

## **REPORT ON MONITORING DUE LEGAL PROCESS IN SOME JUDICIAL PROCESSES**

### ***1. Introduction***

The Albanian Helsinki Committee has as part of its work also the respect for human rights in due legal process. For this purpose, the organization has realized several studies with regard to the rights of juveniles in the penal process, provision of free legal aid by the state and the private sector, respect for human rights in a judicial process, etc.

Based on the identification of some problems in the activity of justice bodies in Albania, which we have encountered in our daily work, or which have been made public by other, national or international, actors, AHC, during 2011, has undertaken sporadic and planned monitoring missions in some of the country's courts, such as the High Court, the Serious Crimes Court of First Instance, the Judicial District Court (penal chamber) of Tiranë, Kavajë, Elbasan, etc.

The goal of the observations has been to monitor respect for the rights of litigants, respect for solemnity, adherence to the code of ethics, finish of judicial processes within a reasonable time, respect of the schedule of trial sessions, in order to improve citizens' access to justice bodies and the effectiveness of the judicial system.

Our observers, have relied their work, on a questionnaire drafted by AHC. It helped the observers identify issues more accurately. The monitoring processes were conducted during the period June – November 2011. The number of monitored trial sessions was a total of 60, of which 33 were in the Kavajë District Court. Most of the trial sessions that were monitored dealt with penal cases, and part of them are penal requests for decreasing sentences, removal of remand measures, exclusion of judges, etc.

AHC has conducted such monitorings even before and has transmitted the respective objection and suggestion, in time, to the representatives of judicial system and other powers. Turning back to the monitoring of trial sessions, in order to verify almost the same direction of work, we have aimed to look in the concrete developments in this regard.

The improvement of the activity of judicial power is made clear in the Progress Report of European Commission, as one of the 12 key issues that our country should fulfill with priority, in the framework of European integration, despite of the important fact that without a fair and impartial judicial system, the rights of individuals and democracy in our country are put under a big question.

## **2. Findings of monitoring due legal process**

### **2.1 Principle of publicity**

The principle of the publicity of the trial session is stipulated in article 42/2 of the Constitution, article 6/1 of the European Convention of Human Rights, as well as in the

Criminal Procedure Code, article 339, which stipulates, *“The trial session shall be public, otherwise it shall be invalid.”* This important sanctioning guarantees that anyone who has an interest may sit in on a trial session, for as long as the court has not ruled through a reasonable decision that the session shall be held behind closed doors, in cases when the law permits such limitation.

The publicity in the conduct of a trial session begins with the public announcement of time and date, through posting in a visible spot in the court premises, with convening the session publicly and further with the conduct of the session with open doors. A public announcement was made in almost all trial sessions that were monitored.

In some of the monitored courts, such as the High Court, the Serious Crimes Court, and the Tirana District Court, it was noted that the internet page functions and through it, any citizen may have full access to the schedule of cases to be adjudicated. In these courts, it is easy for citizens to access the posting board of trial lists. In the High Court, the notification of the parties to enter in courtroom was done through telephone sets by the secretary, in respect of the procedures for notification of parties..

With regard to the Kavajë District Court, its internet page was not functioning and there were noted problems with the posting of judicial session’s lists; these were posted on a small place, lists were posted on top of each other, including lists from 2010. One concern remains the fact that the lists do not indicate the location where the judicial session would be conducted, creating so confusion.

Another problem encountered in this court was failure to summon the parties publicly, before the initiation of adjudication.

## **2.2 Respect for the solemnity of judicial sessions**

The monitoring showed that in general, the principle of the solemnity of judicial sessions was respected, including the pelerines of judges, prosecutors, attorneys, behavior of parties during the adjudication, the conduct of sessions in the courtrooms, with the exception of some sessions conducted in the High Court in the case brought by the prosecutor’s office against Mr. Ilir Meta, in which the defense did not respect communication ethics. We would also like to mention cases of disrespect for the solemnity of adjudication by the use of mobile phones in trial sessions conducted in the Kavajë District Court. As below, we will develop further all the findings as regards every single element of the solemnity of adjudication.

- **Premises of trial sessions**

Decision no. 238, dated 24.12.2008 of the High Council of Justice (HCJ) establishes that all judicial processes, to the extent possible, shall be conducted in adjudication rooms appropriate for the nature of the case in question.

