in co-operation with the Ministry of Justice, which was running the reconstruction of the court building. In the course of the project, every office shared by a judge and the secretary assigned to him, was equipped with a computer and a printer. In total, 50 computers and 30 printers were delivered to the court’s premises as well as generators and batteries in order to be able to bridge power cuts. Software and a web-page specifically adapted to the court’s needs was developed by a domestic information technology company.

The project consisted of two phases. In the first phase, a network and an internal telephone system were created and two servers were provided and in the second phase, the case management was tackled. Each incoming file is automatically registered with a number by the system. The judges then allocate cases by lot. Exceptions to random choice are made to take into consideration the workload. It would be recommended that the assignment by lot

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<sup>35</sup> Universal Declaration of Human Rights, art. 10, ICCPR, art. 14 (1), European Convention, art. 6 (1), Yugoslavia Statute, art. 20 (4), Rwanda Statute, art. 19 (4), ICC Statute, art. 64 (7) and 67 (1). Moreover, the right to a public hearing in criminal proceedings is also set out in international standards; Universal Declaration of Human Rights, art. 11, Principle 36 (1) of the Body of Principles, American Convention, art. 8 (5) and American Declaration art. XXVI.

<sup>36</sup> See point 2.

<sup>37</sup> Amnesty International Fair Trials Manual, section B. chapter 14

<sup>38</sup> I.e., 5 instead of 3 judges, Law "On the Organization and Functioning of the Courts for Serious Crimes", art. 6, section 1, Criminal Code, art. 13, section 2.

<sup>39</sup> Due to the changes within the court system outlined in point B. I.

also be performed by the computerized system, with a possibility for the court to override the computer where workload or other justifications require it. In this case, of course, the computer should register the override and the reasons for it.

Furthermore, a web-page was designed for the court. The web-page provides information related to pending trials, such as the name of the responsible judge or rather chair of the panel, the name of the defendant, the charge, as well as the date and time of the trial. The system is updateable, which means that the actions undertaken during each session as well as the written verdict can be added by the secretary. In addition to the information provided via the internet, at the entrance hall of the courthouse, three computers and – very recently – one touch screen have been set up, on which the (civil and criminal) trials conducted by each judge for any given day and the following one are enumerated. The table comprises the same items as posted on the web page. Finally, all the computers have internet access, so that the judges have an electronic library for research purposes at their disposal.

Unlike the Tirana District Court, the Court for Serious Crimes suffers from a lack of human and material resources, which have a detrimental effect on information management and therefore impair the possibilities of attendance of sessions by interested members of the public.

During the first half year of working operations, before the OSCE Presence donated 19 computers and 3 printers in the framework of the Fair Trial Development Project to the Court for Serious Crimes, the court had been provided only with 5 old computers by the High Court. None of these computers had internet access, so the chancellor was forced to use his private computer outside working hours to send emails with the weekly schedule to media representatives and the OSCE observers. Sometimes he was not able to do this in time, thus the observers had to check the court's pin board. During the first weeks of work, the observers had to ask court personnel about upcoming trials. Later, in March 2004, the weekly schedule was posted on the pin board located in the entrance hall of Tirana District Court and "lost" among various other documents placed there. In April, a pin board was fixed to the wall of the entrance on the third floor of Tirana District Court, where the Court for Serious Crimes is temporarily located.

In addition, a sign with the name of the Court for Serious Crimes has been hung up, although at the entrance of the courthouse there is no reference to this court. The doors of the offices are marked with signs, but whereas on the first three floors of the building occupied by Tirana District Court, the names of the judges are mentioned, on the third floor mainly assigned to the Court for Serious Crimes, only the function is referred to (i.e., judges, secretaries, finance office). The office of the chancellor, which is located in the part of the building where the courtrooms are housed, does not have up-to-date labeling, as previously it was the location of a restroom for lawyers and prosecutors. Names and office numbers of the judges working at the Tirana District Court are posted at the entrance of the first and second floors.

*bb) service*

The conditions at Tirana District Court are more favorable to guarantee observers' access to information and therefore ensure the right to a public trial than conditions at the Court for Serious Crimes. Nonetheless, the differences are not substantial, due to a variety of circumstances:

First of all, often neither the web page of the Tirana District Court nor the screens in the entrance hall are up to date. In one extensive proceeding, the observers even noted that the web page had not been updated for more than two months. This improved in the course of the observations.

Secondly, delays and postponements require that those wishing to attend a trial consult either the judge in charge of the case or his secretary. As delays are rather the rule than the exception,<sup>40</sup> the judge or his secretary have to be addressed anyway and therefore the availability of updated technology plays a less important role because of the frequency of unexpected schedule changes caused by the absence of the parties, absence of witnesses, the non-accompaniment of defendants under the security measure of imprisonment on remand, motions filed, etc. Consequently, getting current information related to the time and venue of a session to be observed essentially depends on the competency and willingness of the court personnel.

In general, it has to be stated that at Tirana District Court - with a few exceptions<sup>41</sup> - judges in particular were more ready and helpful to answer questions related to the holding of sessions. At the Court for Serious Crimes, confusion exists about the appropriate contact point. The chancellor, who is in charge of drafting the weekly schedule, has been very co-operative from the beginning, but was himself not informed about the latest developments concerning certain sessions, as this is not related to his duties as chief of administration. He referred to the court clerks, the court clerks to the secretaries and the secretaries to the judges. The majority of the judges did not know the reasons for the delay and consequently were not able to define whether and at what time the next session would start.

These two examples illustrate the gaps concerning the flow of communication among court staff. As a consequence, observers, mainly relatives or friends of defendants or victims as well as media representatives, are not provided with accurate information. It seems that the reasons for the deficiencies within the information management at the court result at least partly from internal conflicts.

As cases are transferred to the Serious Crimes Prosecution Office - the prosecutorial counterpart of the Court for Serious Crimes - from all district prosecution offices throughout the country, a considerable number of defendants who are on their own recognizance, defense lawyers and witnesses have to travel long distances. Moreover, some of the defendants in pre-trial detention are brought by the police from jails outside Tirana. The conditions of the roads, the traffic situation and the lack of personnel, transportation and equipment (e.g. handheld radios, mobile phones) of the police all contribute to the delayed arrival of

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<sup>40</sup> In November and December 2003, 56 out of 94 court sessions were postponed, i.e., more than 50%.

<sup>41</sup> Two precedents are worth mentioning in this context: Once a judge provided the observers with false information concerning the continuation of a proceeding. He explained that the next session, on the occasion of which another witness was supposed to testify, would take place on 20 November. As a matter of fact, the session was held before 20 November. It remains unclear whether this was done intentionally or by mistake, although in the previous session monitored, the participants obviously would have liked to conclude the case without the missing witness, but did not dare to disregard procedural rules in the presence of observers. In another case, the judge, after the pronouncing of the verdict in one case, refused to inform the observer team about the next session, which was initially supposed to take place afterwards, claiming that he was overloaded with work and the observers should not bother coming again before next year, as he would only then have "time for a cup of coffee".



defendants. By contrast, the majority of participants of the trials at Tirana District Court are Tirana residents and can easily be reached via telephone in their offices in order to seek clarification about their arrival before court.

Apart from these very different prerequisites, a factor aggravating the situation at the Court for Serious Crimes is the lack of an internal focal point in charge of gathering all information related to the scheduling of sessions and providing an update to the persons concerned, meaning trial participants and observers.

With regard to information about the venue of the trial, this is easier due to the fact that there are only two courtrooms assigned to the Court for Serious Crimes, namely the high security courtroom on the ground floor of the building and another one on the third floor. Since the latter is rather small and does not have a cage for the defendants, trials with more than one defendant under the security measure of imprisonment on remand are conducted in the high security courtroom.<sup>42</sup> Notwithstanding the relative certainty of the location, it is nevertheless tricky to find out which trial is going to be conducted next, due to the schedule being conceived in an impracticable manner. Since the Court for Serious Crimes has quite a workload and because the afternoon cannot be used for trials due to the working hours of the police, the trials are squeezed in between 8:30/9:00 and 13:00/14:00, mostly with a sixty or ninety minute gap between sessions.

Usually the first trial begins with considerable delay,<sup>43</sup> which means the schedule cannot be followed from the very beginning, especially because the time allocated for each session is not sufficient. If the court has eight ongoing cases to try, with four or more defendants represented by one or two defense attorneys each, the questioning of witnesses and the administration of evidence in general are usually quite lengthy, given that each lawyer has the right to pose questions, make comments, file motions, etc. This is hardly manageable within a timeframe of sixty or ninety minutes, which is mostly shorter anyway due to delays in gathering participants. The problem of overlapping with the next session<sup>44</sup> has been solved by the judges either by ignoring the next session scheduled or by looking for reasons to postpone the next session, for example in the case of motions filed by one party, by giving the other party time to comment on them or giving time for the panel itself to reach a decision.

Furthermore, as the court staff is not kept informed about the current state of facts regarding transportation of defendants kept in pre-trial detention facilities outside of Tirana, the procedure is has been to hold trials in the order of arrival of the defendants. Therefore, when one arrives at court to follow a certain case, it is likely that the courtroom is empty or that another trial is being held.

The consequences of the unrealistic schedule are not restricted to the court itself. Defense lawyers who have other court sessions are not able to participate. This causes postponements

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<sup>42</sup> See point 1.

<sup>43</sup> The average delay of the sessions carried out within the framework of the “Malushi” case was 45 minutes. Out of 15 sessions, only 2 started on time. The maximum delay was 2 hours and 50 minutes on the occasion of the opening session, as transportation arrangements for the defendant Nikolin Prenga, kept in the Durrës pre-trial detention facilities, did not ensure a timely arrival.

