

authoritarian countries, as long as we may say that the focus of the political incumbents has shifted increasingly toward the development of sophisticated informal/clientelistic practices to “control” the outcome of the election and to secure their grip on power.

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The revaluation proces in Albania during 2016–2021

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Abstract

The constitutional reform related to the system of justice realized in 2016 in Albania, was welcomed with a positive enthusiasm by all stakeholders, civil society, business groups, including the political class who voted for this reform unanimously. One of the goals of the implementation of this reform is not only the restoration of new justice institutions and the strengthening of existing ones but above all the re-evaluation of all judges and prosecutors who are part of the judiciary in three main aspects: - asset valuation, a background and integrity check to discover the links to organized crime and a qualification assessment. The total number of all judges and prosecutors in the Republic of Albania is over 800 subjects, starting from the courts of the first instance and the prosecutor's offices near them to the Constitutional Court. The re-evaluation process is carried out by two new constitutional institutions that are established and function for a transitional period, the Independent Qualification Commission (IQC) as a first instance with a mandate of 5 years, and the Appeals Commission (AC) as a degree second with an 8-year term.

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More than four years have passed since the beginning of the activity of these two institutions and the results they have given are very significant when almost half of the entire body of veto magistrates has not gone through this process, while a considerable number of judges have resigned. On the other hand, many constitutional and legal issues have arisen concerning the vacancies created in the Constitutional Court, the High Court, and other judicial and prosecutorial bodies, the quality of the new magistrates who will become part of the judiciary, and meritocracy or not by those magistrates who have stayed in the system to those who have left. The results provided so far by the Qualification Commission, the Appeals Commission have increased public confidence in the cleansing of the judiciary by judges and prosecutors who do not deserve to be part of the judiciary, but at the same time there have been delays in litigants, to get a faster and better service due to vacancies created in the system and the loss of real independence that must demonstrate magistrates who have not yet been re-evaluated.

For all these results that have been produced so far, it is necessary to be careful that the cleansing of the judiciary by magistrates who do not deserve to be part of this system does not create undeserved subjective discrimination and at the same time go in the election as soon as possible of new members of the judiciary with persons who do not have the necessary qualifications which would seriously affect the quality of the judiciary in the Republic of Albania.

Keywords: constitutional reform, re-evaluation process, judiciary, Independent Qualification Commission

I. Establishment of the Independent Qualification Commission and Special Appeal Chamber

The constitutional reform related to the system of justice adopted in 2016 in Albania, was welcomed with a positive enthusiasm by all stakeholders, civil society, business groups, including the political class who voted for this reform unanimously. One of the goals of the implementation of this reform is not only the restoration of new justice institutions and the strengthening of existing ones but above all the re-evaluation of all judges and prosecutors who are part of the judiciary in three main aspects: - asset valuation, a background, and integrity check to discover the links to organized crime and a qualification assessment. The total number of all judges and prosecutors in the Republic of Albania is over 800 subjects, starting from the courts of the first instance and the prosecutor's offices near them to the Constitutional Court.

The re-evaluation process is carried out by two new constitutional institutions that are established and function for a transitional period, the Independent

Qualification Commission (IQC) as a first instance with a mandate of 5 years, and the Special Appeal Chamber (SAC) as an appeal body with a 9-year term. Four and eight years have passed since the beginning of the activity of these two institutions and the results they have given are very significant when almost half of the entire body of veto magistrates has not gone through this process, while a considerable number of judges have resigned (Baldwin, John. 2000). On the other hand, many constitutional and legal issues have arisen concerning the vacancies created in the Constitutional Court, the High Court, and other judicial and prosecutorial bodies, the quality of the new magistrates who will become part of the judiciary, and meritocracy or not by those magistrates who have stayed in the system to those who have left.

The results provided so far by the Qualification Commission, and the Special Appeal Chamber have increased public confidence in the cleansing of the judiciary by judges and prosecutors who do not deserve to be part of the judiciary, but at the same time there have been delays in litigants, to get a faster and better service due to vacancies created in the system and the loss of real independence that must demonstrate magistrates who have not yet been re-evaluated. The purpose of implementing this reform is not only to meet one of the standards related to the integration of this country in the European Union but also to increase the quality of service in terms of ensuring the fair justice in favor of citizens and business groups. It remains to be seen how this reform guarantees these goals with a positive character, based on the results that have been produced during these four years, as well as on what is intended to be achieved in the future, for its final implementation. (Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, date 21. 21.10.1998," Constitution of the Republic of Albania).

The biggest judicial reform since the fall of communism, a good example for the rest of the Western Balkan states that are in the process of the European integration and fearless fight against the corruption and organized crime – that is how the experts and the European diplomats have been referring to the judicial reform that started in Albania in 2014 (<https://europeanwesternbalkans.com>). The assistance of European Union and USA experts who have assisted in the strengthening of the judiciary bodies in Albania after the fall of communism through OPDAT, USAID, and EURALIUS programs, have seen that beyond the various legal reforms and promises taken by the judiciary itself legislative and executive, the increase in the independence of the judiciary, the professionalism, and honesty of justice officials has left much to be desired, despite flagrant cases or numerous complaints from citizens and business groups. (Law no. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania").