The monitoring found that in the High Court, the Serious Crimes Court, the Kavajë Court,

and partially in the Tiranë Court, courtrooms of penal processes, generally are equipped with the necessary infrastructure. Out of 60 monitored judicial sessions, six of them were conducted in the judge's office. This mostly comes due to the lack of infrastructure, but there were also cases when this occurred due to lack of internal organization of work.

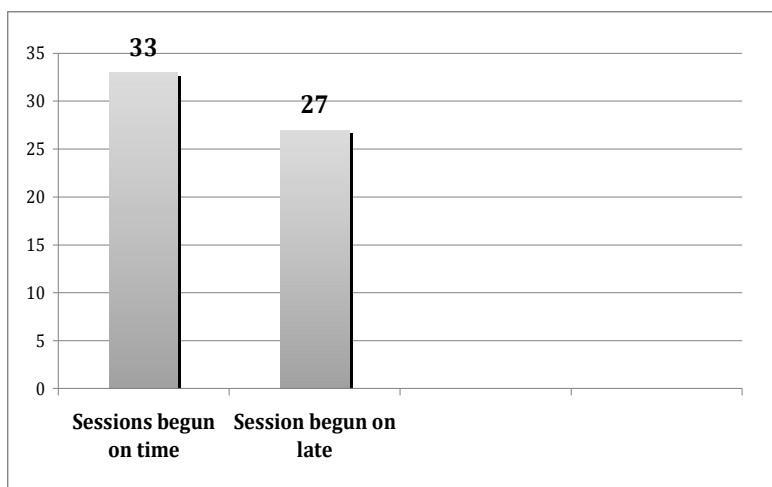
- **Delays in starting sessions**

HCJ decision no. 438, dated 24.12.2008 establishes, *“Judicial processes shall start in respect of the timetable that has been communicated and posted in the court, except for when there is a justified reason. The judicial secretary shall notify the procedural subjects on time for the start of the adjudication and shall orient them about the location of where it will be held...”*

In all of the monitored courts, we encountered delays in the start of judicial proceedings. It is to be highlighted that in most cases, the adjudicating body does not announce the reason for the delayed start of the judicial session.

Based on the monitoring, it resulted that 27 judicial sessions began late and 33 sessions began on time. The reason for the delay was announced in only one of the sessions that had begun late. The delays varied between 5 to 45 minutes.

*Below is a table about the conduct of judicial sessions*



- **Special pelerine in adjudication**

One positive fact that resulted from the monitoring is that there was not one single case when the judge did not wear the pelerine. Wearing the pelerine was respected in all processes conducted in the Serious Crimes Court of First Instance, the Kavajë District Court, the High Court. Cases of failure to wear the special pelerine were encountered in the Tiranë District Court, particularly when the adjudication was carried out in the judge's office.

## ▪ Ethics and behavior during adjudication

HCJ decision no. 438, dated 24.12.2008, clearly establishes the rules and ethics to be upheld during the conduct of a judicial process.<sup>1</sup>

The monitoring showed that in general, communication ethics was respected by the litigants and the judicial bodies, such as the judges, prosecutors, and attorneys. Exceptions occurred in some trial sessions by the defense failing to respect communication ethics in the High Court, in the case against Mr. Ilir Meta.

The conduct of adjudication in the judge's office leads to frequent violations in communication ethics. There were cases in the Kavajë District Court of the trial session being interrupted due to ringing of the judge's, attorneys', or prosecutors' mobile phones, but also due to the entrance of different persons into the judge's office. Part of the solemnity is also the way of announcement of the final adjudication decision on a case. The announcement of rulings was done publicly, but without the reasoning. An exception was the High Court, whose panels of judges announced a brief reasoning for their intermediate decisions. The monitoring showed that some decisions were announced in the judge's office and not in the courtroom, as the law requires.

In almost all cases, the judges' panel respected the way of taking intermediary and final decisions by withdrawing for a decision and then its announcement.

### 2.3 Lengthy of judicial processes

Finishing the adjudication within a reasonable time, without breaks, is often the "Achille's heel" in an effective justice system. In almost all monitoring conducted by AHC throughout past years, it is revealed the procrastination of judicial processes, which, in almost all the cases are "justified" within the legal spaces found by parties.

