



Ky projekt financohet
nga Bashkimi Evropian



QENDRA E SHËRBIMEVE
DHE PRAKTIKAVE LIGJORE TË INTEGRUARA
CENTRE OF INTEGRATED LEGAL SERVICES AND PRACTICES



Save the Children



INSTITUTE OF MIGRATION, DEVELOPMENT AND INTEGRATION

ANNUAL REPORT

The proposed project for the implementation of alternative dispute resolution through the mediation process, part of the sub-granting scheme of the project “Civic engagement for a functional judiciary system and access to justice in Albania”, funded by the European Union and implemented by Save the Children and the Integrated Legal Services and Practices, has begun its implementation on April 2018.

The main objective of this project is "Contribute to limit the negative impact of legal system functions, reduce human rights violations and ensure the availability and use of alternatives dispute solutions in law and practice" determine as its Indicator (Indicator 1 & 2)" Establishment of a joint working committee with 30 professionals "and “lobby for concrete solution/reviewed for alternatives for 10-15 well evaluated caseworks.”

In the final report of this project what IMZHI aims to present in the form of three key elements is:

- 1- IMZHI overview**
- 2- Project overview**
 - a. General description of the project.
 - b. Establishment of the working group and monitoring process
 - c. The process of information
 - d. Alternatives to improve the situation (action plan with alternatives)
 - e. Methodology
- 3- Detailed information on the mediation process.**
 - a. Legal bases and projections

- b. Principles of mediation process
- c. Protocols and procedures
- d. Recommendations

Through this report IMZHI aims to present a platform regarding the continuity of the effects of this project even after the end of its implementation.

Since the beginning, IMZHI has aimed at the integration of the responsible institutions not only regarding the concrete cases identification but also at the establishment of bridges for the cooperation in the process of dispute resolution of specific cases. Therefore IMZHI has decided to enter into a co-operation agreement with the National Chamber of Mediation as a public Entity responsible for the implementation of mediation procedures. Through this cooperation, IMZHI seeks to get closer to citizens in the process of informing them, but also in the process of providing and guaranteeing the most equitable and legal solutions, in accordance with legal requirements, the will of the parties, the law and especially the principles of human rights.

All cases referred in IMZHI's offices regarding dispute resolution through the mediation process will be directed to this institution by orienting them on the procedures to be followed.

In addition to this key agreement, through the working group set up during this project IMZHI has managed to establish key contact points in legislative and law enforcement institutions, in such a way that all cases referred to these institutions find a solution in the right time and manner.

1- IMZHI overview

Institute of Migration, Development and Integration, is an NGO registered with the Court of First Instance in Tirana as a new organization, which deals with the migratory movements as a new phenomenon in Albania and mainly deals with youth issues.

During 2014-2015 IMZHI had implemented 3 important national projects with the CSSA, the ABC Foundation and a UN (international project with UNHCR for the integration of foreigners in Albania). Migration Institute of Development is a member of the youth network throughout regional and international NGOs and takes part in all the events that are organized by these organizations. IMZHI contacts with important organizations like TASCOS, TAIEEX, Save the Children, World Bank, ITAP, Spain, Italy, Belgium, Kosovo, Albania REC, National Chamber of Mediators. Also this organization through its staff, participated in voluntary work within the country, Caritas, Red Cross, UNHCR and abroad, SNV project in each country in need. The center has people who own capacities and have important careers in various fields, especially in the field of youth and European integration.

IMZHI has just ended a successful project completed by ASCS and donor contract with USAID. IMZHI also has implemented a project for the integration of foreigners in Albania, with the financial support of UNHCR and now in 12 December, won another project with SCPA as a donor. IMZHI is part of Balkan Network on NGOs at TASCOS, IMZHI is also registered with ID PADOR EuropeAid ID:AL-2017-AMD-0907535641 for EU projects.

One of the representatives of the Centre, Ms. Amber Duka is Doctor in the field of Education and Deputy simultaneously. Dean of the Faculty of Education, University of Durres.

The study of migratory flows with the purpose of identifying their different problems to orient them as close to reality.

