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THE COURT SYSTEM MAPPING IMPACT TO THE JUSTICE REFORM

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content

EDITORIAL

The court system mapping, impact to the justice reform

Prof. Asoc. Dr. Juelda LAMÇE
Editor-in-Chief

The comprehensive process of reorganizing and reforming the judiciary as part of a deep reform of the justice system in Albania, culminated with the constitutional and legal amendments in 2016, aiming at reorganizing and fostering the newly established as well as existing justice institutions in order to increase public confidence in the justice system. The proposal for a new judicial map by the High Judicial Council and Ministry of Justice is part of such ongoing reforming efforts. The newly organized map is expected amongst others to lead to the closure of several first instance general jurisdiction courts, administrative first instance courts and appeal courts.

The proposal is inspired amongst others, by the impact of the vetting procedure in the number of available serving magistrates versus their increased workload as well as their distribution in the existing courts in the country, aiming at facilitating their efforts in issuing justice. The proposal has led to many reactions by several shareholders in the justice system, as well as by the public as relates to the expected impact in terms of qualitative justice, efficiency, equality of access to justice, of the reformed judicial map.

On one hand the National Chamber of Advocates contests the newly designed map by having many of its members boycott the court hearings, as the new judicial map appears to violate and severely limit the right to access to justice, as well as the accomplishment of the right to defense in criminal, civil and administrative proceedings of all levels. So far, the proposals by the managing bodies of the Central and local Chamber/s were not taken into consideration during the nationally held meetings and discussions.

Under the lawyers' perspective the newly proposed judicial map would deteriorate their situation given that their service would concentrate in certain urban centers. Whereas the National Association of Judges of the Republic of Albania appears

to support the draft. In the opinion of the associations' representatives, the new proposal is expected to better the standards of issuing justice in the country, by satisfactorily meeting the need of the citizens for qualitative justice and in equal time for all.

Last but not the least, what appears of relevance is the impact of such proposal for the main stakeholders and beneficiaries of such reform and new expected reality, namely the citizens, in terms of their reduced or rather increased access to justice.

For certain the new proposal will ask for extensive research and contributes to further explore and analyze the upcoming challenges for meeting the right balance between the fundamental rights of the stakeholders and the proposed solutions by the newly established justice bodies for a better qualitative, efficient, but most importantly accessible-to-all justice.

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

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.

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The effects of the new judicial map on family disputes resolution

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Abstract

The family is one of the most important institutions of our society, which has been given a special protection in national and international acts. In 2004, the Family Code entered into force, providing a set of legal norms for the regulation of relations between spouses, cohabitants, parents and children. In addition to these norms, there were also provided provisions which regulate the resolution of other disputes within family relations.

Due to social, political, cultural and technological changes, affected as well by Albania's long transition since 1990, the core of the family has been challenged,

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affecting the increase of disputes and the number of cases presented to the courts. On the other side, the vetting process in Albania has led to a backload of cases, most of which are civil procedures. Recently, the High Judicial Council has taken the initiative to create a new judicial map, which will lead to the reorganization of the judicial system and the reduction of the number of district courts and courts of appeal. This reorganization and reduction of courts will also affect the resolution of family disputes, especially of those who are vulnerable, in economic difficulties, minors, individuals with disabilities, limiting de facto the right to access the court.

In order to provide a complete picture of the effects that the new court mapping may have on resolving family disputes, this paper will analyze the Albanian legal framework, related case law and the challenges that have been encountered so far. It will focus as well on the doctrinal debate, giving concrete recommendations to the revision of the draft report on the new judicial map.

Keywords: *vulnerable groups, family dispute, access to court, judicial map.*

I. Introduction

One of the most crucial human rights is access to justice as one of the main pillars of our civil society. To guarantee this practically, every country has built up a network of courts with the purpose of bringing the administration of justice as close to residents as feasible. This is a time of constant and consequential change: the development of new infrastructure facilities makes certain places (cities or rural countries), more available than they were previously. In addition, the development of modern modes of transportation makes traveling from one city to another faster and easier.

The European Network of Councils for the Judiciary (ENCJ), which includes the judiciaries of most (aspiring) EU member states as members or observers (if they do not have a council for the judiciary) is aware of the impact of the economic crisis on the judicial system. It adopted the so-called Vilnius Declaration in 2011. This proclamation, aimed to provide sustainable reforms on the judicial system, developing long term policies to assure their efficiency and accountability (https://www.encj.eu/articles/89). The ENCJ established a special committee to identify and analyze changes happening in European nations, as well as provide related recommendations (Van Dijk, Dumbrava, 2013).

The ECEJ (European Commission for the Efficiency of Justice) makes a connection between economic theory and the process of reorganization of courts

known as Supply Chain Management. According to that judicial geography reorganization is a problem of balance between different factors such as:

- Access to justice in terms of proximity of citizens to courts.
- Minimum size of a court so that the presence of various competences and functions can be ensured.
- Reduction of costs as the resources of the public administration cannot and must not be wasted but rather optimized.
- Maximization of quality and adequate performance of the service provided.

Thus, the preparation of a judicial map, as a complex process, should take in consideration the following elements: a) current access to judicial map; b) objectives and criteria to be set by the countries; c) indicators to be build and measured by the countries (Comparative study of the reforms of the judicial maps in Europe, 2012).

II. Resolution of family disputes through the court in Albania

The family is considered an institution as important as the state, as both of them, through their organization and functioning, aim to maintain a social cohesion necessary for the modern society. As a result, the family remains a social, economic, moral, and traditional organization (Omari, 2008: 23). As one of the most important nuclei of society›s existence, the family is often faced with difficulties, misunderstandings, and problems, which are not resolved between family members, and consequently addressed for solution to the courts.

The Family Code and the Code of Civil Procedure provide norms for regulating the conduct of court proceedings in the family field. Family issues, among others, consist of dissolution of marriage, parental responsibility, maintenance obligation, authorization to marry, recognition of paternity/maternity, authorization to move with children outside the territory of Albania, protection orders, removal procedures, restriction of capacity to act etc.

The civil procedural law provides for the competent courts to resolve these disputes, while taking as a general criterion the place of residence/abode of the spouses. Article 51 Code of Civil Procedure provides that: "Lawsuits for proving the existence or non-existence of marriage, marriage annulment and its dissolution, can be filed either in the court of the country where the spouses had their last joint residence or in the court of the country where the defendant resides. When the defendant has no residence or place of residence or domicile in the Republic of Albania, the lawsuit is filed in the court of the country where the plaintiff has

residence, or domicile and when the plaintiff has neither of them, the lawsuit is filed in the court of the capital city."

In the absence of the above general criterion, the law provides the criterion of residence of the defendant, or the person required to have his/her capacity to act limited/removed. Article 382 Code of Civile Procedure provides that: " The ability to act can be removed or restricted by request of the spouse, close family member, the prosecutor, as well as everyone else who has a legitimate interest with this regard. The request is submitted to the court of the territory where the person whose residence is requested to be removed or the capacity to act is restricted".

Regarding of protection orders, the competent court is that of residence of the applicant claiming to have been subject to violation. According to Article 9 of Law no. 9669/2018 "On measures against domestic violence", amended: "In case of domestic violence, the victim can address a request to the nearest police station (of the area where he/she lives or is domiciliated), the relevant local unit (commune, municipality), the health center of the area where he/she lives or is domiciliated or he/she can file a lawsuit to the court of the district of her proper residence or domicile or of the perpetrator, in order to take the necessary measures".

The official national data show that 36% of the cases registered in the court are family related ones (Ministria e Drejtësisë, Vjetari Statistikor, 2020). This is a considerable percentage, which should be taken into account for the reorganization of the judicial system. In the specific, the different categories are summarized below:

- Lawsuit for divorce - 9,328
- Alimony lawsuit -78
- Paternity recognition lawsuit -65
- Lawsuit for derecognition of paternity - 135
- Other - 2,436

The number of divorce lawsuits filed in court has increased in: Tirana, Vlora, Saranda, Elbasan, Lezha, Fieri, Shkodra, Durrës, Dibra, Gjirokastra and Berat. In 2020 there is an increasing tendency in other districts as well. According to these data, the divorce is requested by women in over 80% of cases (Ibid). A considerable number of family cases are also related to seeking protection orders (mostly by women), which have increased in the last years. The number of requests for protection orders, in Tirana District Court for 2021, is 1052 (Ministria e Drejtësisë, Vjetari Statistikor, 2021).

III. Resolving family disputes of the vulnerable groups through the courts

Resolving family disputes requires special attention due to the close relationship between the litigants, the fact that often part of these processes are people with disabilities or children (for whom must be taken into account their highest interest). Considering the difficulties that may arise in different family contexts such as in economic or social conditions, culture and traditions, when a family member often has no opportunity to go to court, risking reinstatement of his/hers violated rights and in some cases endangering health or life.

Referring to the procedural provisions, the person (family member) who initiates the process has the obligation to prepay the costs of the process such as: taxes and fees, notarization of documents, lawyer, and expert costs et[3]c. In most cases, especially in the cases of divorce or protection orders, the person/family member who refers to court is in a difficult economical and psychological situation. In most cases, applicants have no apartment to stay, and they're obliged to provide food for their children. In order to guarantee access to justice of those who are financially disabled, victims of criminal offenses, domestic violence etc., Law no. 111/2017 "On legal aid guaranteed by the state" was approved. It aims to guarantee a fast, fair and equal access to justice as established by Copenhagen criteria, in accordance with the rule of law principles, guarantying the human rights.

The main purpose of this law is to assist the categories in need and the discriminated ones who can benefit from free legal aid services provided by the state. The restructuring of the legal aid system transfers the examination of requests for legal aid from the State Commission for Legal Aid in Tirana to the competent courts throughout the Albanian territory. The later operate closer to the place of residence of residents, and deal with similar issues for the implementation of Article 158 of the Code of Civil Procedure (Report of the draft law no. 111/2017 «On legal aid guaranteed by the state»).

Thus, the new court mapping should take into account not only the access to justice and the distances from citizens residences to the court, but also economic, social and cultural factors in order to effectively guarantee the access to justice. The question is: Can the provisions of this law guarantee equal access to justice if the judicial system is reorganized and reduced according to the proposed draft / report? To our opinion that would be difficult to achieve, as the law itself contains some problems in implementation in practice, which will deepen with the reduction of courts. To illustrate our approach, we will analyze two cases:

[3] For example, in divorce processes, the participation of the spouses in the first hearing is mandatory even if they are represented by a lawyer.

A. The case of filing a lawsuit for divorce by one spouse

If one of the spouses, financially unable, seeks to dissolve the marriage because it has lost its purpose, he/she can proceed in two ways:

a) he/she can present a request for secondary legal assistance before the beginning of the trial[4];
b) he/she can file a lawsuit for the dissolution of the marriage and in the same lawsuit can request secondary legal assistance.

In both cases, the claim is filed at the residence of both spouses, or at the residence of the respondent. In both cases, proof of financial impossibility must be attached to the application. In the second case in drafting the lawsuit, the spouse needs legal advice, but in case of financial impossibility, the question is who will draft the lawsuit? The collection of documents has financial costs, as well as the filing of a claim / lawsuit in court, especially if the court is distant from the applicant's residence/domicile. In these cases, the inability to provide the reasons for divorce may entail the rejection of the request for secondary legal aid, endangering the prosecution of the court process.

As an example of the first case, we bring the decision of Tirana District Court, no. 127, dated 01.02.2022, according to which: "The judge considers that he must return the request and its acts to the requesting party (…). From the review of the submitted request, it results that this request is not complete. It lacks the probative acts in the form required by law (in the original or the unit with the original) according to the provision in article 154 / ç of the Civil Code (...)".

As an example of the second case, we refer to the decision of the Tirana District Court, no. 183, dated 14.01.2021, according to which: "Based on these provisions, the applicant did not prove in the court hearing written evidence that he is in the conditions provided by this law. Thus, his insufficient income has not been proven. The applicant claims to be unemployed, but this claim was not substantiated by any written evidence. Occurring in the conditions when the applicant did not prove with any written evidence his claims regarding the economic impossibility, the court concludes that the conditions provided by articles 11 and 12 of law No. 111/2017 are not met. In view of the above considerations, the court deems that the request is unfounded in evidence, and as such should be rejected." Even in the ideal case that the request for legal aid is accepted and a lawyer is assigned to follow the court proceedings, access to justice is not still guaranteed. In case of divorce, the participation of the spouses in the first hearing is mandatory. Article 134 of the

[4] Explanation: this includes representation by a lawyer, exemption from court fees and costs.

Family Code provides that: "In reviewing the lawsuit for divorce, the court first schedules a conciliation session, in which the spouses must appear in person. The judge may hear them individually and then jointly, without the presence of their representatives."

In the absence of the defendant in the second or third hearing (depending on the reasons for non-participation) the participation of the plaintiff is mandatory, resulting in the termination of the trial. Article 135 of the Family Code provides: "If the plaintiff is not present at the conciliation hearing, although he is regularly informed, the judge decides to adjourn the trial. When the respondent does not appear, although he is regularly informed, the judge adjourns the conciliation hearing, reiterating the notification to the respondent. If even in this hearing the defendant is not present without any reasonable cause, the judge, after hearing the plaintiff and being convinced that the reconciliation of the spouses cannot be reached, schedules the court hearing, ordering the collection of the necessary evidence".

In cases concerning parental responsibility or in other cases involving minors, the court should hear the child. Article 6 of the Family Code provides that: "In any procedure involving minors, he has the right to be heard, in accordance with his age and ability to understand, while retaining the right given by the special provisions that guarantee his intervention and consent". The question is: how will the spouse/child participate in such hearings in cases of financial impossibility, especially if the courts are too far from the place of residence? If we refer to the analysis made in the report on the drafting of the new court mapping, we find that these factors and circumstances have not been considered.

b. The case of requesting a protection order

The situation in the case of requesting a protection order is better regulated, due to the recent changes made to the law on protection from domestic violence. Its main objectives are the prevention and reduction of domestic violence cases, non-discriminatory protection of each group that presents special needs, improvement of protection measures provided by law, increase of free qualified legal aid, determination of clear procedural deadlines for registration of the application for Defense Order and Immediate Defense Order, appeals against court decisions etc. (Report on the draft law «On some additions and changes to the law no. 9669, dated 18.12.2006» On measures against domestic violence», as amended).

Despite the fact that the law against domestic violence has been drafted in accordance to international standards and has offered some solutions to the problems encountered in practice, the proposals for reorganization and reduction of the number of courts, will bring up several concerns related to the distance

between the courts and the residence/domicile of the interested parties. In fact, the law provides a number of subjects that can request a protection order to the court, such as the police, a relative, the prosecutor, etc. Even in these cases, the applicant must be present in court personally or through a representative. If there are no financial means to cover the transportation costs, the court may dismiss the case.

In the decision no. 419, dated 24.03.2021, Tirana District Court argued that: "The court considers that in the conditions when the plaintiff is not present during the process, even though she has knowledge and has not submitted any reasonable cause, considers that it is not in the conditions of article 19 of law 9669/2006, amended, are not met . Point 2/1 where it is provides that" Court issues the protection order even in cases when the parties claim that the conflict has been resolved or should be resolved by conciliation or mediation". It did not result that the parties have resolved the issue by conciliation or mediation. In these circumstances based on article 179 of Civile Procedure Code, where it is provided that "If the plaintiff or any of the parties, without any reasonable cause, are not present in both the preparatory actions and the court hearing, and it turns out that they are regularly informed, the court or the single judge decides to adjourn the trial".

IV. The new judicial map and access to justice in family disputes

In drafting the new judicial map, which will reduce some courts, the High Judicial Council states that it has taken into account some principles such as: guaranteeing access to justice, reducing costs, increasing the quality and adequacy of the judicial service, and demographic development, the number of inhabitants in relation to the number of courts, economic development, geographical characteristics and development of roads and transport (Këshilli I Lartë Gjyqësor, 2022).

More specifically the working group states in their report that: «Although it might be important to include an indicator of the time required to travel to court using public transport, the Working Group requested information from the National Road Authority, but there was no data available.» The report also claims that distances between villages/towns and the proposed new courts have been considered, referring to a unified distance system.

According to authoritative doctrine, "the new judicial map undermines citizens'rights" (Euronews 2022). The Head of the National Chamber of Advocacy in Albania, Max Haxhia, criticized the proposal to reduce the number of courts, proposing a "gradual reduction of the courts' number" (Harta e re gjyqësore, Dosja 18 shkurt 2022). The Minister of Justice, Ulsi Manja, argues on the other side that the new court mapping is dictated by law, which specifies that the courts of first

instance must have at least 7 judges, and the Appeal Courts at least 10 judges (Ibid). A detailed analysis on the criteria established by Law 98/2016 "On the organization of the judicial power in the Albanian Republic" and other internal and external factors, criticize the drastic reduction of court numbers, taking into consideration the Albanian context (Halimi, 2022).

In our opinion the criteria used in the working group report have not been analyzed in terms of implementation in practice and the effects they will bring. The report refers to average data, according to a unified system, but a more detailed information lacked on: infrastructure, public transport and how accessible the latter is from many villages and towns, as there is no study or data costs for the use of public transport, considering the recent increase the fuel and consequently of the tickets price (Këshilli i Lartë Gjyqësor, 2022). In the absence of this important data and information to determine the reduction of courts, the working group could have conducted monitoring of the actual distance of these villages/towns from the proposed new courts and the real costs to access the court.

The monitoring process could have also included vulnerable groups, their ability to access public transport, the financial ability to cover these costs, especially in cases where they rely on a retirement pension, disability pension, economic assistance, or are even unemployed. More specifically, individuals with disabilities or those who are in a difficult economic situation are not considered in the study and as a result, being the most vulnerable part of society, they will remain even more discriminated compared to other citizens. If the number of courts will be reduced, there will be a lack of services (experts, notaries, translators, etc.) in the related areas. This will inevitably lead to forcing this category to either not take any action to seek implementation of their rights or protection of their legitimate interest or to face additional costs, perhaps even higher, due to their physical limitation or other disabilities (Alushaj, 2023).

The reorganization of the judicial system and the reduction of the number of courts will create difficulties for the access of courts to resolve family disputes by vulnerable groups, individuals with financial disabilities, persons with disabilities, etc. The Working Group recommends only one National Court of Appeal, merging the six current courts of appeal. According to the data reported in the report, the maximum travel time within the new proposed appeal jurisdiction is 4 hours and 56 minutes for citizens coming from Konispol in the south and 4 hours and 10 minutes from Bajram Curri – Margegaj (Një hartë e re gjyqësore për Shqipërinë, KLGJ, 2021).

This distance is several times higher than the average distance of 1 hour and 30 minutes taken as a measuring etalon by the working group. It did not take into account neither the conditions of infrastructure and public transport, nor the transport costs for a person from South to Tirana. In addition, what will happen

to people with disabilities? Does public transport meet the conditions for a long journey for a person with disability and the person who will accompany him? Creating opportunities to access the nearest court to resolve a dispute, at the lowest possible cost is fundamental for the protection of human rights and the implementation of the rule of law principles. The high and disproportionate level of legal costs or lack of legal aid may discourage citizens from filing a lawsuit in court, impeding effective access to justice. Furthermore, the availability and quality of legal assistance at the national level is likely to affect effective access to justice. Studies have shown that the costs of justice and the rules governing legal aid can impede effective access to justice. Furthermore, other issues may affect access to appropriate legal aid and have a negative impact on citizens› ability to gain effective access to justice (European Parliament, 2017).