Article 42/2 of the Constitution stipulates, *"Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, **within a reasonable time**, by an independent and impartial court specified by law..."*

Article 6/1 of the European Convention of Human Rights provides *"...In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public trial **within a reasonable time** by an independent and impartial*

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<sup>1</sup> 1) During the adjudication, the litigants shall maintain a correct attitude and behave in a way that demonstrates respect for the judges' panel, avoiding any inappropriate action in their conduct and expression, such as in communication with the judges' panel, the other subjects, or those present in the hall;

2) Communication with the judges' panel by the litigants and other persons present in the process, shall be done in appropriate tones, addressing them with the (plural) "You" or "Your honor;"

3) The litigants in the process shall speak standing to the judges' panel or judge, and so shall experts or witnesses summoned during the oath procedure, with the exception of cases when their health condition does not permit it.

*tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice...*”

Thus, in the case “**Gjonboçari versus Albania**”<sup>2</sup>, the European Court of Human Rights (ECtHR), found a violation of article 6/1 of the Convention with regard to the lengthy process by establishing duties or instructions for the Albanian state, with aim to avoid these in the future. Based on this fact, the ECtHR reminds that, according to article 6 of the Convention, “...every individual shall have the right to a final judicial ruling, within a reasonable time, for the adjudication of cases on civil rights and obligations. **State parties shall be obliged to modify their legal systems in order to allow for the courts to adapt their practice according to this requirement of the Convention...**”

Strasbourg Court has recently stated that, *where the judicial system has deficiencies with regard to the demand on the length of procedures according to article 6/1 of the Convention, the creation of a redress means to accelerate procedures in order to prevent lengthy process shall be the best solution*. Some states have perfectly realized the situation and have opted for the combination of two characteristics of redress, one created for the acceleration of procedures and the other for the regulation of compensation (See *Scordino vs. Italy, no. GC 36813/97/183, 186 ECHR 2006*).

Returning to the case in question, ECtHR also notes that, as the Albanian party has admitted, the Albanian legal system, besides complaints regarding constitutional rights, does not provide for a special means of redress, which the petitioners could have used to address their complaints about lengthy procedures<sup>3</sup>. Assessing that, “*Their statement that the procrastination of procedures does not represent a problem in the domestic system is not founded and, in any event, is not a response to the complaint of the petitioners on lengthy procedures, which the court finds unreasonable*”, ECtHR decided **that there has been a violation of article 13 with regard to article 6/1 of the Convention, with regard to lengthy of procedures**.

In the case “Gjyli vs. Albania” and in the case “Nuri vs. Albania”<sup>4</sup>, the ECHR reached the same conclusion with regard to the reasonable time under the article 6/1 of the Convention.

The Constitutional Court of Albania has also found numerous cases of the violation of article 42/2 of the Constitution and article 6/1 of the ECHR. ECHR decisions have

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<sup>2</sup> See respectively the decisions of March 31, 2005 and 31.03.2008

<sup>3</sup> *Inter Alia*, see the case “*Kudla vs. Poland*,”

<sup>4</sup> See respectively the decision of September 29, 2009 and the decision of 03.02.2009

suggested to the Albanian state to find efficient procedures to avoid lengthy adjudication. Failure to find efficient means for a “reasonable time” and the exaggerated manifestation of these lengthy practices, particularly in the most high-profile and sensitive cases that have attracted public attention, puts the burden of responsibility on the Ministry of Justice, the High Council of Justice, and all other responsible institutions.

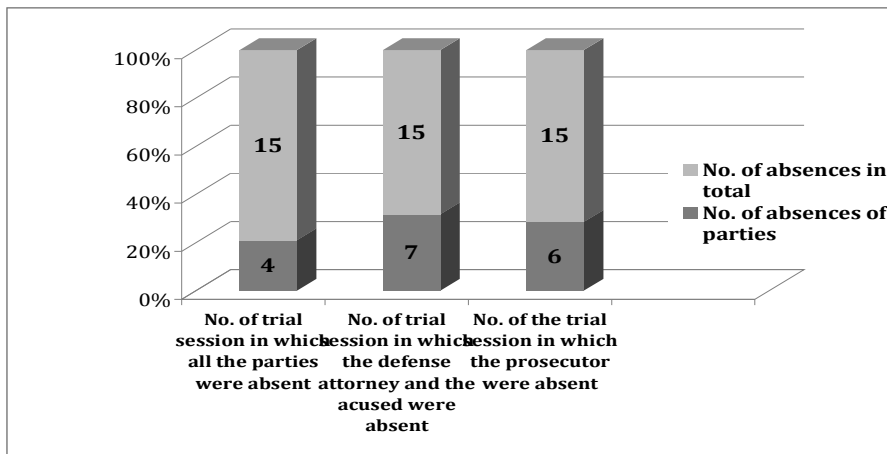
The monitoring of trial sessions, which this report is based upon, shows that the absence of a defense attorney or the defendant has led to numerous postponements of trial sessions. This shortcoming was encountered in almost all monitored courts.