- Identify problems that result from these flows including:
- Movements within the Albanian territory (causes, problems and solutions)
- Albanian migration (causes, problems and solutions)
- Immigration in Albania (causes, problems and solutions)
- Awareness to live in a much cleaner environment
- Albanian youth education with work and education sense CULTURAL

Integration of the Albanian society towards European standards/global conducted through:

- Awareness of the Albanian society for environmental standards
- Approximation of legislation in accordance with these standards
- Training and capacity building needed to withstand EU membership
- Stimulating new element to these enlightened policies.

IMZHI as an NGO has competed to Besa Found, Soros etc.

With the staff that IMZHI has, contacts and experience they possess, we affirm that the Institute has the necessary capacity to implement important projects, in any field.

Institute of Development and Integration Migration is registered in Data- Base Commission in PADOR europium (has his number) to absorb EU projects.

We have applied in 3 projects in the European Commission, IDM and USAID and are awaiting contract ties.

IMZHI has also signed a Memorandum of Understanding with many Universities (TBU, UMSH and "Aleksandër Moisiu" University in Durrës), High Schools, various NGOs, the Prefecture of Tirana and many important Institutions in Albania.

2- Project overview

a. General description of the project.

The project itself is a reflection of analysis and data collection related to human rights violations that occur due to excessive use of coercive measures such as detention and imprisonment. Despite the reforms initiated due to the EU integration process, the opening of new detention facilities, the application of alternatives, and the presence of independent oversight, the current justice system seems to be challenged by a number of problems.

The elimination of the classic sentences given in our justice system to the most vulnerable categories of society, such as children and women, require a more effective approach to dealing with these cases. The project, through the provision of service to resolve these conflicts through Mediation as an alternative process for conflict resolution, in the presence of psychologists as a necessary link in the fair development of a trial process with pairs of children, minors or women, is a novelty indispensable in examining deviant cases in justice.

Through the establishment of contact points with mediators and psychologists at the respective district courts selected for the implementation of this project, the aim is not only to inform the citizens about the new alternative methods of conflict resolution but also their direct application

in solving these conflicts by cooperating not only with the parties in specific processes but also with the local justice institutions.

The project started its implementation in April of this year and included a duration of 8 months, in the targeted areas such as Kurbin and Permet.

During these months we have coordinated the work with legal experts, psychologists and monitors to look closely at the situation not only in law enforcement institutions in the areas targeted for the implementation of this project, but also in the field of informative meetings with citizens of these areas.

During the process of monitoring and cooperation with the institutions, we have managed to identify many potential cases to be solved by mediation without the need to approach the courts waiting for months for a solution.

b. Establishment of the working group and monitoring process

During his work through those 8 months IMZHI has worked on the creation of a working group consisted by professionals whom can help citizens on the target areas to solve their conflicts through alternative dispute resolution. At first our goal was the establishment of a working group of 30 professionals, in the end of this project the number of professionals in this working group committee has exceeded the goal set in the beginning, because IMZHI has in the end a group of 42 professionals in his joint working committee group.

This group has created the needed contacts and links to communicate not only with the citizens but with each other as professionals as well, in order to provide the needed legal aid and to orientate all those in need and conflict to a alternative dispute resolution.

Another task undertaken during this project was the observation of the situation in the Penitentiary Institution in Lezhe and Tepelene and in the Police Station of the respective cities (Kurbin and Permet), in order to make a survey through some forms, in which the convicted/detained in this institution could easily present the situation pointing out some of the crucial matters related to the provision of the legal aid, the process and the conditions not only in the legislative institution but in the law enforcement institutions as well (courts, prosecutor's offices, Police stations, Institutions of Criminal Offenses Execution etc.)

The summarized results are as follows:

• Penitentiary Institution of Lezha

From the meetings we had with the employees of the Penitentiary Institution of Lezha, we have managed to highlight the pros and cons that are faced in this institution during the day-to-day work of this institution, as a result the data we have gathered are as follows:

There have been 283 persons in this institution, 180 in prison facilities and 270 others have been transferred to Shkodra Prison as a result of reconstruction)

Criminal offenses of narcotics production and sale (73persons) and 35 convicted persons for the cultivation of narcotics are the offences that prevails this criminal offense are followed by crimes against property (theft), illegal possession of weapons, etc.