<sup>44</sup> The problem of collisions only occurs when sessions with defendants brought from prisons outside of Tirana are followed. If Tirana defendants are concerned, the same police team brings the defendants back to prison after completion of the session and picks up the defendants accused in the next case scheduled. Of course, this procedure causes its own problems, as it is rather time consuming.

of the session and therefore affects the defendant's right to be tried without undue delay.<sup>45</sup> Not only the defendants, but also the witnesses are affected. They have to spend long waiting hours at the entrance of the courtroom, together with family and friends of the defendants and might therefore be exposed to threats.

It has happened that a session has been concluded without a witness being heard and the witness having to appear a second time in order to give his/her testimony.

Furthermore, the needs of vulnerable persons like children, juveniles, old or disabled people are not taken into consideration in the court's planning, as there is no separate waiting room for witnesses and there are no chairs placed at the entrance of the courtroom on the ground floor. Furthermore, the witnesses have to use the entrance and exit for the public, because the other one is reserved for court personnel. Of course, such practices do not encourage witnesses to testify against the defendants at court, especially because a functional witness protection framework is not yet in place in Albania. The Law on the Protection of Witnesses and Justice Collaborators<sup>46</sup> has been approved by parliament and promulgated by the President, but the secondary legislation needed for the law to be implemented have not yet been passed. This means that the vast majority of witnesses have to testify openly in court, with the consequence that their names are quoted in newspapers and pictures of them are taken, as no restrictions for the media exist.<sup>47</sup>

Given all the aforementioned difficulties to be faced, it is easy to imagine the impact on people not familiar with judicial procedures. Such people depend on a transparent information management system established by the court. This means that the whole court staff, mainly the court clerks, but also judges, secretaries and administrative personnel should be sensitized to the needs of the public, in particular to those of persons with a low educational background, mental problems or in emotional turmoil.

#### b) written decisions

Judgements in trials, criminal or otherwise, are to be made public,<sup>48</sup> with a few exceptions. These concern cases involving juveniles, whose privacy is to be protected, matrimonial disputes and cases about the guardianship of children. The reality is slightly different. Limitations related to the access of information do not merely concern the trial itself, but also written decisions.

On the web page of the Tirana District Court, written decisions related to each concluded case are supposedly posted. In most cases, this is actually done, although sometimes with considerable delay. Nevertheless, the decisions of one judge were never published on the internet during the time of this observation project.

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<sup>45</sup> This right obliges the authorities to ensure that all proceedings, from the pre-trial stage to the final appeal, are completed and judgements issued within a reasonable time. It is enshrined in the ICCPR, art. 14 (3) (c), Yugoslavia Statute, art. 21 (4) (c), Rwanda Statute, art. 20 (4) (c) and ICC Statute, art. 67 (1) (c), which require that trials on criminal charges take place without undue delay, and African Charter, art. 7 (1) (d), American Convention, art. 8 (1), European Convention, art. 6 (1), which require that all (i.e., criminal and other) trials are conducted within a reasonable time.

<sup>46</sup> Law No. 9205, dated 15 March 2004

<sup>47</sup> See also point 8.

<sup>48</sup> ICCPR, art. 14 (1), European Convention, art. 6 (1), Yugoslavia Statute, art. 23 (2), Rwanda Statute, art. 23 (2), American Convention, art. 8 (5), ICC Statute, art. 74 (5) and art. 76 (4).

For decisions issued by the Court for Serious Crimes, the need of a request was stressed by the chancellor. Due to the lack of detailed guidelines, it was unclear to whom the request should be addressed, whether it should be made only once in general or on an individual basis concerning each case and whether it should be in written or oral form. It was agreed between the chancellor and the observers that a general written request should be submitted to him and he would reply. Indeed, the observers got a positive response, but nevertheless oral follow up requests related to the different trials observed were necessary. Due to internal disagreements, the observers received only six written verdicts in total before the summer holiday, although 20 cases already had been concluded. In reaction to repeated requests, ten further decisions were sent via e-mail.

With regard to hearings at the pre-trial stage (i.e., the imposition of precautionary measures), no uniform policy is being implemented by the courts all over the country. Sometimes the public is allowed to attend such hearings, sometimes not. The same applies to the availability of written decisions.

Despite the fact that the provision of the Law on the Organisation and Functioning of the Court for Serious Crimes related to trials behind closed doors<sup>49</sup> is broader than the one of the Criminal Procedure Code,<sup>50</sup> as it provides additional exceptions "when this is seen as necessary for the case at trial or for other proceedings, in the interest of national security, public order, justice and the protection of participants in the trial", so far only one murder case has been conducted by the Court for Serious Crimes *in camera* on the request of the defendant, a father who had killed his son.

### 3. Presence of participants

Of 204 sessions in the framework of 38 proceedings<sup>51</sup> observed between October 2003 and March 2004 at the Tirana District Court, 73 were postponed due to absent participants. This is more than one-third of the sessions. Of these postponements, the majority, that is 28, were the result of the absence of the defendant, 18 of the absence of the prosecutor, 10 of the absence of witnesses called to testify, 9 of the absence of defense attorneys, 7 of the absence of judges and one of the absence of the representative of the assistant prosecutor. Within the category of the defendants, a distinction needs to be made between those defendants tried while on their own recognizance and those under the security measure of imprisonment on remand. If defendants in pre-trial detention were not present in the trial, it was because they were not brought by the police. This was the case in 23 sessions, whereas in the remaining 5 sessions the defendants tried were on their own recognizance.

At the Court for Serious Crimes from February 2004 until July 2004, 138 sessions in the framework of 21 proceedings were followed by the observers. Out of these, 37 sessions in total were postponed because of the absence of participants at trial. The majority of these 37 sessions could not be conducted due to the absence of defendants, defense lawyers and witnesses. Fifteen sessions were postponed because the witnesses called to testify did not appear, 11 because of the absence of the defense lawyers, 7 because the defendants were

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<sup>49</sup> Art. 7, Section 2 of the Law on the Organization and Functioning of the Courts for Serious Crimes (No. 9110)

<sup>50</sup> Art. 340 of the Criminal Procedural Code

<sup>51</sup> These proceedings were mostly related to serious crimes, which means the creation of criminal organizations, murder, premeditated homicide, robbery with use of weapons, trafficking of narcotics, but also include minor offenses like abuse of duty and falsification of passports.

absent, 3 because the prosecutor was absent and 1 because the chair – acting as presiding judge – was attending training abroad. In the case of absent defendants, only 3 sessions had to be postponed because of non-accompaniment by the police forces. In the vast majority of cases, the defendants were brought to the session with considerable delay.<sup>52</sup>

The improvements with regard to the presence of participants at the Court for Serious Crimes in comparison to Tirana District Court is striking, notably because this is related to the magistrates themselves and the transportation of defendants.

Concerning the magistrates, it has to be stated that usually two prosecutors participate in trials at the Court for Serious Crimes, one district prosecutor who is initially responsible for the investigations and, additionally, the Serious Crimes Prosecutor who took over the case.<sup>53</sup> Therefore, the probability of a total absence of prosecutors is less than in the cases tried at the district court, where normally only one prosecutor is in charge. Nevertheless, in most sessions conducted by the Court for Serious Crimes, both prosecutors were present. This can be evaluated as an indicator of better work discipline, which applies also for the judges, as apart from the training course abroad, no postponements related to the absence of members of the panel were registered.

Concerning the transportation of defendants, it seems that the judges of the Court for Serious Crimes are more motivated to carry out the session than those of the Tirana District Court, even taking into account delays which may cause interferences with other sessions scheduled. These delays might be aggravated by the fact that, contrary to those at the Tirana District Court, trial participants come from all over the country and a postponement due to the absence of one of them would mean that long hours of travel by other participants would have been in vain. Moreover, due to the severity of the offenses under its jurisdiction, in cases tried by the Court of Serious Crimes precautionary measures are imposed on the defendants in the majority of cases and the right to be tried without undue delay<sup>54</sup> is even more important.<sup>55</sup>

Finally, the longer the time gap between the commission of a crime and the pronouncement of the verdict is, the more difficult it is to produce reliable evidence; for example witnesses may not be reachable anymore, they may have moved abroad or cannot remember the event, or material evidence might have been lost. On the other hand, the increase in the number of postponements due to the absence of defendants tried on their own recognizance can be explained by the centralized structure of the Court for Serious Crimes. Naturally, it is easier to summon persons living close to the court, as the persons and their residences are known to the court personnel and the judicial police officers, and therefore the procedure of handover is simpler and less time consuming.

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<sup>52</sup> The greatest delay occurred in the opening session of the first case tried by the Court for Serious Crimes, the murder of the Chief of Kruja Police Commissariat, Gani Malushi. The session started almost three hours late because the defendant, Nikolin Prenga, was not brought from Durrës pre-trial detention facilities on time.

<sup>53</sup> In preparing for the establishment of the Serious Crimes Prosecution Office based in Tirana, Order No. 227 by the Prosecutor General, dated 19.12.2003, was released. The order states that the district prosecution offices are in charge of investigations in serious crimes cases until the imposition of precautionary measures, and then the file is transferred to the Serious Crimes prosecution office for completion.

<sup>54</sup> ICCPR, art. 14 (3) (c), Yugoslavia Statute, art. 21 (4) (c), Rwanda Statute, art. 20 (4) (c), ICC Statute, art. 67 (1) (c), African Charter, art. 7 (1) (d), American Convention, art. 8 (1), European Convention, art. 6 (1).

