SUMMARY

General remarks

The Albanian judiciary has seen vast improvements over the last two decades, both in terms of legislative and organisational changes. There is, however, still room for improving the efficiency, transparency and accountability of the judiciary so that it fully meets international standards.

Since 2003, the OSCE Presence in Albania (the Presence) has assisted the Albanian authorities in its justice reform efforts *inter alia* by assessing whether court proceedings are in compliance with international fair trial standards. Based on observation of court hearings, consultation of court files and interviews, the Presence has identified procedural and practical issues and has elaborated a number of recommendations to tackle these problems. In the past, the Presence assessed criminal trials in the first instance and appeals courts and the findings were presented in two reports, published in 2006 and 2007 respectively. In the report at hand, *Towards Justice,* the Presence focuses on civil trials in the first instance. Problems in three main areas, i.e. length of proceedings, transparency of proceedings and access to justice, have been identified and general recommendations for reform are suggested. *Towards Justice* will be followed by a second report, in which these general recommendations are turned into specific suggestions for legislative and practice amendments.

Length of proceedings

Delays in the processing of cases, however minor, impede the efficient use of administrative and financial resources that could otherwise be used to adjudicate more cases. When delays are significant, attributable to the State and avoidable, they may violate the parties' right to a fair trial, including the right to be tried within a reasonable time.

In each of the observed trials, there were on average 10.5 hearings. Of these hearings, an astonishing 47.7 % were completely non-productive, i.e. nothing substantial happened with regard to solving the dispute. In the non-productive hearings, no argument was put forward, no document or written pleading circulated, no evidence taken and no procedural request made.

A number of reasons for this remarkably high number of hearings were identified:

First, the courts frequently had problems with correctly summoning parties to the hearing due to incomplete address information and lack of access to State and local government address databases. The fact that most courts remain inactive if the first attempt at summoning failed also contributed to the high number of hearings and to the rate of non-productive hearings. Moreover, courts did not always use the fastest means of notification allowed by law.

A second reason was the inefficient pre-trial procedure. In fact, 24.8% of the hearings were postponed for evidence related issues (11.9% for obtaining additional evidence and 12.9% for procedural steps concerning experts), making this the most frequent reason for postponements. Written evidence was only circulated in hearings and the procedures for appointing and receiving the testimony of an expert required at least three hearings. Evidence was often not presented at the earliest opportunity, leaving room for late submissions. Room for improvement can also be found in the judges' planning and management of trials, e.g., by not always checking whether trial participants were available before scheduling a hearing and by not determining the scope and schedule of the trial in consultation with the parties.

Thirdly, the absence of trial participants contributed to the high number of hearings in each trial. The criteria for sanctioning absent trial participants are too vague. In addition, the Civil Procedure Code does not specify a procedure for the courts to determine why a trial participant is absent. This leads to the judges' reluctance to sanction absent trial participants. The available sanctions were also found to be too lenient and judges did not seem to use the sanctions to the fullest extent possible. The disciplinary system for lawyers did not seem to be fully operational. In addition, trial participants are not required by applicable law to inform the court before the hearing if they are unable to participate, causing the other trial participants to show up in vain.

In *Towards Justice*, the Presence puts forward several recommendations for reducing the number of hearings and the length of trials:

First, the system for summoning parties could be improved in several ways. Courts should request the parties and lawyers to provide their contact details at their first opportunity. A sample form to this effect is provided in Annex 3 to this Report. Courts should also use the fastest and most reliable means of notification available under current legislation, e.g., fax, email and sms. In the future, the procedural legislation should be amended so that the standard notification procedure is to send the notice by mail or any other means, and requiring the recipient to confirm receipt. The notification procedure would improve if the courts were provided with access to the National Register of Civil Status, the National Registry of Addresses and the existing municipal and central government maps. When the accuracy of the address system improves in the future, consideration should be given to changing the law so that notices delivered to the registered address shall be sufficient to have legally summoned a trial participant.

Secondly, several recommendations for improving the preparatory phase of the trials are suggested. The trial preparation, in particular circulation of written evidence, should, to a much larger degree, take place in writing rather than in hearings and the parties should be required to present evidence at their first opportunity. Judges should, to a much larger degree, actively manage

their trials, *inter alia* by holding a pre-trial planning meeting with the lawyers. The purpose of such meetings should be to condense the trial by clarifying which questions are disputed and to make a schedule for the conclusion of the trial.