- 97.6% of them state that the right to speak as free speech is guaranteed.
- 2.4% deny that this right was guaranteed and/or that the right to speak was guaranteed only in the first sessions but without given any importance to their words by the court.

- 7% of respondents claim to have been victims of violence at the premises of the IECD, 93% denied being victims of violence
- Regarding their right to a fair legal process and protection; 93% of respondents admit that alternative advocacy protection was offered to them and 7% deny that this right was offered.
- 69% of them state that they did not have a financial opportunity to secure themselves and 31% of respondents admitted that they have had financial possibilities to privately provide legal protection.
- Asked about the number of people per cell the results of the survey is that there were usually 5 convicted/detained in one cell.

- **Penitentiary Institution of Tepelena.**

From the monitoring carried out in the Institutions of Criminal Offenses Execution in Tepelena, the results obtained from the monitoring team have created the basis for concretizing the work of legal advisor by highlighting in the form of statistics the problems encountered and the current state of the conditions in these institutions. In the Tepelena Prison, it was noted that the category of crimes for which they were convicted are mainly due to "Narcotics Trafficking and Production", "Murder", "Theft in Qualified Circumstances" and the rest in a distant percentage.

- 77% of them state that the right to speak is guaranteed.
- 16.1% deny that this right is guaranteed and 7.14% claim that the right to speak was guaranteed only at the first sessions but without giving any importance to their words in the court.
- 5% of respondents claim to have been victims of violence at the premises of the IECD, 93% declare that they have been victims of violence and about 2% of them testified to being a witness to the violence situation.
- Regarding their right to a fair legal process and protection; 53.57% of respondents admit that they were offered alternatives to advocacy protection, and 49.43% deny that this right was offered.
- 53% of them state that they did not have an economic opportunity to secure themselves legal protection; 11% show high economic difficulties, so in total 64% of respondents present economic difficulties and claim that they only provided legal protection through debts and assistance from their family members, on the other hand only 36% of respondents admit they had economic opportunity to privately provide legal protection.
- When asked about the number of people per cell from the results of the survey, in average, one cell has 5 convicted/detained.

- **From the Monitoring carried out in the Police Station of Permet.**

Out of the 23 respondents in the Police Station of Permet, it was noted that the category of crimes for which they were arrested are due to "Trafficking and Production of Narcotic Drugs", followed by Cultivation of Narcotics, Thieves and Domestic Violence, while other criminal offenses were in distant proportions.

- 100% of them state that the right of free speech is guaranteed,
- None of 23 respondents claim to have been victims of violence
- Regarding their right to a fair legal process and protection, all the respondents admit they were offered the opportunity of free legal aid by the court. 78% of them have used this right and 22% of them had chosen to get a private lawyer.
- 83% of them state that they did not have any financial opportunity to assure themselves a private lawyer and 17% claim to have paid for a private lawyer off their debts from family and relatives.

- When asked about the number of people per cell from the results of the survey, in average, one cell has 3 persons.

c. The process of information

During the period of implementation of this project April-December 2018 IMZHI has achieved to organise:

- **10 meetings** in order to form the joint working committee group with a targeted group at first with 30 professionals (first Indicator of the project), and finishing the project with **42 professionals as part of the joint working committee group**, so IMZHI in the end has exceeded the goal and reached the goal. (Activity A 1.1)
- **5 periodic meetings** dedicated to project activities and developments in the criminal justice reform as the Activity A.1.2 of the Activity plan provided in function of comparative research of the legal and administrative practices of use of mediation and alternatives to detention.
- More than **15 monitoring visits** in the detention and pre-detention facilities.
- **121 monitoring forms** gathered from the monitoring process.
- **More than four On-the-job workshops** with educational staff and pre-detention dedicated to identified cases as per awareness raising actions and campaigning.
- **Six Open days with key stakeholders** in order of the coordination and networking aimed at identifying and disseminating best practices
- **Two conferences** as final activities.

Throughout the implementation of this project all those activities have been used as a process of information with main stakeholders, informative sections and round tables with the institutions representatives focusing in highlighting all the potential cases towards alternative dispute resolution and building bridges of collaboration between all the instances and citizens to guarantee a fair legal process, access in justice and protection of human rights.