<sup>55</sup> Amnesty International Fair Trials Manual, Section B, p. 28

Another problem for the court is the lack of an updated, complete civil registry and address system, which often complicates the proof of the possibility to appear, as the burden of proof in this regard lies on the court. In most trials with defendants on their own recognizance, defendants under the security measure of imprisonment on remand are accused as well. This applies in particular to trafficking cases, in which those defendants accused for trafficking in human beings or exploitation for prostitution are usually held on remand, whereas those charged with assistance are judged on their own recognizance and often do not show up at court. According to article 351 of the Criminal Procedure Code, a trial can be conducted *in absentia*, but this presumes notification.

The court is faced with a dilemma, as on the one hand the legislative framework principally pre-supposes the presence of the accused and only in certain exceptional circumstances allows a criminal trial in his/her absence,<sup>56</sup> but on the other hand, the reasonable time guarantee, the purpose of which is to protect all parties to court proceedings against excessive procedural delays needs to be respected.<sup>57</sup>

In this situation, the Court for Serious Crimes handles the problem differently than Tirana District Court. Whereas Tirana District Court did not really implement the safeguards established by domestic legislation as well as international fair trial standards related to trials *in absentia*,<sup>58</sup> the Court for Serious Crimes is very diligent when it comes to these matters.<sup>59</sup> This is of particular importance regarding the other exception provided by law concerning a trial conducted without the accused, namely when the accused requests or gives consent that the court examination is performed in his absence or, when detained, refuses to participate, he shall be represented by the defense lawyer.<sup>60</sup> This regulation does not provide exemptions with regard to juveniles or the mentally unstable. In order to define the appropriate measure of punishment, a personal impression on the part of the panel concerning members of these two groups (if found guilty and responsible) is essential. Furthermore, it has to be taken into consideration that such persons may not have the necessary maturity to calculate the potential consequences of their decision not to be present at court.

Finally, the observation carried out at Tirana District Court revealed irregularities regarding the composition of the panel. On the occasion of different sessions within the framework of one proceeding, it occurred that not all members of the panel were present.

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<sup>56</sup> Art. 351 of the Criminal Procedural Code. This provision rules that a trial can be conducted *in absentia* when the defendant fails to appear before the court, despite having been notified, and the impossibility to appear has not been proved. This provision is in line with the requirements of article 6 (1) and 6 (3) c-e of the ECHR which principally presuppose the presence of the accused, but in certain exceptional circumstances allows a criminal trial in his/her absence. Concretely, article 6 (1) ECHR essentially states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 6 (3) c-e ECHR describes the right to representation and legal aid, the right to witness attendance and examination, as well as the right to an interpreter.

<sup>57</sup> *Stoegmueller v. Austria*, 10 November 1969.

<sup>58</sup> For example, in 8 out of 15 monitored trials which were completed by Tirana District Court during the first observation period from 29 October to 31 December 2003, the defendants were judged *in absentia*.

<sup>59</sup> In the case described above, the statement of the defense lawyer that the absent defendant had authorized him to represent him in the trial in conjunction with the confirmation on the part of the defendant's wife who was following the session, was not even considered by the court.

<sup>60</sup> Art. 352 of the Criminal Procedural Code. The European Court on Human Rights has emphasized on the occasion of *Vase Poitrimol v. France*, 23 November 1993, that a party may waive the right to be present at an oral hearing, but only if the waiver is unequivocal and attended by minimum safeguards commensurate to its importance.

This violates the defendant's right to be judged by legally competent judges as well as the principle of direct examination of a case, as the missing judges might base their findings on incomplete evidence.

Such incidents were not noted at the Court for Serious Crimes. The panels, even when composed differently from their usual formation, were not changed in the course of the proceedings.

#### **4. Duration of the proceedings<sup>61</sup>**

Postponements are the main reason for the long duration of proceedings at the Court for Serious Crimes. One of the main reasons for postponements is the absence of participants in the proceedings. Another reason relates to motions filed either by the prosecution or the defense, which have to be decided on by the court. Motions are either dealt with by immediate consultation on the part of the panel, or by postponing the trial, depending on the kind of motion and the time needed to decide on it. Of the 138 sessions observed at the Court for Serious Crimes, 11 were postponed as a result of motions. Notably, ten of these motions were filed by the defense. Of these, nine were related to trafficking cases, one to a murder case and one to a case of armed robbery. Eight out of these 11 motions were filed at the beginning of the trial.

The fact that most motions are filed in trafficking cases coupled with the fact that the vast majority of defense lawyers are not appointed by the court, seems to indicate that trying trafficking cases is a rather profitable source of income for a lawyer and could explain their intent to hinder the completion of the trial. Furthermore, it is noticeable that motions are presented especially often in complex cases, which indicates that lawyers have incomplete access to the files. Since such files are usually quite large, filing a motion gives the lawyer time to read the files. Moreover, a number of defense lawyers seem to consider letting off a "firework" of requests an appropriate tool to impress their clients, to advertise their competencies in order to attract further clients.

In contrast, during the observation carried out at Tirana District Court, only 3 of the 204 sessions were postponed because of motions put forward to the court. All three motions were filed by the defense. Two were related to trafficking cases and one to an abuse of duty case. All these cases were complex by nature and the files rather voluminous. Two of the motions were filed in the first phase of the trial and claimed insufficient time for the defense counsel to study the file. The third motion aimed at a replacement of the chair of the panel by claiming bias. This was the only time during the whole first phase of the project that such a motion was observed. It was related to a high-profile case of the creation of a criminal organisation dealing with drug trafficking and committing related activities within the framework of this organisation.<sup>62</sup>

The considerably higher number of motions leading to postponements at the Court for Serious Crimes in comparison to Tirana District Court can be explained by the fact that at the Court for Serious Crimes offenses are tried with a range of punishment starting at 15 years

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<sup>61</sup> This point is directly linked with the previous one; Point 3, presence of participants

<sup>62</sup> The so-called "Groni case", as the name of the main defendant is Arben Groni. See Prosecutor/Court Project Manager's Special Report, 21 January 2004.

and therefore much is at stake for the defendants. Consequently, the defense lawyer will attempt to take all available actions in order to have his client either declared not guilty or to achieve a milder sentence. Secondly, at Tirana District Court, far more trials were postponed due to the absence of participants and therefore the defense lawyers did not have to use motions to have more time to study the content of the files.

During the first half year of work at the Court for Serious Crimes, 20 out of 81 cases were concluded, i.e., one quarter of the proceedings. Half of these proceedings were carried out in the framework of an accelerated trial.<sup>63</sup> This is actually slightly less than the proportion of judgements resulting from accelerated trials in general throughout the country, which amounted to 56% of the proceedings for the first six months of 2004.<sup>64</sup> An accelerated trial assumes an evaluation on the part of the court that the case may be resolved based on the content of the file.<sup>65</sup> This means that the necessary evidence already has been sufficiently presented by the prosecution, and no witnesses need to be heard in court, which shortens proceedings considerably.

The first two cases completed by the Court for Serious Crimes, both comprised charges of armed robbery and were conducted as accelerated trials. One was completed within 2 sessions, the other within 4 sessions. The average duration of a trial concluded by the first instance Court for Serious Crimes has been 6 sessions. Taking into consideration that there is usually a time gap of about 10 days between the sessions in a case, a case within the jurisdiction of the Court of Serious Crimes generally is concluded within approximately two months. The longest case so far observed has been the “Malushi case”, with 15 sessions. The opening session was on 10 February 2004 and the pronouncement of the verdict on 25 June 2004.

The situation at Tirana District Court is different. Out of 38 proceedings observed, 22 were concluded, which is more than 50%. The average duration of a trial has been 10 sessions. The longest case, which had started half a year before the Presence’s trial observation,<sup>66</sup> has been the “Groni case”, with 31 sessions. The opening session started on 17 April 2003 and the pronouncement of the verdict was on 29 December 2003.

Given that the number of postponements due to the absence of participants was remarkably higher at the Tirana District Court than at the Court for Serious Crimes, the longer duration of a trial at Tirana District Court is not surprising, although the difference is considerable. Tirana District Court needs almost twice the time as the Court for Serious Crimes to finish a trial, although the starting position of the Court for Serious Crimes is in this regard considerably disadvantageous, as firstly minor offences - which are more likely to be dealt with speedily - are not under its jurisdiction and cases from all over country are transferred there, which often causes delays due to the difficult travel arrangements of persons involved in the proceedings. Finally, Tirana District Court often makes more use of the provisions of an accelerated trial, which shortens the hearing of evidence and therefore contributes to a shorter trial.

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<sup>63</sup> Art. 403 – 406 of the Code of Criminal Procedure.

<sup>64</sup> Prosecutor General, Information on the main indicators of the work of the Prosecutor’s office and the situation and expansion of criminality during the first six months of the year 2004, dated 30 July 2004, p. 3.

<sup>65</sup> Art. 404, Section 1 of the Code of Criminal Procedure

<sup>66</sup> 17 April 2003.

It needs to be considered, however, that thanks to the information provided by Tirana District Court on the internet, previous sessions could also be included in the calculation and that those cases already completed by the Court for Serious Crimes are by nature less complex than those that are ongoing.<sup>67</sup>

## 5. Performance of the participants of the trial

### a) Judges

The conduct of the proceedings depends to a decisive extent on the personality of the judge chairing the panel. This applies to Tirana District Court as well as to the Court for Serious Crimes. On the occasion of the observations carried out at the Court for Serious Crimes, however, a more team-orientated approach could be noticed. In the course of a trial, the judges would consult each other many times, for example, on the occasion of motions filed, the presentation of preliminary requests by the parties or the fixing of the date for the continuing session.

Moreover, there is a distribution of tasks within the panel in that one or two members of the panel act as *rapporteurs*, i.e., they take notes with regard to statements provided by the defendants or the witnesses. Several members of the panel are involved in the questioning of these two groups, most actively the presiding judge, followed by the *rapporteurs*.

