Approval of the new judicial map: A priority of the Albanian justice reform

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Abstract

The justice reform that was crowned in our country with constitutional and legal changes in 2016, aims to reorganize existing institutions in the field of justice and establish new constitutional institutions that aim to increase public confidence in more effective justice.

One of the main normative acts that are part of the justice reform in Albania is the adoption of law no. 98/2016 "On the Organization of the Judiciary in the Republic of Albania", which provides, inter alia, the approval of the new judicial map, based on the criteria and principles of territorial distribution of courts of general jurisdiction, courts of appeal and special courts, including administrative courts.

Based on this normative act, it turns out that the new judicial map has not been finalized yet, which is approved by the Ministry of Justice in cooperation with the High Judicial Council. Related to the content of the new draft judicial map in the discussion process, the question that arises is whether "out of 22 courts of general jurisdiction of the districts, including six administrative courts of first instance, including six courts

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of appeal of general jurisdiction, which are supposed to be reorganized. in 12 courts of general jurisdiction, two administrative courts of first instance and one court of appeal of general jurisdiction "would it be a real opportunity to increase the quality of judicial activity, within a fair legal process?

There is a postulate in jurisprudence that is "delayed justice is denied justice". Based on this postulate, the new judicial map has urged the debate regarding the fact that the resolve of court proceedings as soon as possible, as well as the unification of case law due to the centralization of courts, should not jeopardize access to the parties and interest group for a fair and public process by a competent, independent and impartial tribunal established by law.

The lack of resources in the judiciary, due to the vacancies with judges and prosecutors that are currently being created at all levels of the justice system, cannot serve as an excuse for the concentration of courts through a new judicial map without analysis of other social and economic factors, which, as we analyzed above, directly affect the delivery of a more efficient and effective justice than what we currently have.

Key words: *justice reform, new judicial map, justice efficiency*

I. The necessity of a new judicial map

The justice reform that was crowned in our country with constitutional and legal changes aims at reorganizing the existing institutions in the field of justice and establishing new constitutional institutions that aim to increase public confidence in more effective justice. On July 22, 2016, in addition to a series of constitutional changes, a package of seven laws on justice reform was adopted, which aimed to increase the independence of the judiciary and improve the quality and efficiency of justice services. The new legislation introduced an innovative approach to the territorial distribution of courts, setting out new principles and criteria for configuring the new judicial map.

One of the basic normative acts that are part of the justice reform is the adoption of law no. 98/2016 "On the Organization of the Judiciary in the Republic of Albania", which defines the criteria and principles of territorial distribution of courts of general jurisdiction, courts of appeal, and special courts, including administrative courts. (Law no. 98/2016 "On the organization of the judiciary in the Republic of Albania"). Based on this normative act, are defined the competencies of general courts' jurisdiction, administrative courts (including SPAK), courts of appeal, and the High Court. (Articles 10-12 of law no. 98/2016).

An important aspect related to the adoption of Law no. 98/2016, is the definition of the notion of judicial districts as administrative units where the courts of the first

instance exercise general jurisdiction provided that each judicial district can cover the territory of one or more municipalities. This law also stipulates that courts of appeal (with general jurisdiction and special courts) have territorial jurisdiction over at least two judicial districts. One of the main goals that Law no. 98/2016, is the approval of a new judicial map, which defines exactly the new number of courts, the jurisdiction to which they belong, and the total number of judges who will exercise the functions assigned by law to each court. (Article 13 and 21 of Law No. 98/2016)

The finalization of such a sub-legal act belongs to the High Judicial Council together with the Ministry of Justice. Both of these authorities have the legal obligation to prepare a joint proposal for the judicial map, which is then approved by the Council of Ministers. On the other hand, the President of the Republic of Albania approves by decree the total number of judges on the proposal of the HJC. The soon-to-be-approved new judicial map, which is on the verge of discussions with stakeholders, should be reviewed periodically based on HJC assessments every 5 years with a purpose for making necessary improvements and changes during its implementation in practice.

The HJC, as the governing body of the judiciary, has a legal obligation to continuously monitor the workload of the courts and the number of cases per judge and to publish a report on the results collected at the end of June each year. (Ibid, Article 22). Regarding the positive goals that the adoption of a new judicial map aims to achieve, they are well defined in Law no. 98/2016, which are:

- balanced fulfillment of the guarantee of access to justice;
- the need to reduce costs and guarantee the use of public resources and;
- the need to increase the quality of services provided.

To enable these goals, in approving the new judicial map, the two main bodies that are the High Judicial Council and the Ministry of Justice should take into account: (Ibid, Article 15/3).

- the territorial administrative division of the country,
- demographic development,
- number of inhabitants in relation with the number of courts,
- economic development,
- road infrastructure and transport conditions to and between courts,
- as well as geographical features;
- workload in the courts,
- the efficiency of courts and judges in administering justice,
- available human resources,

- as well as the location and size of the institutions for the execution of criminal decisions.

Recently, the judicial system in Albania is divided into courts of the first instance, courts of appeal, and a high court. In Albania, we have 29 courts of the first instance, of which 22 are district courts with general jurisdiction, 6 administrative courts, and 1 special court. We also have 8 appellate courts, of which 6 are appellate courts with general jurisdiction, 1 administrative court and 1 special court, and the High Court. Based on Decree no. 3993, dated 29.3.2003, "On the assignment of territorial competencies of the center of exercise of activity and the number of judges of the courts of the first instance and appeal for serious crimes" and Decree no. 7818, dated 16.11.2012, "On determining the number of judges for each court of the first instance, appellate and administrative courts, as well as the assignment of territorial jurisdiction and the headquarters of the administrative courts", as amended, 408 judges are appointed in total, where 389 are judges of the first instance and appellate and 19 judges of the High Court. The justice system is supported by a judicial staff of 1140 employees. The staff of judges is presented as follows:(https://top-channel.tv/2021/12/28/).

