

Changes while Implementing Law-reforms and Albania as a new EU candidate country

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Abstract

Obviously the study of this paper consists on identifying and why not in addressing the important factors underlying the bailiff office in Albania and changes in the form of organization, under the administrative and implementing reforms in law. The paper also introduces some changes in national law, private or state organizational form. The Bailiff Section in Albania serves two key roles as part of the Judiciary. Both roles help to ensure that justice is fairly administered and carry to its proper conclusion. The Bailiffs and their assistants serve summonses and other important legal documents on parties as required by a Court or Tribunal, or as requested by a person who is a party to litigation, as an instance, a court or tribunal sentence which parties are required to attend. Surely it cannot proceed unless there is proof that the parties concerned have had the summonses attending properly served on them in a specified way by law. The judicial power is one of the most important issues on the legal state.

As stated in the Albanian constitution, one basic principle is: equality and control between governments. Our paper research will analyze the justice reforms in Albania; will analyze bailiff organizational management (private or state form).

Keywords: Bailiff-private; state-services and bailiff law; Justice legislation; changes in administrative service;

Introduction

The judicial system includes district courts, six courts of appeal and also the supreme-court or Court of Cassation. The district courts is about trial level courts from which appeal can be taken to the court of appeals and then to the Court of Cassation. At each of the three levels, the courts are divided into civil, criminal and military chambers. Justices of the Supreme Court serve for 7 years. There is also a Constitutional Court (also known as the High Court) with jurisdiction to resolve questions of constitutional interpretation that arise during the course of any case on appeal.

In 1993 decision, the Constitutional Court invalidated a law that would have disbarred lawyers who were active during the communist regime, and ordered the lawyers reinstated. Justices of the Constitutional -Court serve a maximum of 9 years. Parliament appoints the seven members of the Court of Cassation and five of the nine judges on the Constitutional -Court, with the rest appointed by the president.

A Supreme Judicial Council appoints all other judges. In 1992, the Supreme Judicial Council began to remove judges who had served under the former Communist regime. The judges affected by the abolition of eight small district courts in 2007 have been reinstalled. A computerized case management system for both civil and criminal cases is installed in all courts. The Ministry of Justice started publishing case management statistics on its website. However, court procedures remain problematic in terms of efficiency and transparency. The budget for the judiciary has been increased in 2009. The management of the Office for the judicial budget has improved. However, the funding for the judiciary remains insufficient to ensure proper functioning of court administration. The number of cases of blood feud-related killings is decreasing due to improved prosecution of perpetrators and to the reconciliation efforts led by civil society.

The Bailiff Section in Albania plays an important role in promoting full compliance with Court and Albania judgments and orders, for example, if a judgment debtor who has been ordered to settle a debt, or a person who has been ordered to vacate premises, fails to do so, application can be made to the Bailiff Section to take the appropriate steps to try to recover the debt or deliver the premises to the applicant. A civil case relates to the legal rights and obligations between two or more persons or institutions. In the event that the parties concerned cannot resolve a dispute themselves, either party may start a civil litigation. This is done in order to seek an independent and impartial tribunal's or court's determination as to whether one's legal rights and obligations are being infringed, and if so, to obtain appropriate compensation and remedy.

Civil litigation should be distinguished from criminal litigation. The main difference is that civil litigation is normally undertaken by an individual to seek monetary compensation, to recover properties, or to enforce obligations, while the criminal litigation is instituted in the name of the Government (i.e. Vlora region Special Administrative Region during 2009-2011years) to suppress crime and to punish criminals.

Overview of organization of Bailiff service in Albania

The Bailiffs office are appointed near the district Court and as such are required to conduct their duties of office in accordance with relevant legislation and court decisions of all process and execution of matters coming before them will be handled in an ethical manner in accordance with legal provisions and without favor to any party and in an impartial manner. Execution must be defined and supported by a clear legal framework that defines the powers, rights and responsibilities of the parties. Service and execution of all process will be attended without delay and fees charged will be only that which is allowed by law. Multiple attempts at service and execution will be made at no additional cost to the client, so as effecting service of execution or

until it can be confirmed that the matter can not be brought to the conclusion. On this way will facilitate execution of court decision and other judicial titles, becoming more efficient and with acceptable cost, benefits of legal decisions.