Thirdly, measures to ensure the attendance of trial participants should be considered. The judge should always ascertain the availability of the trial participants before scheduling a hearing. If the parties are not able to attend, courts should immediately inform the trial participants that the hearing is cancelled. Further, procedures for investigating the reasons for absence should be included in the Civil Procedure Code and the legitimate reasons for absence should be clarified. Stricter sanctions for unlawfully absent trial participants should be implemented, e.g., by charging witnesses and experts with the costs of delays. The possibility for the plaintiff to withdraw from the case should also be limited and default judgements for unlawfully absent defendants should be considered in certain types of cases.

The official statistics of the Ministry of Justice were found to be a very good source of information on the judiciary. In some areas, *inter alia* in the statistics on length of trials and number of hearings, some room for improvement was identified. The statistics would also be more useful if adversarial and non-adversarial cases were separated.

Procedures for issuing a written reasoned judgement

The current rules for issuing a written reasoned decision were found to deny judges sufficient time to properly reason their judgement. The Presence therefore recommends that the Civil Procedure Code be amended so that the reasoned decision can be presented within a fixed deadline, e.g., a certain number of weeks after the last main hearing. The current practice of presenting the dispositive part of the decision before the written reasoned judgement should be abolished. The Civil Procedure Code should also be amended so that the time limits for appeals only start running when the parties receive (or are deemed to have received) the written reasoned decision. In addition, the length of the time limit for appeals should be reviewed to ensure that parties have sufficient time to prepare their appeals.

Transparency of court proceedings

A wide range of practical and logistical difficulties were found to reduce the public's ability to follow court proceedings: Insufficient possibilities to contact the court, difficult access to the trial schedule and lack of information about the venue of the hearing gave reason for concern. Conducting hearings in the judge's office rather than in a courtroom was also frequently observed. Occasionally, inaccurate trial records and disorganised court files made reviewing these documents more difficult. Insufficient systems for tracking and identifying case files increased the risk of misplacing or losing them.

In order to increase the transparency of trials, the Presence suggests that the public's possibility to contact the courts be improved, e.g., by making official phone numbers and email addresses of the court available to the public. The court's official phone must be staffed at all times during the working hours of the court. Courts are also urged to post updated and timely trial schedules in their premises and on their websites. Information about the trial venue should be included in the schedule so that this information is available to the public before the hearing takes place. Hearings should, to the extent possible, take place in court rooms and a secretary should be present in all court hearings. In order to keep accurate trial records, audio recording systems should be implemented in all courts. Whenever audio recording is not possible, judges and secretaries should ensure that handwritten minutes are accurate.

Certain suggestions are also made with regards to the case files: Each document received by the court should receive an ordinal number and be stored in the case file according to this number. The table of contents should specify each piece of written evidence in the case file, rather than just grouping a collection of documents under the same description. The table of contents should also be kept up to date on a continuous basis.

Each case should be assigned a unique identification number, unlike the current practice where cases change identification number every year as well as during the appeal proceedings. The location of the case file should also be recorded in the case register.

Access to justice

Certain issues regarding the parties' access to justice were also identified: Court hearings were, to a large degree, held in the judge's office rather than in a court room. There was also room for improving the access to court buildings for people with disabilities. The legal criteria and practice of allowing the parties to examine the case file did not always meet international standards. Occasionally, the written submissions of one party were not provided to the other party, thereby reducing the other party's opportunity to comment on the submission.

One issue of particular concern was that in proceedings to remove the capacity to act, the person in question does not have party rights. This unduly limits the person's access to justice.

In order to improve the parties' access to justice, courts should take measures to hold hearings in the court rooms to the fullest extent possible, e.g., by introducing electronic calendars for the court rooms. Minor alterations could be made to court buildings and court staff should provide extra assistance to allow people with disabilities better access to the venue of the hearings. The rules regarding the parties' access to the case files should be clarified and brought in line with international standards. When receiving written

submissions, the judges should ensure that they are circulated to all parties. The procedure to remove a person's capacity to act should be changed so that the person in question becomes a party to the trial.