Courts	The number of judges that are expected to be in total	Number of judges who are serving effectively
Supreme Court	19	13
Courts of Appeal of General Jurisdiction	78	31
Administrative Court of Appeal	13	5
Special Court of Appeal for Corruption and Organized Crime	11	6
Courts of First Instance of General Jurisdiction	235	155
Administrative Courts of First Instance	36	33
Special Court of First Instance for Corruption and Organized Crime	16	6

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 (Maho, B. 2021).

Regarding the Judicial Charter, the Minister of Justice, Mr. Ulsi Manja, emphasized 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 judicial 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.” (Ibid, p. 110). The General Prosecutor, Mr. Olsian Cela on the occasion of the 5th anniversary of the Justice Reform expressed his concern about the vacancies created in the prosecution structures, due to the process of re-evaluation (vetting) and resignations of prosecutors, seeing the approval of the new judicial map as a very important instrument in the function of good administration of justice. He stressed the fact that: “We risk that the stock of files that are being created by some prosecutors, will become almost unaffordable in terms of delays in organizing the prosecution structures given what will be done with the judicial 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 judicial map should be changed urgently. (Ibid, p.112)

II. Draft a new judicial map, current situation, and reorganization that it intends to resolve

Article 15.5 of Law no. 98/2016 “On the organization of the judiciary in the Republic of Albania”, provides that “judges and courts in Albania must have a balanced workload.” Also, Article 15.3 of Law no. 98/2016, provides that “that the courts of judicial districts and administrative courts of the first instance must have at least 7 judges, while the courts of appeal must have at least 10 judges.

While there is a discrepancy between the judges who currently exercise their functions in the courts of the first instance about the civil, criminal, and administrative cases they are considering the number of average national cases (weighted) burden of 429 cases per judge in district courts, during the period 2018-2020. Thus, mainly in the courts of the first instance near the Capital (Tirana, Durres, and Elbasan), there is a disproportionate burden of the number of court cases per judge, about the number of court cases before judges of other judicial districts (mainly small courts).

Taking into account these data, the new judicial map provides this reorganization of the courts of the first instance of general jurisdiction :

- Court of First Instance of General Jurisdiction Berat
- Court of First Instance of General Jurisdiction Elbasan
- Court of First Instance of General Jurisdiction Tirana
- Court of First Instance of General Jurisdiction Vlora

- Court of First Instance of General Jurisdiction Dibër (merged with the Court of Mat)
- Court of First Instance of General Jurisdiction Durrës (merged with the courts of Kavaja and Kruja)
- Court of First Instance of General Jurisdiction Fier (merged with the Court of Lushnja)
- Court of First Instance of General Jurisdiction Gjirokastra (merged with the courts of Saranda and Përmet)
- Court of First Instance of General Jurisdiction Kukës (merged with the Court of Tropoja)
- Court of First Instance of General Jurisdiction Korça (merged with the Court of Pogradec)
- Court of First Instance of General Jurisdiction Lezha (merged with the Court of Kurbin)
- Court of First Instance of General Jurisdiction Shkodra (merged with the Court of Puka)

Out of 22 district courts with general jurisdiction, 10 courts are expected to be abolished, leaving only one district court for the district, which at the moment would have as interior the insufficient facilities related to the judicial infrastructure and the prosecution, among other problems, related to the transfer of prisoners, transport to litigants, etc.

Regarding the reorganization of the appellate courts of general jurisdiction, the draft judicial map envisages six appellate courts that are only one in the Tirana Court of Appeals. Currently, the staff of the Tirana Court of Appeals provides 31 positions of judges, while, according to current data obtained from the official website of the HJC, 8 judges are serving in this court. Currently, in all appellate courts of ordinary jurisdiction out of 78 judicial positions in the staff, only 31 are occupied in all appellate courts. So, 39.7% of the organic judges are facing 100% of the caseload. (http://klgj.al/wp-content/uploads/2021/)

Delegations between courts are made continuously, which means that judges are separated fromtheir jobs to travel from one court to another. Also, based on the orders of Law no. 98/2016 a Court of Appeals must have a minimum of ten judges, a criterion that is not met by the Courts of Appeal of Korça and Gjirokastra, while the Court of Appeals of Shkodra is on the average limit of court cases that has ten judges with that at the level national (226 cases per judge compared to 217 cases which is the national average).

Draft recommendation only one National Court of Appeal, merging the six current courts of appeal. The National Court of Appeals with General Jurisdiction will include under its jurisdiction, all institutions of criminal punishment.

The Tirana Appellate Prosecution will function at the Tirana Court of General Jurisdiction. By law, all other Appellate Prosecutions will cease to function. A national court will need 78 judges to maintain the national average caseload. This number is equal to the number of positions of appellate judges currently allocated to the judicial system.The Tirana Court of Appeals is located in the center of the city. The court meets the design standards regarding the security and/or avoidance of ex-parte communication (ie, there are dedicated entrances and exits for court staff, parties, detainees), and the public service space is realized according to the standards. However, the number of courtrooms is not enough. (http://klgj.al/wp-content/uploads/2021)

A concern regarding the merging of all appellate courts into a single one based in Tirana is the issue of infrastructure, where the building of the current Tirana Court of Appeals cannot accommodate the new national court, so new functional spaces must be created for court proceedings, as well as the accommodation of court staff and litigants. This is an issue that needs to be resolved. Regarding the reorganization of the administrative courts of the first instance and administrative appeal, it was foreseen that there would be two administrative courts of the first instance, which are the Administrative Court of First Instance Tirana (will include three administrative courts of first instance Durrës, Shkodër and Korçë) and the Administrative Court of First Instance Lushnje (will merge two administrative courts of the first instance, Vlore and Gjirokastër).