In early 2017, just six months after the adoption of constitutional amendments related to justice reform, the United States Embassy revoked non-immigrant visas for some Albanian judges and prosecutors after concluding that these officials did not qualify for these visas.

The US Embassy took this action ahead of the expected vetting process, which will assess the links of certain officials to corruption, as well as in response to a case involving flagrant abuse of an official visa by a high-level prosecutor and his wife, which led to the revocation of their visas (<https://www.droni.al>). This stance of the United States Embassy was an alarm bell that showed that constitutional and legal changes would not just stay on paper, but would bring the long-awaited changes to cleanse the judiciary of corrupt judges and prosecutors. The temporary re-evaluation of all judges and prosecutors (vetting process) has advanced steadily, continuing to produce tangible results, hence meeting the condition for the first IGC.

Under the aegis of the European Commission, the International Monitoring Operation has continued to oversee the process. More than 286 dossiers have been processed thus far, resulting in 62% dismissals, mostly for issues related to unjustified assets or resignations. (<https://ec.europa.eu>). During the COVID-19 lockdown period, the vetting institutions have continued to perform a number of important investigative activities in remote modality. The vetting institutions have resumed public hearings in June 2020. Albania has some level of preparation in the fight against corruption. Albania has continued its efforts towards the establishment of a solid track record on investigating, prosecuting and trying corruption cases (Law no. 95/2016 “On the establishment and organization of institutions to fight corruption and organized crime”. Official Gazette no. 194, date of publication 20/10/2016.)

II. The vetting process in practice

The vetting process started its activity in 2017. In June 2017, IQC and KPA were constituted, and only at the beginning of September 2017, they started their activity for those charged by the Constitution of Albania and the law. (Study on access to justice in Albania, UNDP, 2017). Being granted the candidate status in 2014, Albania introduced constitutional reforms to open the judicial reform process. The main goal of such changes has been to strengthen the judicial system's independence, to increase the system's effectiveness and the public trust in justice. The goal has planned to become a reality through a two-steps process:

- a re-evaluation of the existing judges and introducing and establishing the new self-governing judicial and anti-corruption institutions.

- all judges and prosecutors have been vetted in three main aspects: the re-evaluation of assets, background, and integrity check to discover the links to organized crime and a qualification assessment. The process has been led by the newly established Independent Qualification Commission (IQC) and the Appeal Commission (<https://europeanwesternbalkans.com>)

Many difficulties have been encountered in this process, starting from the constitution of the vetting bodies. Beyond the support of international partners, the new judicial vetting bodies were adopted on June of the 2017 parliamentary elections, through a broad political consensus. The approval was made with a long delay, as well as through the last-minute compromise, where the two main political parties gained indirect benefits by avoiding the initial principles on which justice reform was formulated.

The selection of vetting structures was done through a tacit party consensus, where at least half of their staff represent the minimum to average standards of professionalism and prestige in the justice system (<https://njihreformennedrejttesi.al>). The reform of the legal framework of the justice system took place in a relatively polarized political climate, which led to the simultaneous disapproval of the first seven organic laws of the justice system. (<http://www.osfa.al>). An appeal to the Constitutional Court against Law no. 84/2016 for constitutional amendments that define the vetting process and a temporary suspension of this law's implementation by the Constitutional Court, can be considered as factors that caused the delay in the establishment of the Vetting Institutions. The Constitutional Court rejected the request for the unconstitutionality of this law with the Decision no. 2, dated 18.01.2017 (<http://www.osfa.al>).

In early 2017, just six months after the adoption of constitutional amendments related to justice reform, the United States Embassy revoked non-immigrant visas for some Albanian judges and prosecutors after concluding that these officials did not qualify for these visas. The US Embassy took this action ahead of the expected vetting process, which will assess the links of certain officials to corruption, as well as in response to a case involving flagrant abuse of an official visa by a high-level prosecutor and his wife, which led to the revocation of their visas. (<https://www.droni.al>). This stance of the United States Embassy was an alarm bell that showed that constitutional and legal changes would not just stay on paper, but would bring the long-awaited changes to cleanse the judiciary of corrupt judges and prosecutors.