It is worth mentioning a very special case that is considered a lengthy process or unjustified postponement of it, but with a double character. In a trial session of the Kavajë Judicial District Court on “Opposing the Prosecution Decision,” the attorney had requested the exclusion of the judge. According to provisions of the Penal Procedure Code, the court had interrupted the adjudication in order to have the examination of the request by another panel of judges. The other panel of judges had scheduled two sessions, but the attorney of the petitioner party would not appear, thus leading to the postponement of the two adjudications. We mentioned this case as one of the most flagrant cases that lead to postponement for a long time of the adjudication of a case, even when it is simple, and thus artificially increasing the adjudication time for any case as well as the number of cases for adjudication by every judge.

- **Absence of the parties**

With regard to the presence of parties in the monitored trial sessions, it results that out of the 60 monitored sessions, the parties were absent in 15 of them. As regards the trials sessions in which parties were absent, both sides were absent in 4 of them, the attorney or the defendant was absent in 7 of them, and the prosecutor was absent in 6 of the sessions.

*Below is a charter of the sessions by absent party*



We have devoted special attention to this issue under monitoring because practice has revealed that the postponement of trial sessions due to the absence of the parties has become very problematic and has assumed huge dimensions. The presence of procedural subjects in the trial session is indispensable; otherwise, the absence of the prosecutor, defense attorney, or defendant causes the postponement of the trial session.

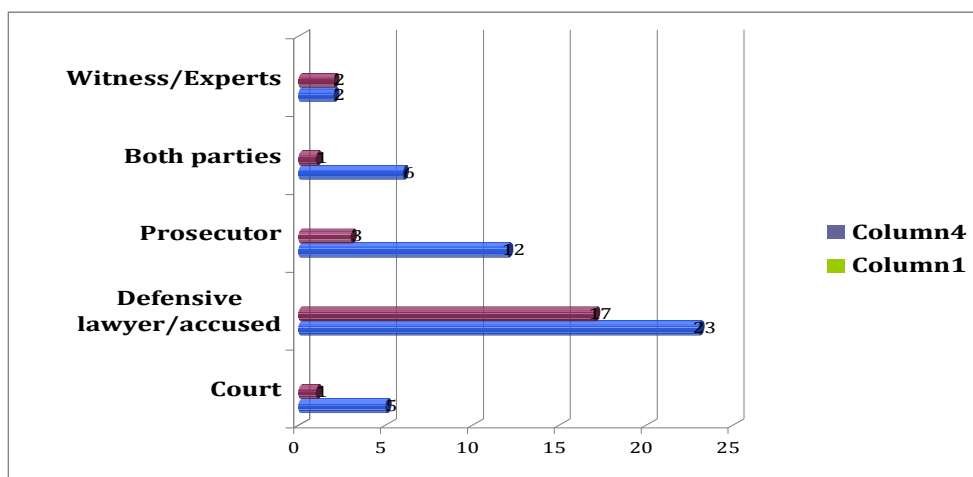
Based on the observation of trial sessions in the monitored courts, it results that the main reasons for the postponement of trial sessions were different such as:

- **Absence of the prosecutor in the trial session**, where in some cases, no reason was provided for the absence, which leads to the postponement of the trial session for another date.
- **Absence of the defensive attorney/accused**, which has been encountered in most of the cases monitored. Of the 60 monitored cases, it has resulted that the attorney/defendant has been absent in a total of 23 cases and in 17 of them, no reason has been provided for the absence (*see table below*).

The reasons for the absence of the accused in the trial sessions have varied and include: lack of notification for the trial session; failure to appear without any reason; failure to accompany from pre-trial detention premises or psychiatric hospital of the accused who wants to participate in his/her trial; failure to find the accurate addresses to notify the accused who are being judged under free status. In some cases, it appears that the prosecutor's office, when submitting the case to court, fails to provide an accurate address of the accused thus causing the postponement of trial sessions solely to ensure their notification through the engagement of other institutions.

- **Failure to form the judges' panel**, has been resulted in some trial sessions, where judges were absent due to family reasons or overlapping of schedule time of different trial sessions, primarily in those cases adjudicated by a panel of three judges.