A concern regarding the merging of four administrative courts of the first instance into a single one in Tirana is the issue of infrastructure, where the current building of the Court, the Administrative Court of First Instance Tirana cannot accommodate in the existing building 31 judges that are expected to have by melting. The Administrative Court of First Instance Lushnje will need 11 judges to maintain the national average workload of the cases under consideration. The dissolution of the Lushnja Judicial District Court and the transfer to the Fier Judicial District Court creates the opportunity to have the necessary infrastructure for the establishment of the Administrative Court of First Instance Lushnje. Meanwhile, the Administrative Court of Appeal of Tirana has 13 judges, where there are effectively 5 judges, while the status of magistrate has ended only for 4 judges. The workload per judge according to the statements given by Ms. Nureda Llagami at the conference on innovation brought by the Judicial Charter in December 2021 is 3700 cases per judge. (http://ata.gov.al/2021/12/28). Regarding the application of a new judicial map that reduces the current infrastructure of the district court and appellate court buildings, we need to know about the new courts that will be created if they enable the fulfillment of such a goal.

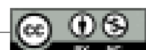
Based on the study officially conducted in 2019, it turns out that 22 court buildings are new constructions or completely reconstructed buildings, or 58%

of the courts (22/38 courts). The approval of the new judicial map conditions the investments in buildings. Full investment is planned to be realized in two court buildings (1 construction, 1 complete reconstruction) and will be extended to two budget years, 2020-2021. With the completion of the investment for these courts, in 2021, the percentage will change from 58% to 63% (24 new and/or reconstructed buildings out of 38 courts in total). (decision no. 409, dated 19.6.2019). As it appears from the official data which are reported in decision no. 409, dated 19.6.2019 of the Council of Ministers "On the approval of the action plan 2019–2021 of the cross-sectoral strategy of justice", the number of new current buildings that are intended to be built by the end of 2021 is insufficient for completing the new reorganization of judicial and prosecutorial bodies.

III. New Judicial Map from the perspective of the needs of interest groups and the reorganization of the judiciary in Albania

The notion of access to justice is enshrined in several provisions of important international instruments, such as Articles 6 and 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights. Based on these provisions, access to a fair and effective trial is guaranteed, a principle that is consolidated in the jurisprudence of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (ECJ). (https://www.echr.coe.int/).The notion of access to justice is also enshrined in Articles 2, 3 and 14 of the United Nations International Covenant on Civil and Political Rights (ICCPR) and Articles 8 and 10 of the UN Universal Declaration of Human Rights. (International Covenant on Civil and Political Rights). Based on these provisions of international acts, the protection of the principle of access to justice includes the possibility of appealing to a public and independent body for the settlement of relevant disputes, the possibility of a fair and honest judicial process for the settlement of disputes in in a short time, the right to adequate redress and the application of the principles of efficiency and effectiveness in the administration of justice. (FRA (2011), Access to justice in Europe)

Referring to the international standards of the bodies of the Council of Europe (such as "CEPEJ", the European Commission for the Efficiency of Justice) or the jurisprudence of the European Court of Justice (European Union), access to justice includes real opportunities for natural and legal persons who regardless economic conditions to have direct access to the courts of different jurisdictions, to be sent and to resolve the dispute under trial with a final court decision within a reasonable time. Obstacles to restricting access to justice are court fees, lack of free legal aid, delays coming from the organization of justice bodies such as vetting reform,



and geographical distances to attend court hearings for which litigants have filed procedural remedies. relevant (lawsuits, counter-lawsuits, appeals, recourses, the geographical distribution of the courts is an essential element of access to justice.

Geographical distance to reach before the courts of the first instance or appellate court, based on travel fees or the cost of travel by private means, even though the litigants live in urban or rural areas, if they cannot afford to cover such costs in addition to the added cost of losing a working day, closely related to the difficult economic situation means impairing access to justice. The long-distance to appear before a court established by law which is evident due to the amalgamation of ten courts of general jurisdiction, five courts of appeal of general jurisdiction, and four administrative courts of the first instance, constitutes a real obstacle to access to justice, for all citizens who will have to come from long distances of the country. What can be easily ascertained is the fact that access to be heard before a court due to the new judicial map, will disproportionately affect poor and needy people, including women, as well as residents living in rural areas who are poor, and have no access to means of transport.

Based on international standards, the judicial organization should be such as to guarantee citizens the right to a fair trial. Article 42, paragraph 2 of the Constitution, provides that: "Everyone, for the protection of his constitutional and legal rights, freedoms and interests, or in the case of charges against him, has the right to a fair and public adjudication within a reasonable time by an independent and impartial court established by law". In the consolidated jurisprudence of the Constitutional Court, the interpretation of Article 42/2 of the Constitution takes on special importance in terms of the element of access to justice. The Constitutional Court considers access to justice as a right that guarantees the violated subjects the right to go to a court, which will hear their claims and announce a decision after a fair and public trial. In case this right is denied, the process is considered irregular, because access to court is, first of all, a key condition of the subjects of law to be heard effectively for the protection of fundamental freedoms and rights guaranteed by the Constitution and the law. The rule of law cannot be conceived without recognizing the individual right and possibility and going to court, a right that is related to effective equality before the law in the sense of Article 18 of the Constitution where the state must take measures of a character objective to help individuals and groups in need in the context of positive discrimination.

Access to justice has been a major concern in all of these reform efforts. Although the creation of larger courts will increase on average the distance/travel time it will take for citizens to reach the nearest court, there is a broad consensus that the principle of proximity cannot be completely ignored. A study requested by the European Parliament on efficient access to justice identifies inadequate geographical coverage by the courts as a potential barrier to efficient access to

justice:Under international and European human rights law, the principle of access to justice compels states to guarantee the right of every individual to go to court or, in certain cases, to have access to a body that alternatively resolves disputes.

