Judicial Reform Index For Albania, Volume III

Executive Summary

Brief Overview of the Results

The 2006 Judicial Reform Index (JRI) for Albania demonstrates limited progress in several areas, while indicating that much work remains before Albania can establish an independent, accountable, transparent, and efficient judicial system. Of the 30 factors analyzed in the assessment, the correlations determined for seven factors improved from 2004 to 2006, while one factor (selection and appointment process) suffered a decline. With the exception of this latter factor, the remaining factors that were rated positive in 2004 continued to be positive in the current assessment, and were joined by three other factors upgraded to positive in 2006, bringing to seven the number of factors receiving the highest grade. Nineteen factors received neutral correlations in this report, including four that had received negative grades in 2004. However, four critically important factors continue to carry negative correlations: improper interference in the judicial decision-making, enforcement powers of the courts, career advancement of judges, and public access to court proceedings. Overall, the findings of the 2006 JRI suggest that fundamental progress in Albania’s judiciary remains elusive, although the assessment reveals some encouraging developments, as well as awareness on the part of the judiciary’s leaders and the government of the need for improvement.

Positive Aspects Identified in the 2006 Albania JRI

- An encouraging development over the past two years has been the increasing capacity of the Magistrates’ School, which continued to improve the quality of its initial training program for future judges. The quality of its curriculum, faculty, interactive methodology, and publications is reflected in the virtually unanimous praise of its graduates, who are widely viewed to possess greater integrity and knowledge and produce better reasoned decisions than non-graduates.

- The Magistrates’ School has also been active in increasing the breadth of its continuing legal education (CLE) program, in response to the recently introduced requirement that all sitting judges participate in such trainings. In 2006, the CLE curriculum was, for the first time, developed for three years in advance, with input from judges, governmental agencies, NGOs, and international organizations. While the government is allocating greater funds for the CLE program, it is not yet completely self-sufficient, and some courses continue to be funded by international donors.

- Acting through the Office of Administration of the Judicial Budget (OAJB), the judiciary still appears to have the power to propose and administer its own budget, although some courts believe that their individual influence is curtailed by limited opportunities to affect the OAJB’s allocations to them. Despite this authority, judicial budgets are seen as insufficient to cover operating costs, especially in lower courts, and the year 2006 brought budget cuts across all government sectors, including the judiciary. Coupled with the continuing decrease of the judicial budget as a percentage of the total government budget, this development prompted some respondents to suggest a weakening influence of the judiciary over its budget.

Concerns Relating to Judicial Accountability and Corruption
The Albanian judiciary continues to suffer from a strong public perception that judicial decisions are often based on improper influences, stemming primarily from private sources, to a lesser extent from public officials, and only rarely from senior judges. Interference from private interests take many forms, including bribery by parties and their lawyers, ex parte communications, and pressure upon judges by means of personal connections. While the actual magnitude of such influences is difficult to quantify, a recent public opinion survey ranked the judiciary among the most corrupt entities in the public sector. Over 50% of judges themselves admitted that corruption is a serious problem. Despite these reports, prosecution of judges for corruption is rare, and ongoing or proposed measures to address this problem are lacking.

Insufficient judicial salaries remain one of the major factors contributing to corruption in judiciary. Despite a modest increase in 2006, salaries of lower court judges are lower than those of their counterparts in other branches of government. In addition, with two small exceptions, there are no provisions that would allow for differentiation of salaries within the same court level based on seniority, merit, or other similar factors. Many interviewees agreed that higher salaries would help in bolstering the resistance of judges to corruption; however, they also noted that the utilization of bribes and connections is deeply entrenched in Albanian society, and that more robust measures are needed to curb judicial corruption.