At Tirana District Court, by contrast, judges rarely take notes and seem to rely mainly on the minutes taken by the secretary. Furthermore, the members of the panel other than the chair usually remained silent during the questioning of witnesses. As a consequence of this inaction, valuable information or procedural mistakes may be overlooked. The probability of errors is significantly reduced when all members of the panel have sufficient opportunity to participate. This also gives them a feeling of responsibility, which promotes the efficiency of a proceeding. Besides, the special skills of every member of the panel can contribute to a successful conclusion of the trial.

Nevertheless, the teamwork within the Court for Serious Crimes is not a substitute for the performance of each judge, which is determined by his/her personality, education, experience etc. For instance, one particular judge creates the impression of being arrogant when she acts as the chair of a panel, which makes witnesses feel intimidated.

Additionally, the observers have noticed within the observation period that close ties exist among the judges of the Court for Serious Crimes, who did not know each other at the beginning, as they came from different districts throughout the country. The full effects of these close ties cannot be judged yet, but negative results are possible. This could be seen in the case of two judges assigned to the same panel.<sup>68</sup> These judges have developed close ties of friendship; they usually sit next to each other during the trials and often have chats that are

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<sup>67</sup> This is illustrated by the new cases on trial in the Court for Serious Crimes as of Spring 2004. 1 out of 2 cases tried was completed in February, 4 out of 25 in March and none of the 9 cases commenced in the month of April. For the ongoing March cases, an average of 10 sessions per case were held, for the month of April, 7 sessions were held per case.

<sup>68</sup> Currently, 11 judges (including the chair) work at the Court for Serious Crimes. According to the organic law, 16 judges (including the chair and a deputy chair) were expected to be assigned to this court. Allegedly because of the reduced number of cases in comparison to the underlying calculation by the Ministry of Justice of 400 per year (after six and a half months of work, 81 files have reached the court), no further judges have been appointed for the court so far, but an expansion is supposedly planned in the near future. See point H.



not work-related. This has been registered with disapproval on the part of another colleague who is also a part of this panel. This person has shown a high level of professionalism, coupled with great commitment to his work. Furthermore, considerable differences could be seen in the way proceedings are carried out by the two panels. Whereas one panel<sup>69</sup> seems to be motivated and works rather thoroughly on each case, the members of the other panel often look bored, chew gum and yawn during the proceedings. In general, they are more ready to postpone a session and the time dedicated to questioning witnesses is much shorter.

#### b) Prosecutors

The Prosecutors are generally passive, which obliges the panel to take a far more active role in the questioning of witnesses than actually provided in the Code of Criminal Procedure.<sup>70</sup> Specifically, in two high-profile cases many of the questions asked by the prosecutors had to be rejected by the acting chair of the panel as being suggestive.

In one of these high-profile cases, the “Malushi case”, this weakness of the Serious Crimes Prosecutor - which was stressed in the final conclusions of the defense - was compensated by the District Prosecutor assigned to the case, who showed better skills in gathering information from the witnesses and the defendants as well. In the other case, the “Petalli gang case”,<sup>71</sup> it was the District Prosecutor who was unsuccessful with her questions. Contrary to the colleague from the Serious Crimes Prosecution Office referred to above, who did not feel deterred from continuing with his line of questioning, she gave up, although the witness called to testify was of crucial importance regarding the proof of the case, as he had approached one of the defendants in order to arrange for the child of one of his relatives to be trafficked with falsified documents to Italy. The Serious Crimes Prosecutor in charge of the case did not contribute anything to the questioning.

In both of the cases described above, the prosecutors carrying out the questioning did not attend the School for Magistrates, which might support the theory of the chairman of the court, who attributed deficiencies in prosecutorial performance in witness questioning to the “old” educational system for prosecutors. The School for Magistrates is now mandatory for prosecutors as well as for judges. The curriculum there incorporates exercises related to the trial stage, e.g., questioning of the accused and witnesses, procedural requests, and presentation of conclusions. Meanwhile the Chief of the Serious Crimes Prosecution Office, made aware of the problem, has also undertaken some efforts to tackle it, as he has promoted information exchange and exercises related to his subordinates’ oral presentations at court. This approach is to be welcomed, as those prosecutors without training from the School of Magistrates have the opportunity to profit from their colleagues.

In contrast to the prosecutors’ appearance at the Court for Serious Crimes, where despite deficiencies they generally were comparatively well prepared, the prosecutors at Tirana

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<sup>69</sup> To whom the aforementioned judge belongs.

<sup>70</sup> According to article 361 of the Code of Criminal Procedure, the questioning of witnesses is performed directly by the prosecutor or the defense attorney who has demanded the questioning. After this, the questioning continues by the parties, in order. Only with regard to the questioning of a juvenile witness, article 361, section 5 states that this may be performed by the chair, upon parties’ requests and objections. Otherwise the chair may ask questions and, when the case requires it, he intervenes to determine the order of the questioning, the truthfulness of the answers, the accuracy of the interrogations and objections, as well as to provide for the respect of the person. Art. 361, section 6.

<sup>71</sup> The defendants are suspected of being involved in the criminal activities of the notorious Italian “Petalli gang” in the area of child trafficking.

District Court obviously have not spent much time preparing their cases. Usually, they did not even have files or codes with them and left the main part of the questioning of defendants and witnesses to the chair of the panel.

Whereas at the Court for Serious Crimes prosecutors only twice caused delays due to organizational problems, their colleagues at Tirana District Court often came late and sometimes did not even bother to justify their tardiness. One prosecutor referred to “too much work”.

Contrary to those in other countries<sup>72</sup>, the Albanian Code of Criminal Procedure does not provide for the use of sanctions for all trial participants in order to facilitate the conclusion of cases,<sup>73</sup> although such powers would limit adjournments more effectively than the mere restriction to disciplinary measures left more or less to the discretion of the Prosecutor General or the bar association, which might not have an interest in being too rigid.

#### c) Defense counsel

In general, defense attorneys had a good knowledge of the files and were quite active in filing motions, in particular objections to the admissibility of evidence produced by the prosecution. This was especially the case in proceedings initiated in Italy and subsequently transferred to the Albanian authorities. Contrary to these high profile cases, which generate great interest on the part of the media and consequently make the lawyer’s name better known to the public, court-appointed lawyers tend to exert visibly less effort. This was noticed at Tirana District Court as well as at the Court for Serious Crimes.

## 6. Security and public order

#### a) Premises

Currently, both the Tirana District Court and the Court for Serious Crimes are located in the same building. This building is divided into three parts, one part with the courtrooms and one part with the offices of the staff. A third part is occupied by KESH, the Albanian Power Corporation. This part has a different entrance from that of the court. The former pathways from KESH to the court have been closed by walls up to the second floor. Only on the third floor is there a separation by bars, with a door. This is due to an additional office in the court part of the building being occupied by KESH.

The two parts of the building used by the courts have separate entrances, but there is also a possibility of passing directly from the part accommodating the courtrooms to that accommodating the offices on each floor. Only court personnel is allowed to use this entrance, although actually no checks take place. An entrance control for these two parts of the building<sup>74</sup> does not exist, which means that basically everybody has access to every office

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<sup>72</sup> For example, in Bosnia-Herzegovina Art. 43 RS/25 FBiH Code of Criminal Procedure provides sanctions in case of a failure of the prosecutor or his substitute to appear at the main trial. The same applies to the accused (Art. 253 RS/261 FBiH), the defense counsel (Art. 255 RS/263 FBiH) and witnesses or rather experts (Art. 256 RS/264 FBiH).

<sup>73</sup> Article 351 of the Code of Criminal Procedure entitles the court to declare the absence of the defendant and consequently to proceed without him under certain circumstances. Another option is the forcible accompaniment of the defendant, article 353 of the Code of Criminal Procedure. Furthermore, article 364 of the Code of Criminal Procedure offers the possibility to interrogate witness and experts in their houses.

<sup>74</sup> In the summer holidays, a metal detector was installed at the entrance of the building that houses the courtrooms.

without being checked for the possession of weapons. Only on the third floor of the building, where nine offices<sup>75</sup> are currently occupied by the Court for Serious Crimes, a guard watches the office of the chairman of the Court for Serious Crimes. If somebody wants to pay a visit to the chair, he/she has to wait until the guard has clearance from the him. Still, it would be very easy to gain admission to the chairman's office by force, as the guard frequently is distracted due to answering requests from the public, chats with court personnel or is absent from his post due to other duties.

Files, sequestered goods and confiscated assets are stored openly in the offices, as the Court for Serious Crimes has very few (functioning) safes at its disposal. Consequently, material evidence is exposed to theft, fire, etc. The danger of the theft of materials deposited in the offices is aggravated by the fact that on the third floor of the courthouse, the aforementioned KESH office is located, which increases the already substantial number of visitors. Moreover, the doors of the secretaries' offices are usually open because fax and copy machine are placed there, and judges, chancellor and court clerks frequently enter and leave the room to use their office equipment. Given this situation, the practice of conducting trials in the offices of the judges is a serious security concern. Fortunately, regarding the Court for Serious Crimes, this has only once been the case<sup>76</sup>, but at Tirana District court this has rather been the rule than the exception, particularly in the first observation period from October 2003 until December 2003.

#### b) Security checks

When a trial is conducted in one of the courtrooms and the security measure of imprisonment on remand is applied, observers and their bags are checked for weapons by policemen before they are allowed to enter the courtroom. It has to be mentioned in this context that the checks are not carried out thoroughly.

For example, the police ask the public to switch off mobile telephones, but verification very rarely takes place. Most of the journalists attending the session either ignore the request or, after having taken a seat in the courtroom, switch on the mobiles again. The observers witnessed on numerous occasions that telephone calls were made or answered during the trial either without being noticed by the police or with the police ignoring the calls.