At the end of this project, the staff has identified dozens of potential cases which can be subject of alternative dispute resolution, and 14 of those cases have been specified during this project, mostly cases regarding domestic violence and property conflicts. What has been a strong element of information during the implementation of this project was related to criminal conflicts which can be solved through mediation, not only as a matter of effective time and costs but mostly because when solving this conflicts through mediation, the person has no penalties in his/her criminal records.

All these links as well as the medias appearance through the interviews of the mediator of his project, have created a base of information as well as a door to refer to in any possible case of conflicts.

d. Alternatives to improve the situation (action plan with alternatives)

The proposed Action is formulated to address the major objective of the call: issues of Access to Justice and respect for Human Rights and for vulnerable and marginalized people, specifically to reach out to the most vulnerable categories:

The action integrates **public interest litigation** and **human rights advocacy** as an area worth being strengthened and consolidated in Albania. The formulation of action objectives and related components reflects the basic assumption that a continuous pressure from non-governmental actors

(local and international) seems to be essential as a driving force to push the Albanian government and specific authorities to make decisive steps to adhere to its human rights obligations.

The action offers solid chances for sustainable changes in the way detainees are treated through consolidating the role and instruments in hand of CSOs replicable and persisting in the short and longer term future.

The legal situation in the institutions for the execution of criminal decisions in Albania is as follow:

- Detention as a form of punishment remains one of the key concerns with regards to human rights violations even for light violation of law. In direct breach of the constitutional principles of presumption of innocence the courts are “feeding” up the pre-trial. This is due to the lack of efficiency of investigations and the easy-way of judges to imprison individuals who do not necessarily present a threat for public safety and security.
- Excessive use of pretrial detention and lengthy delays in trial deny timely justice to the accused as well as his/her victim(s), raising overcrowding and case overload (these supported by high recidivism rates ranging from 30% up to 80% of prison population).
- Actually, overcrowding amount over 35% of the prison capacities and accommodation capacities are for around 3.650, according to European standards. A huge majority of these under-trial prisoners are poor. They are denied bail for want of monetary security. Their trials take years. Often, they have no lawyers, live in bad conditions, do not have access to adequate medical care, and are likely to be tortured, exploited or be subject of inter-prisoner violence
- Beyond obvious human costs of imprisonment or obvious need of taking action of necessary measures for the resettlement of rights on civil trails, the legal benefits for citizens take time.

e. Methodology

The project, has the overall objective to promote access to justice for vulnerable categories. The project covers different overall distinct but interdependent action lines which respectively are centered on service provision, litigation methods and advocacy and capacity building. The services provision involves a line of activities which through monitoring visits aims at providing relevant services and legal aid.

The project will be extended to three levels:

- **The first level** where we have intervene is wider community who will be aware of restorative practices and mediated through awareness-raising activities such as open meetings mainly in rural areas;
- **The second level** of intervention consists in increasing the capacity of the public administration, civil society organizations and the business community who are in frequent contact with citizens who will need to approach the Institute for obtaining this service and the level
- **The third level** has to do with the growth of knowledge, exchange of experiences and building bridges of cooperation of the Institute with law enforcement institutions (the courts, police, prosecutors, etc.) in order to have as successful practices of restorative justice and mediation in the mentioned regions that will help solve many of these issues in the future.

The basic assumption is that more reliable and documented information leads to better publications, which will strengthen the expertise of courts working in the field and in turn improve

the access to justice. The final result is an improved legal framework, increased transparency and good-governance in places of detention and better services for those at most needs; analysis of legislation and policies.

- The Project has involved many stakeholders working in coordination to implement the project at the national level, with shared resources.
- This Project has also been used as a tool to strengthen the role of civil society in promoting human rights, build service-providing skills and capacities among professional staff that serve the detained population. Focusing directly to the inmates (through legal services and public interest litigation and media campaigning).The project implementation foresees continuation of intensive collaboration with actors from different societal groups and positions
- IMZHI personnel is composed of a Team, which has approached solution finding in a team-work approach. The General Practitioner, psychiatrists, Psychologists, Social Workers, Legal Advisors are members of the services provisions, as well as coordinators for different activities, or just one of the implementation team in other ones.

