The Albanian judicial system and access to legal information

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This article examines the work of an EU-funded project that is seeking to develop the justice system in Albania. The author looks at some of the inherent challenges faced by the judiciary, the impact this has on the public and how public perceptions can be improved and overcome, partly with the implementation of IT systems.

During the 20th century Albania suffered for more than 40 years under the most rigid and oppressive regime in Europe. Despite remarkable progress towards a democratic society based on fundamental rights and due process of law, it is still a country in transition. Albania is undoubtedly a “maturing” country but not mature in terms of EU standards.

One of the fundamental elements of the Stabilisation and Association Agreement (SAA) that entered into force on 1 April 2009 is “to support the efforts of Albania to strengthen democracy and the rule of law”; this can only be achieved by raising awareness of the importance of the law and its accompanying and necessary legal institutions.

However, the judicial system presents many challenges for reformers, and despite talk of reform and a number of new or amended laws, many old habits remain, namely:

- slow court proceedings
- a lack of professionalism and discipline
- belated or failing implementation of legal regulations
- conflicting and sometimes arbitrary legal interpretations
- a lack of coherence and consistency in the law itself and in its application.

Unfortunately the endemic corruption that affects many sectors of society, such as the education and health systems, is also well known in the justice system. It seriously reduces public confidence in its proper and fair functioning. Furthermore, the courts and prosecutor’s offices suffer from political pressure and interference which, in significant cases, infringes judicial independence.

In such a climate, conformist attitudes prevail and there is a lack of courage to reform, but there have been signs of increasing self-confidence, a rising sense of independence and adherence to the rule of law, particularly among the younger generation of judges who are less affected by the totalitarian past.

The EURALIUS project

It is in this environment that the European Assistance Mission to the Justice System in Albania (EURALIUS), an EU-funded project under the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme, has been working since 2005. It aims to aid the development of a more independent, impartial, efficient, professional and transparent justice system in Albania, as required by the SAA with the European Union.

Unlike more narrowly focused international assistance projects of usually shorter duration, such as the twinning of an EU member

state with a country undergoing transition in specific legal fields, EURALIUS offers broad support to all areas of the judicial system. This support covers law drafting, court administration, case management, enforcement, budget management, criminal justice, prison standards and management of immovable property problems.4

Drawing mainly on the work of international (and some Albanian) legal experts, EURALIUS provides analytical reports, studies, proposals, recommendations (for example, on judicial reform and budget planning), cooperation through working groups and comments on draft laws and regulations. It also organises training courses, roundtable discussions and conferences, as well as study visits to EU member states. To deliver this support effectively, EURALIUS requires continuous contact with the relevant stakeholders in the judicial system and must be ready to respond to problems, requests for information (such as successful “European models” and issues of comparative law), opinions and help.

Access to legal information, legal advice, dispute resolution and the enforcement of legal claims and rights in a country such as Albania are all hampered by numerous obstacles. Despite attempts to codify the Albanian legal system after the country declared independence from the Ottoman Empire in 1912, it remained largely undeveloped under communist rule; there was not even a Ministry of Justice for many years and lawyers were forbidden to practise.

After 1991 the judicial system was exposed to a variety of internal and external influences. Norms and regulations were changed frequently and were often far from consistent and without sound structural principles. Many laws were not well prepared, driven by ad hoc necessities and wishes and sometimes short-lived political objectives.

Even today, a sound and all-inclusive justice reform strategy and a consensus on objectives are still lacking. Some legal proposals are still exposed to a “hidden agenda” of power games and undue influence and pressure from officials within central government. The existence of flaws, particularly in legal drafting and judicial administration, can only be attributed to a civil service that often lacks professionalism and initiative, and is hindered by a lack of status security (that is, security of the status of a civil servant), by frequent changes in personnel, understaffing, inadequate salaries and overriding political paternalism.