In the decision no. 55, dated 23.12.2013, the Constitutional Court stated that: "In a democratic society, the right to good administration of justice occupies a distinct place and a narrow interpretation of Article 42 of the Constitution and Article 6 of the European Convention on Human Rights (ECHR) is not in line with their aims and scope. Good administration of justice begins with guaranteeing that an individual will have access to court. Access to court should be substantial and not merely formal (see also decision no. 42, dated 29.09.2011, of the Constitutional Court).

The denial of the right to access the court makes the rights merely affirmative, lacking the opportunity to apply and restore those rights in place, when they are violated. The right to access to court includes not only the right to initiate a trial, but also the right to have a final settlement of the dispute by the court. Considering the difficulties in Albania related to the implementation of free legal aid, the economic crisis which will mostly affect the most vulnerable citizens, the infrastructure, security and quality issues in public transportation, the reduction of the number of courts will inevitably lead to the restriction of the right to access the court.

V. Conclusions and recommendations

Undertaking an initiative for the reorganization of the judicial system is a necessity related to the economic, social, legal, cultural changes of a country. Nonetheless, it should be implemented on the basis of an in-depth examination, taking into account all factors, not just policies/models of other countries. In fact, even in these model countries the reorganization of the courts has faced difficulties in access to courts. As analyzed in this paper, in which for objective reasons not all the problems of resolving disputes in court have been considered, concrete examples

were analyzed on what consequences and effects the new draft of the judicial map may have for vulnerable groups, people with disabilities, minors, etc.

Therefore, we recommend that, in order to guarantee for every citizen equal access to the justice system, before the approval of the proposed court mapping, in-depth studies, monitoring and analysis of several factors should be considered. In the specific, economic and social conditions, concrete possibilities for people with disabilities to access the court; public transportation costs, living standard, minimum wage, etc. We also recommend taking into account the recommendations of attorneys, notaries and lawyers who face the every-day problems of such cases in the judicial system.

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Justice Reform during the transition and its progress

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Abstract

One of the primary tasks of the Albanian state during the post-communist transition, remains the justice reform in its two main pillars: new legislation and justice bodies with new qualifications and mentality. Its purpose is to increase the independence of the justice system and strengthen it in terms of professionalism, efficiency, impartiality and honesty of judges and prosecutors in fulfilling their duties. For study purposes, we have divided the reform in post-communist justice into three-time phases, depending on the profound constitutional changes: 1991-1998, 1999-2016 and 2016 onwards. The first two stages are treated mainly in their historical way. This topic deals with the reflection of the results of this reform, the effects so far in achieving the goal for which it is developed. How and to what extent have the bodies of the justice system been cleaned out corrupt judges and prosecutors. Is their independence, impartiality and professionalism been achieved? In this regard, the study captures the changes in legislation, the structure of the system, the efficiency of the new era, the obstacles and shortcomings of the reform, the views of political forces and experts on its development, the contribution of our international experts and partners who strongly support morally, legally and financially, as well as other problems that serve the normal course of the justice reform. Finally, in the paper, criticism, opinions and suggestions are given to avoid shortcomings and lead the reform to the required objective.

Key words: *justice reform, judicial map, post-communist transition, justice efficiency.*

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I. Introduction

Historically, from the formal point of view, in all the basic acts of the Albanian state, the courts have been conceived as independent bodies in the administration of justice, guided and commanded only by the Constitution and the law. Thus, the Basic Statute of the Kingdom of Albania states that judges, in giving decisions, are independent and guided only by the law and their conscience [Basic Statute of the Kingdom of Albania, year 1928, published by the Royal Press Office, Tirana, 1997, Chapter III, Art. 118]. Similar formulations, with the same content, are given in the constitutions of the one-party socialist state of 1946 and 1976, which stipulate that the courts are independent in adjudicating the case (or in the exercise of their function) and decide only on the basis of law. [Constitution of the People's Republic of Albania, year 1946, articles 80 and 81 and Constitution of the Socialist People's Republic of Albania, year 1976, article 103]

Both in the conditions of the feudal-bourgeois regime of the Kingdom of Albania, and in the conditions of the communist dictatorship in Albania, for the way they function, the independence of the courts has been formal or, at least, quite limited. The nature, character and duties of these bodies, as well as the legislation of the state itself, are determined by the model of social relations. Justice takes the form and content that responds to the interests of the socio-economic formation of the respective historical period and reflects the degree of civilization of this period, is the product and reflection of the philosophical, economic, ideological, political and social views of the time. Major changes, reforms, and even its revolutionization, become necessary and inevitable in the stages of profound social transformations, especially in the moments of transition from one system to another socio-economic system.

Dictated by this law, after the fall of the socialist system in 1991, in addition to the reforms in the political and economic sphere that were made to replace the centralized economy with the free-market economy and the transition of Albania to democracy, important measures were taken in field of justice. In this context, a comprehensive and comprehensive reform was launched in both its main pillars: new legislation and justice bodies with new qualifications and mentality. This reform, like any new initiative, has been accompanied from the beginning by political-legal debates, with several remarks, criticism, disagreement on its design and implementation, especially with regard to the current reform, which is still in ongoing. The opposition and a considerable number of lawyers and experts, of both categories, those close to the opposition and the independent ones, express their disagreement on the way this reform is taking place, claiming that it is distorted and is under the political influence of the ruling party.

As per the above considerations, this paper will analyze some dissenting views and approaches, of domestic and foreign experts, which have been presented as well in the media programs. In addition, it will examine the constitutional norms, substantial and procedural legislation relevant to the justice system bodies and other reports, legal acts and documents related to the implementation of the justice reform. Post-communist justice reform can be divided into three-time phases, depending on profound constitutional changes: 1991-1998, 1999-2016 and 2016 onwards.

II. Justice reform during the years 1991 - 2016

In the first two phases of the Justice Reform, which we are mentioning together, all the previous legislation was transformed and replaced with the new legislation, according to the standards of the European Union, as well as the reorganization of the courts and bodies of the other justice system.

In the first place, the constitutional changes had to be made, on which this legislation would be based and the transformation of socio-economic relations. Initially, the law on the main constitutional provisions was adopted, as an interim package of provisions, which lasted until November 1998, when, after the referendum, it was replaced by the Constitution of the Republic of Albania, which is currently in force with the relevant amendments [Law no. 7491, dated 29.04.1991, "On the main constitutional provisions" and the Constitution of the Republic of Albania, 1998]. In the meantime, these basic acts were followed by codes and a number of important laws for the judiciary. On the other hand, as a member of the Council of Europe, in 1996 the Republic of Albania accepted the jurisdiction of the European Court of Human Rights in Strasbourg, with ratification by Assembly of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has become part of the Constitution and one more guarantee in meeting the standards of the rule of law. The Constitution stipulates that the system of government in the Republic of Albania is based on the division and balance between the legislative, executive and judicial powers and that the judiciary is exercised by the courts (Articles 7 and 135 thereof). In this view, (strict, narrow view), with genuine bodies of justice are understood only the courts of all instances. Whereas, in a broader sense, the system of justice bodies also includes the Constitutional Court, the Prosecution and other constitutional bodies, which, in one way or another, are related to the administration of justice or the executive administration of courts and prosecutor's offices.

The sanctioning of the separation and balancing of powers, as a basic constitutional principle, aimed then (and still aims today) at stripping the courts

and prosecutors' offices of party ideology and politicization, and creating a truly independent, impartial, professional, and integral judiciary. But, as it turned out, the new rulers only wanted the image of such a judiciary in public, when in fact they tried to capture and dominate it according to the Marxist axiom: "Power is one and indivisible." In this regard, with the rationale for the implementation of justice reform, the Council of Ministers opened a course, initially 3 months and then turned it into 6 months, for the training of employees of courts, prosecutors and investigative police, which is known as "Course of the Poplars", a nickname he received from the place where it took place, in the area of "Poplars, Durres" [DCM No. 133, dated 26.03.1993, "On the opening of courses for the preparation of employees of the prosecution, investigative police and courts "And DCM no. 296, dated 21. 06.1993]. Although trumpeted and propagated by its inventors as a need and means to replace the politicized judges of the communist regime with new judges, this course actually served to control the justice system through militant party judges and prosecutors, generally incompetent and easy to corrupt. Many judges and prosecutors who had served in the previous system, most of them young and not involved, were dismissed and replaced by "graduates" in the 6-month "Poplar" course, who came from all kinds of professions or sectors, some even in noncompliance with the educational and moral criteria, creating a negative impact on the new Albanian justice.

In the framework of the cooperation of the Albanian state with the Council of Europe, the School of Magistrates was established in 1996 [Law no. 8136, dated 31.07.1996], which would prepare new magistrates, judges and prosecutors who were thought to sound justice, establish a justice system with independent and uncorrupted professionals. Due to the political and social context, it started its activity at the end of the following year .In the second phase, after the adoption of the Constitution in 1998, efforts were made, through a program of assistance from the European Union, to reorganize the justice system, to remove from the system judges deemed incompetent and inadequate. To this end, a failed skills test was organized, as the Constitutional Court considered the test unconstitutional. However, the courts gained wider independence. According to the constitutional provisions, the High Council of Justice, shortly after the HCJ, was established, which decided on the appointment, promotion, transfer and disciplinary responsibility of judges, as well as the National Judicial Conference, a very important body that elected the members of the HCJ from the judicial system. Further, in 2005, the Assembly expanded the role of the National Judicial Conference, giving it the attributes of a representative forum of judges to strengthen the independence of the judiciary. [Constitution of the Republic of Albania, year 1998, article 147; Law no. 8811, dated 17.05.2001, "On the Organization and Functioning of the High Council of Justice"; Law No. 9399, dated 12.05.2005, On the Organization and Functioning of the Judicial Conference"].

In July 2003, the courts and prosecutors' offices of serious crimes were established at two levels, first instance and appeal [Law No. 9110, dated 24.06.2003], and in February 2008 the Assembly undertook further reforms in the judicial system with the approval of the new law "On the Organization and Functioning of the Judiciary in the Republic of Albania" [Law No. 9877, dated 18.02.2008]. The law set criteria for appointment and promotion, and provided that new judges in the courts of first instance should be appointed among the graduates of the School of Magistrates, except for former judges who wished to return to their offices. Military courts were dissolved, and administrative courts were established as well, in order to increase the professional quality, especially to facilitate the adjudication of administrative cases. [Law no. 49/2012, "On administrative courts and adjudication of administrative disputes"]. However, with all these reforms and reorganizations of the judiciary according to the best contemporary European standards, the image of the courts and the prosecution to the public perception came to deteriorate, as bodies stifled by corruption and influenced by politics in decision-making, which dictated the need for a new comprehensive reform.

III. Current Justice Reform

The current Judicial Reform begins in 2014, with the establishment of the Special Parliamentary Commission for the Reform of the Justice System, which prepared a report on the current state of the courts and prosecution offices, shortcomings and problems that resulted in terms of organization, functioning and administration. It has started from the international factor and continues to be strongly supported by it, respectively by the EU and the US with the aim to increase the confidence of the Albanian people in the accountability and success of this reform. Finally justice, being cleansed of corruption and disability, will win in the fight against corruption, organized crime and the influence of politics on the administration of justice, as a source of social injustice, gangrene and disintegration of the state.

The purpose of the Judicial Reform is to increase the independence of the justice system and strengthen it in terms of professionalism, efficiency, impartiality and honesty of judges and prosecutors in fulfilling their duties, in short to increase the quality and speed of trial (maximum: delayed justice, denied justice). As such, it fully affects every element of the current justice system, so it started with the adoption of constitutional amendments on July 21, 2016, where 21 articles were changed, out of a total of 26 belonging to the justice system, and 26 articles were added or new points as well as the package with organic laws was approved. With these changes, three institutions defined in the Constitution were dissolved and the establishment of at least 12 new independent institutions was foreseen, as well

as substantial restructuring of the existing institutions. Subsequently, amendments were made to the Criminal Code and the Code of Criminal Procedure, as well as the adoption of the Juvenile Criminal Justice Code.

IV. Justice Institutions

We are grouping the new Justice Institutions according to the functions they perform:

I. Executive governing institutions

1. The High Judicial Council
2. The High Council of the Prosecution
3. Judicial Appointments Council
4. High Inspector of Justice

II. Trial and prosecution institutions

1. The Constitutional Court
2. The Supreme Court
3. The General Prosecutor
4. Court against Corruption and Organized Crime (Special Court)
5. Prosecution against Corruption and Organized Crime (Special Prosecution)
6. National Bureau of Investigation

III. Transitional Reassessment Institutions (Vetting)

1. Independent Qualification Commission
2. Special Appellate Panel
3. Public Commissioners
4. International Monitoring Operation

We are not mentioning here the auxiliary institutions dealing with external links and data request. Although with a lot of delay, exceeding the constitutional and legal deadlines, the executive governing bodies of the judiciary, vetting and partially or with no full capacity, the institutions of trial and criminal prosecution have been established and started working normally. The Constitutional Court and the Supreme Court are still not fully operational, and some appellate courts are on the verge of collapse. We are focusing on the vetting process, which is at the

heart of the Justice Reform, in terms of the public interest, because its opinion is fraught with a negative perception not only of the performance of judges and prosecutors in post-communism, as affected by politicization and corruption, but also for the entire justice system. It must be acknowledged here that the Albanian politics itself has contributed to the creation of this negative image, throwing mud on the judiciary to cover corruption and its shortcomings in the governance of the country. The illusion was created that the source of all evil that grips the state and society comes from the justice system.

The vetting process is carried out by the three special institutions mentioned above, the Independent Qualification Commission, the Public Commissioners, and the Appellate Panel. They are assisted by the International Monitoring Operation, composed of observers from EU and US member states. Vetting is based on three pillars of re-evaluation: (1) control of assets, (2) control of image and (3) control of professional skills of judges and prosecutors, as well as other employees provided in the Constitution and the relevant organic laws of the package. The re-evaluation started in October 2016, with the approval of the law on the transitional re-evaluation of judges and prosecutors in the Republic of Albania and had to be completed within a period of five years. [Law no. 84/2016]

Specialists and academia have warned of a very complex and difficult process of reform in general, but also of vetting in particular, as for the first time it is experimented in our country and goes beyond the principles and rules known and applied in judicial systems. Eric Vincken, the Head of the Dutch experts' team of in our country, said: "Legal reform in Albania is of a historic and unique scale. It has never been implemented before" https://www.prnewswire.com/news-releases/albania-justice-reform-of-historic-and-unprecedented-magnitude-683473791.html. This process is further complicated by the fact that it has passed through (and still does), obstacles, political clashes, disagreements, reservations and doubts about its objectivity and impartiality, from the unilateral approval of the legal package of this reform to the allegations for the selective, political and clientelist removal of many professional judges and prosecutors and their replacement by militants of the ruling or incompetent party, in order to seize judicial power from the executive, although formally the political parties are in favor of this reform. Justice system experts continue to have differing views on how this reform is being implemented, as well as on its results and success. One of the most active and critical lawyers towards the reform, Prof. Assoc. Dr. Jordan Daci states that "justice reform seems to be taken hostage by the current majority" and that "the political class is in a clear conflict of interest in relation to justice reform, the whole class", because "from both sides without exception there are enough candidates for prison " [Invited by Artur Zhej in "360 degrees", on May 28, 2020 and abcneës.al, on May 22, 2019]. While the lawyer Alesia Balliu, considering the politically distorted

reform, states: "The result so far has been a prolonged weave, which has left the hole population on hold" and further: "Similar to our transition, the state managed to turn the Justice Reform into an endless "Odyssey". [Alesia Balliu, Gazeta "Mapo", dated 30.09. 2020, "Odyssey of Justice Reform"].

However, vetting has ended for the former judges of the Constitutional Court and the Supreme Court, removing almost all these judges from the system, without being able to replace them in time with other judges (even today the required number is not yet reached according to the constitutional provisions), which has led to the non-functioning of these courts for three-four consecutive years. Overall, the Transitional Re-evaluation bodies have dismissed nearly 50 percent of judges and prosecutors who have been subject to vetting, mainly for not justifying their assets, while some of them have resigned by refusing to face or avoiding vetting procedures. As warned by many professionals in the field of justice, but not only, the vetting was not completed nor could it be completed within the five-year constitutional deadline, in the circumstances, modalities and extent in which it took place. The re-evaluation has continued at a slow pace and will take extra time to complete, as a significant number of judges, prosecutors, and other justice staff (almost over twenty-five percent of them) has noy yet undergone the vetting process.

According to the Constitution, the mandate of the members of the Independent Qualification Commission and of the Public Commissioners is 5 years from the date of their commencement of functioning. Following the dissolution of the commission, unfinished re-evaluation cases for judges are reviewed by the High Judicial Council and unfinished cases for prosecutors by the High Prosecution Council. Whereas, after the dissolution of the Public Commissioners, their competencies are exercised by the Head of the Special Prosecution. Appeals against the decisions of the commission, which are still unfinished, will be reviewed by the Constitutional Court. [Constitution of the Republic of Albania, amended, article 176 / b / 8].

In such a situation, where the number of undervalued judges and prosecutors remains considerable, the question arose as to what would be done to complete the vetting. Would the mandate of these bodies be terminated or extended to end their vetting? Termination of their mandate would create serious difficulties for the normal continuation of vetting and would jeopardize the standards and practices followed by these bodies, although the standards used so far leave much to be desired. They have even been criticized by the initiators and zealous supporters of this reform.

Overcoming this impasse through the extension of the mandate of the Independent Qualification Commission and the public commissioners, which was persistently insisted on by the EU representative and the US Embassy, again required

the amendment of the Constitution. Finally, amid numerous controversies and debates for and against, on February 10, 2022, the Albanian Parliament extended the deadline for the end of the mandate of these bodies to continue vetting until the end of 2024. [Law no. 16/2022, On an amendment to Law no. 8417, dated 21.10.1998, "Constitution of the Republic of Albania", amended]

In a careful logical, literal and linguistic interpretation of the phrase "unfinished cases" and "against the decisions of the commission still unfinished" in Article 176 / b / 8 of the Constitution, it is concluded that in the competence of the High Judicial Council, the Council The High Prosecution and the Constitutional Court pass those cases or decisions that are registered with the Independent Qualification Commission at the moment of the end of the mandate, for which the proceedings have started. Therefore, in our opinion, the extension of the mandate is the most appropriate solution, although it was completed without studies and analysis for the non-fulfillment of duties by the Independent Qualification Commission.

V. Some issues of the Justice Reform

Justice reform has been welcomed by the public, which continues to wait impatiently for its promised results. It was trumpeted as a process that would give immediate results, especially from the international community, and that they would be held criminally liable as corrupted politicians ("the big fish"). What is the result so far? A protracted process, with repeated and unfulfilled promises, with blocked files and accompanied by fears that the prospect of reviewing them, especially by the Supreme Court will be distant and with serious consequences for the stakeholders and the Albanian society as a whole.