*The table below provides a charter of absences that have led to the postponement of trial sessions, dividing them into justified postponement and postponement without any reason.*

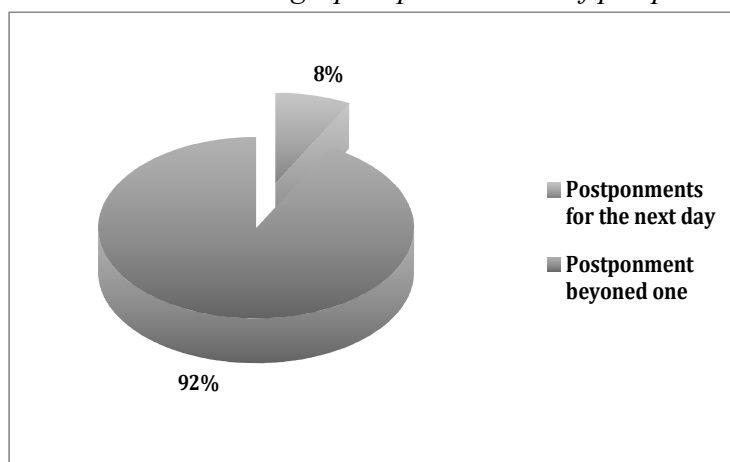


**b) Deadline for the postponement of trial sessions**

Article 342 of the Criminal Procedure Code establishes that: “When judicial review cannot be concluded in one single trial session, the court shall determine to continue it in the next working day. Further on, the court may interrupt the judicial review **only for special reasons, up to 15 days.**”

Based on previous monitoring by AHC as well as on this last monitoring, it results that this provision is not being implemented. This is primarily due to the workload of judges, especially in the Tiranë District Court, but also in other courts, as well as result of ineffective organization of work. In most cases, the courts have abided by the legal deadline for the postponement of the session within a deadline of 15 days without mentioning the special reasons required by the aforementioned article.

*The table below has a graphic presentation of postponements of trial sessions*



### **c) Some of the findings on the monitoring of some sensitive judicial cases**

- During 2011, AHC monitored continuously some sensitive cases, such as penal case No. 3 registered on 18.04.2008 regarding the disappearance of businessman Remzi Hoxha, which is being adjudicated in the Serious Crimes Court of First Instance.

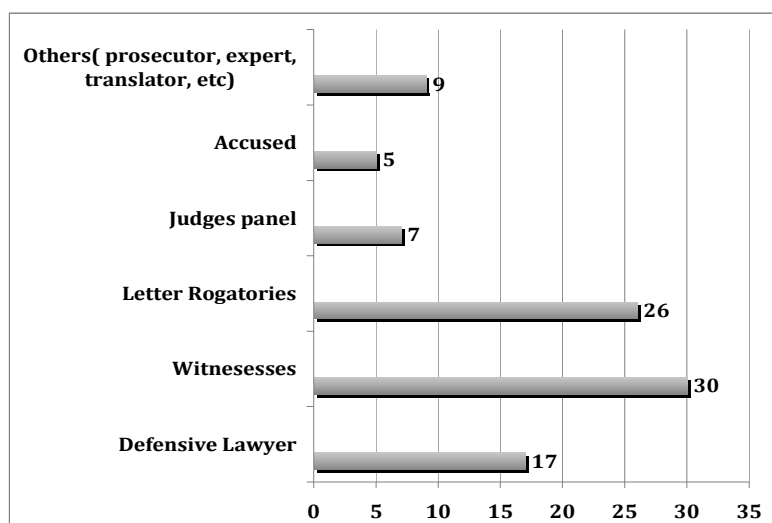
It is a problematic case as it has been lasting for over three and a half years in the court. Until the period of monitoring, it is still under adjudication, with a total of about 100 trial sessions. The reasons for this lengthy case are mostly the absences of witnesses, delays of letter rogatories, absences of attorneys, failure to constitute the judges' panel, etc. The case is sensitive because are accused persons who have worked in secret (intelligent) services of state and the attention of public opinion is very high on it.

In this case, it results that there is a high number of sessions postponed by the attorney, with or without a reason. It is to be highlighted that the judges' panel often accepts the attorney's request to postpone the session. Given that this is a lengthy case, it would be important for the court to conduct a more detailed verification as to the reasons presented for the postponement of the session. Every claim by the attorney, with object requesting postponement of trial session, should by all means include a proven justification regarding



the reason for the postponement (*for instance, in the case of requests for postponement when the lawyer has “conflicting” trial sessions, the request should be accompanied by the list of trials and a copy of the authorization where the attorney shall be present*).