The road Towards Justice

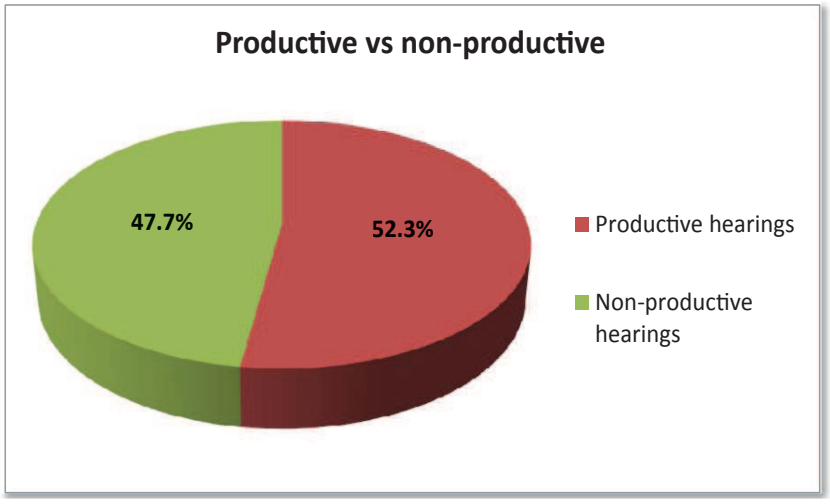
Towards Justice is not intended to be a full review of all aspects of civil procedure, but should rather be seen as a basis for further discussions on justice reform. The Presence will initiate a follow-up study to develop the general recommendations of *Towards Justice* into specific recommendations for legislative and practical amendments to civil proceedings.

SUMMARY OF STATISTICS

The statistics below present key data gathered in the course of the Presence's court observation activity.[1] Twenty-one civil cases with a total of 143 hearings were monitored in the district courts of Tirana, Kruja, Durrës and Shkodra.

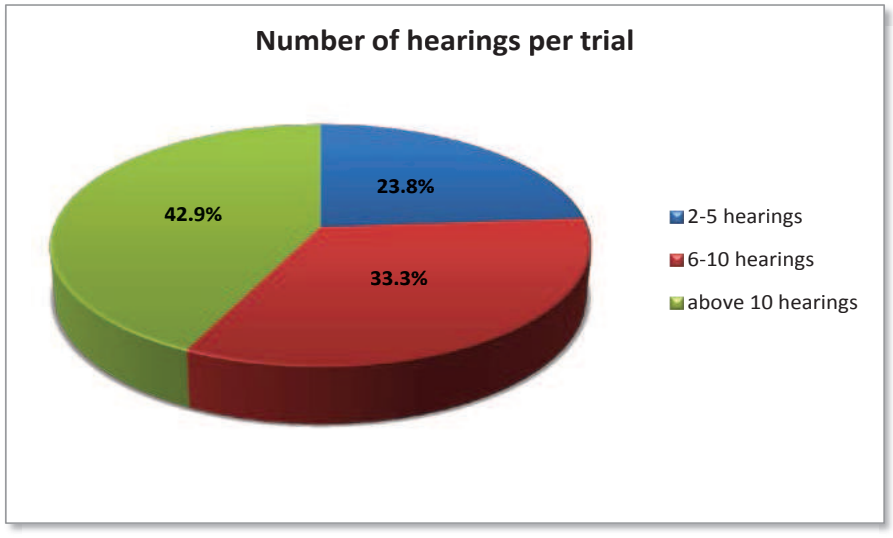
Non-productive hearings

Of the 143 observed hearings, 47.7 % were completely non-productive. These were hearings where nothing substantial happened with regard to the conclusion of the trial, i.e. no argument was made, no document or written pleading circulated, no evidence taken and no request made.