Preparing legislation and access to case law

Faced with such an environment, the Albanian judicial system needs external professional help but it is difficult for external parties to provide this appropriately and effectively. To this end, EURALIUS has developed a Law Drafting Manual5 (based on an earlier version produced jointly by the Council of Europe and the EC Delegation in Albania) with an annex on the approximation of the legal order to the

4. These problems concern registration, restitution, compensation and legalisation of houses constructed without legal permission and/or on another person’s property.
6. This is a process whereby domestic legislation is analysed and aligned with the laws of the European Union.
The manual is used to train civil servants and serves as a handbook for law drafters in government ministries. EURALIUS is currently publishing a collection of all (multilateral and bilateral) international treaties ratified by Albania. This will also be distributed in CD format to all judges, prosecutors and other interested parties.

Access to legal information must first be safeguarded for those who have to apply the law themselves. Albania was eager to sign and ratify a large number of international agreements, often quicker than most other nations, but did not follow up with appropriate implementation measures. Sometimes even correct translations into Albanian were missing. As a result, the application of treaty regulations in Albania is far behind that of other comparable states. EURALIUS hopes to close this “information gap”.

Furthermore, lawmakers pay insufficient attention to the implementation of new legislation. Subordinate Acts are either missing or late, and practitioners are not trained adequately on the underlying ideas and objectives of new or amended legislation.

But it is not always a lack of will or carelessness that is responsible for such shortcomings. Scarce human and financial resources and professional inadequacies tend to increase the already wide gap between the intentions of the lawmakers and the reality of implementing new laws. Sometimes projects like EURALIUS can substitute these shortcomings by convening a roundtable or by contacting judges and prosecutors in various regions of the country and discussing problems with them – thereby motivating participation in reform processes and boosting self-confidence.

Access to, and use of, legal information could also be improved if the drafting of new laws and regulations were more inclusive. It is not yet common practice in Albania for regular consultation procedures – by way of working groups or written comments from interested parties – to form a prerequisite

for enhancing the quality, acceptance and practicability of new laws, although there has been some progress in that direction. By involving those who will be applying new rules (in the judicial system, this is primarily the courts) in the processes of policy deliberation and text preparation, law drafting can be improved considerably and a smooth implementation ensured.

However, despite some improvements there is still a lack of time for consultations, disregard for open discussions on policy options, and an inability to cope with the proper integration of policy or technical comments when revising draft texts. It is also striking how rarely academics contribute to law drafting and legal training in Albania, unlike in other countries where legal reforms often result from ongoing dialogue between lawmakers and their preparatory bodies, judicial and administrative practitioners and academics.

To improve court administration and case management, information technology is crucial. Therefore the European Commission is eager to subsidise the introduction of an Integrated Case Management and Information System (ICMIS) in the Albanian courts. The system not only enables courts to properly manage cases, with internet access for all judges, but also provides online availability of leading court rulings, primarily High Court decisions. In any legal system, access to information about case law is vital for the courts, professional education institutions, practising lawyers and commercial companies. And if the judicial system has proper and adequate access to legal information, this can be seen as a step towards the general public gaining access too.

The Albanian government, assisted by international donors such as the World Bank, USAID and the European Commission, has taken steps to introduce and develop public registers, such as a National Registration Centre for commercial firms and regional immovable property offices.
However, these offices face a difficult situation regarding land ownership in Albania. As in many other transition countries, the restitution or compensation of former owners who have been expropriated by the communist regime is a sensitive issue. In Albania, many houses and other buildings were constructed not only without legal permission but also on land plots and parcels (defined areas of land) belonging to other people or with unclear ownership. Imprecise cadastres, overlapping ownership and forged documents – notwithstanding the considerable corruption risks – add to a complicated situation that has not been clarified in many respects.

Consecutive governments have taken a series of legislative steps for the restitution/compensation of property and the legalisation of buildings (and the land plots on which they were built), although some of those Acts have somewhat added to the confusion rather than solving open issues. Property conflicts create a heavy workload for administrative bodies and the courts, and sometimes they give rise to bloody personal conflicts. Not even the first registration of immovable property has been finalised. This lack of clarity over land ownership is a serious obstacle to investment, particularly from foreign companies interested in doing business in Albania, and to the development of tourism. In addition, a number of former land owners who held property in the pre-communist era have submitted complaints to the European Court of Human Rights regarding the restitution of property rights, with good prospects of receiving compensation.7 The EURALIUS project – aware that this matter involves extremely sensitive political issues – analysed the legal situation and initiated a discussion among key stakeholders, namely a legal dialogue with experts of the European Court of Human Rights. It will undoubtedly take many more years to bridge the gaps that exist between the reality of acquired asset holders and legitimate ownership rights.

