

TRAINING PROGRAM DESCRIPTION
FOR THE
ALBANIA JUDICIAL SYSTEM
TRAINING/STRENGTHENING PROJECT

October 7, 1999

1 *PROJECT OBJECTIVES*

The Project's objectives are to strengthen the commercial law knowledge of Albanian judges and their ability to adjudicate commercial law cases and to improve the efficiency of operations in the administrative offices supporting the Albanian Courts

2 *COMMERCIAL LAW JUDICIAL STRENGTHENING PROGRAM*

A *Introduction*

Based on interviews with members of the Albanian judiciary and the results of the gap assessment, the Project has prepared a comprehensive training/strengthening program for Albanian judges consisting of three separate but related components. The program is designed to update the judges' current knowledge in Albanian commercial law and prepare them for more sophisticated commercial law litigation they may be adjudicating in the future. It begins with an overview of basic principles in Albanian commercial law and progresses to seminars covering advanced concepts in commercial law. The three-step program includes

- A monthly interactive seminar series covering basic Albanian commercial law principles and judicial reasoning,
- Seminars every third or fourth month covering more advanced issues in commercial law and EU harmonization, and
- Judicial training abroad

B Basic training in commercial law and judicial reasoning

The first element of the training program is a monthly seminar series designed to update the judges' knowledge in basic principles of Albanian commercial law and strengthen their skills in judicial reasoning. The topics will include

- Company Law
- Bankruptcy
- Secured Transactions
- Commercial Paper/Negotiable Instruments
- Commercial Contracts

Additional commercial law topics, or a second seminar on a particular topic, may be added if needed as the program progresses.

Each topic will be covered in a one-day seminar, from 10AM to 4PM, with five to eight judges participating each time. The seminars are conducted in English with translation to Albanian. It is estimated that 60 judges in total will participate in the monthly seminar series. The seminar format includes a morning segment providing an overview of the relevant Albanian law in each particular subject area, a lunch discussion of specific problem areas in the law as identified by the judges, and an afternoon discussion using case studies. Consistent with the preferences expressed by the judges responding to the gap assessment, this element of the program is almost entirely interactive, with judges participating in discussions about the relevant legal principles, case analysis and addressing any questions that arise.

The seminar series will be offered to district court judges in Tirana, Durres, Korca, Vlore, Gjirokaster, Shkodra, Elbasan, Kavaje, and Kruje. Some appellate level judges have also expressed interest in participating. The seminars will take place on two dates for each location, if needed, to accommodate the judge's schedules. The seminars will be provided on location or at the Project's legal training center in Tirana, varying with the preferences of the judges. For example, the judges in Elbasan have expressed their preference to travel to Tirana for the training, enabling them to focus on the seminar without interruptions that would occur if the program were conducted in their workplace. Similarly, the judges in Shkodra, Kavaje and Kruje also prefer to take the training in Tirana. The judges in Durres will alternate the training location between Tirana and Durres.

In the gap assessment interviews, the judges requested written materials as part of the training. The Project has prepared a package including a course outline, copies of the relevant law, and case studies for discussion that the judges will receive before the seminar for each topic. At the conclusion of the seminar series, the judges will then have a complete set of course materials they can use for their own reference and in their training of other judges within their districts. The overview of the legal concepts and the corresponding course outlines provide the

judges with the basic tools they need to strengthen and update their commercial law knowledge. The case study discussions build on that foundation, teaching the judges how to apply basic legal principles to the fact situations they may be faced with on a daily basis in their courtrooms. At the same time, the case study teaching method also improves fundamental judicial reasoning skills -- i.e., identifying facts, issue spotting, analyzing the law and the legal arguments, reaching conclusions and issuing rulings. The lunch discussion on problem areas in Albanian law helps identify the specific areas within commercial law that should be addressed in the advanced seminars using outside experts.