The process requires service, after being filed and sealed by the Court of issue, should be forwarded to the Bailiffs Office (Albania Bailiffs Office). The person who has obtained a court decision or as it's called the creditor, in order to materialize his right must be in the right order and in accordance with *Article 515* of the Code of Civil Procedure, choose one of two services the public one or the private bailiff service, in addition the creditor shall provide:

- executive title (original or notarized)
- execution order only in original also the payment of the fee issue in the execution, which will be returned to the person lodging documents and only where is appropriate, the person's attorney, who represents the creditor party¹²³⁴

Bailiff office and services

Execution of judgment is a fundamental element of a state of law in the absence execution, a specific place to a civil trial can not realize their rights in a visible context. Office of Enforcement is the institution charged with the execution of judgments issued by civil courts, namely whether a civil plaintiff makes a decision on the money, the amount collected through procedures implemented by the Office of Enforcement. Albania is being encouraging especially in the framework of the Stabilization and Association Agreements in order to improve the functioning of this office.

- Ensure the address of service as correct and complete one, meanwhile if the action is hand written, all details are legible.
- Including the process of a note giving any information that may assist in the speedy location of the person to be served, such as: Directions to the address of service, if the address is known to be difficult to locate.
- Information, if known, as to when is the most likely time to find the Defendant at a given address.
- Information that may assist the bailiff to locate the defendant without undue delay. Bailiffs often cannot give any judicial decisions; because they have difficulty in obtaining information on the debtors' property may be seized. It is being needed a complement (extra) to the legislation in order to establish crystallization of the system for collecting information on the property of debtors.

¹ Law no. 7491, date 29.4.1991 article 42 law nr. 7491, "*Për Dispozitat Kryesore Kushtetuese*"

² Law no. 7561, date 29.4.1992, Low no.7491, date 29.4.1991 "*Kodit të Procedurës Penale*"

³ Main Constitutional Provisions Article year 2011, Law "*Për Dispozitat Kryesore Kushtetuese*"

⁴ "*Constitution, Article*" kushtetuta neni 145/1 dhe 145/3

This system should be applied properly. Further more, it would be necessary to improve the postal system, so that once the bailiff to take the right information by mail communication with the parties.

The Bailiffs Office, within the jurisdiction of any district court of first instance, makes the local level of organization and administrative subordination of the General Directorate. Bailiff offices are legal persons and comprised of the president's office, bailiffs, administrative and technical staff. Each bailiff office receives the necessary procedural steps for effective execution of executive titles.⁵⁶⁷ But the entry into force of the law no.10 031, date 11.12.2008 "*For Private Bailiff Service*" brought an important innovation in the field of execution of court decisions, that as a private bailiff performs the function in the whole territory of the Republic of Albania without limitation territorial powers by district court. Effectively the service is affected and the completed affidavit of service is returned to the Plaintiff within 15 working days. Bailiffs' service fees must be paid before execution of the decision began as a fundamental condition shown down by Article 515 of the Code of Civil Procedure "Putting in execution" (Amended by Law No. 10 052, dated 29.12.2008 Article 17) The execution order is executed by the bailiff service, public or private, by a bailiff, at the request of the creditor. The creditor, in addition to execution, must submit:

- Executive title (original or notarized)
- Execution order (original)
- Payment of the fee issue in the execution
- Where appropriate, the person's attorney, who represents the creditor party"... [A receipt for fees will be returned to the person lodging documents.]

When not properly fulfilled the above documents for executing the order of execution, the bailiff leaves the applicant a 5-day deadline for filling the gaps. When the applicant does not meet these deficiencies within the prescribed period, the documents are returned to him. When shortcomings are avoided in due course, demand for executing considered registered by the date, is submitted to the bailiff. Putting in the execution of an enforcement order is made within 15 days from the date of submission of the creditor.⁸⁹¹⁰

Execution is based on the title of execution (ie, written order, issued by court).The title clearly defines the information directly related to creditor and debtor, the type and

⁵ "Constitution, Article, kushtetuta" neni 146

⁶ Law no. 8436, date 28.12.1996, law no. 8546, 5.11.1999, "Law in Judicial Power"

⁷ Law no. 8656, date 31.7.2000, law no 8811, date 17.5. 2001 "Law in Judicial Power"

⁸ Law no 8588, date 15.3.2000. Article 13, "Law in Judicial Power"

⁹ Article 6, point 1. "Kodi Zgjedhor i Republikës së Shqipërisë"

¹⁰ Law no 8588, date 15.3.2000. Article 11 "Law in Judicial Power"

the extent of the claim to be applied. The most important type of securities executives are:

- Judicial final decision
- Temporarily binding judgments
- The decision of international courts and arbitrary court
- Instruments drafted by a notary containing obligation in cash or acts to grant credit banking.