The principle of access to justice is a key principle in all international instruments for the effective and equal enjoyment of various civil, political, economic, social and cultural rights, especially by social groups in need and persons with disabilities. In all international acts which guarantee freedom and human rights, persons with disabilities should have access, on equal terms with others, such as receiving services in the physical environment (e.g. public buildings), obtaining information and communication from public entities, as well as benefiting from other services open to the public. (https://www.echr.coe.int/).

Regarding the access to a court established by law, in the framework of the implementation of the new judicial map, special importance is given to the observance of this principle for social groups such as dismissed employees, who in relation to access to heard in the new courts that will be created have as an objective obstacle the lack of monthly salary as well as the increase in the cost of transportation. About this fact, the ECtHR states that an employee who thinks that he/she has been mistakenly suspended or dismissed by his / her employer has a great personal interest in securing a court decision on the legality of this action immediately. (Mishgjoni vs Albania, no. 18381/05, § 70, 7 December 2010).

Due to their nature, employment disputes require a quick decision, taking into account what is at stake for the person in question, who through dismissal loses his livelihood. (ECHR, Frydlender k. France [GC], no. 30979/96, § 45, ECHR, 2000-VII). As to the various obstacles that arise in the examination of an appeal by the courts of the Member States and that relate to access to a court set up by law, the ECHR maintains that restrictions should not restrict or reduce the access of a person in such a manner or extent as to prejudice the very essence of the right. (ECtHR, Shkalla vs Albania (10 May 2011). Remote distance from the court is assessed by Council of Europe bodies or experts as a major barrier to access to justice, which disproportionately affects poor and needy people, including women, as well as those living in rural areas and poor, not having access to means of transport. Determining distances and travel time are important indicators for the citizen to access the judicial service. This indicator is not defined objectively according to the conditions of our country, the quality of roads and road transport, the lack of means of transport in some of the remote rural areas, as well as the limited economic opportunities of citizens to use public and/or private transport. (https: //www.reporter.al/2022/02/11/)

Among the working group's most troubling proposals for the new court, the map is the amalgamation of the Courts of Appeal into a National Court of Appeal of General Jurisdiction. The maximum time it takes to arrive from the wettest corners

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of the country goes over five hours not counting the lack of public transport. The amalgamation of the Administrative Courts of First Instance Shkodra, Durres, and Korça, transferring the territorial jurisdiction of these courts to the Administrative Court of First Instance Tirana brings multiple increases of about 60.84% of the maximum travel time by the courts of the first instance that will be suppressed. (https://ahc.org.al/ëp-content/uploads/2022/02). As mentioned above, wider consultation with citizens is also necessary, given the socio-economic conditions of our country. The new judicial map should take into account the needs and consequently consult directly with municipal councils and civic communities, some of which are most difficult, especially with specific social categories such as the Roma and Egyptian minorities, women in need, young people, and minors, retirees, people with disabilities, the LGBTI community, citizens with economic disabilities, citizens deprived of their liberty, etc. (//www.avokatipopullit.gov.al)

According to INSTAT data, 49% of the population lives on the subsistence minimum, such indicators are essential to give meaning to the right and constitutional principles of equality before the law "- these organizations emphasize in their opposition. (https://www.reporter.al/2022/02/11). One of the problems is the geographical distance that many citizens have with the courts and limited transportation opportunities. (http://www.instat.gov.al/media/6543/anketa). Judicial Charter Review Statement Organizations, Civil Rights Defenders (CRD); Albanian Foundation for the Rights of Persons with Disabilities (ADRF); Institute for Political Studies (ISP); Center for the Rights of the Child in Albania (CRCA / ECPAT Albania); Center for Civic Legal Initiatives (CLCI); 6. European Center; Center for the Study of European Policy for Regional and Local Development; The Albanian Helsinki Committee and the Tirana Free Legal Service (TLAS) have devoted an important debate in the first six months of 2022, taking into account the above problems in the final approval of the judicial map by the HJC and the Ministry of Justice. (https: //www.reporter.al/2022/02/11)

IV. The effects that the implementation of the Justice Reform has produced, regarding the observance of the principle of reasonable time within the framework of a fair trial process

To better respond to the implementation of the Justice reform, the Council of Ministers has approved DCM no. 409, dated 19.6.2019 "On the approval of the action plan 2019–2021 of the cross-sectoral strategy of justice". Based on this action plan (strategy), among other things, three important goals are foreseen, which are:

a) preparation of the draft of the new judicial map in 2020 as well as the implementation and analysis of the new judicial map in 2021, with Analysis of the implementation of the judicial map;
b) establishment of a work plan to reduce the number of cases carried over
c) consolidated primary and secondary legal aid until 2021 (decision no. 409, dated 19.6.2019).

Regarding this plan of measures, what has worked better until the beginning of 2022, is the creation of a free Legal Office at the Ministry of Justice for providing primary and secondary assistance to citizens in need as one of the most important points for them to make access to justice or access to a more effective court. While the plan of measures to reduce the number of married cases in district courts, appellate courts and the Supreme Court has been more of a goal on paper than a tangible reality that has reduced the number of cases pending near these courts.

Currently, at courts of all levels, there is a shortage of support staff, such as legal assistants or advisers. In the courts of EU member states such as France, a judge in the administrative court of the first instance has three legal aids, in addition to students of excellence who provide invaluable assistance under internship programs, where the judge's position focuses on the development in the judicial process, coordination of aids in the construction and reasoning of the decision and its final role in resolving the lawsuit. (Aferdita Maho) Such an example would be a great help in freeing the judges in the first instance from the super burden. Getting students with excellent results in law faculties, public and private, would be a good resource that would help the judiciary, a practice consolidated in Western countries. The Ministry of Justice, the HJC, and the HEIs (Higher Education Institutions) can implement this solution through a memorandum of cooperation. On the other hand, the recruitment of a limited number of legal assistants through the School of Magistrates during the years 2018-2022 has not served to reduce barriers and recruit as soon as possible the legal assistants that judges need so much to district courts which are currently hearing over 200% of the case rate that exists in the EU member state.