The transitional re-evaluation of judges and prosecutors, otherwise known as vetting, is a very important but also complex process as it is an extraordinary and transitional in the reform of the justice system that will be carried out only once, so it has a historical significance (<http://www.osfa.al/>). The vetting institutions

are Independent Qualification Commission (IQC), the Public Commissioners (PC) and the Appeal Chamber (AC) - are working under the oversight of the International Monitoring Operation (IMO), deployed by the European Commission in cooperation with the United States of America (<https://ec.europa.eu/>). Getting out of the system of corrupt and professionally incompetent judges is one of the greatest achievements of the Justice Reform. Many who desperately thought that their complaints against corrupt prosecutors and judges would never be heeded and that they would remain in undeserved public office until the end of their term, with justice reform and the vetting process, this skepticism gets the answer it deserves. We can say that the effects that this process is producing on 70% of the dismissed persons have been positively received by the public opinion, including experts and legal professionals, which can be said that the re-evaluated process is on the right track regardless of the number of judges, and prosecutors who have been verified in a year (*the process could have been faster, but it is still producing results that give credibility to vetting bodies*).

The constitutional amendments made to the Constitution of the Republic of Albania in 2016, for the establishment of bodies for the re-certification of judges and prosecutors with transitional effect, in terms of international constitutional law are original and there is no second example that has been applied in the same way in other countries, including those of the Balkans or Eastern Europe. (Law no. 115/2016” On the governing bodies of the justice system “. Official Gazette no. 231). The failure of justice reform undertaken in Serbia during the period 2006-2010, where about 900 judges and prosecutors who left the justice system due to vetting were returned by the Constitutional Court decision was an example of applying differently a reform to the justice system (<http://avokatia.al/revista/19-avokatia>).

Thus, the establishment of temporary vetting institutions was considered necessary to be provided directly in the Constitution to avoid political pressures and any other pressures that conflict with interest with this reform that is being implemented. If the same reform had been envisaged in the organic laws, the risk of undermining this reform to fail would be many times greater. To contribute for increasing public confidence during the process, it is estimated that better transparency of the vetting bodies will help in this regard. Also, for transparency to the public, during the hearing, the rapporteur or the trial panel must respect the principle of confidentiality. The principle of “tools” equality is an element of “fair trial” extensively elaborated in the jurisprudence of the Strasbourg Court. This principle includes the right to give a reasonable opportunity to the party to present its version of the case, realized through the three main minimum requirements:

- the right to present evidence;

- the right to challenge the evidence against the subject of vetting;
- the right to present arguments about the case.

The second claim is closely related to the principle of adversarial proceedings, which means the right of the party:

- to get acquainted with the evidence and the process;
- to comment on the other party’s evidence (<https://www.osfa.al>).

In some decisions of IQC has been noticed that refusal to take the evidence required by the subject of re-evaluation, such as the appointment of an independent expert, the summoning of witnesses, etc. Specifically, this was observed for the decisions of the IQC for the subjects B.T; R.G; D.R; E.M; where it turns out that only the legal basis of the refusal is cited, but it is not argued why we are in front of the causes and circumstances provided in this provision (*ibid*). The Public Commissioner has an essential role in the integral implementation of the re-evaluation process and in guaranteeing the highest possible standard of investigation, trial, and decision-making, as well as in the protection of the public interest. By the end of 2018, the Public Commissioner was not to a real test, mainly due to the small number of entities vetted and the permanent assistance of the IOM.

Thus, in 16 complaints made by public commissioners, in 38% of cases, it was the initiative that came in the form of a recommendation from the IOM that led to the official complaint by them.

In 62% of other cases, the initiative to make a complaint to IQC was because of public commissioners themselves. Among the most sensational initiative of public commissioners are the appeals against the leaders of the Supreme and Constitutional Court (<http://isp.com.al>).

These concerns and not only are some of the perceptions of public opinion and the political class that the decisions of IQC and KPA do not treat in all cases with the same standard different cases and prosecutors who have committed property violations, where some go through the process of vetting and some not.

KPC has a five-year term that expires at the end of August 2022. This is a real concern because three years and two months have already passed since the beginning of its activity. While the number of cases it has reviewed is only 35% of the total number of judges and prosecutors to be re-evaluated. (In the part of the Annex of the Constitution, Article C)

A major problem of the vetting process is the filling of vacancies that are currently created in the Supreme Court, appellate courts, and courts of the first instance where the number of judges and prosecutors who have not passed the

vetting is many times greater concerning the number of judges and prosecutors appointed by the School of Magistrates (the number of those leaving is many times greater than the number of magistrates entering the system). In 2020 the number of vacancies in the courts of appeal has increased by 50% and also there are currently 16 vacancies in the Supreme Court and five vacancies in the Constitutional Court. On the other hand, filling 15 vacant High Court seats, requires that candidates coming from the appellate court or courts of the first instance, must afford successfully the vetting process and to have at least 13 years of experience as a judge (Article 47/5 of Law 96/2016). Vacancies for appellate courts can be filled by candidates coming to the first instance courts who must afford successfully the vetting process and to have at least seven years of experience as a first instance judge. The vacancies created in the Constitutional Court during 2017-2020 were extremely concerning and had completely paralyzed the activity of this institution with important constitutional functions for resolving constitutional disputes and the final interpretation of the Constitution, and particularly claims regarding incompatibility of laws with the Constitution and individual's appeals regarding the right to due process (<http://www.osfa.al>).

