

SYNTHESIS & RECOMMENDATIONS

The vacancies of Appeal Court Judges are regarded by this study as the main reason for the escalating judicial delays. The dismissal of Judges by the vetting process has not been followed by an efficient strategy for their replacement at the Courts of Appeals in order to eliminate the conditions for judicial delays. The cause-effect relationship between the effective number of judges and the average number of decisions made by each judge is evident if the indicators for each Court of Appeals are analysed from 2020-2022, and for the first six months of operation of the Tirana Appeal Court of General Jurisdiction (1 February - 31 July 2023).

Following the Reform of Judicial Districts, the Judge delegation scheme appears to be suspended; thus, making it impossible to “subsidise” this Court with the missing Judges. The new Court started work with only 24 Judges out of 78 approved positions. In 2023, this number was reduced to 22, and it reached 24 in November 2023.

The Reform of Judicial Districts risks not producing the aimed results in terms of access to justice if increasing the number of Judges is not addressed with some urgency. This urgency must first and foremost concern the Courts of Appeals. Access to justice is not merely a matter of distance; it is above all an issue that requires an effective solution within an optimum time for a dispute that reaches the Court.

Changes to some procedural rules in the administration of judicial proceedings may have had a positive impact in certain occasions. Specifically, the adjudication of appeals against precautionary measures by a sole Judge has resulted in higher efficiency in handling this category of cases. Nevertheless, the quality of such trials remains to be assessed, given the premise that a Panel of three members makes a more comprehensive assessment than a single Judge.

The methods of Court administration are not regarded as one of the main reasons for the backlog or judicial delays until 2022. After the implementation of the Reform of Judicial Districts vis-à-vis the Appeal Court of General Jurisdiction, the judicial administration faces the significant challenge of lack of courtrooms. This circumstance prevents the limited judicial staff of Tirana Appeal Court of General Jurisdiction (ACGJ) from being effective. A scenario of this Court’s operation with 78 Judges in the current building is completely impossible. In the current state of infrastructure even the re-activation of the delegation scheme by the Appeal Court is a challenge because the current building does not have office space to accommodate more than 35 Judges and has even fewer rooms to conduct trials.

The lack of adequate systems for the management of court cases creates added difficulties to the operation of Tirana ACGJ. The automation of carried-over cases is a strict necessity given the ever-increasing backlog. Despite the added personnel to the Court’s Secretary’s Office, the analogue formats of the work processes slow down management, are ineffective, and do not offer the intended accuracy in the data registration.

Based on the above, the main recommendations are as follows:

Increase the number of Appeal Judges through an effective re-activation without any unnecessary preclusions of the delegation scheme to the Appeal by the High Judicial Council (HJC). Prioritize the possibility to assign Judges to the Appeal Court of General Jurisdiction by taking effective steps to address the situation through the identification of Judges who meet the legal criteria of experience and career motivation.

Double or even triple the number of legal assistants who provide their services to the Tirana ACGJ. There are currently fewer Legal Assistants than Judges at this Court.

Improve coordination between the judicial governance bodies and the temporary vetting bodies. The magistrates who have graduated from the School of Magistrates do not classify to fill in the vacancies at the Court of Appeals due to the experience criterion (8 years). The public interest for effective justice must prevail. The interest of the Albanian state to avoid risking sanctions by European Court of Human Rights (ECtHR) must also prevail. The interest of the Courts to avoid being made redundant due to the lack of Judges must also be considered very carefully.

The systematic increase of the backlog at the Court of Appeals must be regarded as a national emergency because it has pivotal dimensions and a clear growing trend, and because it has the potential to jeopardise trust in the Justice Reform. HJC must urgently prepare a clear, effective, and responsible strategy to bring the Tirana ACGJ and the Administrative Court of Appeals out of the backlog crisis.

Assess the possibility to prioritise those cases at the Appeals that risk to exceed the reasonable timing. A preliminary assessment must be conducted by the Judicial Secretary's Office right away for the carried-over cases in order to avoid the risk of lawsuits for judicial delays, which would further deteriorate the backlog. Moreover, this filtering would serve in its entirety the Albanian state to avoid facing penalties by ECtHR in the near future, e.g., as in the case of "Bara and Kola vs. Albania".

Re-consider in light of the Reform of Judicial Districts expanding to at least three Courts of Appeals in order to address in a timely and efficient fashion the lack of courtrooms and other auxiliary premises that enable the Courts of Appeals to examine cases. The option to wait until a new Court of Appeals is built in Tirana favours the additions to the backlog and penalises the citizens by violating their rights for justice without delays and in any case within a reasonable time.

Eventual costs from claims filed with the competent courts for excessive length of proceedings must be calculated as opportunity costs of the Reforms and not unloaded upon the shoulders of the citizens and other Court users. A special contingency fund for the subjects damaged by the judicial procrastinations must be included in the budget of the Courts or the state budget. The 3-year time frame regarded as objective grounds for delays in the framework of the Judicial Reform has lost substance and meaning now that the Justice Reform is entering its ninth year since the approval of its laws.

The backlog of the Tirana Appeal Court of General Jurisdiction (ACGJ) continued to grow from 32 000 to 37 thousand from 1 February 2023 (when it became operational) until October 2023, which is when the latest update was sought for purposes of this thematic assessment. The principle of temporariness, which has been thus far the main argument to discourage complaints of judicial delays from being filed with the higher courts, specifically the *objective circumstances caused by the vetting process*, risks to become a permanent reality if the backlog of the Court of Appeals surpasses 40 thousand files in 2024.

The competent Courts must be on the side of the public who is penalised by the now-chronic delays, not the other way round, when filing claims with the High Court of excessive length of proceedings at the Courts of Appeals. Compromising the opportunity for a just compensation by the domestic Courts in this phenomenon will only recycle the problem to the Constitutional Court and then the ECtHR in Strasbourg.

According to the reasoning of ECtHR in *Bara & Kola vs. Albania* (October 2021), reforms cannot be regarded as “objective circumstances that prevent” the adjudication of cases, at least within the logic of Article 6 of the Convention. This approach would unload all their burden on the shoulders and to the detriment of the citizens. Nonetheless, the consequences of the reform may be taken into consideration to some extent. The general trend of reduction (or not) of the delays is an important factor in the analysis of Article 6. In the study undertaken by CPII, the analysed trend is in most cases constantly regressing.

The professional community of lawyers must be encouraged to use every legal means available to ensure the effective defence of their clients from exposure to delays beyond a reasonable time. Guaranteeing the rights of citizens in respect of a fair and speedy trial must be a constant in their daily activity. They must be active defenders of these rights both at the domestic Courts and at the ECtHR.

The advancement of the judicial digitisation is a necessity given the emergencies posed by adjudication at the Appeal Court. The improvement of existing systems and adoption of advanced ones are necessities that can bring about a fundamental improvement to the management of the Court of Appeals. These systems are relatively cheap if compared to the costs generated by their non-use. The assistance of the international partners of the Justice Reform must be immediately channelled in this direction.

The High Justice Inspector – the most important body of the Justice Reform – also needs assistance with the respective staff, the internal complaint management systems, and other systems that enable this body to play their supervising role on the arbitrary delays of adjudication and the reasoning of Court decisions, which jeopardise public trust in the Courts and justice as a whole.

Delays in the reasoning within the legal time limit of precautionary measures by the Appeal Courts and lower Courts must be included in a special thematic assessment to identify potential irregularities that appear constantly.