Although five years have passed since the adoption of the Justice Reform on July 21, 2016, clashes and accusations between the political wings for bias and seizure of the justice system continue to be severe, hindering and damaging its progress. The shortcomings of the reform, the delays, the tedious length of the procedures and the turbulent political climate, have made people even more skeptical and do not even believe in the "reformed Albanian justice" promised with so much fervor, where the restoration of the people's trust to this justice has been and remains one of the main objectives of this reform.

In the recent controversy over the performance of the Prosecution against Corruption and Organized Crime, otherwise SAPK, each side of Albanian politics accuses the other side, for not initiating criminal cases against the "big fish" of their political opponents. Apparently, Albanian politics finds it difficult to give up pressure on the judiciary to achieve its goals. On the other hand, the US Embassy, which has the SPAK at its heart, came out in its defense and considered these

attitudes as unacceptable interference and pressure in the activity of the SPAK. The representative of the European Union, Alex Hupin, at the National Conference on 24.06.2022, on the topic "Public interest in the administration of justice and the independence of magistrates", was critical of the impact on court cases, stating: "We have made a way long, but inappropriate influences and interference in judicial affairs still continue to take place. They take different forms, they take the form of attacks on justice reform, but also the form of attacks against judges and prosecutors https://politiko.al/english/e-tjera/zyrtari-i-be-vazhdojne-nderhyrjet-ne-gjyqesor-ohen-gjyqtare-dhe-prok-i462460.

The laws in Albania are generally drafted and built according to the best international standards. We generally say that from time-to-time unnecessary changes and additions are made, which make it difficult for the interpreter and their implementation, as has happened with the Criminal Code and the Code of Criminal Procedure. Eric Vincken, Head of the Dutch experts' team in our country, speaking about the values of the current reform in Albania, states: "Almost every article and chapter of the Albanian legislation has changed." https://www.prnewswire.com/news-releases/albania-justice-reform-of-historic-and-unprecedented-magnitude-683473791.html. In fact, some of these additions and changes have brought more confusion than benefit. For example, Chapter VII of the Criminal Code, the general part, which provides for types of criminal offenses with terrorist purposes, consists of 14 articles, 12 of which have undergone two, three or four changes or additions within a four-year period. To make matters worse, there are clashes between them, predicting the same thing in two or more articles or even long sheets, with the nature of a "novel", an article consisting of three pages, which no Heaven can distinguish. But what has compromised the system is the lack of proper implementation, a disease from which even the reform legislation is not escaping. On the other hand, a serious obstacle to the Justice Reforms is the very complex new justice system itself, with a multitude of bodies. The structure of the whole system, especially of the institutions of the executive governance of justice, is aggravated, superimposed, duplicated or characterized by parallel actions, taking large energies and budgets, unjustified for our small and poor country and makes that inefficient. The Venice Commission warned our state early on that such structures would require qualified human resources, which Albania did not have (and still does not), large budget expenditures (for a poor country like Albania) and clashes between these bodies over competencies or jurisdiction, which we are suffering today.

The way some of the most important bodies of this reform were formed, such as the Constitutional Court and the Independent Appellate Panel, left room for their capture by politics. Prior to the constitutional amendments, members of the Constitutional Court were appointed by the President of the Republic with

the consent of the Assembly, and now their appointment is fragmented into three groups: three members are appointed by the President, three members are elected by the Assembly and three members are elected by the Court. Senior, being selected from among the candidates ranked in the top three on the list by the Judicial Appointments Council. Evidence of this conclusion is the prolonged "battle" between the President of the Republic and the Assembly to bring to the Constitutional Court the jurors preferred by one or the other party.

VI. Conclusions

The justice system that is being built in Albania is experimental, it has not been encountered in any country, in the democratic ones, no or not, and it is not finding support (and there is no way) from any other country that is reforming in justice. And as with any experiment, you can do it, but you can also fail. Furthermore, the professional evaluation of judges and prosecutors was entrusted to an inexperienced administrative body, with anonymous members for the justice sector, as is the case with the Independent Qualification Commission. I fear that, with the completion of the vetting in the process, there will be a need for another reform in the judiciary, at least to reduce the number of existing structures, not to mention that it has started the campaign for the restructuring of the courts of appeal, which aims to focus in a single one in Tirana, an "experiment" that has been done before and has failed, as well as in reducing the number of district and administrative courts of first instance.

The High Judicial College, with its decision No. 211, dated 10.06.2022, has approved the Evaluation Report and the proposal of the institutional group on the organization of judicial districts and territorial jurisdiction of the courts. These new changes in our judicial system are once again quickened, with an unexplained rush, apparently we do not seem to have learned lessons from our failures, undertaking reforms not properly studied, tested and, shared/discussed with groups of interest such as: judges, prosecutors, lawyers, psychologists, prison staff and experts in various fields that are in one way or another related to the justice system, contributing to its proper functioning. Without underestimating the public consultation, the ones will wander through lengthy trials from one city to another and will have to disburse out of their efforts in order to claim their rights. While acting speedily and in a rush, things can't be sustainable. Underlying this doesn't mean procrastination and waste of time but undertaking prudent and safe steps.

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Constitutional dilemma on the immediate return of the lawsuit

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Abstract

This paper aims to analyze the Constitutional dilemma on the immediate return of the lawsuit. Since 2001, the third paragraph of Article 154 / a of the Code of Civil Procedure provides: '' When the lawsuit does not meet the conditions mentioned in this chapter, the judge returns it to the plaintiff at the time of its filing or he is notified in writing of the completion of the deficiencies and, after the filing date is indicated in the lawsuit, a deadline is set for filling in the gaps. Until this date, the lawsuit remains without action. "

In as specific case the Court of Appeal decided to immediately return the request for the issuance of an execution order, concluding that the request had not fulfilled the elements of the respective accompanying documentation as required by Articles 154 - 156 of the Code of Civil Procedure. Through this interim decision it was asked the Constitutional Court to repeal the legal provision that legitimizes the court to immediately return the lawsuit [2].

To our opinion the third paragraph of Article 154 / a of the Code of Civil Procedure, in the part that provides "returns to the plaintiff at the time of its submission or", is

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[2] See Decision no. 883 / 90114-1317, dated 15.12.2021 "On the suspension of the trial and sending the case to the Constitutional Court" of the Court of Appeal of Durres, through which it was asked to asked the Constitutional Court to repeal the third paragraph of Article 154 / a of the Code of Civil Procedure, in the part where it is provided "it returns to the plaintiff at the time of its submission or", as it is contrary to Articles 4, 17 and 42 of the Constitution and Article 6 of the ECHR.

contrary to Articles 4, 17, 42 of the Constitution and Article 6 of the KEDNJ. In similar case, to my personal experience, it has never been decided to immediately return the lawsuit or the request, according to the provision of article 154 / a of the Code of Civil Procedure. The inconclusive decision-making of the return of the request or lawsuit, in my case law, was preceded by the intermediate decision-making of ascertaining the procedural shortcomings of the procedural act and was further accompanied by the non-fulfillment of judicial duties by the plaintiff. The same approach was held pe the author in the capacity of Assistant Magistrate in the High Court and further in the capacity of a judge of the Court of Appeal of Durres.

Keywords: *constitutional lawsuit; immediate return of the lawsuit, civil procedure regulations*

Introduction

As an expert in the Committee of Experts on amendments to the Code of Civil Procedure, which was established by the Assembly in the period January - March 2017 within the package of legal changes of the Justice System Reform, the author proposed with the respective explanations to be repealed this part of the third paragraph of Article 154 / a of the Code of Civil Procedure (https://www.academia.edu/31108874/Propozim_p%C3%ABr_reform%C3%ABn_n%C3%AB_Kodin_e_Procedur%C3%ABs_Civile, visited on 09.01.2022.). Nothing changed then in the law in this regard and nothing has changed in the case law of the courts of first instance with general jurisdiction as long as the law has not changed since 2001.

In November 2021, the author initiated an incidental constitutional review procedure on this part of the third paragraph of Article 154 / a of the Code of Civil Procedure. This article reflects all the constitutional dispute that the author has filed with the Constitutional Court with the conviction that this part of the civil procedural legal regulation should be repealed and, even if it is not repealed, it should not be enforced by courts with general jurisdiction.

General considerations on the shortcomings of the lawsuit

One of the procedural presumptions of the validity of the civil or administrative judicial process is the validity of the lawsuit or request as a procedural act. The validity of the lawsuit or request as a procedural act is closely related to the existence of its formal and substantive elements that perfect it, as provided in Article 154 of

the Code of Civil Procedure[3]. A lawsuit or request that is not perfected in form and content as a procedural act can not constitute a valid court process, within the meaning of Article 153 of the Code. It also brings to attention that directly, in Article 154 - 156 of the Code of Civil Procedure, as well as in Article 21 of Law no. 49/2012, regulates the validity of the lawsuit as a procedural act and not the request as such. However, based on and for the application of the second paragraph of Article 1 of the Code of Civil Procedure, since there are no special regulations of this nature for the request as a procedural tool, it is concluded that exactly these regulations of the law are applied by analogy, whether in civil litigation and administrative adjudication.

The lawsuit or request in this sense and in terms of its fundamental importance as a procedural act enters into the typical procedural acts, which means that their form and content must strictly respect the legal requirements that are opposed. In this sense, Article 115 of the Code of Civil Procedure provides that procedural acts, for which the law does not require certain forms, can be performed in the most useful form to achieve their purpose. Since Article 154 of the Code of Civil Procedure defines the mandatory elements of the form and content of the lawsuit or request, then it is concluded that all these extremes are mandatory for the active litigants of the civil or administrative judicial process. On the other hand, the civil and administrative procedural law has provided that some acts must be attached to the lawsuit or request in order to meet the legal condition of the proceedings. In article 154 - 156 of the Code of Civil Procedure and in point 1 of article 21 of Law no. 49/2012 provides for written acts which the plaintiff or claimant must attach to the lawsuit.

The lack of conformity of the active litigant of the civil or administrative judicial process in drafting the content or form of the lawsuit or request and on the other hand the non-compliance with the legal obligations to enclose written acts individualized in law, civil and administrative procedural law considers defects of the lawsuit or claim. The civil and administrative procedural law has also provided for the eventuality when the lawsuit or claim may have a deficiency of these formal and substantive legal elements or in the legal requirements on the written acts that must be attached to the lawsuit. Common to both procedural laws is the fact that all the shortcomings of the lawsuit refer to those provided by Articles 15 - 156 of the Code of Civil Procedure. The common denominator of all these substantive, formal and procedural shortcomings is that in these cases all the shortcomings of the lawsuit of this nature are correctable or validable.

This is the reason why Article 154 / a of the Code of Civil Procedure provides for the obligation of the single civil judge to determine the shortcomings by an intermediate decision and to leave time for the plaintiff or the requesting party

[3] See by analogy the regulation of article 21 point 1 of Law no. 49/2012 "On administrative courts and adjudication of administrative disputes".

to complete them. This is the reason why letter "a" of point 1 of article 25 of Law no. 49/2012 provides that, in case of ascertaining the defects of the lawsuit or the request by the single administrative judge, the intermediate decision-making of ascertaining the defects is proceeded and leaving time for the plaintiff or the requesting party to complete them. This is why letter "dh" of Article 467 of the Code of Civil Procedure provides for the incomplete defects of the lawsuit or request in the court of first instance as a cause for dismissal and for returning the case for retrial, with the task of rectification. of defects and of this invalidity of the lawsuit as a procedural act. On the other hand, the shortcomings of another nature of the lawsuit in the procedural sense that the law distinguishes must be brought to attention and distinguished. It should remain in mind that civil or administrative litigation requires the existence of some positive or negative procedural presumptions in order to avoid legal impediments to non-proceedings (see Article 299 of the Code of Civil Procedure). Positive procedural presumptions are those legal conditions without which the civil or administrative judicial process is terminated, such as the will of the parties to proceed. On the other hand, negative procedural presumptions are those legal conditions which, if proven to exist, terminate the process, such as the existence of a judiciary or the adjudicated item.

These legal reasons are found to be sometimes typified in law[4] and sometimes provided as pilot causes, which the court must identify case by case [5]. Proof of these legal obstacles of a procedural nature constitutes the universal legal cause of inconclusive decision-making of the civil and administrative court, according to Article 127 of the Code of Civil Procedure, decisions which end the trial and do not allow the continuation of the trial to assess the merits and the basis of the lawsuit. Universally, these procedural reasons affect the lawsuit or the request in the procedural sense and weigh exclusively on the ability of the lawsuit or the request to constitute a valid court process.Therefore, the consequence and civil procedural sanction is the final decision or the termination of the trial and the termination of the civil or administrativejudicial process.The procedural reasons for the termination of the civil litigation are flaws of the lawsuit, as they represent causes of procedural pathology of the lawsuit or the request in the procedural sense which enable it to produce a lawsuit. But unlike the shortcomings of the lawsuit provided and regulated in Articles 154 - 156 of the Code of Civil Procedure which are all valid, the shortcomings of the lawsuit that terminate the civil or administrative judicial process are invalid and that their finding extinguishes with immediate and

[4] See for example Article 58, Article 59, Article 154 / a, Article 179, Article 201, Article 299, Article 392, Article 451 / a of the Code of Civil Procedure or Article 9, letter "a" of point 1 of Article 25, Article 39 of Law no. 49/2012.

[5] See the former Article 468 of the Code of Civil Procedure or letter "c" of Article 299 of the Code of Civil Procedure, which among other things provides that the court decides to adjourn the trial when it is found that "the lawsuit can not be filed" or when the trial could not continue.

retrospective or retroactive effect any procedural activity performed (Article 300 of the Code of Civil Procedure.).

It is in this essential difference that the change in the way the civil or administrative court administers the judicial process in each case of identifying these procedural flaws of the lawsuit in the procedural sense lies. This means that the ascertainment of procedural shortcomings provided in Article 154 - 156 of the Code of Civil Procedure or in Article 21 of Law no. 49/2012 does not immediately lead to the termination of the civil or administrative judicial process. They can also be validated and that the lawsuit or request as a procedural act has causes of invalidity that can be corrected and that if corrected the trial continues normally and validly and the act is validated with retrospective force. Only if the shortcomings of the lawsuit or claim are not met in time, then the civil or administrative court process is terminated with retroactive effects. On the other hand, the ascertainment of the irreparable flaws of the lawsuit immediately leads to the termination of the civil or administrative judicial process. But it should remain in mind that all this category of legal causes that immediately and retroactively extinguish the civil or administrative judicial process are different from those regulated in Articles 154 - 156 of the Code of Civil Procedure and that consequently their legal regime cannot be procedurally unified.

Given that any defect of the lawsuit and the claim according to article 154 - 156 of the Code of Civil Procedure or according to article 21 of Law no. 49/2012 can be corrected, I consider unreasonable the legal regulation of the third paragraph of article 154 / a of the Code of Civil Procedure, in the part that provides discretionary the way of administration of the judicial process in case of ascertaining the defects of the lawsuit, immediately allowing the single judge to proceed with the immediate return of the lawsuit. The author considers that the inconclusive decision for the return of the lawsuit and the termination of the civil or administrative trial for the reasons of non-fulfillment of the tasks left by the court to correct the validable defects should in any case be preceded by the interim decision on the defects of the lawsuit or the request and ability of the plaintiff or claimant to meet them. The author also considers that the premise for the validity of the incomplete decision to terminate the trial through the return of the acts to the plaintiff or the applicant is the non-fulfillment of the individualized obligations directly by the court of the plaintiff or the applicant. Failure to complete the deficiencies constitutes a circumstance of ineligibility according to article 154 / a and letter "c" of article 299 of the Code of Civil Procedure or letter "a" of point 1 of article 25 of Law no. 49/2012. Exactly the existence of this discretion of the court in the Code of Civil Procedure, in the conditions when there should be only one way for the administration of the civil or administrative process, leads to incompatibility with the principles of the right to due process.

Arguments on the unconstitutionality of the challenged legal regulation.

i) Violation of the principle of proportionality

Considers that it is necessary to note that initially the legislator in Article 154 / a of the Code of Civil Procedure, in the part that provides for the discretion of the court to decide the immediate return of acts and this way of disposition, did not respect the principle of proportionality restricting the right of active subjects of civil litigation to access the court. The procedural tool and legal solution used by the legislator does not match the factual and legal situation that dictated the legal intervention.

Attention should also be paid to Article 17 of the Constitution, which provides that:

"1. Restrictions on the rights and freedoms provided for in this Constitution may be imposed only by law in the public interest or for the protection of the rights of others. The restriction must be in proportion to the situation which has dictated it.
2. These restrictions may not infringe the essence of the freedoms and rights and in no case may they exceed the restrictions provided for in the European Convention on Human Rights. "

This constitutional norm constitutes the universal test of the constitutionality of any law in terms of the restrictions it imposes on the fundamental rights and freedoms of the individual. At the core of this principle is the "fair balance of interests", their important and objective assessment, as well as the avoidance of conflict through the selection of appropriate means for their realization. A limitation would be considered in line with the standards of the principle of proportionality if:

(i) the objective of the legislature is sufficiently significant to justify the restriction of the right
(ii) the measures taken are reasonably relevant to the objective - they may not be arbitrary, unfair or based on illogical assessments;
(iii) the means used are not harsher than to achieve the required objective - the greater the detrimental effects of the selected measure, the more important the objective to achieve, in order to the measure to be justified

as necessary (Decision no. no. 52, dated 05.12.2012 and Decision no. 71, dt. 27.11.2015 of the Constitutional Court. Decision of the Constitutional Court of the Republic of Albania no. 30, dated 01.12.2005 on Summary of Constitutional Court Decisions, 2005, p. 254; Decision of the Constitutional Court of the Republic of Albania no. 18, dated 14.05.2003 on Summary of decisions of the Constitutional Court, year 2003, p. 100).

Among othersa, the ECtHR has held that the principle of proportionality implies the use of the most appropriate and least harmful means to achieve the goal in the conditions dictated by them and that states are given a wide margin of appreciation in the implementation of economic policies and social or law-making, but by no means can Member States neglect to update this principle ("Jahn and others vs. Germany"; decision of the ECtHR. dated 30.06.2005; "Jahnes and others v. United Kingdoom"; decision of ECtHR dated 21.02.1986). All this jurisprudence of the Constitutional Court and the ECHR at its core has the principle that the means used by the legislator should be appropriate in relation to the need that has dictated the intervention in restricting the right of the individual.

The author considers that this principle, from all other legal regulations, has not been respected by the legislator only in the third paragraph of Article 154 / a of the Code of Civil Procedure. It is noted, as will be shown below, that the legislator has respected this principle in all other provisions of the same Code or in other laws regulating the same or similar issues. First of all, attention should be paid to Article 44 of the Code of Administrative Procedures, which provides for the shortcomings of the administrative request addressed to a public administration body and further the procedure for their correction. This provision, among other things, regulates that the public body examines in advance the request regarding the fulfillment of formal legal criteria, such as the competence of the public body, legitimacy, deadline, form and any other criteria provided by law. Further, if corrective procedural deficiencies are found, the public administration body notifies the requesting party in writing of the completion of the deficiencies related to the fulfillment of the formal legal criteria, setting a reasonable deadline. The procedural law continues to be regulated by the provision that in these cases the public body actively assists the party in completing the identified shortcomings.