Number of hearings per trial

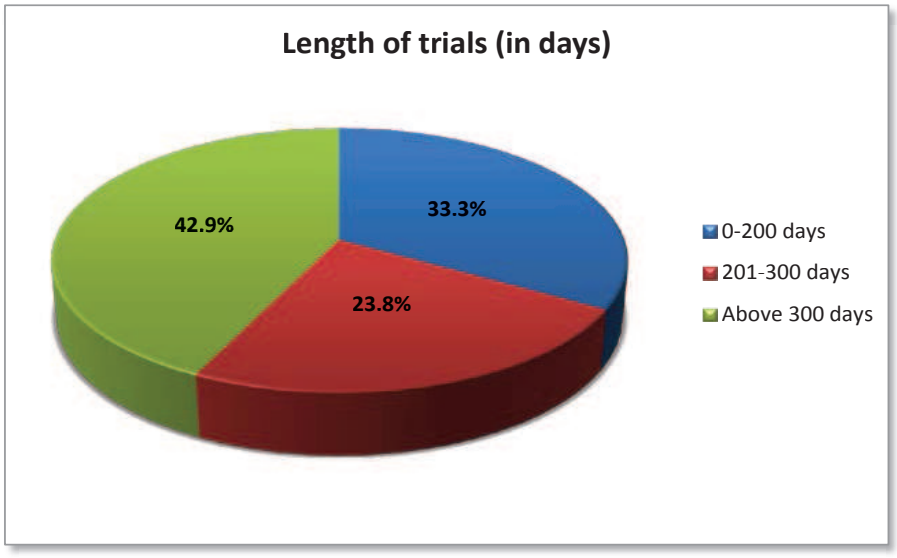
On average, there were 10.5 hearings in each observed trial, ranging from a minimum of two hearings to a maximum of 28 hearings. The vast majority of cases, 76.2 %, required six or more hearings to conclude.



1 Additional statistics are included in Annex 1 to this report.

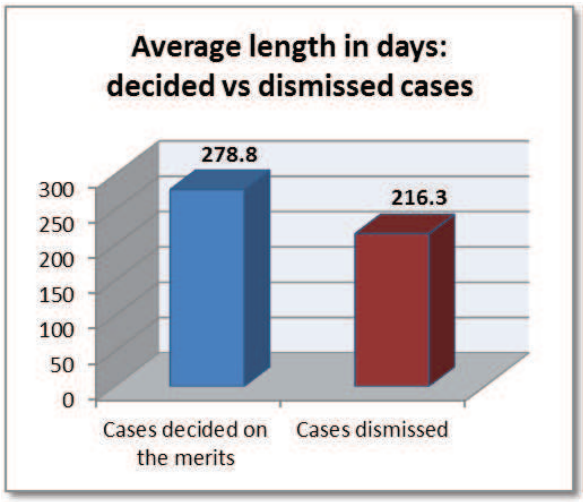
Length of trials

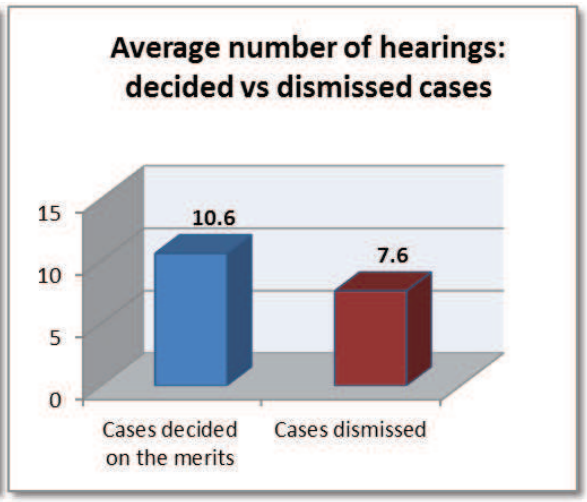
The average length of the observed trials, in number of days, was 281.7. The length of the shortest trial was 65 days, whereas the longest trial lasted for 653 days. The majority of cases, 76.2 % lasted more than 200 days. The data includes only the length of the first instance proceedings; any appeals proceedings would thus further delay the final settlement of the dispute.



Trials that were procedurally dismissed lasted almost as long as disputes that were decided on the merits: 216.3 days and 278.8 days on average, respectively. The difference in average number of hearings was furthermore not substantial: 7.6 hearings for dismissed cases and 10.6 hearings for trials decided on the merits, respectively.