The judges interviewed in the gap assessment complained about isolation of the judiciary and a general feeling that their suggestions are rarely sought, let alone heard when the Albanian government and various others make so-called improvements to the court system. To create an effective program for these judges, the Project must be sensitive to their concerns and address them in the context of the training it provides. Accordingly, consistent with the results of the gap assessment, which showed clearly the judges' strong preference for interactive training, the monthly seminar series on Albanian commercial law principles is designed to encourage group discussion. Based on some negative experiences with prior training programs in which they have participated provided by various organizations, the judges also made clear in the gap assessment interviews that they would benefit most from training provided by persons having knowledge in Albanian law and practice and working knowledge of the civil law system. With these points in mind, the Project is providing the initial seminar series in small groups using in-house trainers (Erik Hutfeldt and Andrea Lako) on the first two topics, Company Law and Bankruptcy. These local counsel have the requisite civil law system experience and knowledge in Albanian law and practice. In fact, Erik Hutfeldt has working experience as a judge handling bankruptcy cases in a civil law system. The Project will also add one local expert, Mr. Yair Baranes, on the subject of secured transactions and other external experts on the topics of commercial paper/negotiable instruments and commercial contracts. The qualifications of the local trainers and the criteria for the short term experts are summarized below in section C.

Familiarity between the trainers and judges for the initial stage of the training program is important for several reasons. First, it establishes a strong working rapport between the Project and the judges, making group discussions more frank and meaningful. Because the case studies build on each other as the topics progress, using the same trainers also promotes continuity in the program and avoids unnecessary overlap. In addition, repeated contact between the judges and in-house trainers during the course of the seminar series provides the best opportunity for the Project to identify the most appropriate candidates for participation in the training abroad segment of the program. Moreover, the Project will have more credibility in promoting attendance for the advanced seminar sessions using the outside experts if the judges are already entrenched in the initial phase of the training program and are happy with it.

Seminars on the topic of company law have already been held for the judges in Tirana, covering registration of companies and general company law, with emphasis on founding and funding of companies, transferability of ownership, liability for company debt, corporate governance, minority owner protection, mergers, acquisitions and conglomerates. The Project has had positive feedback about the program from Tirana district court, stating that the company law seminar was very instructive and the scope of material covered was right on target. The judges also said they enjoyed the group discussions, which helped them resolve together some ambiguities with which they have been faced in interpreting and applying Albanian company law. Eleven judges participated in the initial sessions, with one judge returning to hear the seminar a second time. All who participated agreed that the day “flew by” and felt the group discussion format worked very well and provided them with practical knowledge they could and will use in their courtrooms.

The judges interviewed by the Project have been enthusiastic about participating in the training program. They acknowledge that strengthening in commercial law is needed now and is important for the future because it is the direction cases are taking in Albanian litigation. The seminars will be provided monthly for each location, with a different topic being covered each month, from September 1999 through at least May 2000. Judges will receive a course completion certificate at the conclusion of the seminar series.

C Qualifications of the Project's in-house trainers

The judicial strengthening seminar series in Albanian commercial law will be provided by attorneys Erik Huutfeldt, the Project Director, and Andrea Lako, the Project's In-Country Manager on the topics of Company Law and Bankruptcy. A local expert, Yair Baranes, Director of Iris-Albania, will help train on the topic of secured transactions. Mr. Baranas is the drafter of the Albanian law on secured transactions.

Erik Huutfeldt has been a practicing attorney in Norway and the United States for over fifteen years, having earned his J.D. law degree from the University of Oslo and his graduate law degree (LL.M.) from Harvard University. He brings to the training program extensive expertise in the area of commercial law as well as working experience as a judge with a civil law background. In addition to having many years of teaching and working experience in the area of commercial law, Mr. Huutfeldt also has a strong background in EU law harmonization.

Andrea Lako is a law graduate of the Faculty of Law of Tirana University and the Central European University Legal Department, Budapest, Hungary, where he earned a Master of Comparative Constitutional Law (LL.M.) granted by the University of the State of New York. Mr. Lako has extensive knowledge of the Albanian judicial system and civil procedure.