Failure to meet the deficiencies within the set deadline is a reason for non-acceptance of the request. The Code of Administrative Procedures in its article 44 goes further in the arrangements to help the party to have access to the administrative proceeding and provides that the public administration body notifies the requesting party if it is necessary to perform further administrative actions before deciding on the admission or not of the request and, if such a need exists, in this case the body also sets a reasonable deadline for carrying out further

actions. Article 454 of the Code of Civil Procedure regulates the content and form of the procedural act of appeal or recourse. Meanwhile, in Article 455, the Code has regulated the acts that must be attached to the appeal in each case. The lack of conformity of the appellant with these procedural rules does not lead to the disposition with inconclusive decision-making of the only judge of the court that gave the decision or of the court with reviewing jurisdiction. Letter "b" of Article 450 of the Code of Civil Procedure provides that the inconclusive decision-making of the rejection of the appeal against his shortcomings of the only judge of the court that issued the decision or the court with review jurisdiction, in the deliberation room and immediately after submission will be taken only when the appellant or recursor has not fulfilled in time the deficiencies found by an intermediate decision by the court.

This means that even in this legal provision there is no possibility of immediate return of the appeal and that the inconclusive decision of rejecting the appeal should be preceded by the intermediate decision of ascertaining the defects and only if the defects are not corrected in time the court decides with an inconclusive disposition, ending the litigation without resolving the matter on the merits. On the other hand, letter "dh" of Article 467 of the Code of Civil Procedure provides for the invalidity of the lawsuit as a procedural act, in the sense of Articles 154 - 156 of the Code, as a legal cause that nullifies the trial held in the first instance not to extinguish entirely judgment but to repeat it from the beginning. Therefore, this provision provides that the court of appeal decides in these cases to overturn the decision of the court of first instance and send the case for retrial (letter "ç" of Article 466) and not to overturn the decision of the court of first instance and dismiss adjudication of the case (letter "c" of Article 466). The meaning of this legal remedy used by the legislator is determined precisely by the validity of the procedural act of the lawsuit or request and that for this reason the trial is not terminated but is repeated by repeating from the beginning.

Articles 474, 475 and 476 of the Code of Civil Procedure regulate in a special way the procedural act of recourse from the point of view of form and content. Point 3 of Article 476 of the Code provides that, when it does not complete the formal and substantive shortcomings as a procedural act, the rapporteur who gave the decision or the single judge notifies the party to complete the shortcomings of the recourse within 5 days. In this case, the recourse is reviewed in the deliberation room and the ascertainment of the shortcomings is realized through an intermediate decision of the monocratic judicial body. When the appellant does not complete or correct the deficiencies within the deadline, the recourse is considered not to have been filed and is returned to the party together with the other acts submitted by him. It is further provided that, when the deficiencies of the recourse have not been ascertained by the lower court, the rapporteur of the case in the High Court by

decision notifies the party to complete the deficiencies within 5 days. When the shortcomings of the recourse are not met within the deadline, the rapporteur, in the counseling room, decides to return the recourse. This means that in these cases of legal regulation, the final decision to return the recourse is always preceded by the intermediate decision to ascertain the shortcomings of this procedural act. Article 515 of the Code of Civil Procedure provides for the formal and substantive validity of the creditor's request to the bailiff service for the enforcement of the executive title. After regulating the content and form of this typical procedural act and the documents to be attached to the act, the provision provides that, when the above documents for the execution of the execution order are not completed properly, the bailiff finds the defects and leaves the applicant a 5-day deadline for filling in the gaps.

When the applicant does not complete these deficiencies within the set deadline, the documentation is returned to him. This means that in these cases of legal regulation the final decision of the bailiff to return the request and the attached documents is always preceded by the intermediate decision to ascertain the shortcomings of this procedural act and the legal opportunity left by this authority to the creditor to validate the shortcomings of the procedural act. In 2017, Article 161 of the Code of Civil Procedure was amended, regulating for the first time the mandatory co-litigation as a procedural defect of the lawsuit or request. Letter "ç" of this provision stipulates that, if the decision can not be given except against many persons, in the case of compulsory co-litigation, the latter must be summoned as defendants in the same process. In these cases, when the judge finds that the mandatory co-litigation on the part of the defendants is incomplete, he leaves the plaintiff a period of up to 20 days to fix it, according to letter "c" of this article, and article 154 / a of this Code.

If the plaintiff does not act within the above deadline, the court decides to adjourn the trial. If the deficiencies are rectified in time, the lawsuit is rectified and validated with retroactive effect. In all the tests cited above by the following legal provisions it is provided that, when the shortcomings of the procedural act have been corrected within the deadline set by the procedural authority, then it is considered that it has been presented regularly from the moment of filing. So the corrected flaws validate the procedural act in each case with retrospective effect. On the other hand, the same issue that regulates the third paragraph of article 154 / a of the Code of Civil Procedure, is regulated differently from letter "a" of point 1 of article 25 of Law no. 49/2012. This provision does not allow for two options available to the single administrative judge in preparatory actions or in other words does not allow discretionary opportunities for the administration of the process by the single judge. This part of the provision provides that:" 1. For the conduct of the trial, according to the principle of a regular judicial process and within a quick

and reasonable time, the presiding judge, within 7 days from the date of filing the lawsuit, performs the following actions: a) Requests the plaintiff to complete the deficiencies of the lawsuit, setting him a deadline of up to 10 days. When the plaintiff does not meet the shortcomings of the lawsuit, within the set deadline, the judge issues a decision on the return of the lawsuit and the acts attached to it. A special appeal is allowed against this decision ".

In this law there is no discretionary possibility for the immediate return of the lawsuit or the request for validable defects, the defects which under the blanket provision of article 21 of this law are determined to be exactly those that are regulated by article 154 - 156 of the Code of Civil Procedure. Article 46 of Law no. 49/2012 provides for the eventuality of ascertaining the shortcomings of the appeal. In case the appeal does not meet the conditions provided in point 1 of this provision, or when the appeal is not signed, the litigants are not indicated, the decision against which an appeal is made or what is required by the appeal, the single judge notifies the party to correct flaws within 5 days. It is further provided that, when the appellant does not complete or does not correct the deficiencies within the deadline, the appeal is deemed not to have been filed and is returned to the appellant by decision, together with the other acts submitted by him. Correction of shortcomings in time, validates the appeal as a procedural act with retroactive effect.

Article 57 of Law no. 49/2012 provides the same legal regulations and the same way of proceeding with the court in case the defects of the recourse are ascertained as a procedural act. Point 2 of this provision stipulates that, if the recourse does not meet the conditions provided in paragraph 1 of this article, and when the recourse is not signed, the litigants are not indicated, the decision against which the recourse is made or what is required by the recourse, the judge by decision notifies the party to correct the deficiencies within 7 days. It is further provided that, when the complainant does not complete or does not correct the deficiencies within the deadline, the recourse is deemed not to have been filed and is returned to the complainant by decision, together with the other acts submitted by him. When the deficiencies of the recourse are filled in time, it is considered presented from the date of its registration in court. In article 32, point 2 of Law no. 8577, dated 10.2.2002 "On the organization and functioning of the Constitutional Court of the Republic of Albania" regulates the formal and substantive shortcomings of the individual constitutional appeal as a procedural act in the same way and differently from what is provided by article 154 / a of the Code of Civil Procedure.

This legal regulation stipulates that, when the request has various procedural defects, the Panel of the Constitutional Court returns it to the applicant for completion, giving the reasons for the return and the deadline for its completion. When the request is submitted within the deadline set for the correction of the

defects, it passes again for preliminary review in college (Decision no. 146 dated 06.12.2021 of the Constitutional Court). In this case, the date of submission of the request is considered the date of its submission to the court for the first time. In case the request is submitted to the court within the deadline set for the correction of the defects, but is not fulfilled, the panel decides not to pass the trial. From all these analogous examples it is understood that the proportional solution of restricting access to court in the procedural sense to plaintiffs or claimants who have filed claims with valid defects is only one, namely the intermediate decision of the prosecuting authority to ascertain it shortcomings of the procedural act and leaving time to the active subject of the process to correct the shortcomings. And if they are not remedied within the set deadline, then the proceeding authority with an inconclusive decision terminates the process. And if they are corrected, automatically and ex legge the procedural act is considered valid with retroactive effect.

Consequently, it is naturally and logically concluded that the provision in the third paragraph of Article 154 / a of the Code of Civil Procedure of the part "returns the plaintiff at the time of its submission or" is contrary to Article 17 of the Constitution, as the legislator can not provided as a restrictive means of the right of access to court for the active litigant of the process the immediate non-final decision and also the discretion of the single civil judge to proceed in this way. The only proportional constitutional remedy in this case is that the procedural laws universally provide as a solution in analogous cases and that in this way it is concluded that for the corrective shortcomings of the procedural act lawsuit or request this is the only constitutional way of proceeding of the procedural authority.

ii) Violation of the right of access to court

I must point out that the right of access to a court derives directly from the constitutional principle of the rule of law and the prohibition of any arbitrary power which the ECHR itself seeks to exercise ("Zubac c. Croatie ", Decision of the Grand Chamber of the ECHR, 2018, paragraph 76 et seq). The ECtHR has ruled that a court's refusal to review the lawsuits of litigants at trial violates their right of access to a court (Al-Dulimi et Montana Management Inc. c. Suisse ", Decision of the Grand Chamber of the ECHR, 2016, paragraph 131). It is true that this fundamental right has no absolute character and that the law may provide for restrictions, but these restrictions must in any case pursue a lawful purpose and be proportionate and in direct proportion to the state of the fact that they have justified the restrictions ("Paroisse gréco-catholique Lupeni et autres c. Roumanie ", Decision of the Grand Chamber of the ECHR, 2016, paragraph 89; ECtHR Decision, 1991, paragraph 59; the case "De Geouffre de la Pradelle c. France ",

ECtHR Decision, 1992, paragraph 28), as otherwise the right would be violated in its substance ("Stanev c. Bulgaria ", Decision of the Grand Chamber of the ECHR, 2012, paragraph 229; "Baka c. Hongrie ", Decision of the Grand Chamber of the ECtHR, 2016, paragraph 120; "Naït-Liman c. Suisse ", Decision of the Grand Chamber of the ECHR, 2018, paragraph 114; "Philis c. Greece (no. 1).

In any case these restrictions must pursue a legitimate aim. In any case, the right of access to court is violated in its substance while its legal regulation ceases to serve the purposes of legal security and good administration of justice and immediately creates legal barriers that prevent litigants from seeing that their case is considered meritoriously by the court (Zubac c. Croatie ", Decision of the Grand Chamber of the ECHR, 2018).

The author considers that these requirements for the quality of the law restricting the right of access to court have not been complied with by the third paragraph of Article 154 / a of the Code of Civil Procedure in the part that provides for the discretion of the single civil judge for immediate non-final decision. It is therefore concluded that this way of legally regulating access to court has created obstacles for the plaintiff or applicant without the necessary constitutional and convention qualities and that the right of access to court has been incompatibly restricted.

iii) Violation of a reasonable trial time

It should be noted that the ECHR as well as the Constitutional Court in their consolidated jurisprudence have determined that the laws should outline the organization and functioning of the judiciary in such a way as to enable the fulfillment of the convention and constitutional obligation to conclude the trial in a reasonable term (H. c. France ", ECtHR Decision 1989, paragraph 58; "Katte Klitsche de la Grange c. Italy ", 1994, paragraph 61; "Comingersoll S.A. c. Portugal ", Decision of the Grand Chamber of the ECHR, 2000, paragraph 24; "Paroisse gréco-catholique Lupeni et autres c. Romania ", 2016, paragraph 142). In each case the duration of the process is assessed taking into account the circumstances of the concrete case ("Comingersoll S.A. c. Portugal ", Grand Chamber, 2000; "Frydlender c. France ", Decision of the Grand Chamber of the ECHR, 2000, paragraph 43; "Sürmeli c. Allemagne ", Decision of the Grand Chamber of the ECHR, 2006, paragraph 128; "Paroisse gréco-catholique Lupeni et autres c. Roumanie", Decision of the Grand Chamber of the ECHR, 2016, paragraph 143; "Nicolae Virgiliu Tănase c. Roumanie", Decision of the Grand Chamber of the ECtHR, 2019, paragraph 209).

The author points out that in this case the delays in adjudicating the case are brought about by the very manner provided for in the third paragraph of Article 154 / a of the Code of Civil Procedure. The civil procedural law in all other

provisions as sister, including the general provisions on the validity of procedural acts from article 119 to article 124 of the Code, is regulated in such a way as to save the process and at the same time preserve the validity of the procedural acts and why flawed. This legal regulation derives directly from the legal philosophy of the constitutional and convention principle of concluding the trial within a reasonable time.

The purpose of legal regulation is that through conservation due to the law of validity of valid procedural acts is given the opportunity for the parties to validate them and the trial to achieve the constitutional goal for which it is intended, namely the resolution of the civil case. In procedural legislation, the third paragraph of Article 154 / a of the Code of Civil Procedure constitutes the unique case where the law itself prevents the validation of the procedural act, providing for the immediate decision-making of returning the lawsuit and the acts attached to them.

This way of legally anticipating the judge's discretion causes unjustified and unreasonable length and delay of the trial, as the deficiencies found by the court of first instance to rectify the lawsuit will need the plaintiff or claimant. to appeal the decision to the appellate court and this review court to overturn the decision and return the case for retrial with the task for the court with initial jurisdiction to enable the active litigant to validate the procedural act by correcting the deficiencies.

Given the discretionary nature of the civil procedural law, the possibility is not ruled out that the appellate court may apply Article 154 / a of the Code of Civil Procedure in the same way. In these cases, the party will have to exercise special recourse to the High Court to validate his procedural act and to finally have a meritorious trial, the reason for which he has exercised the right to sue or lawsuit.

When considering the procedural scenario that even the High Court can discreetly apply the third paragraph of Article 154 / a of the Code of Civil Procedure, then we easily assume that the plaintiff or plaintiff may have the right to sue or request and that the subjective right sought to be protected has been substantially violated precisely by the way Article 154 / a of the Code of Civil Procedure has regulated the manner of proceeding of the civil court on the shortcomings of the procedural act that initiates the process. In these conditions, the only possibility for the individual to explode from everything has gone wrong with all three levels of trial, due to the third paragraph of Article 154 / a of the Code of Civil Procedure, remains Article 131 letter "f" of the Constitution, specifically the individual constitutional complaint. This is unacceptable. Given the commitment that our Republic has made at the time of ratification of the ECHR and given the element of evaluation criteria of the behavior of state authorities in achieving the standard of reasonable time, considers that our Republic through the regulation of the third paragraph of Article 154 / a of the Code of Civil Procedure, in the part that recognizes the discretion of the only civil judge to dispose immediately

with an inconclusive decision, has violated the right to conclude the trial within a reasonable time and together with it is found again violated the right of the subject active litigation for due process. Consequently, this part of the provision must be abrogated by the Constitutional Court as incompatible with Articles 4, 17 and 42 of the Constitution and Article 6 of the ECHR.

iv) Violation of the principle of legal certainty

The law, in order to comply with the requirements required by the Conditions and the ECHR, must meet the requirement of predictors, as well as clarity. The Constitutional Court has determined that the principle of legal advocacy guarantees the predictability of the normative system (Decision no. 20 dated 20.04.2021 of the Constitutional Court.). The issuance of legal norms does not only serve the resolution of a possible conflict or the settlement of a previously unregulated situation.This process should create the impression among the subjects of law that the content of legal norms guarantees security and stability for the future. Legal certainty is also treated as a condition for the material validity of an act, guaranteeing the immutability in principle of normative acts, where attention is paid to the regulation of situations without substantial changes continuously, as otherwise we would put the subjects of law in position unpleasant and unfavorable to them (Decision no. 20 dated 20.04.2021 of the Constitutional Court.)

In its jurisprudence, the Court has stated that legal certainty itself, as an element of the rule of law, has as a necessary requirement that the law as a whole or its specific provisions in their content must be clear, defined and understandable (Decision no. 9, dated 26.02.2007 of the Constitutional Court). Understanding and applying the principle of legal certainty requires, on the one hand, that the law in a society provide security, clarity and continuity, so that individuals can direct their actions correctly and in accordance with it, and on the other hand, the law itself should not remain static if it is to shape a concept. An incorrect regulation of the legal norm, which leaves the way for the implementer to give it different meanings and which brings consequences, does not go in accordance with the purpose, stability, reliability and effectiveness of the norm itself (Decision no. 10, dated 26.02.2015; Decision no. 36, dated 15.10.2007 of the Constitutional Court.).

In the present case it is found that the third paragraph of Article 154 / a and Article 154 - 156 of the Code of Civil Procedure has no legal criteria expressed to clearly and distinctly separate the cases when the court proceeds immediately with a non-final decision and when the court proceeds with an intermediate decision for ascertaining the defects of the lawsuit. It is incomprehensible on what legal basis this discretionary power of the single civil judge is exercised and when the shortcomings of the lawsuit or are found to be such that the trial should cease and

on the other hand when the shortcomings of the procedural act are such which dictate the intermediate decision-making of ascertaining defects and leaving time for their correction.

Not only active litigants are unclear about this arrangement but also their lawyers, legal advisers, representatives and the courts themselves as well. I consider that this way of regulation violates the constitutional and convention principle of legal certainty of the litigants active in the effective enjoyment of the right of access to court. They always remain vulnerable in these cases in the face of the exercise of the discretion of the single civil judge in the initial jurisdiction or further even before the civil courts with review jurisdiction, as the civil procedural law does not define any clear legal criteria when the lawsuit or the request made by them can be returned immediately and when it is found to be defective and will be given the opportunity to be corrected. I therefore conclude that the challenged part of the third paragraph of Article 154 / a of the Code of Civil Procedure should be repealed by the Constitutional Court because it contradicts the principle of legal certainty regarding the effective enjoyment of the right of access to court.

Conclusion

For all the reasons given above, the author considers that the Constitutional Court should repeal the third paragraph of Article 154 / a of the Code of Civil Procedure, in the part that provides "returns to the plaintiff at the time of its submission or", as this normative civil procedural regulation is in contradiction with Articles 4, 17, 42 of the Constitution and Article 6 of the ECHR.

However, even if the Constitutional Court does not repeal it, given all the above reasoned, courts with general jurisdiction should not apply this part of the legal regulation, as it violates the right of the plaintiff or requesting party to due process in the element of excess in court, the reasonable time limit of the trial and with them the principle of legal certainty.