Concerns remain about political influence and the lack of transparency in the judicial discipline and removal process, which derive from a number of variables, including the manner of drafting disciplinary decisions, executive influence, and the perceived randomness of the disciplinary charges. The High Council of Justice (HCJ) and the Ministry of Justice (MOJ) both have Inspectorates with overlapping responsibilities in the discipline process. Nonetheless, only the MOJ is authorized to initiate disciplinary proceedings, allowing it to reward or punish judges for their decisions. In addition, some judges are disciplined for minor infractions while serious violations go unnoticed. Despite a growing number of public complaints concerning judicial misconduct, there has been a steady decline in the number of disciplinary proceedings. This is attributable in part to the constitutionally imposed restraints barring investigation into judicial decisions, but also in part to weaknesses in the disciplinary process. On a more positive note, recent efforts to promote cooperation between the two Inspectorates and to streamline complaint registration and verification procedures bode well for improved efficiency.

The Code of Judicial Ethics, which generally encompasses all aspects of judicial behavior, lacks a meaningful enforcement mechanism and does not create grounds for formal disciplinary proceedings before the HCJ. However, the National Judicial Conference (NJC) has started to promote an agenda of ethics reform by increasing the enforceability of the Code, providing advisory opinions, and creating more opportunities for ethics training. Likewise, the HCJ has referred to the Code in its decisions requiring interpretation of statutory disciplinary provisions. These efforts should result in greater recognition and effect of the Code among the judiciary.

Concerns Relating to Transparency of the Judiciary

Despite constitutional and legal guarantees of the right to public trial, limited courtroom space makes it unlikely that everyone wishing to observe a trial can be accommodated. Trials in first instance courts are often held in the small offices of the judges, which has the practical effect of restricting attendance to parties, their lawyers, the judge, and the secretary. Access to accurate information about scheduled cases can be equally problematic. Typically, this information can only be obtained by contacting the judge. Public relations and media offices do not exist in all courts,
other court personnel are not always able or willing to provide the public with such information.

- While judicial decisions and other court documents are, in theory, a matter of public record, only decisions of the High Court and the Constitutional Court are published on a regular basis. A handful of lower courts began publishing some of their opinions on their respective websites, but criteria for selecting the judgments for publication are unclear. Other courts may, reportedly, deny non-parties’ requests for copies of court records under various pretexts. Lawyers and representatives of international organizations interviewed by the assessment team stated that they have difficulty obtaining access to courts documents. Even when decisions are obtainable, they may contain poor reasoning and suffer from illegibility when handwritten.

Concerns Relating to Inefficiency of Judicial Proceedings

- The distribution of judicial caseloads among different levels of the judiciary and different courts within the same level is extremely uneven. As a result, many courts are unable to adjudicate cases in a timely manner, and lengthy backlogs and delays are typical. A number of factors contribute to this problem, including high caseloads, understaffing, poor case management practices, infrastructure issues, and other systemic deficiencies that result in an inefficient use of the judges’ time. Notably, however, some courts do not experience any backlog problems, despite their enormous caseloads. The government is contemplating reorganization of the judiciary, partial consolidation of smaller courts, reapportionment of judges, and unification of case management practices.

- The number of court support personnel in most courts is insufficient to enable judges to perform their duties efficiently. Court staff salaries are low even in comparison with civil servants in other branches of government, and the existing salary structure suffers from inequalities in its distribution. The low salaries make it difficult to attract and retain qualified personnel and make them more susceptible to corruption.

- Significant gaps exist between contempt and subpoena powers granted to judges pursuant to procedural codes and the exercise of these powers in practice. Inefficiencies of the notification system, non-appearances of witnesses, advocates, and prosecutors, and failure of the police to bring detainees to court are ongoing problems that set a detrimental example of disrespect toward the courts. Nonetheless, judges rarely issue contempt orders in these instances, choosing instead to postpone the trials. As a result, these are among the most frequent problems cited in trial delays.

- A related problem of enormous proportions is the lack of enforcement of monetary judgments, particularly those issued against government authorities. Although courts themselves have limited powers in this area, the widespread belief that bribes to bailiffs are necessary for successful enforcement only serves to aggravate the poor public image of the judiciary. In response to the international notoriety resulting from a judgment by the European Court of Human Rights, the Government of Albania is starting to address the enforcement problem more aggressively.