For this reason the project has planned open meetings with the community in the units of local government (selected as units that have more problems in terms of the development of their economic and social) to increase its capacity cognitive the process mediation and restorative justice, stimulate his skills to lobby and advocate for the respective institutions of law enforcement to implement the law on mediation and restorative justice; round tables, seminars and monitoring activities at courts to enhance knowledge and become aware of judges and other employees of the law on the existence and crucial role of mediators and training with different groups of stakeholders (civil society organizations, chambers of commerce, institutions , schools, etc.) to enhance their skills to help the community mediated them. Part of these activities will be the National Mediation Room and Bar, where a representative is himself a member of our staff.

To meet and better coordinate the implementation of the above activities, IMZHI will strengthen institutional cooperation with the District Courts, Prosecutors, the Regional Directorate of State Police etc.

3- Detailed information on the mediation process.

Mediation is a dynamic and flexible process. Mediation is a non-binding procedure in which a neutral intermediary, called the mediator, assists the parties in reaching a settlement of the dispute. Historically, legal disputes have been resolved either by litigation or by arbitration. Mediation (a form of ADR) is a new way to settle litigation disputes. The purpose of this thesis is to introduce mediation as a method of alternative dispute resolution and point out its potential in the framework of justice reform in Albania.

Mediation and other alternative dispute resolution (ADR) processes have been increasingly relied on by many courts to increase access to justice and to mitigate the limitations of the formal adjudicatory system. Mediation has proven to be popular due to its potential to resolve disputes in a timely manner without incurring prohibitive costs, thus ameliorating two key constraints inherent in the conventional adjudication process.

Many of the approaches in mediation are influenced by the customs and norms that exist in different cultures. Mediation styles vary not only among individual mediators but also among countries because of the cultural and societal influences within the broad institutional framework. The styles and approaches adopted by individual mediators are likely to differ depending on their background, training and personal values.

This project focuses on appraising the mediation model against vs. court litigation of increasing this way the access to justice. Taking into consideration the situation of the judicial system in Albania, the filtering of the vetting that is passing through a very strict valuation the entire judiciary, the paralysis of the main courts in the country, the Constitutional Court and the Supreme Court, the alternative solution of cases through mediation as far as the law allows is a safe parachute for those who want a fast, effective and cost-effective solution.

Mediation, a consensus-based process, again offers a way to attenuate this drawback of litigation. Apart from reducing the common barriers to access to justice, mediation is well-known for increasing access by giving the disputing parties greater participation. Another common repercussion of litigation is the damage it often causes to the relationship between the litigants.

In many Countries, Mediation and other alternative dispute resolution (“ADR”) processes have been increasingly relied on by many jurisdictions to mitigate the limitations of the formal adjudicatory legal system and to enhance access to justice. Mediation in general has been actively promoted and lawyers and the public have been introduced to mediation as a useful means for resolving disputes before going to trial.

Although in Albania since 2013 the National Chamber of Mediation has been actively involved in the awareness campaign, the situation of this profession compared to other countries leaves much room to discussion, referring to referral statistics from courts or lawyers, Albania is still far from the parameters of other states that have supported and embraced this alternative.

For this reason, what this project aims to show is the strengths and potential of this alternative solution as a powerful tool to help the individuals and the community in the framework of the justice reform. Furthermore the goal is to work also as a support mechanism for courts to reduce the countless number of cases filed in this institutions as well as to increase the efficiency of judges' work and increase the quality of their decisions.

a. Legal bases and projections

Alternative resolution of disputes through mediation are regulated by Law in Albania, through Law No.10385 date 24.2.2011, "*For Mediation in Dispute Resolution*", as well as in the legal provision in the Code of Civil Procedures (article No.25), Article No.59 & 284 of Code of Penal Procedures, Article No.137 of Family Code as well as all the legal provision in the Law No.37/2017 “Code of criminal justice for juveniles”.

b. Principles of mediation process

- Equality of the Parties
- Confidentiality of impartiality
- Transparency, flexibility and efficiency of procedures
- Free will of the parties in the process.