In any case, the shortcomings of the lawsuit according to Articles 154 - 156 of the Code of Civil Procedure are correctable and that the immediate return of the lawsuit in these conditions is an unjustified, unfounded decision-making. If the lawsuit has procedural flaws of the invalidity type that is not validated, then the legal cause of immediate inconclusive decision-making in these cases will always be another cause than that provided in the third paragraph of Article 154 / a of the Code of Civil Procedure. Civil Procedure. In this way, the author considers that the case law has the opportunity to correct itself and over time this unconstitutional provision of the third paragraph of Article 154 / a of the Code of Civil Procedure, despite the fact that the appropriate constitutional and legal solution is that this part of does not exist as a legal provision in force.

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Lis Pendens in the Albanian Civil Procedural Code in the light of the European legislation

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Abstract

Justice reform in Albania dates back to 2014 and it is still in progress. It has the scope to reform the justice system by affecting all aspects of its organization, functioning and administration in order to strengthen and increase the independence of the justice system in Albania. Among other things, this reform approved Law 38/2017 on some additions and amendments to the Civil Procedure Code of the Republic of Albania, which aims to improve the access to justice, the adjudication of cases within a reasonable time and the non-delay of cases. In fact, the innovations of this law are numerous, so for this paper it has been selected to analyze an institute which from the

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point of view of the authors is important such as the Lis Pendens. This institute aims to regulate a situation of simultaneous pending of two proceedings with the identity of the parts, object and title that have been brought before the courts of different states. The Albanian Civil Procedural Code lacks a proper definition of international Lis Pendens, but it is regulated lately in the provision of article 38 of this code, which by law no. 38/2017, has undergone relevant changes, to be object of analysis in this article. These changes are in line with those in the European legislation. Therefore, object of our analysis will be also the problems in the judicial practice regarding the competence of judges which brought the need for changes in the European discipline of Lis Pendens and were disciplined in the EU Regulation no. 1215/2012, which for the first-time regulated cases of litigation between Member States and third States. Finally, will be analyzed the effects of these changes in the international context and the impact they will have on the Albanian civil process.

Keywords: *Lis Pendens, Law 38/2017, EU Regulation no. 1215/2012, justice reform*

I. Introduction

If we were to give the meaning of Lis Pendens, we would define it as a mechanism of civil procedural law that aims to avoid conflict between judges, in cases where two different judges are facing the same case. So there are identical issues that have in common three identical elements: personae, causa petendi, petitum. The aim is to safeguard the ne bis in idem principle through the application of the criterion of prevention, on the basis of which the judge actually competent to decide the case on the merits is the judge first seised, while the one seised subsequently must, in any state and degree of the trial, declare by order Lis pendens and order the cancellation of the case.

Judicial cases are increasing not only in Albania but also internationally the judges are more and more overloaded. Therefore in the case of the Lis Pendens, the simultaneous treatment of the same issues and with the same parties would not only increase their burden, but would often lead to conflicting decisions. So for a judicial economy and shortening the length of litigation, the European legislator has long considered the problem of Lis Pendens between Member States in its regulations.

But the case law regarding the Lis Pendens has highlighted problems that over the years have brought the need to reformulate these regulations. Based on the case law of the ECJ, the European legislator has made changes to alleviate the situation

regarding the treatment of problems related to civil proceedings that have been set up simultaneously in two different countries and that have the same parties and the same object. These changes are also reflected in the latest Brussels Ibis regulation, in articles 29-31 which will be the subject of our analysis.

Part of this paper will be also the reflections of this institute in the Albanian Civil Procedural Code. The Albanian Civil Procedural Code lacks a proper definition of international Lis pendens, but it is regulated lately in the provision of article 38 of this code, which by law no. 38/2017, dated 30.3.2017 has undergone relevant changes, to be object of analysis in this article. This institute aims to regulate a situation of simultaneous pending of two proceedings with the identity of the parties, object and title that have been brought before the courts of different states (Lupoi, M.A., 2002 page 615). In fact, in this paper will be analyzed the changes that the Albanian Code of Civil Procedure of 2017 has undergone compared to the old one.

In order to achieve the main purpose of this paper we have formulated some research questions which we will try to answer in this paper. How is the problem of civil proceedings that have been set up simultaneously in two different countries and that have the same parties and the same object in the EU context solved? What rules do Member States apply in cases of Lis Pendens and what are the regulations which lay down these rules? What happens in cases where the parties by an exclusive agreement have chosen the jurisdiction of the Court? What does the reformulated provision of the Albanian Code of Civil Procedure provide regarding the Lis Pendens and is it in line with the European changes? What will be the effects of European and national legal changes regarding Lis Pendens?

In order to answer the above questions some scientific methods have been used, such as the literature review, descriptive and analytical methods, and the study of practical cases.

II. European Lis Pendens and its regulation in the EU Conventions

The Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters was signed in 1968. Its purpose was to enable the free and easy movement of decisions. In the context of the realization of the main objective of the EU, which is the functioning of the internal market, an effective functioning of the Jurisdiction in the recognition and implementation of decisions, which is the main object of this Convention, is needed. As a result of the changes dictated by the problems encountered in the jurisprudence of the EU countries, the Brussels Convention was subsequently replaced by Regulation 44/2002 or as we call Brussels I. When the European Commission launched the process of

revising the Brussels I Regulation in 2000, it identified five main objectives, one of which was to strengthen jurisdiction clauses (Cuniberti G, 2015). Most recently, on 10 January 2015, EU Regulation 1215/2012 or as we call it Brussels I bis entered into force, it repealed Regulation 44/2001 and constitutes the latest EU regulation on the Jurisdiction and Execution of Decisions in Civil and Commercial Matters. Although the object of our analysis will be the last regulation of Brussels I-bis, in this paper we will also refer to the previous regulations which have formed the legal basis of the most relevant decisions of the European Court of Justice and have preceded the regulation of last Brussels I Bis.

We can also say that the last regulation is based on and is considered a Brussels I Recast which is also based on the previous regulation of 1968, following principles, lines and a structuring similar to the previous regulations. As the jurisdictional provisions of the Brussels Ibis Regulation will apply only to proceedings initiated on 10 January 2015 and onwards, it will take time for it to form the basic Regulation for the recognition and enforcement of judgments. Among the presently existing instruments on European international civil procedure the Brussels' Regulations are certainly the most important ones (Magnus U. & Mankowski P., 2007).

In this context we cannot leave without mentioning another important Convention in this field, such as the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988 which contains similar rules to the Brussels Convention and which applies to parties domiciled in Denmark, Iceland, Norway and Switzerland. In order to achieve the main objective of this paper, which has to do with the latest changes in Article 38 of the Albanian Code of Civil Procedure, we will make an analysis of some aspects of Articles 29-31 of Regulation 1215/2012 to understand whether this code has effectively reflected recent changes to this Convention. This analysis is important given Albania's intentions to become part of the EU, and one of the tasks set before it is to harmonize legislation with that of the EU.

Although it should be noted that the purpose of Conventions on Jurisdiction is not to unify procedural practices in the Member States, but to determine which court has jurisdiction in disputes relating to civil and commercial matters, in order to facilitate the enforcement of judgments. As stated above, the Lis Pendens rule applies to concurrent proceedings in the Member States courts, regardless of whether the jurisdiction is established on the basis of the Regulation, provided however the subject-matter is within the scope of application of the Regulation (Van Calster G., 2016 page 174).

One of the most important innovations for the Albanian context is the one brought by Article 31 of the Brussels Ibis Convention in relation to cases of litigation between Member States and third States. Referring to the provisions of the previous Regulations the orientations were contrasting. Problems arose when

the case was referred to the competent European judge according to the criteria of the Convention, after the judge of a third country. Part of the doctrine considered the respect for previous non-European litigation as a limitation of the jurisdiction of the European judges. On the other hand, it was argued that when refusal or suspension does not affect relations with another Contracting State, the derogation from the following conventional competence does not prejudice the uniformity of the application of the Brussels discipline, therefore the various national rules remain in force (C-281/02, Owusu v. Jackson).

III. Lis Pendense in Brussels I Bis Regulation and in the Albanian Civil Procedure Code

After an overview of the evolution of the Brussels Convention to date, let's make a brief analysis of the Brussels I bis Convention today with reference to the relevant articles governing the Lis Pendens. This analysis will help us to understand the current situation of Lis Pendens in the international context but also in the national one, because in this part of the paper we will analyze the changes that the Albanian Code of Civil Procedure has undergone, including in one of its provisions the Lis Pendens.

Article 29(1) of the Brussels I bis Convention provides that without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. The purpose of this provision is to avoid the issuance of 2 incompatible decisions by different courts of the Member States, which would violate the central principle of mutual trust in the administration of justice in the EU. The following Article 29 (2) provides that in the cases provided for in 31 (2), upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32. Finally 29 (3), states that where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

While, according to Article 30 (1), where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings. 30 (2) Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof. 30 (3) For the purposes of this Article, actions are deemed to be related where they are so closely connected

that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

The purpose of these two articles is to give priority to the court which was elected first, avoiding parallel proceedings, which in addition to incompatible decisions would bring unnecessary court costs for the parties, overload for the courts and a poor administration of justice.

One of the most radical recent changes in private international law internationally is the development of the law in relation to the effect of choice of court agreements (Keyes M., 2020 page 3). One of the important innovations of the Brussels Ibis Convention is Article 31 which provides a solution to one of the most common problems encountered in the Member States in relation to the application of the rules of Lis Pendens in cases of application of an exclusive agreement on the choice of jurisdiction. This issue was initially dictated by the critics who followed Gasser's decision. Referring to the previous discipline of Brussels I, the Regulation obliges the court elected by agreement of the jurisdiction to suspend the proceedings if another court is first seised.

Meanwhile, the Recast of the Regulation has made a very important change in this aspect, giving priority to the court elected by exclusive agreement.

According to Article 31(1) where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court. In continuation 32 (2) determines that without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement. 32 (3) Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.

The main advantage of the new lex lata in comparison to the previous legal situation is that it strengthens jurisdiction agreements and the parties' reasonable expectations when they formed this agreement (Heinze 2011a, page. 588; Radicati di Brozolo 2010 page. 123; Lazic V. & Stuij S., 2017 page 17).

Another very important innovation of Brussels I Bis is Article 33 of the Convention. This Article refers to cases of international Lis Pendens between Member States and other States. Thus, without excluding the possibility of adjudicating cases in the courts of different states, Article 33 of the Convention stipulates that: Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and if proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings according to point 33(1)(a).

It is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State and 33(2)(b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice, and cases when the court of the Member State may continue the proceedings at any time if: according to point 33(2)(a) the proceedings in the court of the third State are themselves stayed or discontinued, 33(2)(b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time, 33(2)(c) the continuation of the proceedings is required for the proper administration of justice.

Also 33(3) determines that the court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State. Point 4 of this provision contains an instruction for the court of the Member State that shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

This article is very important also in terms of the current Albanian context regarding Albanian Lis Pendens. As set out in the introduction to this paper, the current Code of Civil procedure has undergone significant changes in terms of some definitions of international Lis Pendens. Prior to the 2017 amendments, Article 38 of the Albanian Civil Procedure Code provided that the Albanian Court does not terminate or suspend the adjudication of a dispute when the latter, or any other related matter, is being tried by a foreign court (Albanian Civil Procedure Code, 2014).

Currently, with the changes of 2017 this article has been reformulated. It provides that when the same lawsuit, between the same parties, with the same cause and object of lawsuit is being reviewed simultaneously by a court of a foreign state and the Albanian court, the latter may suspend the trial of this dispute when: the lawsuit has been filed before in time in the court of the foreign state; the decision of the court of the foreign state is possible to be recognized and / or executed in the Republic of Albania; the Albanian court is convinced that the suspension is necessary for the proper administration of justice.

While in point 2 this article provides that the Albanian court may continue the process at any time if: the possibility of having two incompatible decisions disappears; the trial in the court of the foreign state has been suspended or terminated; the Albanian court is convinced that the process in the court of the foreign state will not be completed in a reasonable time; or the continuation of the trial is required for a better administration of justice. Finally, the Albanian court terminates the trial when the court of the foreign state resolves the dispute with a final decision, which can be recognized and / or executed in the Republic of Albania court (Albanian Civil Procedure Code, 2017).

This regulation is in line with the latest amendments to the Brussels Ibis Convention, while not all states have provisions that refer to international litigation in their Codes of Civil Procedure. But from a practical point of view there is still everything to be seen as these changes are recent and we still do not have a consolidated case law on this topic. However, this article is very important and will resolve many dilemmas regarding the jurisdiction for resolving cases between the same parties, with the same cause and object of lawsuit. Judges will now find it easier to define jurisdiction when they have a special provision to which they can refer, uniformed with European Conventions.

IV. The ECJ's Case Law on Lis Pendens

1. Gasser vs MISAT (C-116/02). Exclusive Jurisdiction Agreements

Austrian supplier Gasser and Italian distributor MISAT had signed a contract for the supply of children's clothing. In a clause included in the contract, they had stipulated that in case of dispute, the court that would have jurisdiction to resolve the dispute would be the Austrian court. Contrary to what was stated in the contract clause, at the moment when a dispute arose between the parties, MISATI addressed an Italian court for the termination of the contract, referring to Article 21 of the Brussels Convention.

This article stipulates that when proceedings involving the same case and between the same parties are brought before the courts of different Member States, the second instituted court shall suspend the proceedings until the jurisdiction of the first court is established. If the first elected court is found to have jurisdiction, then the second elected court must reject the jurisdiction. This is done for a better administration of justice and to avoid contrasting decisions by the courts. Given that the parties had previously reached an agreement on the jurisdiction of the court, Gasser brought the same case before the Austrian court, where the case was finally referred to the ECJ for an interpretation of the case in question concerning Lis Pendens and the application of Article 21 of the Convention.

The parties had different views on this issue. Italy, the Commission and Misat argued that the doctrine of Lis Pendens should take precedence. While MB and Gasser argued that the choice the parties had made regarding the jurisdiction of the court should have priority. The Advocate General was also of the opinion that the contract clause should be applied in relation to the court selected by the parties to resolve the dispute. In conclusion, the European Court of Justice ruled that a court elected by court agreement should suspend its proceedings, like any other second elected court within the Brussels regime, until the first elected court declares that

it has no jurisdiction. The court decision gave priority to the jurisdictional rules of the Brussels regime over the autonomy of the parties, which was amended in the Brussels Regulation I of 2012.

2. Irmengard Weber vs Mechthilde Weber (C-438/12). Exclusive Jurisdiction

This issue has to do with the conflict between 2 sisters over a property they co-owned in Munich. M. Weber sold his share to ZbR, a company established under German law, in which M. Weber's son worked as a director. In one of the clauses of this contract concluded on October 28, 2014, M. Weber reserved the right to withdraw from the contract within March 28, 2018. In the meantime, informed of these facts, referring to a notarial deed, which defined the right of its pre-purchase, the co-owner I. Weber, on 18 December 2014 exercised through a letter the right of pre-purchase.

Thus, on February 25, 2015, the Weber sisters entered into a contract which provided for the transfer of part of M. Weber to her sister I. Weber at the price for which was accorded the sale of the property of the company Zbr. However, they asked the notary not to complete the procedures for the transfer of ownership until M. Weber exercised her right to withdraw from the contract concluded with Mr. Gbr. On 2 March, I Weber paid the agreed price of 4 million euros and on March 14, 2015, M. Weber exercised her right to withdraw from the contract with the company Zbr, according to the clause provided by this contract.

For this reason the company Zbr filed a lawsuit against the sisters in Milan claiming that the exercise of the pre-emption right was ineffective and invalid and that the contract concluded between M. Weber and that society was valuable. I. Weber subsequently instituted proceedings against M. Weber in Germany seeking an order for M. Weber to register the transfer of ownership. The German court suspended the proceedings under Article 27(1) and, under Article 28(1) and (3) of Brussels I, given that the proceedings had already begun in Milan. The case was referred to the ECJ, which in its interpretation took into account its case law for the Brussels Convention and for Brussels I.

The ECJ found that the lawsuit seeking a statement before the Italian court that was not exercised validly as regards the category of proceedings having as object a real right over immovable property under Article 22(1). According to the ECJ referring to Article 22(1) the second elected court has exclusive jurisdiction, therefore a decision given by the first elected court such as the Court of Milan which does not take into account Article 22(1) cannot be recognized in the State where the immovable property is situated in accordance with Article 35(1). It found that in those circumstances, the second elected court, the German Court,

could not suspend its proceedings or refuse jurisdiction because it had exclusive jurisdiction. This was also the opinion of the Advocate General.

3. Owusu v Jackson and Others (C-281/02). Lis Pendens in third States and the forum non conveniens.

In the fall of 1997 Mr. Owusu, a British citizen living in the United Kingdom, was spending his vacation in Jamaica, where he had rented an apartment from Mr. Jackson who was also resident in the United Kingdom. The contract also included the provision of a private beach. Mr. Owusu, while diving in the Mammee Bay, collided with a shore of sand submerged in water and suffered a vertebral fracture, remaining tetraplegic. For this reason Mr. Owusu sued Mr. Jackson and several Jamaican companies which were licensed to offer the beach in English courts for damages caused as a result of the accident occurred as a result of lack of warning of hidden dangers that may have the private beach.

The respondent parties raised the exclusion of forum non conveniens, claiming that the dispute represented a more intense connection with the Jamaican territory, so this court would be competent to resolve the issue in question. The High Court dismissed the defendants' objections, arguing that according to European jurisprudence, Article 2 of the of the Brussels Convention would oppose an application of the forum non conveniens doctrine. Article 2 provides: "Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State…"

The Court of Appeals, Civil Division, addressed the case to the Court of Justice. The ECJ initially rejected an argument put forward by the defendants and the United Kingdom Government that the rules of residence in Article 2 of the Brussels Convention did not apply, because the plaintiff and one of the defendants resided in the United Kingdom and the other defendants resided in a non-contracting state. So for the Convention not to apply, the existence of an international element was required, as happened in this case. The Court also held that the doctrine of forum non conveniens was incompatible with the Brussels Convention except as expressly provided by the Convention. She also argued, inter alia, that this doctrine could not be reconciled with the Convention because it would risk the guarantee of legal certainty and the predictability of the rules of jurisdiction and that a defendant could generally exercise protection before the courts of his place of residence.

The ECJ ruled that the plaintiff has the right to institute proceedings in England, even though England had nothing to do with the accident and Jamaica appears to be a more appropriate forum for adjudication. The Court held that no matter how true the difficulties set forth in their claims concerning the costs of the English

proceedings, the logistical difficulties arising from the geographical distance, the need to assess the substance of the case by Jamaican standards, they were not such as to put in doubt the binding nature of the fundamental rule of jurisdiction contained in Article 2 of the Convention.

V. Conclusions

Recast Brussels I, is currently one of the most up-to-date and important Europeans acts in relation to the determination of jurisdiction in cases of international Lis Pendens. The greatest achievement of this Convention are the regulations regarding the choice of the exclusive agreements of jurisdiction, which in this Convention are given priority in the cases when a certain issue can be tried in the courts of different states.

This Convention also defines certain regulations in respect of cases of Lis Pendens created between Member States and Third States. These regulations are also reflected in Article 38 of the Albanian Code of Civil Procedure which is in line with Article 33 of the Brussels Ibis Convention. These regulations will improve the work of the courts resolving many problems regarding the Lis Pendens. Consequently, we will have a resolution of court cases in a shorter time without delays and a better administration of justice.