These delays may have had consequences or may impair the efficiency of the trial and the justice system sought by citizens from the first instance courts, in the courts of appeal, to the Supreme Court. There is an overload of files carried over from previous years. An insufficient number of newly appointed judges (currently three judges out of nineteen), who handle more than 35,900 files created over the years awaiting trial, the lack of function of the High Judicial Council regarding the appointments of the High Court members, there are several reasons of inefficiency of the Supreme Court (<https://top-channel.tv>).

However, despite the fact that almost the half of the judges have been dismissed in the process and the data provided by investigative journalists, due to the lack of the consequences in terms of filing criminal charges for those who have been proved as ineligible to keep their posts, the concern remains whether the process will bring the real change remain very high. Accompanied by the long-lasting procedures and a lot of delays, vetting process has betrayed high exceptions from the very beginning (<https://europeanwesternbalkans.com>).

The IQC was successful and made headlines in the media and public life with the sensational dismissals of several members of the Constitutional Court and the Supreme Court. IQC with its decisions broke the myth of inviolability and created the necessary environment for a re-evaluation process at all levels of the judiciary and the prosecution. The success of this process was so great that the model of vetting injustice was considered as a solution for both vetting in the police and politics (<https://isp.com.al>).

However, problems arising from the crisis in the Constitutional Court, the Supreme Court, the High Inspector, and later with the High Judicial Council

and the High Prosecution Council, the IQC changed the list of priorities of the re-evaluation process several times. The crisis created dilemmas as to whether it would have been more effective to start vetting proportionately at all levels or to start as it started, by the Constitutional Court and the Supreme Court. The other problem the KPA faced was following the verification standards. The Constitution provides for three standards, three evaluation criteria, but in more than 30% of cases, the IQC made decisions based on the evaluation of only one standard, mainly property. (*ibid*, p. 27). Referring to the IQC data for the period from the drawing of lots and until its final decision, on the topics of re-evaluation, it turns out that there are large differences for different entities. For example, to decide on the subject K. S, the head of the Administrative Court of Appeal, the IQC decided after about 20 months, with much more than for any other subject of re-evaluation. There are other names in the list of subjects that have been re-evaluated from 16 to 18 months, which according to the law should not have lasted more than 60 days to 90 days, or two to three months. (*ibid*, p. 28).

The real situation in justice institutions due of the revaluation process during 2018-2021.

Viti	Vendime nga KPK	Dispozitivi i vendimit			Rekomandime nga ONM	Vendime te shqyrtuara nga IKP	Ankime	Mos ankime	Ne proces shqyrtimi ende pa vendimarrje	Ankime te shqyrtuara nga KPA		
		Konfirmim	Shkar-kime	Ndërprerje						Ankime te përfunduara	Ne proces prirje	Seanca te zhvilluara
Shkurt- Dhjetor 2018	77	33	29	15	5	77	16	61	-	4	2	17
Janar- Dhjetor 2019	127	55	44	28	5	127	13	144	-	11	1	68
Janar- Dhjetor 2020	103	35	38	30	3	103	16	87	-	9	9	48
Janar-Dhjetor 2021	166	61	66	39	8	160	14	146	6	13	4	75
Totali	473	184	177	112	21	467	59	408	6	37	16	200

From this actual situation, 473 decisions have been issued by the KPC for subjects of re-evaluation (judges and prosecutors), of which 184 have been confirmed in office, 177 have been dismissed, and for 112 it has been decided to terminate the re-evaluation process due to resignation, retirement, or for natural reasons (death). Regarding the decisions taken by the KPC, public commissioners

have made 59 appeals, while 408 decisions they have made no appeals, and in the meantime, they are assessing the possibility for appealing or not appealing 6 decisions. KPC's International Operation has advised public commissioners to file a complaint in response to 21 KPC's decisions during 2018-2021.

During four and a half years of activities of the re-evaluation bodies, 2/3 of the entire judicial and prosecution bodies have either been dismissed or have resigned without facing the re-evaluation process.

One hundred and ninety-two (192) vacancies for judges and prosecutors created in the judicial system are the result of the implementation of the justice reform that was undertaken in 2016. In some dismissal decisions, it was noted that IQC has decided to complete the revaluation process only on the property criterion, not completing and not considering the investigations on the criterion of evaluation of integrity and professional skills. In these decisions, based on the results of the administrative investigation into the property, the trial panels have assessed that the property criterion is sufficient for the decision-making process regarding the transitional re-evaluation of the respective subjects (<https://www.osfa.al/>).

Most discharges relate to issues related to unjustified assets. These concrete and credible results have significantly strengthened the justice system by consolidating the independence, impartiality, professionalism, and accountability of the judiciary (<https://www.parlament.al/>). With six months left in the KPC's mandate to re-evaluate judges and prosecutors, a concern that has arisen in the circle of domestic and foreign experts is whether or not it is necessary to make further constitutional and legal changes to extend the mandate to the members of the KPC for at least another two-year period, leading to a total of seven years of their period in this process, as important as it is delicate for the consequences it has created and is creating in the judiciary.