The Albanian Court obliges the institutions to pay reparations and money back to employees Bailiff Office and legal institutions will need to make better accounts before dismissing their dependents. There are innumerable cases where employees wander through the doors of the courts to obtain redress unfair break from work and after he won the trial must wait for months until receiving the money. But there are some decisions of the Supreme Court that regulate this practice. The Court had to examine some typical case for which has come to the conclusion that the unreasonably long judicial issue in these cases as well as time of employees that have earned this right by a court decision is a violation of a human right constitution. In most cases, the indemnity institutions drag their former employees on the grounds of limited funds. Based on this fact, the lack of funds can not be used by institutions as an argument for profitable of the debt of employees if the court concluded that he was dismissed from work without the right.¹¹¹²¹³

Albanian justice and European Convention of Human Rights

State authorities can not cite lack of funds as an excuse for not respecting a financial obligation that comes from a court decision, cited in most of the arguments with which the Court justifies its decisions. The event that has set in motion the Constitutional Court dates back to the city of Albanian region. In spring 2008 a citizen of the Inspectorate dismissed the National Urban Construction district court addressed the claim that during her discharge violated procedures are provided in the Labor Code. Court decides in favor of former employee forces to indemnify him in five months' salary and a bonus for seniority for a period of six months and a half.

Setting the excessive length of judicial proceedings in violation of the European Convention on Human Rights and the rejection of the argument of lack of funds to indemnify the employee is considered a support to hundreds of individuals who continue to wander through the doors of the courts, and a message clear to the judicial power to court proceedings concluded in time. According to the Albanian Court, the lack of money can not be used as an argument by the institutions not to

¹¹ OSBE, më 17.1.2003 prej *"Inspektoriatit të Këshillit të Lartë të Drejtësisë"*

¹² Law no 8588, date 15.3.2000, *"Law in Judicial Power"*, article 135/1 point 11.12

¹³ Law no 8588, date 15.3.2000. Article 19, *"Law in Judicial Power"*

pay damages to workers unjustly dismissed from work. (For example: Review of the case has as starting point a judicial process in some Albanian offices where worker sue the institution for two years but with time could not obtain indemnity.)

The court had decided to pay indemnity to the employee for five violations of the provisions of Labor Code during its break from work. Unreasonably long judicial processes or the implementation of the decision of the court regarded as violation of right to a fair trial by prejudice to the Constitution EU calls on all political parties to urgently proceed with the appointment of a new people treatment.¹⁴

The escalating political situation in the country which brings delay in undertaking important reforms to the country viewed with concern by representatives of the European Union Delegation in Albania. In a response of EU delegation notes the absence in the operation of some institutions because of the political stalemate. Among these institutions, the changed stated (public and private sector and its function) that is because of the dispute is not doing its replacement with a new name.

The European Union is very concerned about the impact that has political stalemate in the functioning of the influences of institution. European Union calls on all political parties to urgently proceed with the appointment of a new People’s Advocate. Political stalemate should not prevent the adoption by the Parliament of the reforms and measures in the interests of Albania and its citizens - is quoted by the EU delegation in Tirana. Part of the application has also been taking measures by the government to implement anti-discrimination law including financial and human support for protection forms.

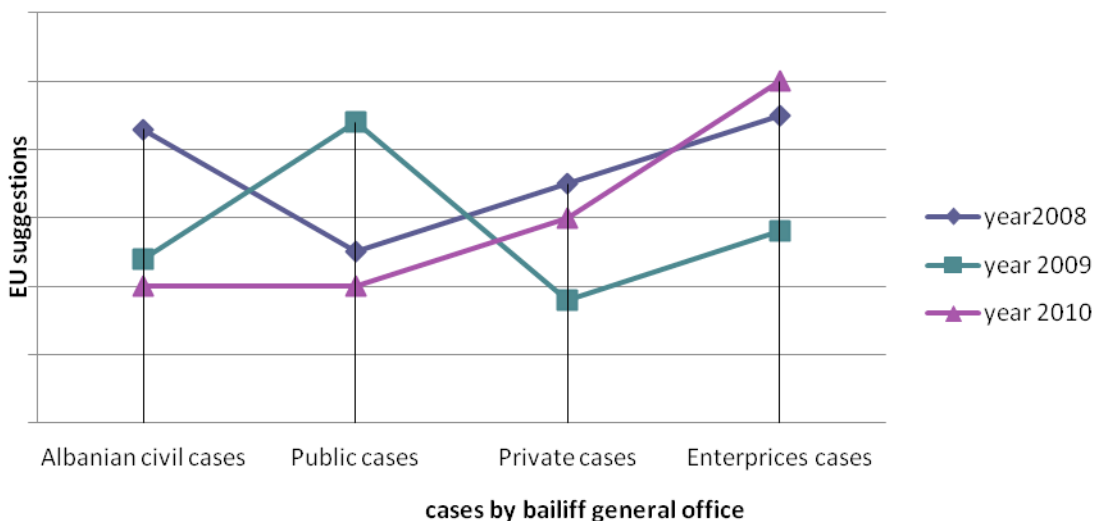


Fig. 1 - Distribution indicators of cases by bailiff general office.