External experts will be added to the local training team for seminars in commercial paper/negotiable instruments and commercial contracts. The specific background criteria for these experts are

1 Negotiable Instruments/Commercial Paper

- Paying for goods with negotiable instruments, negotiation and collection of checks and drafts (i.e., the Albanian rules that parallel UCC Article 3 Negotiable Instruments and UCC Article 4 Bank Deposits and Collections)

2 Commercial Contracts

- Sales contracts and the process of selling goods (the Albanian rules that parallel UCC Article 2 Sales) and Letter of Credit (UCC Article 5 Letters of Credit),
- Borrowing and Lending Contracts, different forms of Loan Agreements including Revolving Credits, the Mortgage Documentation and other Security Documents,
- Leasing goods, consumer leases, financial leases and sale and lease backs (the Albanian rules that parallel UCC Article 2A Leases),
- Agency contracts, broker relationships, powers of attorney and proxies, and
- Shipping and Transportation contracts, Charter Parties, Bill of Lading (shipping and storing goods covered by documents of title (Warehouse Receipt, Bill of Lading) (the Albanian rules that parallel UCC Article 7)

D Seminars on advanced commercial law concepts and EU harmonization

The Project will host two seminars covering advanced commercial law principles, building on the foundation laid by the more basic Albanian commercial law seminar series. All judges in the district and appellate courts will be invited to attend, not just the judges participating in the monthly seminar series. These seminars will use short term experts from the U.S. and Europe, either individually or as a three person panel, to discuss within the subject areas (i.e., company law, bankruptcy, secured transactions, commercial paper/negotiable instruments and commercial contracts) how commercial law is evolving in the United States and the European Union and how these developments will affect what Albanian judges might expect in their courtrooms now and in the coming years in the context of commercial litigation.

The seminars will be held in Tirana for the convenience of the judges and to avoid problems with travel restriction limitations for the short term experts. A system for simultaneous translation to Albanian will be required. The first seminar will be held in December or January and will cover advanced issues in company law, bankruptcy and secured transactions. The second seminar will be held in April or May, covering advanced issues in commercial papers/negotiable instruments and commercial contracts. It is estimated that between 45 and 75 judges would attend each seminar, which will take place over one or two days and will be held at the Palace Congress Hall or Hotel Tirana or the Rogner Hotel.

The Project will also make arrangements for the seminar to include the Law Schools and the School of Magistrates on another day if those schools are interested. It is estimated that the short term expert(s) would stay in Tirana for between one and two weeks for each seminar. The Project will provide copies of the monthly seminar series course outlines to the short term expert(s) in advance of their travel to Tirana and will make all arrangements for the seminars.

E Judicial strengthening abroad

The third element of the judicial strengthening program coordinates with another project to send selected judges abroad, such as to the United States, to observe how commercial courts work outside Albania and its civil law system. The Project has approached World Learning in this regard. Matty Thimm, the Training Coordinator in Albania for World Learning, is very enthusiastic about the possibility of developing a judicial training program abroad for up to ten judges because the composite of judges involved in the Project fits well with World Learning objectives and selection criteria. If the first program is successful, Ms. Thimm indicated additional programs may be available for more judges to participate.

Most of the judges participating in the seminar series have expressed a strong interest in obtaining judicial training abroad and it is a natural follow-up to the seminars for the judges to observe commercial law courtrooms and judges in action in a forum such as the United States. Based on the trainers' repeated contacts with the judges participating in the monthly seminar series, the Project will be in a position to identify for World Learning, together with input from the chief judges, which judges should be nominated for participation in the training abroad program.

F Training in the law schools and School of Magistrates

The Project will offer to conduct its monthly seminar series for the law schools in Tirana, Elbasan and Shkodra and will also invite the law schools to attend the Tirana seminars in advanced commercial law concepts. Elbasan may discontinue its law curriculum within the next two years and as a result, may be less interested

in coordinating with the Project's training program offerings. The schools begin their fall semesters in October.

The Project will also approach the School of Magistrates, which teaches judges without bench experience who are full time students, about its interest in the commercial law training program when the new deputy director is appointed. The School of Magistrates will also be invited to the Tirana seminars in advanced commercial law concepts.