c. Protocols and procedures

IMZHI has signed an agreement with the National Chamber of Mediation for further cooperation not only regarding the continuous training of the working group established during this project, but also in order to offer a fair and strong legal protection to the citizens who are part of any kind of conflict. This can be made through the continuous collaboration of stakeholders with this Entity to refer all the potential cases to the mediators or in order to provide those institutions the list of mediators in each district. All these connections provide not only a fair access to justice but also guarantee the further application of the effects implemented during this project even after the deadline.

d. Recommendations

What we Aim is:

- Providing assistance information regarding new alternatives resolution disputes as a new form of access in justice.
- Social Justice Advocacy, acting with and acting on behalf of the under-represented groups of needs, helping them overcoming barriers and providing solutions through mediation, lobbying and advocacy.
- Rehabilitation services and programs for vulnerable groups, provided by strict collaboration with court's chairman's, judges, lawyers and all stakeholders.
- To increase the trust of community members on their ability to access their problems and find proper solutions by approaching the Institute of Migration Development and Integration
- To build the environment to offer justice restoration opportunities to the individuals that benefit via the cooperation with the respective institutions; building up institutional facilities towards a more effective transparency and better institutional performance;
- To help stemming governmental and justice-sector corruption in the mentioned regions by
 - a) Having the procedure as short as and realistic ;
 - b) Strengthening the role of the local institutions in the above-mentioned effort.
- Increasing civic engagement for the resolution of problems related to justice by lobbying to promote local institutions and to increase their participation in the treatment of such problems.
- Increase the ability of lawyers, judges in mediation and restorative justice practices by organizing various round tables, trainings, workshops, etc .;

In order for the system to comply with European standards and positive experiences from European countries, such needs call for concerted actions: combining legal and practical measures to reduce imprisonment rates (thus overcrowding and recidivism); with more knowledge and awareness on preventive policies and society benefits (through use of alternatives to sentencing).

This offers a window of opportunity for the local actors (non-governmental organizations) on being more active and advocating for sustainable changes. Due to such experience civil society actors continue to help address the major concerns identified inside prisons, acting as a bridge among state and prison population, and contribute to awareness raising about the current violations of basic rights and standards in detention, and fostering human rights initiatives in Albania

Ineffective and inappropriate implementation has also undermined the rule of law in Albania. In a reported overcrowded system, where this is of a structural and systematic nature, opening of newly built penitentiaries may not be the answer (especially in a economically poor country as Albania where such action proved to be expensive, temporary and ultimately an ineffective solution).

Preliminary results of an ongoing IMZHI/RCT survey in places of detention or courts, is showing a problematic situation in almost any of the 21 penitentiary institutions and in our civil court in different districts of the country.

With regard to access to justice, developments are made into introducing the Legal Aid Commission (yet in need of mechanisms of functioning); the mechanisms for monitoring trial processes have improved due to extensive visits by independent monitoring authorities and civil society; with regard to prisons, the probation service has started to operate but application of alternative sentencing by the judiciary remains slow;

This is where IMZHI has intervened, through new offers of alternative resolution of disputes such as Mediation in collaboration with National Chamber of Mediators in Albania.

Two decades after the transition from communism, democracy in Albania remains fragile. As the country makes further formal steps towards Europe, important democratic deficits remain. The issue of access to justice remains a specific concern of international community reports on Albania while it becomes critical with regard to persons deprived of their liberty. Access to Justice and the strengthened contribution of civil society organizations in this area are clearly formulated in the Partnership Document of Albanian with European Commission.

Some of the recommendations that we present are:

- Establishment of the working group.
- Updating of its members.
- Collaboration of the working group with National Chamber of Mediation.
- Making the list of mediators available at the respective institutions.
- Identifying potential cases for mediation solutions.
- Raising awareness for citizens
- Raising awareness through written and visual media
- Training by DHKN of the members of the established working group.

This report is produced by IMZHI in the framework of the project ***“New Alternative Resolution”*** part of the sub-grating scheme of the project Civic engagement for a functional judiciary system and access to justice in Albania, funded by European Union and implemented by Save the Children and Center of Integrated Legal Services and Practices.

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