The amount of attention paid by police to the public in general, including the level of thorough security checks, basically depends on the police personnel on duty. Therefore, security standards are applied arbitrarily and without a clear strategy. For instance, sometimes the observers are asked to leave their bags in the last row of seats in the courtroom and sometimes they are allowed to take them with them.

No link between the level of security checks and the nature of the proceeding<sup>77</sup> could be ascertained. The lack of a regulation for the Court for Serious Crimes is conducive to arbitrary actions by the police. The drafting of such an internal regulation is within the competencies of the Ministry of Justice, which so far has taken no action.<sup>78</sup> As a

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<sup>75</sup> After the appointment of five additional judges, two further offices will be requested by the Court for Serious Crimes to Tirana District Court (see also point F.).

<sup>76</sup> See point 2. a

<sup>77</sup> For example, a high profile case in which more severe security measures are imposed on the public.

<sup>78</sup> Due to alleged lack of time and human resources, as well as other duties of prime importance, e.g., finalising the so-called Anti-Mafia legal package.

consequence, clashes between police and participants in the proceedings are inevitable. It appears that police personnel consider the defense as weaker than prosecution or the court and therefore are more willing to use their powers with trial participants associated with the defense.

These kind of arguments fought in the presence of observers, media representatives and family members, do nothing to improve the image of the Court for Serious Crimes as an institution. Either the chair is judged to be too weak to implement his decision or he is regarded too lax concerning the implementation by security standards. From either perspective, the flow of communication between court staff, especially judges, and police leaves much to be desired. To make improvements in this regard, regular meetings clarifying each other's area of responsibility, discussing issues of concern and presenting suggestions should be scheduled. Security can only be achieved through the co-operation of all parties involved.

Steps also should be taken to ensure more transparency concerning security measures for the public. The police presence is concentrated in the courtroom. Thus, clashes between family members of the defendant and those of the victim, which could also result in reprisals towards witnesses,<sup>79</sup> as well as misbehaviour on the part of media representatives, are not always noticed by the police. Usually after the session has started only one police officer is posted outside the courtroom in front of the door for the public, in order to control the access of latecomers. The view of the entrance area, especially on the outside of the building, is restricted, however. Moreover, the police officer remaining outside the courtroom occasionally has to leave his position in order to consult with colleagues in the courtroom. This is of particular concern because there is no waiting room or a separate entrance to be used by witnesses.

The court clerks have not received special training in defense techniques in order to be able to take action in cases of physical attacks. This is especially important, as in trials with defendants on their own recognizance<sup>80</sup> or defendants tried *in absentia*, the duty of maintaining public order is with the court clerks.

Another point of concern that is closely linked with the problem of police acting in a rather arbitrary way in applying security standards is the reluctance of media representatives to follow police instructions. Even when they were requested not to take a seat in the first row closest to the cage with the defendants and not to make recordings during the session, they tended to ignore such orders by the police, well aware that the police would not go further, i.e., would not move them or take away equipment by force.

The urgent need for action in the field of security particularly concerns the Court for Serious Crimes, as many of the cases tried there attract public attention due to their sensational nature and therefore generate great interest among the media. This also applies to high profile cases

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<sup>79</sup> See also point 7.

<sup>80</sup> It should be noted that cases with accused who are not imprisoned are rarely tried at the Court for Serious Crimes, as the court's competency basically comprises offenses with a range of punishment of not less than 15 years. Thus, usually defendants on their own recognizance are accused together with collaborators who are under the security measure of detention on remand.

remaining under the jurisdiction of the district courts, for example the “Karaburuni case”,<sup>81</sup> which is currently on trial at the Vlora District Court.

Naturally, in these sensitive cases, unrestricted disclosing of witnesses’ names, taking pictures of them or quoting their statements, significantly increases the risk of reprisals. This applies as well to police officers on duty being filmed while guarding the defendants. Moreover, the publication of recorded statements given by witnesses or defendants endangers the success of the court’s efforts to establish the truth, as follow-up testimonies can be adapted to the information already quoted in the media. It has to be noted, that the information based on notes taken by the journalists and published in the media is rarely in accordance with the real facts, as the majority either do not listen attentively or follow the trial and often simply rely on oral summaries provided by colleagues.

Despite this worrying situation, the young institution of the Court for Serious Crimes seems to be rather passive in its dealings with the media as it may fear bringing about a bad image for the court.

## **7. Witnesses**

Given the described insufficiency of court arrangements to ensure witnesses’ personal security, coupled with the media’s lack of respect of privacy or rather data protection, and the fact that the implementation of the Law on the Protection of Witnesses and Justice Collaborators<sup>82</sup> takes time, particularly because of the technical secondary legislation that is still needed, it can be stated that at the moment witness protection only takes place as an exception in Albanian courts. The only measure applied in two cases tried by the Court for Serious Crimes, and based on a prior request by the Serious Crimes Prosecution Office, has been the accompaniment of two witnesses by Judicial Police Officers when they testified.

In addition to the danger of recording witness testimonies and these being spread mainly via the print media before all evidence has been taken and thus increasing the likelihood of influencing subsequent witness testimonies, there is a risk in the court not checking whether witnesses called to testify have been present in the courtroom before their questioning.

First of all, the court does not always ask whether there are witnesses among observers at the beginning of each session. Secondly, no checks are made whether people remain silent, although they have been called to testify. This has happened several times during the observations carried out at the Court for Serious Crimes. The identification of witnesses basically depends on the prosecution and the defense having the court ask them to leave the courtroom until their testimony, if the prosecution and defense are sufficiently attentive and remember the witnesses. If witnesses are identified too late or it is noticed that witnesses have participated and listened to a defendants’ statements or other witnesses’ testimonies, they consequently must be rejected as a source of evidence – potentially seriously damaging the trial.

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<sup>81</sup> On the evening of 9 January 2004, 19 Albanian citizens heading to Italy on a dinghy died due to bad weather conditions and reported engine failure. Another 8 persons went missing. The tragedy has been given broad media coverage in the country and abroad.

<sup>82</sup> Law no. 9205, dated 15 March 2004, entered into force on 1 May 2004.

The problem of separating witnesses from observers could be solved if either police personnel or court clerks were provided by the presiding judge with a list of witnesses to be called by the prosecution and defense, so that the police or court clerk could check identification at the entrance. Finally, in the summer, high temperatures in the courtroom motivated the police to leave doors open and witnesses waiting outside could become aware of the entire content of the session.

In this context, it must be mentioned that witnesses ignoring requests of the court is not necessarily a result of reluctance or maliciousness of the witnesses, but sometimes simply of a lack of understanding of court procedures. It was never the case that the chair of the panel explained to the observers and the witnesses why the presence of witnesses in the courtroom is problematic. Also the obligatory instructions prior to the witness testimony related to the truthfulness of the statements and the punishment of false testimony or refusal to testify<sup>83</sup> are occasionally not given.

Additional explanations would be more desirable as well because a number of witnesses have a rather low level of education and therefore no clear understanding of legal terms. It is recommended that the upcoming course of proceedings be explained to witnesses at the point of their interrogation by the judicial police in order to avoid later misunderstandings. This would also allow a discussion of points of concern, particularly those related to the security of the witnesses and their families. Then the prosecution would have sufficient time to think about appropriate protection measures and, after filing of the indictment, could approach the chair of the panel dealing with the case for consultation on further actions necessary for the future trial.

Special attention needs to be paid to vulnerable witnesses like minors or victims of trafficking. Training of magistrates by a psychologist would be of help, but it has to be taken into consideration that due to the possibility of a judicial hearing already at the pre-trial stage,<sup>84</sup> it is very rare that trafficked women or children have to testify at the main trial. Of 348 sessions observed in the framework of 58 proceedings<sup>85</sup> during the whole observation period from October 2003 to July 2004, only one victim-witness gave her testimony in a case of trafficking women for prostitution in collusion. The reason for calling her to testify despite previous evidence was that she had changed her statement and already been sentenced for false testimony.

This lack of sensitivity towards witnesses was only noticed in the performance of the second panel of the Court for Serious Crimes, whereas the first panel proved quite skilful in this regard.

Moreover, as already indicated in point 2. b), the arrangements at court are not sufficient to ensure the safety of witnesses. In the above-mentioned case with the victim-witness from Kamza, the panel left her face to face with her accused pimps in the courtroom during the break. Moreover, due to the delay concerning the start of the session, she and her parents were obliged to stay in the same place as the defendants' friends and families.

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<sup>83</sup> Art. 305, 307 of the Criminal Code

<sup>84</sup> Art. 316 - 322 of the Code of Criminal Procedure

<sup>85</sup> Trafficking in human beings Art. 110a of the Criminal Code; Trafficking of children Art. 128b of the Criminal Code; Trafficking of women for prostitution Art. 114b of the Criminal Code

## 8. Media

In contrast to the situation in Macedonia, where the Presidents of the courts in the capital do not grant permission to record court hearings and television in fact has no access to courts<sup>86</sup>, it has never been observed in criminal cases at the Tirana District Court and the Court for Serious Crimes, that journalists were prohibited from attending a trial, apart from those held behind closed doors.<sup>87</sup> Due to easy access to the schedule of Tirana District Court via internet and the computers with the daily schedule set up in the entrance hall of the court building, all media representatives are able to find the date and time of trials in which they are interested. The chancellor of the Court for Serious Crimes sends the weekly schedule, which is also posted on a pin board on the third floor of the court building, on request to journalists. Furthermore, most journalists enjoy good relationships with the police, so that they are often provided with more accurate and updated information on the start of the sessions than is the court.