Also, we have a recommendation regarding the regulation of the institute of Lis Pendens in the Albanian Code of Civil Procedure. It relates to the external Lis Pendens, which has been the object of this paper. Although Article 38 of the Albanian Code of Civil Procedure has brought important changes, it would be useful to have a provision for the regulation of external Lis Pendens in cases where there is an exclusivity agreement in relation to jurisdiction. In our opinion, the latter should also be in line with the provisions of the Brussels I bis Convention.

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National power and political elite behavior

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Abstract

Many scholars of international relations estimate that capacity-building of national power has significant impacts on the behavior of states, while its their absence directly affects the capacities of national power, hence the weight of a country in the international arena. For a small country, the magnitude of power is compared to relations with neighboring countries or even a little more in the region, but without going further. It is the obligation of political elites to evaluate and influence the capacities of national power. The fact that many lecturers mention the concept of 'sovereignty' while conventional sovereignty (at least the aerial and naval spaces) fail to secure even with minimal power capacities and turns the discourse of leaders into

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momental behavior. Without power capacities (economic, military, moral-political), a country can only be as a 'sovereign without sovereignty'. For all above, we have presented few reflections to national power, its role and perspective. The goal is to emphasize that national power is essentially for the interests and vitality of the nation on the present and the future. It is not the aim to exhaust the concept, but to sensitize objective reflections about the opportunities and the need for a comprehensive analysis. Further, it can be a major national project, encouraging contributions by researchers, experts, analysts and leading elites into political tactical and operational level and dynamic unity at a strategic level.

Key wards: *national power, grand strategy, leadership, national sovreignity.*

I. Introduction

The end of the Cold War and the emergence of the unilateral world presented that the process of survival for the small countries has not only failed, but the dilemmas have increased and confrontation is more difficult. Many countries demonstrate the dilemma of survival by focusing on the drafting of strategies, the recognition of the national power, in terms of the conduct of political elites, the preservation and creation of strategic alliances and partners. For a long time the concept of elite behavior and referral to power capacities was thought to belong to only great powers, there is now no dilemma that it is just as important a matter for small countries as well. Everything is related to the same dilemma with the limitations in the trinity: resources, instruments, interests. The debates about the way in which strategic behavior (the elites) should be projected are still very active in the academic, public and political fields. But what distinguishes large countries from small countries is the difference that the first do not suffer from the construction of this strategic trinomial, as the small countries face (Cohen 1997).

Another difference is that large powers configure their (strategy) strategy to maintain and expand their role as small countries to consolidate survival elements (Morgenthau 2006). Because a strategic behavior must be quite clear to allow for broad interpretation, to inform resource allocation, and finally, when implemented, it must finaly guide the nation increasingly towards security and prosperity , this makes the task of intellectual and political elites even more difficult (Hurt 2002). This is also the dilemma that not often the lack of a constant strategic behavior, in itself, appears as 'strategy', especially for a small country. The following paper aims at expanding the debate on the concept of national power and its relation to the behavior of elites. Under this idea are brought some reflections on national power, its role and perspective, and its derivation in the conduct of leading political elites.

The goal is always to emphasize that national power is at the heart of the interests and vitality of the nation for now and the future and the behavior is more or less effective. It does not take the objective to end the concept, but to sensitize objective reflections about the opportunities and the need for a comprehensive analysis. This may be a major project, which is above all national, but that encourages contributions by researchers, experts, analysts and leading elites that may be divided into political tactics but close to the operational level and in the unity dynamic at the strategic level.

II. Theory of national power

The term "power as a goal in international relations" has been widely used by political theorists, such as Niccolò Machiavelli and Hans Morgenthau. Especially among Classical Realist thinkers, power is an inherent goal of mankind and of states. Factors of this power include economic growth, military growth, cultural spread etc – all of which tend to achieve the ultimate goal of international Power as influence. In other words, "power" is an actor's ability to exercise influence over other actors within the international system. This influence can be coercive, attractive, cooperative, or competitive. Therefor Freeeman (2011, p. 35) states as follows:

> "Power is the capacity to direct the decisions and actions of others. Power derives from strength and will. Strength comes from the transformation of resources into capabilities. Will infuses objectives with resolve. Strategy marshals capabilities and brings them to bear with precision. Statecraft seeks through strategy to magnify the mass, relevance, impact, and irresistibility of power. It guides the ways the state deploys and applies its power abroad. These ways embrace the arts of war, espionage, and diplomacy. The practitioners of these three arts are the paladins of statecraft."

Buzan and Ueiver (2012) believe that the core of state behavior is the capacity of national power. Based on the concept of power capacities today, countries are categorized into hegemonic powers, great powers, regional powers, 'small' and small powers (Buzan 2012). Morgenthau (1989), one of the prominent figures of the study of International Relations, mentions that the national capacity or capabilities of a nation to realize its national goals and objectives in relation to other nations. It includes the capacity to use or enable the use of force by influencing others ... Currently hegemone power is just the US. Russia is a powerful force with powerful military potentials, but economic potentials do not allow it to emerge as hegemonic powers. China is a powerful force with powerful economic potentials,

but military arsenal restrictions, but not comparable to those of the US and Russia and necessarily do not make it a hegemonic power. England and France are great powers, but with military and economic potential not comparable to the first three.

Hegemone powers and great powers are also conditioned by the possession of nuclear power (Collins 2011). Germany and Japan possess strong economic potentials, perhaps even bigger than the others, but limited military power, and this is not because of inability, but because of the constraints imposed by the winning powers since the Second World War. Regional powers are smaller than great powers and much smaller than hegemonic powers. Continuing the argument in their work "Region and Powers", Buzan and Ueiver list only one hegemonic power (US), five major powers, that are also members of the UNSC and 13 regional powers. In our region as a regional power, there are Turkey and Italy. The other countries are either 'small powers' in the best case or simply 'small countries'. While countries classified in the first three categories (hegemonic, large and regional) are not challenged by survival risks, others (small) countries according to Milan Kundera struggle for their survival and modify in any case behavior to avoid the risks of survival security. David Mitran, author of some important works and favor of small countries, when comparing power capacities, finds the position of these countries mainly in alliances or in strong strategic partnerships for survival and prosperity.

National power

"Power is the capacity to impose the will on others, relying on the capacity of effective power in cases of non-compliance", -Schvarzenberger -2003. National power is expressed by a number of elements that international science policy scholars classify in different ways. The well-known scholar Morgenthau (1989) classifies them into two categories - permanent and not permanent, while Organski (2008), author of the Transitional Power theory, has preferred to classify in the natural and social resources. Other scholars as Palmer, Perkins, Charles O. Lerche, Abdul Said, Couloumbis and James H. Uolfe discuss for two groups: tangible and untouchable or in more articulated languages in 'soft power' and 'hard power'.

In a more detailed form all the above classifications of power capacities are related to : geography, natural resources, economic development and industrial capacities, technology, military power, ideology, leadership, governance quality, national character and morality, diplomacy etc. In the follow-up to Ajsle Tojle's analysis (2011) she simplifies the definition of power in economic, military, and moral power. All three forms of national power are inseparable from one another. Without any economic power, no nation can develop its military power, and without that, no nation can have the moral power to play an active role in international

relations. Disconnected from this trinity, countries are intertwined in situations that few opportunities and capacities have to show a 'unitary' behavior, much less affecting the behavior of the greatest. If political elites do not respect this equation early or late, they are in unforeseen situations or even in adventure.

National Power is the 'most interchangeable currency' for communication in international relations. Each country uses its power or at least one of its forms (economic, military, and diplomatic) to secure its interests in the international arena. It is this charachteristc that makes us see international relations as a competition for power. The nature of this 'struggle' for power can only be analyzed through a comparison with other nations within, neigbhour closer to or far from the region. The role a nation plays or can play in international relations can be judged by appreciating its power. Hence the fact that the interest in preserving and enhancing national strength is the primary interest of every nation on the path of survival.

National power is the means to meet the needs and aspirations of a nation. As such, it remains essential that on the basis of national power we can appreciate the importance and weight of a country in international politics. Hence, it emerges one of the most important conditions of elites and political leadership behaviour. Beyond the 'genius' that a leader can reveal, what gives weight to his attitudes and declarations is the power of its nation. No nation can overcome its 'weight' in international relations outside the context of alliances and allies. National strategies are those that balance the weight and role of political elites. Losses or not serious attitudes towards allies lead to a state at risk of survival...

Western Balkan countries and balance of power. The Balkans with an area of 550,000 km² and a population of around 55 million are made up of 13 states. Western Balkan include only five countries. None of the Balkan states can be classified as 'great power'. Only Turkey and Italy in the region, as mentioned above, are assessed at the level of regional powers. Other states are divided into the category of 'small powers' or simply as small states. Their economic and military powers do not rise to the level of regional powers or beyond. To clarify this submission, the concept of national power becomes necessary. This is why we value the categories we mentioned above: economic, military, moral-political.

Military power is one of the most important forms of national power and for a long time it so traditional language was united with the term of national power. It (military power) is considered absolutely essential to the nation's security objectives from self-confidence as the most vital element of national interest. In fact, military power is at the same time the main concern of every nation for its security. The possibility of violating the security of a nation through threats (war and aggression) from other nations is always seen as a special case, but it can not ignored, so each nation gives priority to its security through military power. To

keep security from potential dangers, each country creates and consolidates the armed forces by assessing them as the main means of security and territorial integrity.

The capabilities of military power in the countries of the region. Based on the global power index 2016, Albania ranks 115 out of 125 countries under review. It is a disagreeable position on a regional scale as well. Using the same source of reference (CIA fact book 2016), for the global index of military power, the countries of the region are ranked: Turkey 8, 10th Italy; 28th Greece; Romania 43rd; Bulgaria 67th; Croatia 68th; Serbia 83th; 115th Albania; Slovenia 111th; Bosnia is the 120th. Turkey and Italy are ranked in the top 10 countries and are classified as regional powers even in the military sphere. Greece rises in the context of a power, but not regional, while other countries are at the level of 'small' powers (Croatia and Serbia). Other Balkan countries are simply considered 'small countries'. In this regard, therefore, in the context of military power, our country remains a 'small country' and far from categorization as 'small power' compared to neighbors, who have the most preferred positions in the ranking.

Even the trend of increasing military power is dominated by neighbors. According to SIPRI, based in Stockholm, the 2016 military spending for the countries in the region continues: Italy, $ 27.3 billion; Turkey 14.9; Greece 4 billion 973 million; Serbia 710; Croatia 695; Albania 147 and Kosovo 51 million dollars. Despite being in powerful alliances (NATO) or strong strategic partnerships (Serbia-Russia), this has not prevented the region's countries from entering a "strong armament race" at regional level, making the region even more fragile and less secure. Referring to the 'security dilemma', countries in the region, although recognizing the balance of power, are not reluctant to invest in internal power capabilities. In the national defense slogan, they do not hesitate to seek modern war systems and order armaments to gain supremacy within the region largely with neighboring countries. Greece spends over 5% of GDP for defense needs, while other countries such as Serbia, Turkey and Croatia have surpassed 2%. Our country has failed to reach 1% of the total GDP, though compared to the above countries there is lower. In a simple comparison Greece has an annual budget nearly 30 times bigger than Albania, while Serbia is 5-6 times too. Balkan countries are looking for the highest positions in military capabilities. All countries are members of powerful alliances or partnerships, but this does not stop their growth trends in military spending.

International relations scholars estimate that securing basic military capabilities influences the behavior of states, its minimal power directly affects the capacities of national power, and consequently the weight of a country in the international arena. For a small country the magnitude of power is related to relations with neighboring countries or perhaps even a little further in the region, but without going further. It is the obligation of political elites to evaluate and influence the

capacities of national power. The fact that many lecturers mention the concept of 'sovereignty' while conventional sovereignty (at least the aerial and naval spaces) fail to secure even with minimal power capacities and turns the discourse of leaders not in normal behavior. Without power capacities (economic, military, moral-political), a country can only be a 'sovereign without sovereignty'.

Serbian Prime Minister Vucic earlier completed the honeymoon week in Russia. The great Slavic-Orthodox brother, President Putin, filled his hands with 'war toys' as gifts to a younger brother on 2017 Christmas Eve. They were modern Mig- 29, Tanks T-72 and a considerable number of war machines. The Russian emissaries assured Vucic that they would always stand alongside. In this case, the same positions of both countries Rusia and Serbia were cited for Kosovo. Vucić assured that these weapons would be vital for Serbia and that "we will now be able to defend our territories ...". He did not have to define the term of Serbian territory, because the Constitution helps. A tripartite Russian-Serbia-Belarus exercise was agreed to develop soon with the broad participation of modern forces and armaments. Croatia, a NATO member country, closely following and sensitizing the latest developments in the region, has reacted strongly by planning to buy a modern helicopter squad and also in March 2017 a supersonic aircraft squadron from the US. Croatian President Kitarovic said the modernization of the armed forces responds to Croatia's needs. So both leaders of Serbia and Croatia have assured that modern armaments respond to defense needs alone. None of them, of course, admitted that this is an arms race in the heart of the Balkans. While many analysts are reluctant to name these developments as the dynamics of a strategic rivalry of power not only between these countries, but the super-great ones, who have not been able to express themselves alongside them.

Shortly thereafter, the foreign and defense ministers of of Greece, our neighboring country did not hesitate to declare their military superiority in the armed forces this time directly against Albania. A military exercise at the borders with our country was used by the Defense Minister to directly indicate the military force. Our country responded "strongly" to this blackmail by the the top executives of the departments through the Facebook and twitter blogs, bringing to the attention that we are a NATO member country. It was hinted at this, that in any case "we will protect NATO". Perhaps it is 'land and sea' because for five years, the neighboring country (charged by NATO) 'oversees and preserves' our airspace. So even NATO has not solved the dilemma of how to defend itself from its member states!!! But even without the Greek ministers telling us, the truth is bitter. Albania is today the country with the lowest capacities of national power in the region. And it seems that even for an indefinite time will continue to be such.

Economic power, according to scholars, is the most important form of national power. It presupposes a nation's ability to meet its needs and to control the behavior

of other states by economic means. Economic instruments in foreign policy are currently considered the most vital means a country can use to influence its actions and behavior towards and from other states. Palmer and Perkins in their book (2010) 'International Relations' argue that no country can become a 'power', even small, without adequate economic power. On the other hand, economic power is inseparable from military power, says James Uolfe (2013), because it is one of its basic components in the conditions of modern warfare, moreover that economic power can be considered also with the effects of military power, but expressed in the most 'soft' form.

Using the logic and reference (CIA fact book 2016), we can clearly distinguish the economic power capacities of the countries in our region. Italy needs to be analyzed, ranked 12th, while the other countries are: 13th Turkey; 57th Greece; 76th Bulgaria; Serbia is 81; Croatia of 84; 98th Slovenia; Bosnia 111th; 121st; Albania; 125th Macedonia; Kosovo 145th; Montenegro 153. The position of most of the countries in the region, excluding the first two, does not provide estimates that any of these countries have the capacity of economic power in the international arena. But on the other hand, this does not mean that in the regional space each of them plays according to their specific weight.

Unfortunately, the Albanian states or where the Albanian population placed, do not enjoy enough economic weight to feel 'economic power' and to modify their behavior or the behavior of others towards them by economic means. So, despite the terms of 'sovereignty', this does not avoid economic dependence, even within the region. Even in the near future, the ranking position will hardly exceed the rankings presented in the CIA fact book 2016. Meanwhile, there would be optimism if we were to refer to a 'great strategy' that would express a goal that could to be realized after several years. So, in terms of capacity, looks that we are not able to get up in the power category yet we are just a small country.

And thirdly, the 'moral power' that we can find as 'soft power', 'psychological power', 'national morality' and other forms, is considered to be another important national power. It implies the power of thought and the image of the nation, the behavior of elites and national culture. Even though they are not measurable they are quite sensitive. They are the forms used by states to provide a desired change in relation to the behavior of other states. With the use of formal, informal, public and cultural diplomatic means, a state always tries to influence the public's opinion and leadership of other states. The ability to influence others through communication is the 'soft' part of a national nation's power. Josef Noer describes the soft power in his book 'Tools for Success in World Politics' (2014) as an opportunity that ' ... a country can achieve the results it wants in world politics, because other countries admire its values, using the example by aspiring the level of prosperity and well-being - they want to pursue it...' This soft power - makes others to positively

influence the national goals you want - to bring people and states closer to them than to force them.

III. Political elite behavior. Limited alternatives

It is within the unique context of the particular circumstances that each nation designs its own major strategy. In a quick incursion to history, for small countries, distinguishes the way of strategic behavior approaches with three different recourse alternatives to ensure national strategic interests. The small number of alternatives, only three, implies the same strategic constraints to choose and implement strategic behaviuor. Alternatives, according to geopolitical circumstances, may evolve into each other, but do not change the variety of choice. David Mitran (1989) defines these alternatives as a. strategy of neutrality; b. the merger strategy in alliances and c. partnership strategy with a strong regional or global country.

a. Neutrality strategy

Merriam - Webster, but also Dictionary.com define the concept of neutrality as a country position not to support any party in an argument, in a conflict, in a war etc.: the quality or the state to remain neutral . For a long time, neutrality has been seen as an alternative to military alliances, a security patch, whether collective security is challenged or even fails. In a realistic estimate, neutrality is foretold by exogenous forces and material resources - imposed by major powers, or dictated by geography or the status of small power. Critical criticisms of the neutrality strategy come from realistic theory, which has dominated the course of understanding neutrality for small countries as inability, weakness and inactivity in the international system. Other critics argue that the Neutrality Strategy does not work without its recognition of great powers, regardless of whether a country can declare its choice in the international arena. In the "real war theater" slogan, the warring parties were not limited either in World War I or World War II to respect the neutral status of selected countries. In World War I neutral countries were Argentina, Chile, Venezuela, Denmark, Spain, the Netherlands, Norway, Sweden and Switzerland. These were the only 10 countries that were able to remain neutral throughout the First World War.

The strategy for the status of a "neutral country" did not work for our country during the First World War. All the fighting parties, with more than 250,000 troops, crashed in the Albanian territory without worrying about the status of our country declared earlier but interested in operational aspects related to each other. The particular thing was in this case, since in some sense the neutral status,

or the protectorates, had themselves directed these powers, with the approach of Prince Vidit in the direction of the small Albanian state. The period 1914-1918 found our country unable to defend its sovereignty under the strategy of neutrality and turned it into a theater of warfare even without ever fighting power.