Regarding the observance of the principle of reasonable time within the framework of a due process of law, a major concern remains the high number of cases to be considered before the High Court. Assistance in reducing cases in the High Court has been seen to be provided in several areas, such as the increase of support staff (assistants / advisors), the completion of this institution with all its members and the increase of efficiency to review as much as possible the recourses recorded over the years. Based on the USAID Justice for All Project in 2000, the goal is to provide technical and financial support to the Case Reduction Officers (NCP). However, despite the positive results that this project has brought, it has

not yet been translated into the expectations of over 30 thousand recourses for which the litigants have appealed, pending review, where some of these recourses have over seven years waiting to be examined. (The USAID Justice for All Project)

To reduce the large number of cases in the Supreme Court, the Council of Ministers has recently adopted a DCM that allows the State Advocacy to withdraw the complaint for 3800 recourses against to final court decisions which are mainly court decisions that have recognized the right of ownership to expropriated entities. (https://www.destesia.gov.al). About the increased access to recourse review filed with the Supreme Court, there is growing doubt as to whether all backlog cases can be evaded within a short time. The fact that each judge in the High Court has to deal with a workload of about 500 cases per year is an essential reason to re-evaluate the possibility of increasing the total number of judges of the High Court, in the context of the adoption of the new judicial map. (http://klgj.al/udherrefyes-per-funksionalitet-e-gjykates-se-larte)

In the constitutional and legal reform that was undertaken in 2016 was the addition of some legal provisions in the Code of Civil Procedure which provide what would be considered a reasonable deadline for the review of a criminal, civil and administrative case by setting maximum limits for reviewing them and on the other hand giving the litigants the opportunity due to certain circumstances related to the long time they are waiting for the review of the three legal remedies (lawsuits, appeals, and recourses) to request the acceleration of the judicial process in a higher court and as after the circumstances which have influenced the causing of the delay and the respective compensation.

On 30.03.2017 the legislator approved the law no. 38/2017 "On some amendments to the Code of Civil Procedure", which has included new provisions in the CCP for reasonable deadlines for the completion of the investigation, trial, or execution of a final decision (articles 399/1 - 399 /12.) With the entry into force of these amendments on 05.11.2017, the Constitutional Court in one of its decisions has held the position that: domestic legislation already provides an effective remedy, which guarantees both the acceleration of the judicial process and compensation and provides a concrete result in terms of restoring the violated right to litigation within a reasonable legal timeframe. (Decision no. 80, dated 18.12.2017 of the Constitutional Court)

Regarding the observance of a reasonable time limit, the Constitutional Court in several court decisions has legitimized the individual for submitting requests for non-adjudication of cases within a reasonable time, even when no final decision was given, or non-execution of the decision within the time limit. reasonable, in the sense of the right to a fair legal process (decisions no. 22, dated 29.04.2021; no. 16, dated 16.03.2021; no. 69, dated 17.11.2015; no. 12, dated 05.03.2012 of the Constitutional Court). Regarding also the new legal provisions that take place in

the Code of Civil Procedure, the ECHR has maintained its position, which has concluded that the legal remedy provided in Articles 399/1 et seq. of the CCP in principle is effective, but to be such in practice, the request for finding a violation of a reasonable time limit and expediting the proceedings, under Article 399/6, point 1, of the CCP, must be promptly reviewed by the court. (Bara and Kola v. Albania, ECtHR Judgment of 12 October 2021)

Referring to the reasonable deadline that takes place in the Code of Civil Procedure after 2017, the Constitutional Court states that the entry into force of law conditions its applicability by all bodies unless otherwise provided by law. On the contrary, the legislator must take measures and find the necessary means to change the factual situation (delay in the examination of cases in the High Court), for the laws to be implemented and for the courts of all levels to function normally. (Decision no. 81, dated 28.12.2015; no. 69, dated 17.11.2015 of the Constitutional Court). According to the Constitutional Court, the implementation of justice reform cannot justify the delays caused, as states are obliged to organize the entry into force and implementation of such measures in a way that avoids prolonging the consideration of pending cases. It is the responsibility of the contracting states to organize their judicial system so that their jurisdictions can guarantee everyone the right to make a final decision on disputes concerning their civil rights and obligations within a reasonable time (decision no. 33 dated 01.11.2021 of the Constitutional Court).

Regarding the same situation, the ECHR has also taken a stand in its jurisprudence, which emphasizes that the temporary accumulation of cases does not burden the state with responsibility, provided that the latter has taken immediate action aimed at improving the situation to resolve an emergency of this kind. (Reference see Buchholz v. Germany, 6 May 1981). On the other hand, regarding the situation created due to the justice reform, the ECHR has taken the position that it takes into account and recognizes the fact that a small country like ours has difficulties in filling the courts with the necessary and sufficient human resources ordinary jurisdiction. (Furthermore, see P.H. v. Ireland, no. 45046/16, dated 10 October 2017). The lack of human resources in the courts as well as the solution offered through their restructuring through the adoption of a new judicial map cannot justify the long waiting time for litigants. Regarding this reality, where the violation of the reasonable deadline after 2017 has become even more tangible, while the public expectation has been the opposite, the Constitutional Court states that although it is not the duty of this Court to find solutions and give recommendations. The Constitutional Court estimated that the measures taken by the Albanian authorities are not sufficient, while the proceedings in the High Court, in this case, are lasting beyond reasonable deadlines. The Constitutional Court considers that the situation is not at the appropriate levels of efficiency and

effectiveness of the measures taken so far by the authorities that could lead to the avoidance of further prolongation of court proceedings. (Furthermore, refer to decision no. 33 dated 01.11.2021 of the Constitutional Court).