Regarding the above issue from the table of senior officials on the occasion of the 5th anniversary of the Judicial Reform, an opinion was given by the General Prosecutor regarding the vacancies created in the prosecution structures. He stressed the fact that: "We risk that the stock of files that are being created by some prosecutors, become almost unaffordable in terms of delays in organizing the prosecution structures in view of what will be done with the court map. This requires other measures, different in the School of Magistrates, such as the duration of years of study for students. "The third year should be a working year", while he added that the map of the court should be changed urgently. (<https://euronews.al/al>). On the other hand, the EC, through the reaction of Genoveva Ruiz Calavera, emphasizes that "vetting is going in the right direction" and that "the EU and the US are fully committed to continuing to support the reform of the judiciary in Albania, to guarantee the right of citizens to a democratic society where no one is above the law".

Ms. Calavera argues that the vetting process for judges and prosecutors is moving in the right direction and that is in the public's interest to report directly to the International Monitoring Operation (IOM) on justice reform, corruption cases, and lack of professionalism in the judiciary. "In the last six months, the IOM has received about 250 complaints from individuals, private enterprises, civil society organizations, and public institutions. This willingness to contribute shows that citizens believe that vetting is going in the right direction to respond. These are legitimate public aspirations," says Calavera. She considers the results of the vetting so far "very tangible" and notes that "the vetting will continue for several years to complete the evaluation of over 800 judges and prosecutors" (<https://www.dw.com>).

The same attitude has held Ms. Yuri Kim, Ambassador to the USA, stated that justice reform has not been easy, but now we are seeing results. She referred to the vetting process, where she said that many corrupt prosecutors and judges have already been fired (<https://euronews.al/al>). Likewise, Mr. Luigi Soreca, EU Ambassador to our country, stressed the fact that: "*The implementation of justice reform represents a new era in the rule of law in Albania. It is one of the most important steps taken by the country in the 30 years since the fall of the dictatorship.*" (<https://euronews.al/al/>)

Constructive attitudes regarding the postponement of the vetting bodies have been held by experts who have followed this procedure continuously in relation to the results of the re-evaluation of judges and prosecutors. Prof. Afrim Krasniqi, director of the ISP, told DW "*Justice reform remains the most positive development in Albania in the last two decades. But in the meantime, the five years of its implementation so far have shown that the legal basis and expectations of this reform were built on inaccurate data, based more on passion and the will to carry out the reform than Albania's capacity for such deep and horizontal reforms.*" He also points out that "*Justice reform has taken place in Albania in the last five years, but the new justice system has not yet delivered justice. There is still no functioning justice system to end corruption and clientelism. There is still no guarantee that anyone who breaks the law will face justice, regardless of state, political, financial, or social position*" (<https://www.dw.com>).

Prof. Dr. Aurela Anastasi, a constitutionalist academic, thinks differently about both constitutional amendments and human resources. The constitutional amendments of late July 2016 are the foundation of Judicial Reform. They have proven to be effective for a radical change of the justice system and its reconstruction according to the latest European model. The constitutional amendments introduced detailed principles and adjustments regarding constitutional guarantees. "For the independence of the judiciary and the integrity of the judge" she told DW ("Aurela Anastasi "For a better understanding of justice reform, Tirane, 2016). In order to maintain a more objective position on the need to extend the term of

the vetting bodies, the members of the Socialist Party in the Legislative Council of the Assembly decided to turn to the Venice Commission for amendments of Albania Constitution in order to extend the mandate of the Vetting institutions, until the end of 2024. The request for extension of the mandate of the Independent Qualification Commission and the Public Commissioner was also supported by representatives of the European Commission and vetting institutions in a hearing with the Council for Legislation in the Assembly of Albania.

Maciej Popojeski, Chairman of the Board of International Monitoring Operation, IOM at the European Commission, said that he supported the initiative of the assembly to amend the Constitution in order to extend the mandate of vetting institutions (<https://top-channel.tv>). The Venice Commission held positions on this issue in March 2016 and November 2021. Regarding the opinion given by the Venice Commission in March 2016, it was emphasized these points “*The Venice Commission is not in a position to indicate exactly how much time will be necessary to vet all sitting judges and prosecutors. It is conceivable that in the most complex cases vetting procedures may take more than three years, or even longer. It is the legislator’s responsibility to ensure that the persons subject to the vetting cannot artificially delay the vetting procedures, and that commissioners, members of the IQC, and judges of the SQC have the necessary resources and powers to complete the procedures in a reasonable time.* (Strasbourg, 14 March 2016 Opinion No. 824 / 2015 CDL-AD (2016)009)

It would be desirable to set a fixed time limit of about 3-5 years on the length of time for which the IQC and the SQC would exist.