¹⁴ Albanian Civil code year 2008, pp123

Court enforcement officers face inadequate incentives and oversight in performing their work. The System for Enforcing Agreements and Decisions (SEAD) Program supports the work of government, legislators, the courts, and the business community to introduce different incentives in the enforcement process, and to improve the management of courts and enforcement bailiff offices drawing on the experiences of Kosovo's regional neighbors. The SEAD will work to support Albania's efforts to find sensible, workable solutions to the problems of enforcing civil court judgments.

Improving Information and Methods in the Collection Process

The procedural code and insufficient resources in the courts create problems in collecting court judgments. The Systems for Enforcing Agreements and Decisions (SEAD) Program will support the efforts of government and legislators to improve legislation; the ability of courts to gather information from other government agencies, from debtors, and from third parties; and to bring new vigor to court orders. The SEAD Program will also work to improve working methods within courts so that cases, orders, and information are better used. The Bailiffs Office, within the jurisdiction of any district court of first instance, makes the local level of organization and administrative subordination of the General Directorate. Bailiff offices are legal persons and comprised of the president's office, bailiffs, and administrative and technical staff. Each bailiff office receives the necessary procedural steps for effective execution of executive titles. But the entry into force of the law no.10 031, date 11.12.2008 "For Private Bailiff Service" brought an important innovation in the field of execution of court decisions, that as a private bailiff performs the function in the whole territory of the Republic of Albania without territorial limitation powers by district court.

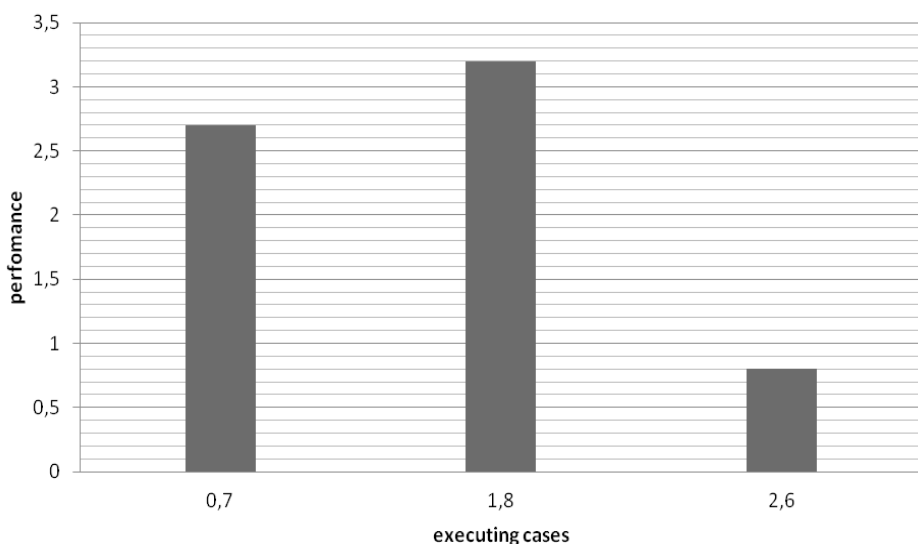


Fig. 2 - Distribution executions of an enforcement order, year 2010, Albania

Institutional centralized and needs for decentralized in Albanian law bailiff service

Examples of decentralize the bailiff system and services conditions that may motivate democratic decentralization include:

- Increasing urbanization that local conditions more complex and less easily controlled from the center;
- Collapse of a centralized regime;
- Lack of central resources to meet local needs; and concern over human rights and governmental accountability.