Consequently, in almost every session observed at the Court for Serious Crimes, several journalists, partially accompanied by cameramen, were present. Due to the great competition within a small market,<sup>88</sup> print media and television stations focus on spectacular crimes in order to attract public interest. Due to the high level of job insecurity,<sup>89</sup> many journalists are students. As they often have other duties, they usually only follow a part of the proceedings. The incomplete knowledge of the case coupled with a lack of understanding and experience in legal issues in general is then reflected in articles that do not provide correct information. It was often the case that journalists were looking at notes taken by the observers because they were not able to follow the presentations of the parties to the proceedings.

The media's reporting on court proceedings is practically unlimited, i.e., defendants in the cage together with the police forces guarding them, prosecutors, judges and witnesses are all filmed and their statements recorded. Names of the persons enumerated beforehand are disclosed as well, which means that data protection does not take place at all. This endangers the safety of witnesses, court and police personnel and may infringe on the right of privacy of those defendants who do not agree with their pictures and names being published. Therefore, restrictions are urgently needed.

General guidelines would also limit the discretion of police personnel in the application of security measures concerning journalists. It was obvious that a number of male police officers have been rather lenient when female journalists disregarded instructions.

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<sup>86</sup> See p. 49 of the Evaluation Report of the NGO Coalition "All for Fair Trials" written by Lukasz Bojarski in June 2002.

<sup>87</sup> Within the framework of a civil defamation case pertaining to a lawsuit filed by the prime minister against a newspaper, the competent judge denied OSCE personnel attendance at a preliminary hearing.

<sup>88</sup> The Nations in Transit 2004 report on Albania published by Freedom House reads as follows (p. 8): "In 2003, the National Council on Radio and Television reported that 54 radio stations and 79 television stations were licensed for broadcasting in Albania. This is up from 34 radio and 62 television stations - including 6 cable operators - in 2002, according to the Albanian Media Institute. The total number of newspapers and magazines in 2002 was 95 and 70, respectively, as reported by the same source. There are 19 daily newspapers."

<sup>89</sup> Nations in Transit 2004 report on Albania published by Freedom House, p. 9

As the magistrates in general are rather reluctant to comment on cases to journalists, the latter focus on the defense<sup>90</sup> in order to obtain additional information. Whereas the defense lawyers often see the media as a welcome tool for advertising themselves, the families of the defendants either behave in an aggressive manner towards the media, as they do not want them to “throw dirt on the name of the family” or they try to use the media as an ally in the fight against “unfair justice”. It is not easy for the journalists to withstand such pressure, as the interference of newspaper owners in combination with high levels of job insecurity makes them vulnerable anyway.<sup>91</sup>

## II. Written decisions

### 1. Legal reasoning

#### a) General remarks

The right to a reasoned judgement is part of international fair trial standards. Article 6 of the ECHR requires that domestic courts give reasons for their judgment in both civil and criminal proceedings. The elements of the sentence are described more specifically in article 383 of the Criminal Procedure Code. Courts are not obliged to give detailed answers to every question, but if a submission is fundamental to the outcome of the case, the court must then specifically deal with it in its judgement.<sup>92</sup> Otherwise it is not possible for the parties to the proceedings to ascertain whether the court has simply neglected to deal with the issue or intended to dismiss it and, if so, what the reasons were for dismissing it.

Similar to judges’ quality of work,<sup>93</sup> the quality of written decisions is very different. The length of the decisions is an indication of this. The average length of the decisions of cases observed at Tirana District Court is 5 pages. The decisions issued by the Court for Serious Crimes are on average 7 pages long. The longest decision received from the Tirana District Court was in the “Groni case”<sup>94</sup> with 25 pages, whereas the shortest related to the illegal possession of narcotic substances and comprised only 2 pages. The longest decision received from the Court for Serious Crimes related to a murder case<sup>95</sup> and was 23 pages long, whereas the shortest was 4 pages long and related to homosexual intercourse with minors. The shortest verdicts both concerned proceedings completed at court with an accelerated trial.

#### b) Structure

The decisions are not structured in a uniform way, starting with the cover page. The date of the last session, in which the pronouncement of the verdict took place, is sometimes only referred to in the introductory part, while sometimes all sessions carried during the trial are mentioned. Furthermore, the personal data of the defendant are often incomplete, for example often, the place of birth, date and month of birth, education or employment are missing. This also applies to the criminal record, due to the non-existence of a national database accessible

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<sup>90</sup> Or on informal sources within the police, which often do not have much to say.

<sup>91</sup> Nations in Transit 2004 report on Albania published by Freedom House, p. 9

<sup>92</sup> Van de Hurk v. the Netherlands, 19 April 1994, para. 61

<sup>93</sup> See point I. 5.

<sup>94</sup> The two defendants in this proceeding initiated by the Italian authorities and based on the content of intercepted telephone conversations, were accused of creating an armed gang and criminal organization, organizing and leading criminal organizations and producing and selling narcotics, Art. 333, 284, Section 2, 283a, 28, 334 of the Criminal Code (The “Groni case”).

<sup>95</sup> The “Malushi case”.



by every court. Additionally, in some decisions it was not clear, whether the defense lawyer was appointed by the court or by the defendant himself (or rather his/her family).

These differences could be noticed in decisions drafted by the same court. They not only concern the operative part of the judgement, but also the reasoning for the judgement. A common feature is also that no headings or other subdivisions can be found in the text of the decisions. Long decisions referring to a broad range of criminal activities, like that in the “Grori case”, would be easier to read and could be better used for quotations and cross-references within the frame of follow-up cases, if they were structured differently.

In most decisions, the reasoning begins with a short summary of the history of the proceeding, while some start with the prosecutorial request related to the measure of punishment. Usually, this request is placed after the personal data of the defendant in the part enumerating the criminal charges. Only a few decisions explained the history leading to the event before they start with the description of the state of facts as considered proved by the court after hearing evidence. Stating the history of a case facilitates the understanding of complex cases and should be an integral part of the verdict.

In the section dedicated to the evaluation of evidence, the most conspicuous differences can be found. These are – with some exceptions – also linked to the type of court from which the decisions originate. The Court for Serious Crimes is more thorough in the reasoning of its decisions, as the different means of evidence are mostly<sup>96</sup> not merely enumerated, but their meaning elaborated on and linked to the pretenses of the defendants. This has rarely been the case in the decisions drafted by judges from Tirana District Court.

### c) Subsumption

As the evaluation of evidence by the Court for Serious Crimes is more detailed, its argumentation is more comprehensible for the reader: The different means of evidence, namely witness testimonies, expert evaluations, and material evidence are not only enumerated, but their impact on proof is put in context.

Contrary to the Court for Serious Crimes, no distinctions were made by Tirana District Court regarding a number of criminal actions exceeding one and fulfilling different types of offenses as provided in the Criminal Code, undertaken by the defendant in the course of the happening and concurrences among them in the cases under the competency of Tirana District Court.

The weakest parts of the subsumption for both courts concerns the treatment of the involvement of other persons in a crime, most frequently therefore the form of collaboration or whether the defendant was part of a criminal organisation.<sup>97</sup> In the period under review, only two decisions concerned the latter, one drafted by Tirana District Court<sup>98</sup> and one by the Court for Serious Crimes.<sup>99</sup>

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<sup>96</sup> Apart from one exception in a case comprising the charge of an attempted murder.

<sup>97</sup> Art. 333, 334 of the Criminal Code

<sup>98</sup> The “Grori case”

<sup>99</sup> The “Karajani case”

Both defendants were accused of being part of a network comprising Albanian and Italian citizens trafficking heroin. In the “Groni case”, it was stated that one of these Italians was a member of “Sacra Corona Unita”, a mafia organisation operating in southern Italy. In the “Karajani case”, links of the defendant with an Italian mafia organisation called “Trento” were assumed. Although in the “Groni case” both defendants were declared guilty of creating a criminal organisation and in the “Karajani case” the defendant was declared guilty of committing crimes through criminal organisations, the decisions did not specify the size, structure, composition and background of the criminal organisations of which the defendants were assumed to be part. Thus the connections to “Sacra Corona Unita” and “Trento” remained unclear. The distinction, therefore, between simple collaboration on the part of the defendants and the creation of a criminal organization remains unclear, although the latter has higher requirements regarding permanence, goals, structure, and profit.

The element of collaboration also often lacks sufficient argumentation, as the subjective component, namely the decision to commit the crime together, is examined either not at all or only superficially. Even if the court can ascertain without a doubt from the defendant's and the witnesses' description of an event that both defendants were acting together, it is important for the assessment of the penalty to decide who was the driving force.

The above mentioned case also illustrates the general negligence of the courts concerning their evaluation of subjective elements of an offense. This is of utmost importance for a clear distinction between a serious intentional injury<sup>100</sup> on the one hand and intentional murder<sup>101</sup> or premeditated homicide<sup>102</sup> on the other hand. In the decision, often mere facts are stated, namely that the defendant shot at the victim and caused a wound in the victim's stomach. Internal injuries resulting from the shot then led to the endangering of the victim's life. This argument, however, does not evaluate the intention of the defendant. Such an evaluation would not even have been possible by the court, as the defendant had not questioned in this sense during the sessions.

## **2. Assessment of penalty**

### **a) General remarks**

In general, the assessment of penalty is rather superficial for two reasons. Firstly, the personality of the defendant is not subject of a diligent examination by the court. The decision itself only states some personal data,<sup>103</sup> a life history or curriculum vitae of the defendant is not attached, although the additional information would be an asset in determining the appropriate measure of punishment. Moreover, the court would be able to discover mental disorders of defendants at an early stage of the trial and consequently necessary psychiatric or rather psychological examination could be initiated and eventually precautionary measures changed.