Contrary to the above opinion, the Venice Commission in its last opinion given in November 2021, has expressed that about 800 magistrates and legal assistants are currently undergoing the vetting process, which began in February 2018. These are 2020 data, and they do not include the vetting subjects who have resigned or reached retirement age. From the available data, until July 2021, it appears that ICQ completed the vetting process for 421 subjects. By June 2022, 71 reassessment processes are expected to be completed. At the end of the 5-year mandate, it results that ICQ has completed the re-evaluation process for 500 subjects (magistrates), and a total of about 300 other cases will remain uncompleted. These uncompleted processes, according to the constitutional provisions will be passed for review to the High Judicial Council for Judges and the High Prosecution Council for Prosecutors. (Strasbourg, 26 November 2021 Opinion No. 1068 / 2021 CDL-REF (2021)096.)

The default constitutional scenario (continuation of cases left by the Councils - High Judicial Council, High Prosecution Council) carries the risk that the Councils will need approximately one year to establish their own internal rules and procedures and to build the capacity to take on these tasks while having many

other important tasks to perform in the management of courts and prosecutor’s offices during the transition, while the vetting/vetting process is ongoing. Therefore, it risks further delaying the verification process and hindering the Councils in their functioning. Forecasts based on the results produced so far show that verification by ICQ could be completed by December 2024 (the most positive scenario). Thus, according to such projections, the revaluation process in ICQ is forecasted to be completed in 2024, and considering the time needed for Councils to establish the regulatory basis, relevant structures, and mode of operation to carry out the vetting process, the councils would need 3 and a half years to complete this process. So, the deadline in such a case would be longer than the deadline that ICQ and PC need to complete the vetting process according to the forecasts above. Having said that, the extension of the mandate of the ICQ and PC according to the proposal of the legal initiative would be in line with the recommendations of the Venice Commission in the opinion CDL-AD (2016) 009 in the current situation; while the continuation of cases by the councils would fall in contradiction with this opinion as the deadline for completion of the process is longer than the proposed intervention. (Law no. 115/2016” On the governing bodies of the justice system “. Official Gazette no. 231)

The number of new judges, prosecutors, assistants and legal advisors who have graduated from the School of Magistrates, during the years 2017, 2018, 2019, 2020, and who have recently entered the justice system is 73 magistrates. Due to the vetting process, 177 judges and prosecutors were dismissed and for 112 it was decided to terminate the re-evaluation process for resignation, retirement or natural causes (death), which in total is 289 judges and prosecutors less in justice system. Currently, 216 judges and prosecutors are missing in the justice system. The total number of vacancies /absences that will be created by 2022 amounts to about 280 judges and prosecutors. On the other hand, we should not forget that the number of new magistrates admitted to the School of Magistrates in 2020 academic year is ninety (90); forty judges, thirty prosecutors, and twenty legal assistants and advisers. Due to the vetting process, this number is the same as the justice officials who came out today. If the School of Magistrates continues at this pace until the end of 2025, all vacancies that may be created by judges and prosecutors who are not going through the vetting process or are resigning will be filled.

III. The role of the School of Magistrates before and after 2021 related to Justice Reform in Albania

With regard to the role of the School of Magistrates before and after 2021, related to Justice Reform in Albania, the data is the following: (<https://www.magjistratura.edu.al/>)

- No candidate for judge and prosecutor was registered during 2014-2017;
- Eight candidates for judges and three prosecutors who were graduated from the Magistrates' School in 2016 and began practicing in 2017;
- Ten candidates for judges and six candidates for prosecutors were registered during 2015 -2018 and started practicing the profession for which they graduated from the School of Magistrates in 2018;
- Fifteen candidates for judges and ten candidates for prosecutors who registered in 2016-2019, started practicing the profession for which they graduated from the School of Magistrates in 2019;
- Thirteen candidates for judges and two candidates for prosecutors who were registered in 2017-2020, started practicing the profession for which they graduated from the School of Magistrates in 2020;
- Six candidates ex officio were registered in 2018-2020 and started practicing the profession as judges for which they graduated from the School of Magistrates in 2020;
- No candidate for judge and prosecutor has been registered in 2018 - 2021, and as a result, there will be no appointment of new magistrates in 2021.
- Currently, the third year of the School of Magistrates (2019 - 2022) is attended by twenty-four judges and twenty-two prosecutors. In addition, twelve legal advisors and legal assistants have been graduated in 2020;
- Currently, the second year of the School of Magistrates (2020 - 2023) is attended by forty judges and twenty-six prosecutors. Six legal advisors and three legal assistants have been graduated (in 2021);
- Currently, the first year of the School of Magistrates (2021 - 2024) is attended by thirty-six judges and twenty - four prosecutors. There are also six legal advisors and one legal assistant who will graduate in 2022.
- It has been announced in the media that the first year of the School of Magistrates (2022 - 2025) will be attended by 120 candidates for judges, prosecutors, advisors and legal assistants, but there is still no official decision from the HJC.