Institutional Albanian forces, in the middle between local and central forces, are a critical entry point for policy change. Crises in institutional performance can serve as a valuable springboard for redefining institutional relationships and systems to support the democratic decentralization objective. Examples of institutional forces, for example, include:

- political will as manifested by a vision for change, leadership commitment, and the consensus of the bailiff offices in Albanian governed
- policies and actions that enable and facilitate innovation, especially at sub-national levels
- genuine autonomy at the local government level;

In some cases, decentralizing may not be possible in a democratic way. It may be necessary for a national leader, who might have been elected, to use undemocratic means to decentralize. It is not always possible to decentralize political structures in a totally democratic way, especially in relatively short time within which donors provide resources and require results. In the cases where democratic practices may be created in an autocratic manner, the strategy of other area for further work is to look empirically at the effectiveness of entry points, narrow versus wider interventions, and decentralization democratic local governance.

We want to emphasize here again, that in the report the above mentioned subcomponent has been assessed positively until the end of 2005. Despite the above, we want to stress that Public Administration Department, despite the reform in the Human Resource Management field, proposes, manages and implements two other very important fields of the reform in the public administration, such as: the reform in the remuneration field and the reform in the functional and structural review of the public administration institutions. We want to put emphasis on the fact that these two directions of the reform, are being brought forward by the Public Administration Department, as it was done before.

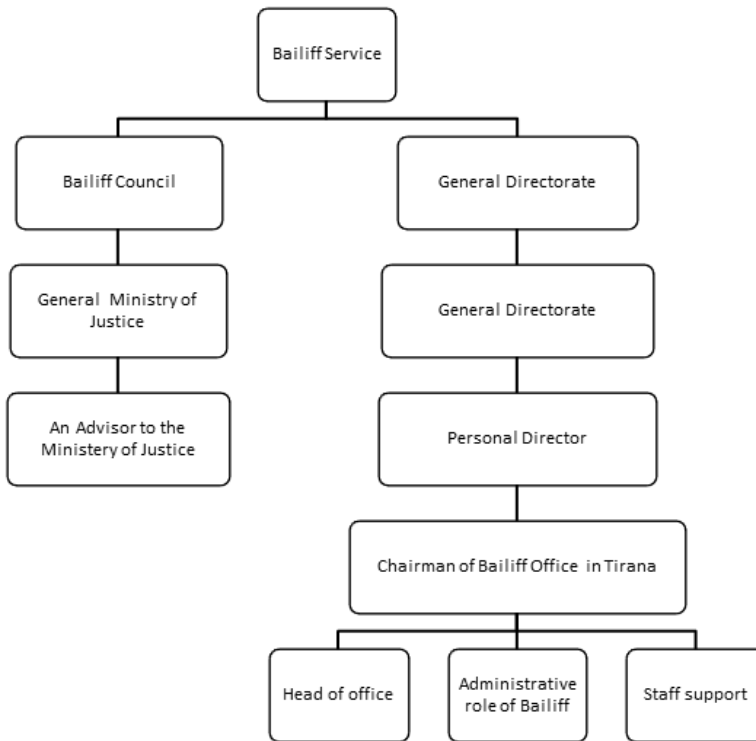


Fig. 3 - Structural Office. MO Justice, no.166, date 02.11.2011

Conclusions

Democratic bailiff local services in Albanian government, legitimacy with citizens, communities, and the organizations in civil society that represent them, shared values and ethics that define the operating principles of how government relates to target systems are the middle three. In all of these scenarios, some initial steps have been taken toward democratic practices and there is interest in making the entire governance system more democratic. Different presenting conditions require different strategies. For example, expecting a country that is moving from authoritarian rule or that has recently and tentatively established a democratic political system to decentralize and to do so using democratic practices is expecting a lot.

Structure should be created where the complaints are expected in offices execution. Failure executing orders must be punished steadily prosecuted. Bailiffs need a clearer structure of payments spending. Bailiffs should be trained to cooperate with prosecutors, police and courts.

While these should be trained in order to work better with the bailiffs. This should facilitate the work of bailiffs to obtain data for property of the debtor.

Bailiff is created with a single goal that of execution of judicial decisions, executive and other judicial titles or not, this is also its mission. His organization was originally that of a centralized body. Changes are in force of Law no 10031 dated 11.12.2008 "On the private Bailiff Service".

Such changes were reflected in the Code of Civil Procedure, Article 515 of its predicted (section on) that: the creditors already give opportunity to choose between state service and private bailiff. In "such mixed system" exist in various state of European member. The need of Bailiff logistic reform was not as effective and attractive in the results of state direction.

Four years have passed from the first licensing of private Bailiff and time shows that the service provided, due to improved competitiveness that comes as the benefit of Albanian citizen's interest which now can materialize their rights with the court decision of final form. The privatization of the bailiff service as a result of free market competition is a response that we let the recent years, in which the extension will be show, the balance between demand and supply for these services.

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