The First World War, which touched Albania, has become the object of research by many foreign historians and scholars, who, using the memoirs published by former military personnel in Albania, as well as the rich documentation that has been preserved the archives of Italy, Austria-Hungary, Prague, Belgrade, and some other European states that were involved in the vortex of that war, have occasionally published books that have inspired interest from many readers.

b. The strategy of joining with powerful alliances

Alliances can be defined as formal groupings of states related to joint engagement to use military force against non-member countries to protect integrity. For Hans Morgenthau, alliances are "the most important manifestation of the balance of power." (Morgenthau 1985). In this finding, alliance members have common interests based on fears from other states. Stephen Walt has modified this concept. For that, the alliances themselves are the result of a "balance of threat." In the old system the existence of alliances and potential threats were inseparable.(Walt 2013)

Alliances promote the commitment of all participating States to take effective and coercive measures, in particular the use of military force, against an aggressor. This strategy seems to be one of the most attractive to many European small countries, part of the ambition to become a member of a strong alliance like NATO. But this may be the moment of dilemmas: Can small states be sure the system will help you in the eventualities of an alliance's foreign aggression? If the alliances are too wide in what position it will stand if the threats arise between the countries of the Alliance itself. Will particularly the major powers consider a threat to small states or a civil conflict as a worthy threat to collective action? After the end of the Cold War, the focus shifted. Now, a good part of the critical literature on alliances tries to explore the questions: Why do alliances end? What are the forces or events that lead states to disconnect common commitments in security matters compared to the period they were directed towards? Why are some alliances still struggling with suspicion of alliances? Why do some alliances continue to survive even after the arguments of their creation do not exist any further?

c. Seeking protection or partnership with large allies / powers

This is the third alternative that recognizes and accepts 'grand strategy'. As previously stated, there are many factors that can affect a small country to develop

a great strategy. The strategy itself connects the survival not only with power but also with geography, history, politics, analysis and finding common interests with other countries, especially with regional and hegemonic powers. This election could be even more credible if the country had some historical precedents of cooperation with the category of these great powers. For some small countries, there is a conflict of such factors - eg. where the proximity of the great powers and the economic interests of the union imposes a subordinate attitude to the allies.

Located in the heart of Europe, Albania has traditionally pursued a security policy based on the idea that the country is surrounded by countries that have rarely shown non-friendly access. Despite the fact that in the National Security Strategy (2014) or in the Defense Strategy (2015) there are no comments on the term hostile countries, this does not impede the 'grand strategy' to overcome the scope of these definitions and to orient them in situations where the regional context can become more fragile and more unstable. On the other hand, since the 'grand strategy' comes from the nation and state level, and most of the nation is outside the grand strategy of the state, the national strategy needs to be seen more than state risks. This is another reason why the country does not formally foresee a neutral status in the international position.

IV. Conclusions

In defining strategic allies, it helps not only history, geography, the economy, but especially the mode of state behavior. Major powers in any case have their primary strategic interests. A small country is convinced that they will not always be the same as those of the great allies. He strives to find harmony in the least about those interests related to his geography and to influence as much as those (interests) do not contradict or face different lines with that of strategic allies. All states, large and small, expressed Krasner "play" within their context of power: military, economic, diplomatic and intelligent. These are the instruments of power that make "big" or small states (Krasner 2005). Successful use gives the opportunity and opportunity to be considered or ignored. Small places have no luxury to appear more than they weigh. Strategic allies increase the power elements of small countries. Lack of allies or unmatched behavior against them jeopardizes the power of a small country.

For the above, only a few reflections have been made of the national power, its role and perspective. The goal is always to emphasize that national power is essentially the interests and vitality of the nation for the present and the future. It is not taken to exhaust the concept, but to sensitize objective reflections about the opportunities and the need for a comprehensive analysis. This can be a major project that is above all national, but that encourages contributions by researchers,

experts, analysts and leading elites that can be divided into political tactics but close to the operational level and dynamic unity at a strategic level.

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Domestic violence in Albania

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Abstract

This paper will be presented a comparative picture of the norms of criminal substantive law intertwined in the Code of Criminal Procedure and the harmonization they carry with the Constitution of the Republic of Albania. Domestic violence is a disturbing element that we face daily as a society. The peculiarity of this criminal offense figure is the fact that both the perpetrators and the victims have an active role in terms of the realization of this criminal offense.

Based on the most developed European countries' legislation tradition regarding this criminal figure, in 2006 the law on domestic violence was adopted. Based on the judicial jurisprudence, the problems that have been identified in this area have gaps

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and leave room for many discussions. It is noted that the norms of the Criminal Code do not find an adequate approach to combat this phenomenon in all dimensions. Often there is an internal conflict between norms, where being or not being part of a family affects the coercive measure, losing the re-educational function which is expressed in the Constitution.

An ongoing key role remains for the legislator, social operators, individuals, and not only, to take initiative and address the competent bodies to update this criminal figure provided by the Criminal Code. Also, an important role in preventing and reducing this phenomenon plays not only the legislator but also the social media as a whole with the force of development.

Keywords: *Domestic violence, law, constitution, legal norms, criminal offense, legal violation.*

I. Introduction

Domestic violence is a phenomenon of social, economic, and legal character with serious consequences not only for its victims but also for the perpetrator. Of particular importance is the way it is classified or a definition for domestic violence. This violence should not be justified as bad behavior, because in reality it is a criminal act and the tendencies tend to show that the violence is escalating to a progressive dimension, which makes it very disturbing.

When we talk about domestic violence, we mainly refer to its most widespread form: 'Violence against women. Violence against women, although the most widespread human rights violation in the world, continues to be less valued. Violence is also a profound health problem that results in death and injury, compromises women's well-being, and destroys their dignity and self-esteem. It is already known that domestic violence transcends all boundaries and is present in all cultures.

As a result of strong patriarchal traditions, Albanian society has historically been dominated by men. Women have long been dictated to accept the role of subordinates. During the communist regime, a deep gap was created between the theory of emancipation of women and her daily reality. In 1991, after the overthrow of the communist regime, Albania went through a period of great changes, often dramatic social, political, and economic that have created a profound impact on the lives of Albanians. Gender equality is a new principle in Albanian society, which has not yet been embraced by a significant percentage of the population.

II. Albanian legislator and legal instruments

In 2006, the Albanian Parliament approved Law No. 9669, dated 18.12.2006 "On measures against domestic violence" which aims to prevent and reduce domestic violence in all its forms through appropriate legal measures and to guarantee protection through legal means to family members who are subject to domestic violence (Law no 9669 dated 18.12.2006 "On measures against domestic violence")

The law has four main objectives:

1. the establishment of a coordinated network of authorities responsible for the protection, support, and rehabilitation of victims, mitigation of consequences, and prevention of domestic violence;
2. orienting efforts to establish structures and responsible authorities at the central and local levels to support victims and prevent domestic violence;
3. strengthening the judiciary to take protective measures against domestic violence;
4. providing/guaranteeing fast, inexpensive and simple services to victims of domestic violence provided by courts and other law enforcement agencies, by the law.

The law defines violence as "any action or inaction of one person against another, which results in a violation of physical, moral, psychological, sexual, social and economic integrity. (Article 1 of Law No. 9669/2006 "On measures against domestic violence", as amended). The following, domestic violence is defined as "any act of violence exercised between persons who are or have been in a family relationship" (Ibid). By law, family members include:

a. spouse or cohabitant or ex-spouse or ex-cohabiting partner;
b. brothers, sisters, gender in a straight line. (Ibid)

The law provides for safeguards against domestic violence, including protection orders issued by the court - a court-issued decision providing for protection for the victim (article 12 of Law No. 9669/2006 "On measures against domestic violence", as amended) and immediate protection orders - an interim injunction issued by the court, which is valid until it issues a protection order (Ibid). The peculiarity of these types of trials has to do with the fact that even if the victim (under pressure) wants to withdraw the lawsuit/lawsuits or dismiss the case, this does not affect the continuation of the trial, in this case, the principle of availability has no value

and is not taken considered by the court, due to the specificity of this type of trial prescribed by law ((Ibid, article 16, par. 3). In these trials by law, the raped woman is not only the main witness but also the forced witness (Albanian Criminal Code – ACC 2016). Failure to execute the protection order or the immediate protection order constitutes a criminal offense under Article 320 of the Criminal Code. Consequently, its perpetrator can be arrested without an arrest warrant.

In Albania, although the powers of the police to enter private premises are generally limited, this law provides that the police may enter a private residence in conditions of domestic violence if required by a person residing on that premises or if the police the officer has reason to believe that a person in the home is the subject of a criminal attack or is in danger of being attacked. It is important to note that the law establishes six government institutions in a coordinated network of authorities responsible for the protection, support, and rehabilitation of victims, for mitigating the consequences, and preventing domestic violence. The main governing authority under this law is the Ministry of Labor, Social Affairs, and Equal Opportunities. Other line authorities under the Law on Measures against Domestic Violence are the issuance of a protection order or immediate protection by the Local Police Department, which does not prevent interested parties from also initiating criminal proceedings in connection with actions or omissions that are classified as criminal offenses. Determining the criminal figure of domestic violence in the Criminal Code of the Republic of Albania. Other provisions for the treatment of crimes related to domestic violence may be applied in the Criminal Code of the Republic of Albania.

These criminal offenses are not limited only to elements of domestic violence, but also to other elements of the objective and subjective side that they belong and below are reflected some articles of the Criminal Code of the Republic of Albania that is listed as follows: Intentional homicide is punishable by 10 to 20 years in prison (article 76 ACC). Intentional homicide related to another crime (intentional homicide that precedes, accompanies, conceals, or follows another crime, is punishable by imprisonment of not less than 20 years (article 77 ACC). Premeditated murder (premeditated murder is punishable by imprisonment of 15 to 20 years; murder committed for interest, revenge, or blood feud is punishable by imprisonment of not less than 25 years or life imprisonment (article 78 ACC). Intentional homicide due to the special qualities of the victim (committed against a minor, against a person with a physical or mental disability, seriously ill or pregnant, when the qualities of the victim are obvious or known; against a the denouncing witness [of the criminal offense], the victim, other litigants, more than once, against two or more persons, in such a way as to cause special suffering to the victim, shall be punished by not less than 25 years of imprisonment or with life imprisonment (article 79 ACC). Threat, serious threat of murder or grievous

bodily harm to a person, constitutes a criminal offense and is punishable by a fine or imprisonment of up to one year (article 84 ACC). Intentionally inflicting grievous bodily harm (intentionally inflicting an injury that has resulted in mutilation, disfigurement, or any other permanent damage to health, causing termination of pregnancy or that was life-threatening at the time of its infliction, is punishable. with imprisonment from three to ten years; when this offense has resulted in death, is punishable by imprisonment from 5 to 15 years (article 88 ACC). Intentional minor injury (intentional minor injury, which has caused temporary incapacity for work for more than nine days, constitutes a criminal offense and is punishable by a fine or imprisonment of up to two years (article 89 ACC).

The other intentional injuries (beatings), as well as any other act of violence, constitute criminal offenses and are punishable by a fine; when this offense has caused temporary incapacity for work for up to nine days, constitutes a criminal offense and is punishable by a fine or imprisonment of up to six months (article 90 ACC). Serious injury by negligence, serious injury committed by negligence constitutes a criminal offense and is punishable by a fine or imprisonment of up to one year (article 91 ACC). Minor injury by negligence, minor injury committed by negligence constitutes a criminal offense and is punishable by a fine (article 92 ACC). Termination of pregnancy without the consent of the wife (termination of pregnancy without the consent of the wife, unless the termination is dictated by a justified health cause, punishable by a fine or imprisonment of up to five years (article 93 ACC).Sexual intercourse with adult violence (committing sexual intercourse with adult violence is punishable by imprisonment from three to ten years; when sexual intercourse is performed in cooperation or more than once, or when the injured party causes serious health consequences, punishable by imprisonment of five to 15 years; when the offense has resulted in the death or suicide of the injured party, is punishable by imprisonment of 10 to 20 years (article 102 ACC).Sexual or homosexual intercourse with persons of the same sex or under guardianship (committing sexual or homosexual intercourse between a parent and child, brother and sister, between other persons of the same sex, or with persons in custody or adoption relations, is punishable by imprisonment up to seven years - article 106 ACC. (Domestic Violence in Albania: A National Population-Based Survey). Abandonment of minor children (abandonment of a child under the age of 16 by a parent or person who is obliged to take care of him/her is punishable by a fine or imprisonment of up to three years. When the offense has caused serious damage to the health or death of a child, is punishable by imprisonment of three to ten years (article 106 ACC). Failure to provide means of subsistence (failure to provide the means necessary for the livelihood of children, parents, or spouse, by the person who is obliged to provide it under a court decision, constitutes a criminal offense and is punishable by a fine or imprisonment of up to one year (article 125 ACC).

From the above, it is clear the approach that the figure of domestic violence has with these offenses provided by the criminal legislator. The above reflects the forms of domestic violence in Albania, the objective and subjective elements, as well as the definitions from the minimum to the maximum for the legal coercive measures for this criminal activity. According to Article 284 of the Criminal Procedure Code of the Republic of Albania (2013), for the criminal offenses provided by Article 89, Articles 102, and 106 of the Criminal Code, criminal prosecution can begin only with the appeal of the injured party, who can withdraw it any stage of the procedure. In other words, criminal proceedings can be initiated by the Prosecution only if the victim lodges a complaint and usually the preparation of the whole case is the responsibility of the victim. The victim has an important role related to the right to appeal, but also the obligation to present evidence before the prosecuting authority related to these figures of criminal offenses provided in Article 284 of the Code of Procedure Criminal Court of the Republic of Albania. He/she has the right to drop the appeal until the preliminary investigations have not been completed or even during the trial until the court has given a final decision. The state generally does not assist in the exercise of criminal prosecution, especially for all criminal offenses prosecuted at the request of the accusing injured party under Article 59 of the Criminal Code, such as the beating provided for in Article 90 of the Criminal Code.

The Family Code of the Republic of Albania also contains several articles related to domestic violence against the spouse and the child/children. The Family Code addresses the parental obligations and rights of children in family life, as well as child abuse and neglect. For example, Article 62 of the Family Code provides that "the abusive spouse may be forced to leave the marital home." However, this article has no other procedural provisions to determine how such a measure should be taken which is regulated by Law no. 9669 "On measures against domestic violence", dated 18.12.2006 (article 62 of the Albanian Family Code - AFC).

III. Is there a conflict between legal norms?

Article 130 / a of the Criminal Code on Domestic Violence (Added by Law No. 23/2012, dated 1.3.2012; amended the last paragraph by Law No. 144, dated 2.5.2013, amended by Law No. 35/2020. 16.4.2020) provides: Beating, as well as any other act of physical, or psychological violence, against the person who is a spouse, ex-spouse, cohabitant or ex-cohabitant, close gender (before birth, after birth, brothers, sisters, uncle, etc.) or close relatives (mother-in-law, mother-in-law, etc.) or in connection with or previous connection with the perpetrator, leading to the violation of his physical, psycho-social, and economic integrity is punishable

by imprisonment up to three years. The serious threat of murder or grievous bodily harm to a person who is a spouse, ex-spouse, cohabitant or ex-cohabitant, relative (etc. as in the first paragraph of Article 130 / a of the Criminal Code), as in the above paragraph, or in connection with or the previous relationship with the author, is punishable by imprisonment of up to four years. Intentionally injuring a person who is a spouse, ex-spouse, cohabitant or cohabitant, relative (etc. as in the previous paragraph of Article 130 / a of the Criminal Code), or an ex-spouse or in an intimate relationship with the perpetrator, who has caused temporary incapacity for work for nine days, is punishable by up to five years in prison. The same offenses committed repeatedly or in the presence of children are punishable by imprisonment of one to five years.

Article 130 / a of the Criminal Code is in contradicts the constitutional principle provided in Article 18 and specifically: "Everyone is equal before the law and secondly, no one can be unjustly discriminated against, even because of gender." For the criminal offenses of beating, threatening, minor or serious injury, other intentional damages are provided by Articles 84, 89, and 90, where these offenses are prosecuted based on the complaint of the accusing injured party and the appeal can be withdrawn in any case during the stage of criminal proceedings, as long as the decision has not become final. While according to Article 130 / a of the Criminal Code, this criminal case is prosecuted mainly by the prosecuting authority, although the accusing injured party may wish to terminate the criminal prosecution against the accused subject, the criminal case against this subject continues mainly by Prosecutor Office. So, a provision within the Albanian Criminal Code cannot be both a criminal offense and a crime. According to article 130 /a of the Criminal Code., any simple beating is punishable by imprisonment of up to 2 years if it is happened at the same gender as the injured party, while for the same offense committed by persons outside the family or gender, article 90 i. K.P. which provides only a fine or deprivation of liberty for up to 6 months and this offense is prosecuted, directly in court under Article 59 of the Criminal Procedure Code.

Serious intimidation, as well, for all subjects is provided as a criminal offense by Article 84 of the Criminal Code, which is punishable by a fine or imprisonment of up to one year. While for subjects who have committed this criminal offense due to their gender, is replicated Article 130 / a of the Code of Criminal Procedure applies which provides for a sentence of up to 3 years imprisonment. Even the intentional minor injury of general subjects is followed by the denunciation of the injured party and is provided as a criminal contravention by article 89 of the Criminal Code which provides for a fine or punishment of up to 2 years, while the same offense if committed by persons of the same sex, is treated under Article 130 / a of Criminal Code, where in addition to the complaint of the injured party is not required, but is provided as a criminal offense with punishment in 5 years.

For these reasons, we think that based on article 134 point "d", article 145 point 2 of the Constitution of the Republic of Albania, and article 68 of law no. 8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania" it is reasonable to request the suspension of ongoing trials and their submission to the Constitutional Court of the Republic of Albania, for the abrogation as unconstitutional of Article 130 / a of KP amended by law 144/2013 and 23/2012.

IV. Cases of domestic violence associated with the commission of other criminal offenses.

Domestic violence is of critical importance in all cases where the perpetrator's actions and omissions are accompanied by the commission of other criminal offenses such as intimidation or attempted murder, which clearly show that the perpetrator's subjective purpose is not merely rape of the victim for motives of jealousy, anger, rage, economic problems, etc. In these types of situations, the risk of losing the life of a victim of domestic violence can occur and is not excluded, when acts of violence are accompanied by other illegal actions such as threatening with a weapon, or attempted murder committed and such circumstances, where the prevention of causing the murder occurred due to the interference of other persons. These types of situations should be taken into consideration with too much care during the investigation of two or more criminal offenses simultaneously, such as domestic violence and intimidation, as case law has shown that the subject of domestic violence, after serving his sentence, later has committed a grave criminal offense such as the murder of the victim.

In such a situation the question arises whether the maximum punishment for domestic violence committed to aggravating circumstances, such as acts of violence in public and the eyes of children, as provided in Article 130 / fourth paragraph of the Criminal Code from one year to five years of imprisonment serves to prevent future murder when, moreover, the domestic violence is committed at the same time with another criminal offense that is illegal possession of a weapon?

Referring to a case from the jurisprudence, the Kavaja District Court, among others, in the reasoning of its decision, analyzes ".With his actions, the defendant F. K has completely consumed elements of the figure of the criminal offense of "Illegal possession of weapons "provided" by Article 278/5 and "Domestic Violence", provided by Article 130 / a1 of the Criminal Code, these offenses that violate and jeopardize legal relationships established to ensure public order, and public safety from the production or possession, sale, or purchase of illegal weapons that endanger legal relations established by law to guarantee freedom,

rights, health and the life of each cohabitant or family member by the actions of criminal omissions of family members or their cohabitants, specifically protected by our criminal legislation from criminal acts or omissions (decision no. 12-2016-664-76, dated 28.04.2016 of the Kavaja District Court).