Recently in a public appearance in early January 2022, the Minister of Justice, Mr. Ulsi Manja, held the position that the number of candidates to attend the School of Magistrates in an academic year should increase from 80 which is currently to 120 (<https://tvklan.al>). Accepting such a large number of candidates for judges and prosecutors, including legal advisers, increases the risk of reducing the quality of individuals who will become part of the new judiciary. From the statistical data for the competition in the School of Magistrates, in recent years there are on average two candidates for a position of judge and prosecutor. Throughout the history of the School of Magistrates from 1997 to 2017 have competed over 200 candidates

for 10 seats for judges and as many candidates for prosecutors. One of the reasons that fewer candidates compete in the School of Magistrates has to do with the re-evaluation process that will be applied to the successful candidates as well as the fact that candidates must already have at least three years of experience after graduating from law school to compete in this school. These obstacles have reduced the number of competing candidates for the highest educational institution in the field of justice, even though the number of law students completing their studies each year in Albania goes over 1000.

The same big opening about changing the functioning of the judiciary was made in the Republic of Albania in 1992 by the Political Party that won the elections that year. On the basis of the justice reform that was undertaken after 1992, dozens of individuals with a six-month course had the opportunity to become judges and prosecutors, even though most of them had no a law degree. The candidates who became judges and prosecutors that period after a six-month course had previously worked as agronomists, teachers, veterinarians, engineers etc.

It was 1992 when the President of the country at that time decided to open a 6-month Accelerated Course to produce the so-called "Poplarp Judges" (<http://dodonanews.net>).

This reform would be strongly opposed by the Former Chief Prosecutor Maksim Haxhia, who in the parliamentary interpellation on Monday, September 7, 1992, at 17.00 in the Albanian Parliament said "... I would like to inform you before this Parliament, the President, and the public our firm stance against regressive thinking for the creation of so-called multi-month training courses for judges. Accepting this means raping justice and deliberately leading society to anarchy". Even the Former Minister of Justice Kudret Çela opposed the opening of such a course, who in the proposals he presented concerning this reform held this position "... A variant that greatly alleviates this great hunger would be possible to take students of senior courses from the Faculty of Law and why not also from senior correspondence law courses (full 4 years' studies). These are much better in terms of vocational training compared to those students who are in high school and undergo an accelerated 3-4-month court. (Notebook of Parliamentary Speeches, Book 5, p. 1693, ed. 2009).

This reform replaced judges and prosecutors who served during the Monist Regime with unqualified persons. It had its consequences over these last thirty years that drove the political class through the concerns of society and business groups and always with the support of international partners to undertake the justice reform in the constitutional changes that were made in 2016. (Law no. 97/2016 "On the organization and functioning of the prosecution in the Republic of Albania"). Meanwhile, Albania's deep judicial flagship reform continues, with a comprehensive vetting process being undertaken for all judges and prosecutors

and the establishment of new judicial structures. New appointment procedures and national investigative offices will guarantee a much greater protection from political influence and greater independence. More than 50 percent of the judges and prosecutors so far reviewed by the Independent Qualification Commission have been removed following vetting, largely due to their inability to justify their wealth. The process has resulted in a serious shortage of judges, critically in the Constitutional Court, and created serious backlogs across the judicial system (<https://www.un.org.al/>).

The concern for the justice reform that took place in 1992 and the comparison with the constitutional and legal reform undertaken after 2016, it allows many candidates to enter the system for judges and prosecutors during an academic year (there have been 90 magistrate candidates for 2020). The normal number of students that have studied at the School of Magistrates from 1997 to 2016, has been too low (from 10-25 in maximum for one academic year). This fact risks the quality and professionalism of those who will continue to serve as judges and prosecutors and who will replace those who currently have precisely the lack of professionalism and problems with their wealth.

The role that the School of Magistrates must play in relation to vacancies created by Justice Reform in Albania, was the topic of a joint meeting of the governing bodies of the justice system charged by the Constitution and the laws. This meeting was organized at the School of Magistrates on September 7, 2021, for the academic year 2021-2022. In this meeting, there were discussed issues related to the good administration of the justice system in the context of the progress of justice reform and within the responsibilities that each institution has in today's developments. The participants in the meeting pointed out that measures should be taken to meet some important conditions in order to make the School of Magistrates support the reform in the best filling of vacancies. Also, some conclusions were identified that were supported by all participants as follows:

- acceptance of 80 candidates to attend the School of Magistrates in an academic year;
- despite the high admission quotas of recent years and those expected for at least the next two years, the process will still require at least three academic years.

Improving the daily work practices of each institution

A. Regarding the School of Magistrates

- Re-evaluation of the continuing education program, with a view to reducing it, in order to avoid the overload of judges and prosecutors and to

create the opportunity for specialized training of entities that are part of the continuing education program in the school.