*Below is a charter presentation of trial sessions in the mentioned case:*



Another problem revealed particularly in cases in the Serious Crimes Court, is the execution of letter rogatories that have led to the postponement of 26 trial sessions, looking forward to them. In order to improve the situation, the Ministry of Justice, as the responsible institution, should take measures to avoid unjustified “bureaucracies.” The Albanian state should use better its diplomatic means and exert its influence for a quick solution of the problem, as well as legal means established in ratified international conventions and mutual agreements. Namely, based on **Law no. 8498, dated 10.6.1999** “On the ratification of the Council of Europe Convention “On mutual legal assistance in criminal matters” and its additional protocol (Amended by law no. 9539, dated 22.5.2006), article 4 establish that “*On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents*”. Also, in the article 15 of this law are established the cases of urgent requests, providing that “*In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. ... Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities ...*”.

Also, law no. 8883, dated 18.4.2002 “On the ratification of the second additional protocol on the “Council of Europe Convention on mutual legal assistance in criminal matters,” specifies “deadlines” regarding mutual assistance that states provide to one another.

- Another important case is judicial case no. 35, dated 11.06.2009, registered with the Tirana Judicial District Court, known as the “Gërdec” case, which is adjudicated for the

past three years and there is yet a final decision. Even this case is very sensitive, not only for the damages that has caused in terms of human beings lives and real estate property, but also because the accused are high functionary of the state and the public wants to see how is reflected the criminal responsibility charged on them, how is implemented the constitutional right for being equal before the law. The justification of delays in this case, are considered by the judges with the large number of defendants (about 28 defendants), the large number of defense attorneys (about 30 attorneys), as well as the large number of witnesses and evidence deposited with the court.

AHC has monitored dozens of trial sessions of this case and, in spite of problems associating the case, it reaches the conclusion that there is a procrastination of trial sessions. We also reach this conclusion through an analysis of indicators of this case publicized in the web page of the court which examines the case. To date, a total of 197 trial sessions have been heard, with about 70 featuring the absence of legal representatives (defensive attorneys) of the accused or the accused themselves, thus leading to the postponement of trial sessions and about 36 trial sessions being postponed due to the absence of witnesses. Another part of trial sessions have been postponed to the next day due to the end of officials hours; this is particularly noticed in those trial sessions whereby the prosecutor's office has provided its final conclusions, which amount to hundreds of pages. Other reasons that have led to a postponement of trial sessions are the failure to constitute the judges' panel or when this has been requested by the prosecutor's office.

### **3. Recommendations for improvement of the situation**

- AHC suggests creating the possibility, as soon as possible, in order to provide electronic information with regard to addresses of the persons who will be summoned in trial; by the time when the electronic addressary has initiated to function for citizens and subject with aim to avoid the lengthy of adjudications.
- We suggest that the Ministry of Justice should collaborate through an agreement with the Albanian Post Office, in order to realize the notifications of parties wich must be presented before the court, d in the agreement those actions envisioned by the procedure law on the validity of notification.
- AHC suggests that should be taken the measures for a better organization of the courts' work, with aim to achieve the notification of parties in cases of delays, reflecting the reasons for delays or postponements, better use of courtrooms through a graphic of trial sessions, better publication of the calendar of trial sessions, etc.
- AHC suggests that the High Council of Justice and the Ministry of Justice should conduct inspections with regard to respect for the code of ethics, solemnity, the principle of publicity, the announcement of reasoned judicial decisions within a reasonable time, avoiding in this regard the obstacles set for the parties who wants to appeal the decision, enabling the access of citizens in judicial system, etc.
- We suggest that there be better coordination of work between the Courts and the General Directory of Prisons with regard to the appearance of defendants in trial sessions in order to avoid delays;

- Court Chairs, in cases of unjustified absences in trial session of prosecutors and defensive lawyers, should take the measures to notify immediately, respectively, the prosecutor's office head or National Chamber of Attorneys.
- AHC suggests that the Kavajë District Court should take measures for a better posting of trial session lists in order to ensure citizens' access, in order to improve the access of citizens in trial, and also make its internet page functional.
- We suggest that in complex cases, particularly those with numerous accused, defensive attorneys, witnesses, experts, etc., the HCJ orient judges to take efficient measures to eliminate procrastination and artificial postponement of trial sessions by not accepting unjustified requests for postponements. It should be revealed the responsibility of professionals who participate in trial, in cases when it is proved that the postponement of trial are made in interest of the party represented by them