To find a solution to this situation as soon as possible, the negative effects that reforms bring, such as justice reform, cannot be ignored, but the entire burden caused by delays cannot fall on litigants (applicants), a position recently consolidated by the ECHR. (Refer to Bara and Kola v. Albania, ECtHR Judgment of 12 October 2021). As mentioned above, another reason for adopting the new judicial map has to do with the fact that the sources of justice officials currently in the district courts have made it impossible and ineffective to hear court cases within a timely manner. Reasonably, finding a way to speed up the deadline in resolving these disputes the restructuring of the courts, and the concentration of human resources.

V. Judicial map as an instrument to increase the efficiency of Justice Reform

According to the Open Society Foundation for Albania, the new judicial map jeopardizes the implementation of justice reform, raising concerns that there can be no justice for the citizens away from the citizens. The concentration of courts and files can undermine the length of proceedings, which, although dispersed, have major problems with deadlines for reviewing court cases. (Maho, B. 2021). Regarding the observance of the reasonable deadline, the Constitutional Court has maintained its position, in several recent decisions, where it emphasizes the fact that the vetting process and all justice reform cannot be considered as an excuse for delaying court proceedings. (https://www.gazeta-shqip.com/)

According to the Constitutional Court, the delays that have been created in the review of civil and administrative criminal cases as well as complaints / recourses, directly violate the criteria related to the observance of a due process of law. Among others in decision no. 37, dated 11.05.2021 of the Constitutional Court, states that "…. reforms in the justice system and especially the vetting process in our country have brought as a positive effect not only the removal of judges and prosecutors who have failed to pass the process of re-evaluation for legal reasons, but on the other hand it has been found the addition of a large number of unresolved civil administrative and criminal cases that has passed as a burden to other judges. Based on this reality, the Constitutional Court raises the concern that the Judicial Reform cannot justify the delay of court proceedings and the legitimate expectations of non-litigants, as the state is obliged to organize the entry into force and implementation of these measures in order to avoid delays in reviewing pending issues. According

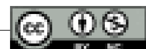
to the Constitutional Court, if the judiciary cannot implement effective methods to temporarily speed up the adjudication of various cases and if such a situation is clearly seen as a delay in court proceedings, then the state should ensure more effective measures, reorganizing the system court, to guarantee each litigant the right to make a final decision within a reasonable time. (decision no. 33 dated 01.11.2021 of the Constitutional Court)

Access to justice is one of the basic criteria in the jurisprudence of the ECHR. Access to justice was related to all legal and institutional reforms which make it difficult or easier for legal and natural persons to access the courts and obtain the justice they need in the fastest possible time and with fewer barriers or obstacles of economic and institutional character. The question that rightly stands and should receive an objective answer is whether "22 general jurisdiction district courts, including six administrative courts of the first instance, including six appellate courts of general jurisdiction are supposed to be reorganized into 12 courts of general jurisdiction, two administrative courts of the first instance and an appellate court of general jurisdiction "would this Reform be a real opportunity to increase the quality of judicial activity, related to the administration of justice, without compromising the access of citizens to have a fair legal process for all the disputes and conflicts they are currently dealing with?

Based on the postulate "delayed justice is denied justice", the new judicial map aims to resolve court proceedings in a faster time, to have better-unified case law, and to make the execution of court decisions as effective as possible. Given the large workload of court cases currently before the court of the first instance and mainly those of appeal, more than their reorganization and centralization add the need for urgent posting with new magistrates and alternative sources.

The increase in financial costs for filing a lawsuit / appeal from the jurisdiction of the courts merging into the jurisdiction of the new courts that are being created or merged is likely to discourage the initiative of the subjects and the lawyers themselves to seek the resolution of the relevant issues, which means violation of access to justice. On the other hand, the exhaustion of all trial panels in the small courts and the court of appeals, except the Court of Appeals of Tirana, has not created an increasing problem during the last years where the scheme of delegating judges has not worked. Certainly, the professional irresponsibility of the judicial bodies themselves in the courts of appeal and the High Court has contributed to this issue, as they have returned a case for retrial several times, thus exhausting all the judges of the respective Court (de-facto, making it impossible that court to have other judges to retry a dispute).

Regarding the new judicial map, in a press conference, Mr. Sadushi said that a judicial map is a necessity, effective, and quality ", as the country has a problem with the low number of judges and prosecutors. "For the new judicial map, he argues



that a single Court of Appeal of general jurisdiction is the most acceptable solution. Today we have 6 Courts of Appeal that have different positions on the same issue, while only one court of appeal at the national level eliminates this risk and is a good opportunity for the effectiveness and uniformity of trials. This new judicial map is needed by the justice system, as the restructuring of judicial institutions is the most acceptable solution. Another problem is the number of judges. Their number and the number of prosecutors should be much higher than it is. Albania has about 12.5 judges per 100 thousand inhabitants, while the European level is about 25 judges. (http: //www.panorama.com.al/)

The High Judicial Council in cooperation with the Ministry of Justice completed on March 11, 2022, the cycle of public consultations on the proposal for the new judicial map.This cycle of 8 consultative meetings took place during the period January - to March 2022 and consisted of 6 consultations with stakeholders exercising their activity in the jurisdictions of the courts of appeal Vlora, Gjirokastra, Shkodra, Korca, Durres, and Tirana and 2 meetings with representatives of civil society and the business community.(http://klgj.al/). The opinions and suggestions that have resulted from this cycle of meetings will be subject to a joint evaluation process by the HJC and the MoJ, to then proceed with the process of approving the new judicial map, which aims to provide citizens everywhere with equal access and an efficient judicial system.