Secondly, notwithstanding the fact that the Criminal Code offers a broad range of punishments such as imprisonment,<sup>104</sup> fines,<sup>105</sup> supplementary punishments,<sup>106</sup> as well as

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<sup>100</sup> Art. 88 of the Criminal Code

<sup>101</sup> Art. 76, 77, 79 of the Criminal Code

<sup>102</sup> Art. 78 of the Criminal Code

<sup>103</sup> Name, parent's name, date of birth, place of birth, residency, marital status, education, profession and criminal record

<sup>104</sup> Art. 32 of the Criminal Code

medical and educational measures<sup>107</sup> related to irresponsible persons or minors, the majority of sentences are imprisonment.<sup>108</sup> According to the six-month analysis of the year 2004 by the Office of the Prosecutor General, district court decisions on imprisonment make up 58.9% of the sentences and 60.2% of the prosecutors' requests. Regarding the Court for Serious Crimes, in none of the 20 concluded cases were defendants declared not guilty. Due to the limitation of the jurisdiction of the court to criminal offenses with a minimum punishment of 15 years, all sentences are imprisonment, ranging from 3 years and 8 months of imprisonment<sup>109</sup> to life imprisonment<sup>110</sup>. The average sentence of the defendants by the Court for Serious Crimes has been 15 years and 1 month of imprisonment.

#### b) Elaboration on mitigating/aggravating circumstances

To determine a measure of punishment, articles 48 to 50 of the Criminal Code state the mitigating and aggravating circumstances that judges ought to take into consideration when deciding on a punishment. It is not mentioned in article 50, whether the enumeration is of a limiting or an exemplary nature.<sup>111</sup> Thus, in some of the decisions subject to examination, facts are mentioned that are not covered by the aforementioned provisions. For example, several decisions referred to the defendant's age or marital status. It was not always clear from the context, whether this was evaluated as a mitigating or an aggravating circumstance and why.

#### c) Complementary punishments

Despite numerous cases of trafficking, a rather profitable activity, only the Court for Serious Crimes used the possibility of imposing an additional fine on perpetrators as provided by article 34 of the Criminal Code. It is possibly due to the lack of experience in the application of this provision, that the determination of the amount of the fine was not elaborated. According to the law, the court can impose an additional fine of 100 000 to 5 000 000 ALL. It is recommended that criteria be issued as an orientation for decisions on fines in order to guide the judges and prevent arbitrary decisions. This also concerns cases of civil lawsuits when they are combined with a penal proceeding.<sup>112</sup>

### **III. Types of criminal offenses tried**

Murder and implication in the trafficking of human beings and drugs represent the bulk of offenses investigated by the Serious Crimes Prosecution Office and tried by the Court for

<sup>105</sup> Art. 34 of the Criminal Code

<sup>106</sup> Art. 35 – 42 of the Criminal Code

<sup>107</sup> Art. 46 of the Criminal Code

<sup>108</sup> The last study of the Albanian Directorate of Prisons reveals that 1 in 400 Albanians is in prison, which is the highest figure reported in the last 14 years. More concretely, a total of 9.000 Albanians suffer imprisonment in Albania, Italy, Greece and other countries. Of these, some 3.500 are in Albanian prisons.

<sup>109</sup> The defendant was a minor tried in the framework of an accelerated trial. As the provisions of the Criminal Code (Art. 51 of the Criminal Code, Art. 406, Section 1 of the Code of Criminal Procedure) provide a reduction of sentences by half for minors and one third of the sentence for persons tried in an accelerated trial, the original sentence was reduced to 3 years and 8 months.

<sup>110</sup> Two defendants were sentenced to life imprisonment for murder for reasons of the special qualities of the victim, under article 79c of the Criminal Code. One of them was defendant Agim Pepa, who was found guilty in the killing of the Chief of Kruja Commissariat, Gani Malushi.

<sup>111</sup> Whereas article 49 states that regardless of the circumstances mentioned in article 48 of the Criminal Code, the court may also consider other circumstances as long as it deems them reasonable to justify the lowering of a sentence.

<sup>112</sup> Art. 58 – 68 of the Code of Criminal Procedure

Serious Crimes. Half of the 200 cases investigated in the first half year operations by the Serious Crimes Prosecution Office were homicides, with the rest evenly divided between trafficking offenses and armed robbery.

Of the 81 cases sent to trial at the Court for Serious Crimes in the reporting period, 36 cases involved homicide charges, 18 armed robbery and 12 trafficking offenses. The homicide proceedings followed by the observers mainly related to material needs and property disputes or were the result of antagonistic personal relationships. A considerable number of these cases was rather old, originating from the 1997 unrests. Therefore, proof of the cases is difficult, as witnesses have emigrated, their whereabouts are unknown or they cannot remember events clearly. Moreover, use of expert evaluations has been curbed, as ballistic expertise was not available in 1997 and DNA analysis still cannot be carried out in Albania. This complicates the establishment of the truth by the court and lengthens the proceedings.

In contrast to this, the perpetrators of robberies with the use of weapons are often juveniles from rural areas. Most of them are relatively easily identified by the police and plead guilty. Therefore, most such cases are tried with an accelerated trial.

Organized crime cases are usually linked to trafficking offenses. Due to the involvement of foreign countries, denials by the accused and the appointment of defense lawyers “bombarding” the court with motions, these proceedings are the lengthiest ones.<sup>113</sup>

## **F. REFLECTIONS ON ORGANIZED CRIME CASES**

### **I. Statistics**

The first 6 months of 2004 saw an increase in the prosecution of organized crime cases. In the latest statistical data provided by the Office of the Prosecutor General,<sup>114</sup> the prosecution offices identified 867 criminal prosecutions with 769 defendants accused of involvement in organized crime, illegal trafficking and corruption during the first 6 months of 2004. Compared to 2003, the Office of the Prosecutor General registered an increase of 36.9% percent in prosecutions and 52.5% in the number of defendants. There was also a 50% increase in indictments (totaling 360) and a 25% increase in the number of sentenced persons. In cases of organized crime, there were 14 criminal prosecutions with 30 defendants, out of which 11 indictments were filed in the court, 2 of them resulting in sentences and the other 9 still being tried.

### **II. Case studies**

During the reporting period, only one case<sup>115</sup> of creating an armed gang or criminal organization<sup>116</sup> or committing crimes within an armed gang or criminal organization<sup>117</sup> was observed at Tirana District Court, whereas four such cases were tried at the Court for Serious Crimes. One of these cases has been completed; the others are ongoing.

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<sup>113</sup> see point C. I. 4.

<sup>114</sup> “Information on the main indicators of the work of the prosecutor’s office and the situation and expansion of criminality during the first six months of the year 2004” by the Prosecutor General’s Office to the Head of OSCE Presence in Albania, dated 30 July 2004, p. 7

<sup>115</sup> The “Groni case”

<sup>116</sup> Art. 333 of the Criminal Code

<sup>117</sup> Art. 334 of the Criminal Code

Three of the four cases<sup>118</sup> are related to drug trafficking.<sup>119</sup> All the trafficking cases were initiated in Italy and the evidence was based on telephone interceptions by the Italian authorities. This clearly reflects the need for special investigative measures in order to be able to detect trafficking networks operating in Albania. This not only assumes a legislative framework, allowing for the interception of telecommunications and communications by a computer network, obtaining a record of telephone calls<sup>120</sup> made from a given telephone number without the knowledge or consent the person subject to the measure, deployment of undercover agents and disclosure of financial data, but also requires the necessary information technology equipment as well as training of the law enforcement personnel responsible for applying such measures. Particularly in the field of criminal organizations, evidence based solely on witness testimony is often not sufficient proof, as the leaders of these organizations usually act behind the scenes and therefore their contributions are difficult to reveal.

In fact, organized crime groups are increasingly flexible and tend to engage in a range of criminal activities, depending on the opportunities available.<sup>121</sup> For instance, a defendant was accused as an accomplice in the murder of two collaborators as a result of a quarrel arising from the sale of 9 kg of heroin of minor quality. The latter defendant was declared not guilty,<sup>122</sup> the connection to his criminal activities remained unknown, although at the time of the trial the telephone surveillance carried out by the Italian authorities had already been completed. This again shows the need for a better sharing of information between Albania and its neighboring countries. Moreover, these two case studies verify the association of ethnic Albanian organised crime groups that use extreme violence while trafficking in human beings and smuggling narcotics.<sup>123</sup>

### **III. Specifics of drug trafficking cases**

In all drug trafficking cases tried, the drug trafficked was heroin. This is in line with the UNODC World Drug Report 2004, which states that the illicit cultivation of the opium poppy in Afghanistan increased even after the ban of opium poppies by the Taliban regime. As a result, heroin trafficking regained momentum and is even predicted to increase due to another large opium poppy harvest expected in Afghanistan.<sup>124</sup>

As most of the heroin destined for Western Europe is moved along the Balkans route,<sup>125</sup> Albania is likely to continue to be a country of transit. About 43% of narcotic substances, particularly heroin, that arrive in Italy are suspected to have passed through Albania. Tirana, Durrës, Fier, Vlora, Elbasan and Laç have been identified as the main drug trafficking centres.