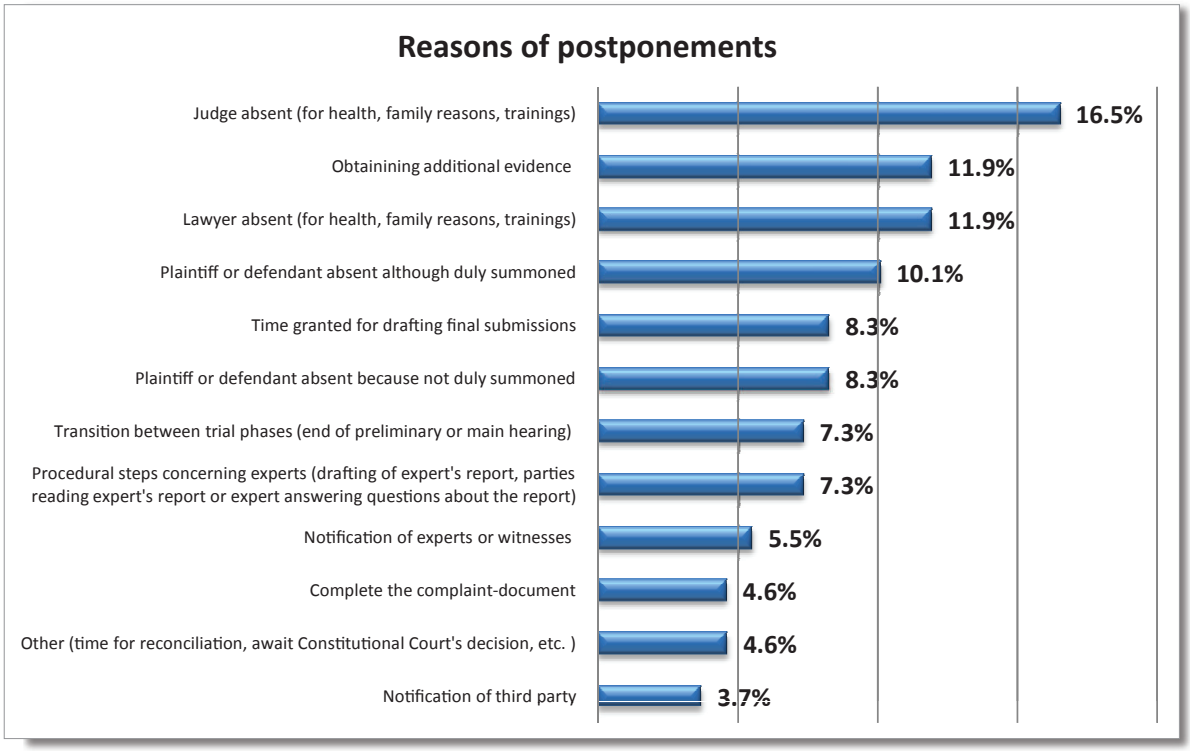
As dismissal does not preclude the plaintiff from restarting the case, such dismissals represent a considerable waste of resources for the courts and parties alike.



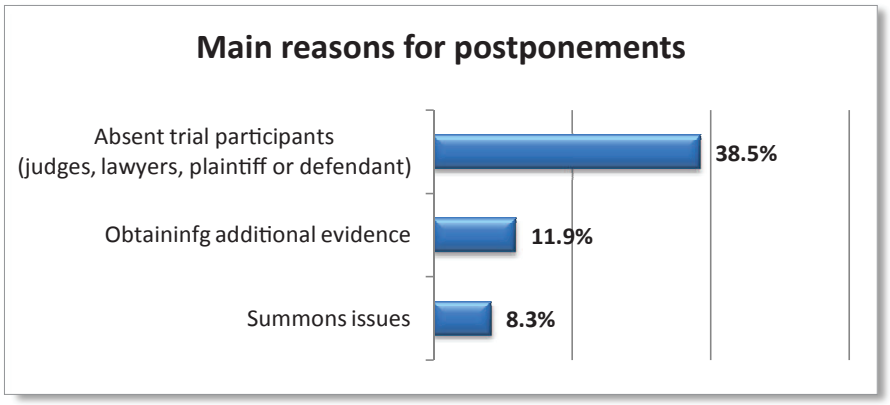


Reasons for postponement of hearings

The majority of observed hearings, 109 of 143 hearings, was postponed. The chart below shows the reasons for adjournments.



On the basis of the above detailed reasons for postponement, *Towards Justice* identified three main groups of causes for trial adjournments: Absent trial participants, obtaining additional evidence and summons issues. The chart below visualises the numerical significance of postponements caused by these problems, provoking overall more than half of all trial adjournments (58.7 %).



Time between postponed hearings

The time between hearings varied from court to court and case to case. On average, there were 21 days between observed hearings. However, 49.6 % of the observed hearings appear to be postponed for between 20 to 61 days. The judicial summer break of 30 days was excluded when calculating the time between hearings.