According to the official announcement made recently on the website of the High Judicial Council, the HJC states that: today, on 10.06.2022, the Council approved the final evaluation report of the Inter-Institutional Working Group for the reorganization of judicial districts and territorial jurisdiction of courts. The adoption of the "New Judicial Map" marks the completion of a 3-year work of the Inter-Institutional Working Group, which has been intensively supported and assisted by experts from the Council of Europe, the EEU and the INL. The adopted act reflected the suggestions and opinions addressed during the public consultation process organized in cooperation with the Ministry of Justice, by representatives of local chambers of advocacy, the General Prosecutor's Office, judges and civil servants, as well as civil society and business organizations. community. Based on these consultations, the HJC decided that the reform of the "judicial map" in Albania aimed at merging smaller and less efficient courts.(http://klgj.al/njoftim-per-shtyp-date-10-qershor-2022/)

However, beyond this statement on the official website of the HJC, the National Chamber of Advocates has approved the order to suspend and abandon trials for four days, from 14 to 17 June, 2022, with the exception of only the security measures that are planned. This decision was adopted in protest of the draft of the new judicial map, which according to the National Chamber of Advocates affects access to justice. The National Chamber of Advocates considers unconstitutional

the decision of the HJC to merge 18 courts, as this decision affects the access of citizens to justice and damages the protection process in all types of court cases, therefore asks the Council of Ministers not to approve the request of the HJC. (https://euronews.al/vendi/aktualitet/2022/06/12/)

Keeping in mind and implementing the law on free legal aid should be a priority of the Ministry of Justice for the effective implementation of the reform that will be undertaken for the Judicial Map and the consequences that will be created by the implementation of this reform. Based on Law no. 111/2017 "On legal aid guaranteed by the state", any entity can apply for primary and secondary legal aid in the offices of free legal aid, which are administered by the Directorate of Free Legal Aid at the Ministry of Justice, to prove that it meets legal conditions for free legal aid.(articles 10, 12, 13, 14 of Law no. 111/2017 "On legal aid guaranteed by the state). According to Article 12 of Law no. 111/2017 "On legal aid guaranteed by the state", the beneficiary of legal aid is anyone who proves that he has insufficient income and assets to cover the costs of counseling, representation, and/or defense in criminal matters, administrative matters and in civil matters. Also, the provision of free primary legal aid can be provided by non-profit organizations which operate by the authorization approved by the Minister of Justice. (Law no. 111/2017 "On legal aid guaranteed by the state)

The ECHR and the jurisprudence of the ECHR have emphasized that access to a court established by law must meet several guarantees of an effective natural and that it must aim at the realization of the rights of the subjects. Eliminating any obstacles of an economic nature related to court fees, legal aid, transportation, prepayment of the financial obligation for which you have appealed, etc. However, the right of access to courts is not absolute. However, these restrictions should not limit the access provided to the individual in a way or to the point where the right of access is violated in its content. Furthermore, the restrictions comply with Article 6/1 of the ECHR, only if they pursue a legitimate aim and if there is a "reasonable ratio of proportionality between the means used and the intent envisaged". The court examines whether the restriction affects the essence of the law, in particular, whether it pursues a legitimate aim and whether there is a reasonable relationship of proportionality between the means used and the particular aim.("Execution". 15/66 European Court of Human Rights Guide to Article 6 of the Convention – Right)

The main focus of the last four years of justice reform has been the 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. Should not forget that the reevaluation process is not the whole Justice Reform, but only one of its constituent stages. (Maho, B. 2021).

The lack of justice officials, due to the vacancies of judges and prosecutors currently being created at all levels of the justice system, cannot serve as a justification for concentrating the courts through a new judicial map without taking into consideration and analysis other factors of social and economic character, which, as we analyzed above, directly affect the delivery of a more efficient and effective justice than what we currently have.

References

A. Law related to Justice Reform in Albania

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. Official Gazette no. 138, date of publication 27/07/2016.

Law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania". Official Gazette no. 208, date of publication 07/11/2016

Law no. 98/2016 "On the organization of the judicial power in the Republic of Albania". Official Gazette no. 209, date of publication 07/11/2016.

Law no. 115/2016" On the governing bodies of the justice system ". Official Gazette no. 231, date of publication 01/12/2016.

Law no. 111/2017 "On legal aid guaranteed by the state"

Sub legal act no. 409, dated 19.6.2019 "On the approval of the action plan 2019–2021 of the cross-sectoral justice strategy

B. Scientific publications, opinions, and links

Effective Access to Justice, Directorate-General for Internal Policies, 2017, can be found at the link: http://www.europarl.europa.eu/supporting-analyses.

Baldwin, John. 2000. Access to justice: the English experience with small claims (English). PREM Notes; no. 40. Public Sector. Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/327031468318325993/Access-to-justice-theEnglish-experience-with-small-claims Broka, Petrina.

Handbook on European law relating to access to justice that it`s download at this link https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf

UN, General Assembly (GA) (1966), International Covenant on Civil and Political Rights (ICCPR), 16 December 1966. 6 UN, GA (1948), Universal Declaration of Human Rights (UNDHR), 10 December 1948.