A sound legal framework and a strong economy

Albania, having been one of the poorest countries in Europe, has made remarkable economic progress in recent years, which has led to a moderate increase in living standards in the country. However, unemployment is still high and much of the business activity is still “informal”. Even a flat tax rate of 10 per cent, introduced in 2008, did not significantly improve this situation.

So, for legitimate business and trans-border investments to flourish, a secure and transparent legal framework is needed. This includes a professional and fair organisation of administrative justice that gives administrative bodies the power to adjudicate matters within their area of authority. This is important given that the judiciary has the final word in most administrative matters conducted by the administrative authorities. At present, administrative disputes at this final stage are adjudicated under the Code of Civil Procedure by ordinary courts and judges who are not particularly specialised in these matters. Reforms that aim to establish a separate and specialised administrative court structure and to adopt a modern code of administrative justice had almost made it through parliament when the national elections took place in June 2009. The reforms will undoubtedly be taken up again by the new government.

Legal education, judicial training and enforcement of court rulings

The quality of a legal system depends not only on well-drafted and well-implemented laws and regulations, but also on the members of the legal profession being well educated and trained in order to apply the law professionally. In Albania, due to a serious lack of well-trained lawyers after the fall of communism, and to quickly fill the ranks of the judiciary and practising lawyers, short (sixth-month) courses were organised, replacing ordinary university education and specialised legal training. It was not until 1999 that a School of Magistrates was set up to provide training for university graduates.
and to prepare them for work as judges and prosecutors. The school is well respected and is performing its task successfully.

However, most members of the judiciary and of the prosecutor’s offices have either been performing such functions under the “old regime” (and therefore with little training) or are stigmatised as “sixth-month judges”. All too often, court proceedings in Albania are slow and hearings postponed and protracted, mainly because of a serious lack of discipline by lawyers, who much too often simply do not show up at hearings and trials. Disciplinary proceedings, which would have to be initiated by the Chamber of Advocates against lawyers who fail to fulfil their professional obligations, are not conducted. In fact, the courts do not have any effective sanctions available in such cases.

Judicial rulings in civil matters require either willingness by the parties to comply or effective enforcement procedures. The latter often do not function properly in Albania. The Ministry of Justice, assisted by EURALIUS and an Austrian twinning project on commercial matters, initiated a major reform by introducing private enforcement agents along with the existing public enforcement service, aiming at more efficiency and speedier procedures (a “double-track system” that has also existed in Bulgaria since 2007). The respective laws were adopted before the end of 2008 and are now in force but they are yet to be implemented. This would require training, a new fee system and an IT system to coordinate enforcement endeavours by different agents.

**Legal aid and access to courts**

Another area in which the Albanian legislature has taken action recently is legal aid for low-income litigants and defendants. Until now, legal aid has been provided to a limited extent in criminal matters only, thanks partly to the activities of an NGO, the Citizens Advocacy Organization (CAO). The new law provides financing for a certain level of legal aid in both criminal and civil procedures, although it is not yet fully in line with European standards, in particular for lack of budgetary means. Nevertheless, it represents an important step forward. Without access to legal information and representation, neither the realisation of legitimate claims nor the defence against illegitimate demands by others are secured. It must be noted, though, that the debtors most frequently sued and most frequently violating their obligations to comply with court judgments in Albania are the state and public entities themselves.

**Conclusion**

It is hardly surprising that Albanians have limited confidence in public institutions, the judicial system and the rule of law. Court proceedings are slow, there is a lack of professionalism and discipline, laws are poorly implemented, corruption is widespread and there is continued political influence in judicial matters.

Access to legal information by the general public and transparency are certainly basic requirements of a democratic state, and the notions of access to law or access to justice are even broader. To safeguard a sound and sustainable relationship between the citizen and the state, based on trust in the courts and other public authorities, more effort to reform the legal system is required. International donors and projects can contribute, but the core of the work must be carried out by the state and its leadership.

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