G Evaluation Criteria

Success of the commercial law strengthening program will be a measure of the extent to which the judges are able to apply the knowledge and skills learned in the seminar series to their daily judicial work as more and more commercial law cases enter their courtrooms. The judges and their supervisors are the best source of information on how the program has helped them. No simple methodology exists to quantify the degree to which a judge's judicial reasoning abilities improve or commercial law knowledge increases based on particular training. Nevertheless, the Project is able to evaluate the value of its training programs in concrete ways through follow-up discussions with the judges themselves and with the chief judges to whom they report and who monitor the caseload numbers and quality of rulings rendered. The Project will continue its frequent dialog with the judges and chief judges to obtain feedback about the training program, ways to improve it, and learn specifics about how the training has helped the judges improve their skills at work.

In addition, the Project will use evaluations to be completed by the judges at the conclusion of the training sessions as another means of measuring the program's value. The Project will distribute the course evaluations at the conclusion of each training session, review the responses and summarize them in written reports.

As the Project's training program gets more underway, the Roundtable Discussions with the donor community will be an additional means for evaluating the effectiveness of the training program in providing the judges with actual skills they can apply to their work.

3 *COURT ADMINISTRATOR TRAINING PROGRAMS*

A Assessment of training needs

The Project is now assessing training needs for the various administrative offices of the courts, which include court secretaries, the chief secretary/chancellor, archive personnel, budget staff, and the execution office. The company register office is currently being upgraded with the assistance of GTZ, so less help from this Project is required there. While assessing court administrators' training needs, the Project is also learning about other required improvements, unrelated to

specific training deficiencies, but desperately needed by the courts to run more efficiently, effectively and transparently. Without these concurrent improvements to the courts, the judicial system strengthening program cannot achieve maximum results. These areas include, among others, the court messenger system, general working conditions in the courthouses, courthouse and judicial security, and office/storage/archival space issues.

B Computer Skills Training

The court officials interviewed have identified computer skills training as a high priority item in the list of court administration training needs. Currently, most Albanian court offices do their work by written hand or manual typewriter. Courts in some districts now have a limited number of computers but they are rarely used. This low technology situation is about to change significantly.

The newly created Office of the Administration of Albanian Judiciary Budget (OAAJB) has proposed that the Albanian government fund the purchase of 120 computers this year and 150 more computers in the year 2000. The OAAJB anticipates that the first wave of computers will be installed by December 1999. The older computers now existing will be redistributed to districts with lighter caseloads and the new computers will be installed in the heavier workload districts. The OAAJB also hopes the government funding will cover the cost of software for the new computers. OAAJB does not have, however, nor does it anticipate getting government funding to cover the cost of computer training.

Final decisions concerning specific offices to receive computers have not yet been made. It is expected that the 36 budget officers will get computers as will the 36 court chancellors, and possibly some judges, secretaries, and the archives and execution offices in at least some districts. A large majority of those who will receive computers have no experience in using them and all will require basic computer skills training, followed by more specialized training in specific software for the budget officers. Secretaries will require word processing training and possibly scheduling program training.

The Project is working with the OAAJB Director to obtain specific information about the computers, their distribution, and the software that will be included and will coordinate efforts to obtain the required computer training. The Project is coordinating a basic computer skills training program to be provided by The Fultz School. Following the basic skills training, more specialized training in specific software will be provided. The training program would include an evaluation element where the users would be required to show their ability to perform basic computer tasks before continuing with more advanced software training.

C Execution Office Improvements

The Albanian court execution office is responsible for executing the final rulings of the judiciary so the rulings become enforceable judgements. The Albanian law grants broad powers to the execution office, but coordination with the police for assistance in enforcing the orders is a problem in many districts. As a result, most of the execution offices currently are not operating in a satisfactory manner, leaving the judiciary with very little power in a practical sense.

The Project is evaluating the enforcement difficulties in the execution office and will determine what that office needs to operate effectively. One element of the program may involve travel outside Albania to learn more about an operating jurisdiction's methods at work. World Learning is a logical connection for coordinating this type of program and has expressed interest in doing so. For example, four court administrators (i.e., the chief judge, chancellor, execution officer and budget officer) from selected districts would together participate in a training program abroad so they could work as a group to improve the administrative system in their courts, from filing and recording the cases as they come in to executing the final rulings and sending the closed cases to archives.