FRA (2011), Access to justice in Europe: an overview of challenges and opportunities, Luxembourg, Publications Office,

European Court of Human Rights Guide to Article 6 of the Convention - Right to a fair trial (civil aspect)

Maho, Besnik "The revaluation process in Albania during 2016-2021, published in Jus & Justicia Scientific Journal No. 15, "Overview of the decentralization process in Albania, comparative approach in the Western Balkans

Maho, Aferdita & Maho, Besnik "Justice Reform in Albania, publishing in Ninth International Conference on: "Social and Natural Sciences – Global Challenge 2020". Organized by

International Institute for Private, Commercial and Competition Law, Stockholm, Suede, November 2020

Maho, Aferdita "A comparative view between Administrative Jurisdiction in France and Administrative Jurisdiction in Albania", published in Central and Eastern European Legal Studies, no. 2/2020

Handbook on European Law of Access to Justice, European Union Agency for Fundamental Rights and Council of Europe, 2016, can be found at the link: https://ëëë.echr.coe.int/documents/handbook_access_justice_eng.pdf

Një hartë e re gjyqësore për Shqipërinë. Raport Vlerësimi nga KLGJ - Shtator, can be found at the link: : http://klgj.al/wp-content/uploads/2021/12/NJ%C3%8B-HART%C3%8B-E-RE-GJYQ%C3%8BSORE-.pdfhttp://ipls.org/ëp-content/uploads/2021/09/Punimi-final-mbi-gjendjen-e-reformes-se-drejtesise-prill-2021-6.pdf

https://www.reporter.al/2022/02/11/rrezik-kolapsi-organizatat-shoqerise-civile-oponence-hartes-se-re-gjyqesore/

http://klgj.al/ëp-content/uploads/2019/10/Plani-Strategjik-i-KLGJ-se-per-sistemin-Gjyqesor-2019-2020-versioni-shqip-1.pdf

http://klgj.al/udherrefyes-per-funksionalitetin-e-gjykates-se-larte/

https://top-channel.tv/2021/12/28/harta-e-re-gjyqesore-manja-do-te-sjelle-perdorim-me-te-mire-te-burîmê-publike/

http://klgj.al/njoftim-per-shtyp-date-10-qershor-2022/

https://euronews.al/vendi/aktualitet/2022/06/12/avokatet-bojkot-proceseve-gjyqesore-per-4-dite/

https://euroneës.al/al/vendi/aktualitet/2021/07/23/stoku-i-dosjeve-i-paperballueshem-olsian-cela-situata-do-perkeqesohet-ne-vjeshte/

https://ahc.org.al/ëp-content/uploads/2022/02/Opinion-ligjor_Raporti-i-Vleresimit-per-Harten-e-re-Gjyqesore.pdf

https://www.reporter.al/2022/02/11/rrezik-kolapsi-organizatat-shoqerise-civile-oponence-hartes-se-re-gjyqesore/

http://ipls.org/ëp-content/uploads/2021/09/Punimi-final-mbi-gjendjen-e-reformes-se-rejtesise-prill-2021-6.pdf

https://www.avokatipopullit.gov.al/media/manager/ëebsite/reports/Draft%20raport%20per%20standartin%2 0e% 20minimumit% 20jetik_AqypVjs.pdf;

http://www.instat.gov.al/media/6543/anketa-e-t%C3%AB-ardhurave-dhe-nivelitt%C3%AB-jetes%C3%ABs-2017-2018_.pdf

https://www.reporter.al/2022/02/11/rrezik-kolapsi-organizatat-shoqerise-civile-oponence-hartes-se-re-gjyqesore/

https://www.destesia.gov.al/keshilli-i-ministrave-miraton-udhezimin-per-heqjen-dore-nga-rekurset-ne-gjykaten-e-larte-nga-administrata-shteterore/

http://klgj.al/udherrefyes-per-funksionalitet-e-gjykates-se-larte/

https://realstory.al/fondksion-shoqeria-e-hapur-per-shqiperine-harta-e-re-e-gjyqesorit-rrezikon-zbatimin-e-reformes-ne-rejtesi/

https://www.gazeta-shqip.com/ne-fokus/harta-e-re-gjyqesore-frika-e-problemeve-te-vjetra-i1164487;

http://www.panorama.com.al/harta-e-re-gjyqesore-sadushi-domosdoshmeri-shume-gjykata-apeli-japin-vendime-te-ndryshme-per-nje-ceshtje-kemi-numer-te-sits-judges-and-prosecutors /

http://klgj.al/permbyllet-cikli-i-konsultimet-publike-per-harten-e-re-gjyqesore/
European Court of Human Rights Guide to Article 6 of the Convention - Right to a fair trial (civil aspect)
https://njihreformennedrejtesi.al/sq/lajme/item/173-isp-raport-reforma-ne-drejtesi-2018-bilanci-problematikat-sfidat

C. Decisions of ECtHR
Mishgjoni vs Albania ECtHR Judgment no. 18381/05, 7 December 201
Frydlenderv. France [GC], App No 30979/96, ECHR 2000-VII, [2000]
Makarova v. Russia, no.23554 / 03, 1 October 2009;
Shkalla v. Albania, ECtHR Judgment 10 May 2011;
Bara and Kola v. Albania, ECtHR Judgment of 12 October 2021;
Buchholz vs Germany, 6 May 1981;
Zouhar v. Czech Republic, 11 October 2005;
Comingersoll S.A. v. Portugal [GC], 6 April 2000;
P.H. v. Ireland, no. 45046/16, dated 10 October 2017.

D. Decisions of the Constitutional Court
Decision no.21, dated 20.03.2017, of the Constitutional Court;
Decision no 52, dated 14.11.2014, of the Constitutional Court;
Decision no. 80, dated 18.12.2017 of the Constitutional Court;
Decision no. 22, dated 29.04.2021 of the Constitutional Court;
Decision no. 16, dated 16.03.2021 of the Constitutional Court;
Decision no. 69, dated 17.11.2015 of the Constitutional Court;
Decision no. 12, dated 05.03.2012 of the Constitutional Court;
Decision no. 33 dated 01.11.2021 of the Constitutional Court;
Decision no. 81, dated 28.12.2015 of the Constitutional Court;
Decision no. 69, dated 17.11.2015 of the Constitutional Court.