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<sup>118</sup> 1 at Tirana District Court and 3 at the Court for Serious Crimes

<sup>119</sup> 1 at Tirana District Court and 2 at the Court for Serious Crimes

<sup>120</sup> i.e., number called/received and duration of the call

<sup>121</sup> Europol, 2003 European Union organised crime report, p. 9

<sup>122</sup> in a four page verdict, although the defendant was proved to be present at the scene of crime in the moment of the happening

<sup>123</sup> Europol, 2003 European Union Organised Crime Report, p. 14

<sup>124</sup> UNODC, World Drug Report 2004, Volume 1, p. 59/60

<sup>125</sup> UNODC, World Drug Report 2004, Volume 1, p. 71

The trend towards poly-drug trafficking by organised crime groups<sup>126</sup> has so far not been reflected in court cases; however the recently seized amount of 10 kg of cocaine, the largest in Albania's history, indicates the existence of cocaine trafficking activities in the country, as do the figures in the annual report of the Italian Central Anti-Drug Directorate at the Italian Ministry of Interior, according to which 190 Albanian citizens were arrested in Italy on charges of trafficking cocaine or as members of organised groups trafficking cocaine.<sup>127</sup>

The links between criminal organizations based in Italy and Albania, shaped by Albanian emigrants in Italy, have become evident in all the aforementioned court cases concerning organized trafficking. The high degree of co-operation is illustrated by two cases of Italian network members being considered part of such well-known Mafia groups as “Sacra Corona Unita” and “Trento” which had collaborators within the Italian police. In these two cases, the Albanian perpetrators were suspected of having committed murders in the framework of their criminal activities, but evidence was not deemed sufficient. A proceeding was pending in Belgium against one defendant accused of the murder of his girlfriend. According to her relatives, the defendant was also involved in trafficking human beings and the exploitation of women for prostitution.

## **G. RECOMMENDATIONS**

### **Court organisation**

#### ***- Right to a public hearing; right to be tried without undue delay***

- Trials should be scheduled not only for the morning, but also for the afternoon. This would make it easier for the court to meet timelines and keep its schedule.
- The chancellor should prepare a realistic assessment of the duration of the session, based on the numbers of defendants, defense lawyers, and witnesses, as well as court proceedings. In order to achieve this, regular communication with the chair to exchange information is required.
- Apart from the weekly schedule, additional information regarding daily sessions, the times of sessions, names of defendants and the criminal offense should be posted on the doors of the courtrooms.
- An information desk could be established within the Court for Serious Crimes in order to disseminate information related to delays of sessions, to provide updates of the weekly schedule and to answer requests of the public.

#### ***- Right to call and examine witnesses; right to a fair hearing***

- A separate waiting room for witnesses needs to be established and arrangements that avoid confrontation with the families of the defendants need to be made. Witnesses should be able to make use of the second entrance/exit reserved for court personnel.
- A list of witnesses called to testify by the prosecution and the defense should be provided either to the police officers carrying out security checks at the entrance or to court clerks before the opening session in order to avoid witnesses attending the proceedings.
- Adequate arrangements should be made so that courtrooms are adapted to the features of a proceeding. These should consider the number of participants, communication between defendants and defense lawyers, equality of arms with regard to witness questioning, and

<sup>126</sup> Europol, 2003 European Union Organised Crime Report, p. 19

<sup>127</sup> “2003 Il contrasto al traffico illecito di sostanze stupefacenti”

security measures. In order to achieve an agreement on this, regular meetings should be held by the court personnel, and with presence of the police responsible for guarding the courtroom.

### **Legislative framework**

- A regulation should be drafted to avoid rivalries between the judiciary and police related to security measures and to avoid arbitrary decisions. The chairpersons/chancellors of the court must be seriously involved in drafting these regulations, as they are most familiar with the practice and can therefore provide a more target-orientated needs assessment.
- The regulation should consider the rights of media and restrictions arising from concurring rights of defendants and witnesses related to data protection and personal security. In particular, limitations to the recording of sessions as well as rules on the disclosure of names and pictures of defendants and witnesses should be considered.
- Failure without sufficient justification of prosecutors or defense lawyers to appear at a trial should be subject to sanctions in order to prevent unnecessary delays and ensure completion of the trial within due time. Such sanctions could be incorporated in the Criminal Procedure Code,<sup>128</sup> the Law on the Organisation and Functioning of the Prosecution Office, or an enforceable Code of Ethics for lawyers.
- As a considerable number of postponements are caused by the non-accompaniment of the defendants from the pre-trial detention facilities to the court, the transfer of responsibilities from the Ministry of Public Order to the Ministry of Justice should be completed as soon as possible and adequate human and material resources for the transportation of defendants must be allocated. Further, the new building for the Court for Serious Crimes should include cells for the defendants in order to bridge waiting hours and facilitate collective transportation arrangements.

### **Juvenile justice**

#### ***- Right to be present at trial and appeal; right to a fair hearing***

- The use of accelerated trials, which currently make up 56% of the penal proceedings,<sup>129</sup> should be excluded for juvenile defendants, as they are not likely to realize the consequences of this procedure, especially related to the limited possibilities of defense. Furthermore, serious crimes like homicide cases, should be excluded as well, as the examination should be as diligent as possible, given what is at stake for the defendant.

For instance, if the panel does not have a personal impression regarding a witness, whose testimony is decisive for the proof of the case, it is almost impossible to assess his credibility. Therefore, only proceedings related to misdemeanors and relatively minor felonies that have simple statements of facts and adult defendants who have admitted committing the crime should be judged in an accelerated trial.

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<sup>128</sup> Bosnia and Herzegovina has solved the problem in this way

<sup>129</sup> This figure was given in the "Information on the main indicators of the work of the prosecutor's office and the situation and expand of criminality during the first six months of the year 2004" by the Prosecutor General's Office, dated 30 July 2004.

- The same applies to trials *in absentia*. Trials without the defendants being present are either carried out because the defendant's whereabouts are unknown and he is therefore declared absent by the court, or because they are based on a request by the defendant who does not wish to participate in the trial. The latter possibility should not be possible in the case of juveniles, as it is essential to get to know the defendant's personality in order to be able to define the appropriate measure of punishment. This will become even more important when the legislative package on juvenile justice is passed, as it envisages educational sanctions instead of prison sentences for minors.

### **Professionalism**

- Magistrates need training in the questioning of witnesses. This is especially important with regard to particularly vulnerable groups of witnesses, such as victim-witnesses, children, juveniles and the mentally disordered. Prosecutors – mainly those who have not completed the School of Magistrates – tend to pose suggestive questions and therefore fail in their efforts to elicit the information required for proof of the case.
- A spokesperson for the prosecution office as well as the court should be appointed in order to improve the relationship with the media. Often the magistrates react in a very reserved manner when they are approached by media representatives, as they lack experience in dealing with journalists and are afraid of producing a bad image of the court or prosecution office. It also may not be appropriate for them to discuss matters with the media. Consequently, the media attempt to obtain information indirectly, possibly by questionable means, which by its very nature may result in inaccurate reporting.
- More expertise is required to deal with the shift by the court from using witness testimony to using material evidence resulting from special investigative measures.

For instance, in one proceeding in which the evidence was mainly based on telephone interceptions by the Italian authorities, the main suspect denied having spoken on the telephone. Therefore, a voice analysis would have been necessary, which cannot not be carried out in Albania. In such a case, the court needed to contact Italian counterparts to name an Italian expert, which caused further delays in the investigations.

- A uniform design for the written decisions should be developed. This would ensure completeness of the personal data of the defendant and help to streamline argumentation. Consequently procedural mistakes leading to the reversal of the decisions on appeal should be reduced.
- In order to improve the quality of penalty assessments, the personality of the defendant needs to be examined more thoroughly by the panel, i.e., by detailed questioning. This would also help to initiate eventual psychiatric or psychological expert testimony at an early stage of the trial.
- The course of proceedings needs to be tightened in order to avoid the violation of the defendant's right to be tried within a reasonable period of time. Therefore, as practiced in a few cases, the prosecutor should be able to be replaced by a colleague. If the defense counsel is repeatedly unable to attend a court session, the court should make more use of its power to appoint a replacement. Moreover, conclusions of the prosecution and the



defense could be given in the same session. Motions could also be decided on after a break instead of resorting to postponing the session.

**- *Right to a reasoned judgement***

- The written decisions need to contain more arguments in order to explain how the court reached its conclusions, taking into consideration also statements and requests made by the defense. This might reduce the number of appeals, as prosecution and defense would be able to better assess the success of an appeal. In some cases this may lead to the conclusion of the case, so that the first instance verdict can become final.

## **H. OUTLOOK**

Latest developments indicate that the situation regarding human resources at the Court for Serious Crimes might ease, but the court will probably continue to suffer from inadequate working conditions. Rumours already circulating in the media concerning an increase in the current number of 11 judges (including the chair) have been confirmed by the Chair. The recruitment process of five additional judges is reported to have started. This would mean that the court would be able to form a third panel in the near future, as it was originally provided by the staffing plan designed by the Ministry of Justice. Therefore this may lead to a reduction in the backlog of cases.

A third courtroom has been assigned to the Court for Serious Crimes by the Tirana District Court so that the former can carry out sessions in all three panels simultaneously. The court has requested two additional offices in the building for additional staff. This would imply less space for the personnel at Tirana District Court. In order to create more spacious working conditions for both of the courts, the Court for Serious Crimes of the first instance will move temporarily to a building in the area of Prison 313 in the course of next year, until the construction of the new courthouse, funded by the EU under the CARDS program, for all the serious crimes bodies.<sup>130</sup>

As the funds provided in the final judicial budget of 2005 for the equipment of the Court for Serious Crimes are needed for the renovation of the interim accommodation, it is obvious that financial resources will not meet material needs. Moreover, due to the different locations of the prosecution office, first instance and appeals court and the even greater distance after the move of the Court for Serious Crimes, communication will be more difficult, especially as the staff does not have internet access and telephones have to be shared.

On the other hand, the new location will diminish delays caused by transportation arrangements for defendants under the security measure of detention on remand. It remains to be seen how the other participants of the trial (i.e., prosecutors and defense lawyers) will handle the situation.

The impact the planned structural and logistical changes will have on the work of the Court for Serious Crimes will be reflected in the final report, which will be issued after completion of the project in December 2005

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<sup>130</sup> Serious Crimes Prosecution Office, First Instance Court for Serious Crimes, Court of Appeals for Serious Crimes.

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