D Archives Training

The judiciary is organized with archives at each individual court and a central archive in Tirana. The working conditions and lack of space devoted to archives make well-functioning operations there very difficult. The Project has started evaluating the current archival system in the courts and, with the help of a short term expert, will develop a training program structured around the following basic elements:

- Archive system training to track cases from their initial filing date through the date they arrive at archival storage
- Computer software training to record, compile and compute statistics of cases and courts
- Modern filing systems for maintaining hard copies of all cases

The archive in Durrës has been modernized recently with new shelving and is a useful model for the archives in other districts. The Durrës archive is not computerized, however, so will also require training in further updating the archival system there. The training program will include a budget for expenses required to support the system improvements, such as expanding storage space, purchasing filing cabinets/shelving, computers and software and other basic

improvements to the archive localities. A system for evaluating the results of the archives training will also be developed.

A short term outside expert with knowledge of setting up computerized archival systems for courts will be helpful to the Project. The expert would provide a training session for the archive personnel in a central location such as Tirana and also provide more individual on-site assistance in organizing the archives in the various districts. The Project will provide more information about specific training needs and the timing the training will be needed after its evaluation of the archives is completed in the next two months.

E Budget Staff and OAAJB Staff Training

In addition to the computer skills training described above, the budget offices will need to be trained in how to draft a budget, obtain the relevant data, process the data, communicate the budget and use the budget in the most efficient way. A short term outside expert with knowledge of court budget preparation and budgeting software will be useful to the Project. This expert would provide training sessions for the budget officers in budget drafting and budget software and may also need to provide on-site support as the offices computerize their budget operations. This training would take place after the basic computer skills training is completed, which will not be before December 1999.

The budget officers will be receiving computers in December 1999 if the OAAJB proposal is approved and implemented. The Project will work with the OAAJB to design a training program and evaluation system for the training. A World Learning training abroad program is also being considered for the budget officers.

F Court Chancellor Training

The position of Court Chancellor is new – an upgrade of the former Chief Secretary position. The job description for Court Chancellor has not yet been finalized so the training needs cannot be identified specifically at this time. The Project will continue its dialog with the office of the Court Chancellor so an appropriate training program can be developed and implemented when the job requirements for the new position are determined.

4 *OTHER AREAS NEEDING IMPROVEMENT FOR EFFECTIVE JUDICIARY/ADMINISTRATIVE OPERATIONS*

In the course of evaluating the judiciary and court administrative offices, the Project has also identified other difficulties in the judicial system that infringe significantly on the court administrators' and the judiciary's ability to do their jobs. Without addressing these related issues in the courts, the judicial system strengthening program cannot fully achieve its objectives to improve adjudication and enforcement of commercial law litigation in Albania. The Project is

considering how the following problems might be remedied in conjunction with developing and implementing its training programs

A Court Messengers

Tirana district court has an 8000-9000 yearly case docket and only five court messengers charged with making cases known to defendants (i.e., service of process). The messengers have no cars, making timely service difficult. In addition, court messengers are paid poorly, opening the door for corruption. The Project will explore what solutions may be available and practical to solve the court messenger/service problem in Albania.

B Court Security

Currently there is no separate court security and judges must rely on police to maintain order in the courthouse. Police protection is scarce and unpredictable. Requests for a policeman to be posted near the judge's offices have been denied. Fights, threats and weapons are common in the courthouse. In Tirana, a large majority of the judges are women. Violence in the workplace is common. The Project will explore the possibility of improving court security. Improvements in security are also required for the court's execution office so the judges' rulings can be enforced effectively.

C General Working Conditions

In Tirana, there are two courtrooms shared by fifty judges. Space issues similar to Tirana exist in the other districts as well. As a result, hearings typically must be held in the judge's tiny offices and no security is provided. Under Albanian law, three judges (one judge, two assistants) must sit in trials and that quickly fills the room before the parties and witnesses manage to squeeze in. Interruptions are frequent because the judge's offices are accessible to all, so judges have little or no peace or privacy to get their work done when not holding trials or hearings in that space. The judges in most districts also must share their offices with the secretaries and assistant judges.

The Project is exploring the possibility of donor funding for additional buildings/space expansion at the courthouses to provide office areas separate from courtrooms. It is a high priority for all the judges and administrators to obtain more office space, storage and archival space. The space shortages clearly curtail the courts' ability to function efficiently.