- Comprehensive re-evaluation of the programs to involve judges or prosecutors in mock trials, mentoring, and so on, in order to avoid wasting time that could be spent on judicial activity.
- Priority commitment to make efficient the orientation of the curriculum of pre-professional and professional internships, mentoring, mock trial organizations, and so on, in order to prepare for the profession of judge and prosecutor at the end of two or three years of the initial training program.
- Increase the technical capacity of the school for the development of online or hybrid training.

B. The High Judicial Council and that of the Prosecution.

- Compilation of the court map as soon as possible is one of the effective measures to mitigate the shortcomings in the system.
- Ongoing follow-up of the need for structural or legal changes in the system that facilitate the adjudication of cases or their administration in general.
- Re-evaluation of the systems for selecting and verifying candidates for judges and prosecutors graduating from the School of Magistrates in order to expedite the entry into the system.
- To enable the third-year interns of the School of Magistrates to be welcomed into the system and to be given the opportunity to help in the administration of cases, the drafting of acts, and the giving of opinions for their solution.

Possibility of legal improvements

The participants in this forum discussed and agreed on a set of issues that should constitute an end as legal changes:

- a. The third year of the initial training program in the School of Magistrates was conceived as a practical internship year, to be turned into a working year as magistrates. To be assigned to duty immediately following the completion of the second year in the School of Magistrates.
- b. Counselors and legal assistants have the opportunity for career development within the judiciary.
- c. The process of assessing the wealth and image of candidates for masters at the end of studies at the School of Magistrates can be removed.
- d. The law should clearly provide for the figure of the legal assistant in the court of the first instance (<https://www.magjistratura.edu.al/>).

On 28.12.2021, in a joint roundtable between the Ministry of Justice, the High Judicial Council, the High Prosecution Council, the General Prosecutor, and representatives of civil society, the proposal forwarded by the HJC to the Ministry of Justice is to reduce the number of district and appellate courts, as well as administrative courts of the first instance. It is thus proposed that “out of 22 district courts with general jurisdiction, six administrative courts of the first instance and six appellate courts of general jurisdiction will be reorganized into 12 courts of general jurisdiction and two administrative courts of the first instance, and one appellate court “. Regarding the Judicial Charter, the Minister of Justice, Mr. Ulsi Manja, emphasizes that justice reform is in the consolidation phase. The Albanian government has contributed to justice reform, raising a payroll system to dignified levels. “The review of the court map is a process dictated by the reality of the judicial system in the country to guarantee the maintenance of a fair balance and the possibility of access to justice” (<https://top-channel.tv>).

According to the Open Society Foundation for Albania, the new justice map jeopardizes the implementation of justice reform” and that there can be no justice for the citizen away from the citizen. The concentration of courts and files can undermine the length of proceedings, which, although dispersed, have major problems about deadlines for reviewing court cases. (Strasbourg, 26 November 2021 Opinion No. 1068 / 2021). Violation of these deadlines also contradicts the recent decision of the Constitutional Court, which stressed that the vetting process and all judicial reform cannot be considered as an excuse for the delay of court proceedings (<https://www.gazeta-shqip.com>).

The Constitutional Court has given recently some decisions regarding the delays that have been created in the judiciary institutions about the review of civil criminal and administrative cases as well as complaints/recourses, within a reasonable time as one of the main criteria of a due process of law, due to the process of vetting. Among others in decision no. 37 dated 05.11.2021 of the Constitutional Court, it is pointed out “In assessing the overall duration of the proceedings, the Court considers to show a more cautious approach, given the changes brought by the reform of the justice system in our country and its effects, especially regarding the number of judges in the courts and a large number of civil administrative and criminal cases pending. However, the Court has emphasized that the provision of this Reform cannot justify delays, as the state is obliged to organize the entry into force and implementation of such measures in a way that avoids prolonging the consideration of pending cases. Although some methods can be applied by the courts to temporarily accelerate the adjudication of cases, if even such a solution results in procrastination and turns into a problem of structural organization, then the state must ensure the adoption of more effective measures, and to organize the

judicial system, to guarantee the right to make a final decision within a reasonable period (see decision no. 33, dated 01.11.2021 of the Constitutional Court).

The main focus of the last four years of justice reform has been vetting process, exclusion from the system of individuals who do not meet one of the three constitutional criteria, leaving out of focus other important aspects of reform, such as new entries in the system, career system, improving quality of work in the administration of justice, transparency and increased independence and professionalism. We should not forget that the reevaluation process is not the whole Justice Reform, but only one of its constituent stages (<https://njihreformennedrejttesi.al>). As we mentioned above should be given essential importance not only to the exited from the justice system of judges and prosecutors that does not meet the criteria of professionalism, economics, and integrity but also the way of opening the School of Magistrates in Albania. The lack of vacancies in the judiciary today should not lead us to rush to recruit young magistrates who do not have the necessary professional, ethical, and moral integrity to make a difference to those who they are replacing.

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