Based on this position of the court in the reasoning part, the defendant F.K was sentenced to 4.5 years of imprisonment for the criminal offense of illegal possession of weapons provided by Article 278 of the Criminal Code and the criminal offense of domestic violence provided by Article 130 / a paragraph fourth of the Criminal Code, and where under summary judgment was finally sentenced to three years' imprisonment. After two years in prison, he was released, benefiting also due to the time of detention which is worth 1.5 days of imprisonment. The citizen F.K, after serving the sentence for domestic violence and illegal possession of weapons committed another more serious crime which was the murder of his ex-wife F.Sh. This painful case in the social aspect raises the question in the legal aspect of whether such similar cases should be treated with more severe punishments when the criminal offense of domestic violence is accompanied by another criminal offense such as the illegal possession of weapons, or any kind of maximum punishment against the perpetrators of these offenses would not be the most effective measures of preventing in the future the commission of more serious criminal offenses, such as murder. Of course, there can be no definitive answer, despite the very serious consequences of the degradation of family relations, if the finger were pointed only at the judiciary bodies for protecting the lives of citizens, mainly women.

Exercising the pressure on the judiciary in connection with such similar offenses involving domestic violence to give maximum sentences, to prevent a more serious criminal offense such as murder, would discourage magistrates from being independent, in the interpretation of the provisions of substantive law, procedural law, and the evaluation of evidence administered in a concrete case. It should be noted that beyond the pain and failure that has resulted from the loss of an innocent mother's life, preventing the avoidance of murder, when the commission of the crime of domestic violence has previously occurred in the company of unlawful possession of a weapon, should serve as an alarm bell for the awareness of all actors in society, human rights organizations, relatives, social authorities and the media, regarding the phenomenon of these two types of criminal offenses prevalent in our country. To hope that only the maximum punishment of the perpetrator of domestic violence by the judiciary will prevent the commission of another more serious crime, in the future would be a departure from the responsibility and role that everyone should play in a democratic state and emancipated.

In another case, the role played by the head of the family in some patriarchal families in our country has caused violence against the boy's wife to go to extreme limits, such as taking a life. The connection with this generational conflict regarding

the dissatisfaction that parents have with their children's choices regarding the future spouse has resulted in the loss of life of the victim M.H, by the father-in-law of the victim, 61-year-old Xh. H, where the motive for the murder of the boy's wife was the disagreement of his son's relationship with 30-year-old M.H, who according to the author had been previously married and had three children, and this was the reason why his son was separated from ex-wife with whom he had an 8-year-old son (https://sot.com.al/aktualitet/vjehrri-na-kishte-thene-me-pare-vrasje-e-30-vjecares-ne-fier-e-parala-i506072).

Another problem that has arisen in the judicial activity has to do with the circle of subjects that can be considered perpetrators of domestic violence and victims of this violence.

Even though the intention of the legislator in 2012 when he first provided this provision in the Criminal Code was intended to protect mainly the health and dignity of spouses against violence perpetrated by men, the categorization of other persons who will be part of the circle of gender or marriage.

Another contradiction regarding this situation has been encountered because point 3 of article 3 of Law no. 9669, dated 18.12.2006 "On measures against domestic violence", has a categorization of the circle of these persons narrower than Article 16 of the Criminal Code.

In point 3 of article 3 of Law no. 9669/2006, the definition of "family members" is given, is defined as such:

a) spouse or cohabitant or ex-spouse or former cohabiting partner;
b) siblings, straight-line gender, including adoptive parents and adopted children;
c) the spouse or cohabitant of the persons provided in letter "b";
ç) gender in a straight line, including the parents, and the adopted children of the spouse or cohabitant;
d) brothers and sisters of the spouse if they have lived together for the last 3 months;

Meanwhile, in the meaning and interpretation of the term "close gender" provided in Article 130 / a of the Criminal Code, we find the answer referring to the provisions of the Code of Criminal Procedure, Family Code, criminal doctrine, and judicial jurisprudence. According to Article 16 of the Code of Criminal Procedure and Article 10 of the Family Code, the term "close gender" includes firstborns, descendants, brothers, sisters, uncles, mothers-in-law, grandchildren, great-grandchildren, great-grandchildren, children of brothers, and sisters.

Based on this duality of legal concepts that takes place in various normative acts, the Court of the Durres District in reviewing the accusation about a crime

that was committed between two cousins (uncles' sons), where the Prosecution had raised the accusation provided by Article 130 / a / 1 of the Criminal Code, decided to suspend the trial and requested before the Constitutional Court the abrogation of the terms "Near gender" and "Near marriage" provided in Article 130 / a of the Criminal Code, because it is contrary to Article 3 of Law no. 9669, dated 18.12.2006 "On measures against domestic violence" (Decision no. 148 dated 31.05.2022, Criminal College of the High Court, point 4). For this request (which is a random trial), the Constitutional Court decided to reject the request for the abrogation of Article 130 / a of the Criminal Code of the term "close gender" with the argument that: "The referring court, based on the principle of constitutionality, before to address the Court must do everything to interpret the law in force. by the Constitution (Decision no. 55, dated 21.07.2015 of the Constitutional Court). The referring court must resolve the interpretative doubts, giving the right explanation of articles that are in force based on constitutional principles (decision no. 38 dated 25.3.2016 of the Constitutional Court).

Following the trial, the Durres District Court ruled: The dismissal of the criminal case against the defendant N. O, accused of the criminal offense "Other Intentional Injuries". According to the Durres District Court, in the main part of its decision, it is held that: "... the term" narrow gender "used in the first paragraph of Article 130 / a of the Criminal Code should be interpreted systematically with Article 3, point 3 of Law No. 9669, dated 18.12.2006 "On measures against domestic violence", which means gender in a straight line, including adoptive parents and adopted children, as well as adoptive parents and children of the spouse or cohabitant, but not other relatives beyond this circle. According to the court, a different interpretation would expand the circle of subjects provided by Article 130 / n of the Criminal Code beyond the scope of the legislator, for a criminal offense that can be prosecuted directly by the injured party in court and the prosecution office under Articles 59 and 284 of the Code of Criminal Procedure. Meanwhile, the expansion of the circle of subjects called "narrow genius" based on Article 130 / n of the Criminal Code, makes that the criminal prosecution cannot end with the withdrawal of the report by the injured party, as the criminal prosecution continues mainly by the prosecution body that is to the detriment of the procedural interests of the accused person (Decision no. 514, dated 24.04.2016 of the Durres District Court).

The same position as above was held by the Court of Appeal of Durres, which after reviewing the appeal of the Prosecution decided: "Leaving in force the decision no. 514 dated 28.04.2016 of the Durres District Court." (Decision no. 712 dated 24.10.20 of the Court of Appeal of Durres). The Court of Appeals of Durres, among other things, in its decision reasoned that: finds grounded the reasoning of the decision of the Court of First Instance that in the interpretation and application of Article 130 / a of the Criminal Code, have to take into account the provisions of

law no. 9669, dated 18.12.2006 "On measures against domestic violence", which is also the law whereby the legislator is based for approving of article 130 / a of the Criminal Code, this provision added by law no. 23/2012 "On some additions and changes to Law no. 7895, dated 27.01.1995 Criminal Code" (Decision no. 148 dated 31.05.2022, Criminal College of the High Court, point 1).

Against the decision of the Court of Appeal of Durres, the Prosecution filed a recourse in the High Court, where at the end of the review of this procedural act, the Criminal College of the High Court decided to annul the decision no. 712, dated 24.10.2016, of the Court of Appeal of Durres, and returning the case for reconsideration to the same court, with another panel. Among other things, in the reasoning part of the College's decision, regarding the term "close gender", it is analyzed: Article 130 / a before the amendments approved by law no. 35/2020, dated 16.4.2020 did not exhaustively define the subjects that benefited from the legal protection offered by this provision, because after listing the spouse/cohabitant, the ex-spouse/cohabitant defined the subjects that are in a close relationship, without specifying which category of subjects was included in this group. In these circumstances, the only criminal provision that gives the meaning to the notion of "gender and close relationship" is Article 16 of the Criminal Code which defines the circle of relatives who are close gender: According to this article in the same proceeding cannot participate as judges persons who are among themselves or with the participants in the trial, spouse, cohabitant, close gender (prenatal, postnatal, brothers, sisters, uncles, nieces, nephews, grandchildren, children of brothers and sisters) or close relatives (father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, stepmother, stepmother, stepfather, and stepmother (Decision no. 148, dated 31.05.2022, Criminal College of the High Court, point 15).

The College Panel considers it is true that this provision is not directly related to Article 130 / a of the Criminal Code, but it is the only criminal procedural provision that gives a clear understanding of who will be considered the closest gender in terms of the criminal norm. On the other hand, the reference made by the courts of fact to law no. 9669, dated 18.12.2006 "On measures against domestic violence" is not grounded, as this is not a law applicable in criminal proceedings (Ibid, point 26). In this line of reasoning, the Panel considers that the reference to Article 16 of the Criminal Code made by the courts of fact to determine the subjects that would be considered close gender and relative, in the sense of Article 130 / a / 1 of the Criminal Code has been fair (Ibid, point 28). The above considerations should be emphasized as very positive the position of the Criminal College of the High Court in terms of doctrine and theological interpretation where it is suggested that the judiciary takes into account the individualization of the circle of subjects who have committed the crime of domestic violence by referring directly article 130 / a of the Criminal Code which has clarified the circle of subjects that are close gender based

on the changes made in Criminal Code 2020, as well as article 16 of the Code of Criminal Procedure and not point 3 of article 3 of law no. 9669, dated 18.12.2006 "On measures against domestic violence".

V. Legal ways and instruments to prevent domestic violence

The use of moral norms that precede legal norms has long served as a positive instrument in the prevention of domestic violence. There is a fundamental difference between moral and legal norms regarding the prevention of domestic violence. Moral norms (or moral beliefs) tend to be 'more motivated by conscience than social expectations' and relate to deeply held values rather than a matter of judgment or taste associated with personal attitudes. For instance, 'I do not hit my wife because I believe it is morally wrong to do so' or 'Thou shalt not kill'. While social norms are informal rules of behavior and enforced through group approval and disapproval. On the other hand, legal norms are formal rules of the game, commanded by the state, and enforced through coercion. For example, national laws against domestic violence (Alexander-Scott, M., E. Bell, J. Holden, 2016).

The most important international instrument aimed at preventing domestic violence is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Article 12 of this Convention stipulates the obligation of the member states that have ratified the convention to take the necessary measures to promote changes in the social and cultural patterns of behavior of women and men, to eradicate prejudices, customs, traditions, and all other practices based on the idea of women's inferiority or stereotyped roles for men and women (Council of Europe Treaty Series - № 210, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence Istanbul, 11.05.2011, page 7). Article 29 of the Convention provides for the possibility of opening civil proceedings and other legal remedies for domestic violence (Ibid, article 29, page 11). Regarding the legal remedies that can be used by persons who are victims of domestic violence (victims are mainly women and children), our domestic legislation provides for the possibility of pursuing two legal remedies, which are to file a civil lawsuit to secure a protection order and report for the criminal offense provided by Article 130 / a of the Criminal Code.

In several cases of court practice, it turns out that men are also victims of domestic violence. In the decision no. 313, dated 24.1.2019 of the Tirana District Court, after analyzing the circumstances of the case, it results in that: on 29.10.2017, the citizen S.B was presented at the Police Commissariat no. 3 in Tirana, who has filed a criminal report for the fact of physical violence by the suspects, where according to his allegations are his ex-wife and ex-sister-in-law (Commentary on the Law against Domestic Violence, Tirana, December 2021, School of Magistrates, page

62). In the civil case no. 13010/7261, as well, with plaintiff AB against the respondent BB, the Court of the District with a decision no. 13010 reg. dated 31.10.2020 has decided: "Acceptance of the lawsuit. Issuance of an immediate protection order for plaintiff AB, consisting of the following measures: The respondent is immediately ordered not to commit or threaten to commit domestic violence against her minor children and ex-spouse as well as not to go to the school where the children are learning, except meetings allowed by the Court." (Ibid, page 207).

Statistical data show that there has been a continuous increase in the number of women convicted of domestic violence under Article 130 / a of the Criminal Code, from 1 case in 2013 to 76 cases in 2017. In 2013, women accounted for only 0.4% of convicted persons in domestic violence cases under Article 130 / a of the Criminal Code. However, in 2017, women accounted for 10.3% of persons convicted of domestic violence under Article 130 / a of the Criminal Code. These data are important because they reflect a large increase in the number of women convicted of domestic violence under Article 130 / a of the Criminal Code, compared to a significant decrease in the number of men convicted of domestic violence.[3]

However, the largest number of victims of domestic violence not only in our country but also in developed democracies like the United States of America, are women and girls. The majority of violent victimization researchers for example have found out that being a female is the main factor of violent victimization. Similar studies have revealed that women are more significantly likely to experience violent victimization than men. This study was conducted in the United States within the periods of November 1995 and May 1996. Almost 8000 men and women were selected for this study. The outcome of the study showed that more women than men reported experiencing violence victimization before and after the relationship ended with their partner (Violent Victimization against Women in Canada: Evidence from the General Social Survey 2009 Data, a Gendered Study. Published at Open Journal of Social Sciences, Vol.5 No.4, April 17, 2017).

VI. Consequences of domestic violence on women and children

Domestic violence against women can cause multiple negative consequences that affect the well-being and physical and mental health of abused women. Research has shown that domestic violence can cause chronic pain,1-4 either through repeated

[3] National population-based survey 2018. Violence against Women and Girls in Albania, prepared by INSTAT with the technical expertise of Ph.D. Robin Haarr, International Consultant, with support from UNDP and UN Women and financial assistance from the Government of Australia, as part of the Regional Gender Statistics and Sustainable Development Goals project, "To make every woman and girl important and the Swedish Government in the framework of the United Nations Joint Program to End Violence Against Women in Albania. March 2019, page 37

physical injuries over a period of time, or caused indirectly by the long-term stress that domestic violence causes victims. Migraines and/or headaches are not common among domestic violence victims. The cause of migraines is relatively unknown; however, migraines are closely associated with anxiety, depression, and distress, all of which are often present among in domestic violence victims. Headaches can also be caused by traumatic brain injuries from hits and impacts. Central Nervous System problems: The immune system, via the central nervous system, may be negatively influenced by stress and emotional distress. Stress increases cortisol, which is immunosuppressive. There is a considerable link between stress and the onset of cancer, cardiovascular disease, and autoimmune diseases (National Prevention Toolkit on Domestic Violence for Medical Professionals Conditions & Injuries Related to Domestic Violence National Prevention Toolkit on Domestic Violence for Medical Professionals. Florida State University 2014).

Usually, Mental Health Conditions that can Result from Domestic Violence are Depression and Suicide: Victims of domestic violence may suffer from depression due to feelings of loss of control, lack of worth, and fear for one's life. Other contributing factors to depression are being isolated, controlled, and injured by a partner. Suicide is caused by depression and feelings of hopelessness. If a victim feels like there is no escape or other way out, he or she may become desperate. Another post effects of domestic violence are post-traumatic stress disorder (PTSD), Alcohol abuse, Drug abuse, and Anxiety (Ibid).

Women and girls are also often the hardest hit by the socio-economic impacts of both sudden- and slow onset disasters and climate change. Destruction of infrastructures such as water and electricity supply, transport, communications, health, education, and care service, often imposes an increased domestic burden on women, as household work is made more difficult, and the responsibility of caring for children and the elderly falls disproportionately on women (Beyond vulnerability to gender equality and women's empowerment and leadership in disaster risk reduction: Critical Actions for the United Nations System. Published by UN WOMEN, UNFPA, UNDRR 2021. page 57).

Regarding children as victims of domestic violence, the effects of this violence are associated with permanent effects of their physical and mental health damage. It is not excluded that cases of violence against children can cause their death. According to WHO data, is estimated that there is one death of a minor child as a result of violence for every 150-2400 cases of abuse. In terms of the consequences of domestic violence caused to children, childhood injuries can be very dangerous, especially severe brain damage as a result of violence, which causes serious consequences throughout the life of the injured person in terms of social. It should be noted that in terms of violence against children the most at risk are children born into an abusive family (where their parents have previously experienced the

effects of domestic violence against them or have witnessed domestic violence against them. origin), where the opportunities for domestic violence are higher (Consequences of Child Abuse and Exposure to Domestic Violence. Journal of Domestic Violence, Vol. 25. page 53-63).

Increased awareness and understanding of the phenomenon of domestic violence against women and its impact on children are a prerequisite for changes in attitudes and behaviors. Therefore, it can play an important role as part of a comprehensive prevention strategy. To be effective, it is important to ensure that awareness campaigns or programs are designed as an integral part of a comprehensive and sustainable approach to ending violence against women, such as a national action plan or program. A clear framework, which defines clear objectives, targets, and ways to measure and evaluate success, is just as important as the choice of partners, such as civil society and other partners with relevant experience - in particular NGOs. Based on existing knowledge and expertise and taking into account the mutually reinforcing and intertwined nature of the Convention on Preventing and Combating Violence against Women and Domestic Violence, it is possible to design effective awareness-raising initiatives appropriate to different local or national contexts (Summary of documents on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Council of Europe publication, September 2014).

VII. Conclusions

Referring to international standards, the use of imprisonment as a form of punishment should be strictly limited, as well as be an extreme ratio in special cases, when other appropriate measures cannot be applied.

Also, according to the Council of Europe: "imprisonment should be applied as a measure only when any other measure or sanction would be inappropriate for the gravity of the offense, efforts should be made to minimize the use of measures depriving a person of their liberty and to apply more many that do not". (Recommendation R (2017) 3 of the Council of Europe).

After this brief comparative presentation of criminal offenses which express within themselves elements of violence, whether in the family or not, it becomes clear the desire of the legislator to curb this increasingly worrying phenomenon for the Albanian society, while the legal changes of 2013 focus mainly in toughening the imprisonment sentence.

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ADR and Domestic Courts in Albania

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Abstract

Practice has shown that the western democratic legal systems have developed several alternative dispute ways for resolving disagreements between the parties other that national courts. The article aims to explore and highlight the differences between peaceful means of conflict resolution and to provide a clear framework of the necessity of their promotion and further development. Depending on the different jurisdictions of the states, the opinion regarding the duties, rights and obligations of the parties in the process of ADR is different between each of this means and different regarding the domestic courts. In most legal systems the role of the conciliator, arbitrator or mediator it is simply to try to bring the parties together.

For example, the proposed possibility of arbitration to withdraw the disputes from the jurisdiction of national courts is extremely beneficial to investment attractiveness. All this led to the exponential growth of bilateral and regional agreements for the protection and promotion of foreign investment, where one of the main provisions is the possibility of transmitting disputes between investors and the state of international arbitration. The sources of the law of ADR lie in a number of international conventions, international model laws and model rules, and institutional rules. To these may be added domestic legislation, reports of awards and academic writings.

An arbitrator or mediator is described as 'a disinterested person, to whose judgment and decision matters in dispute are referred and must act in accordance with the rules

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of natural justice. Mediation practitioners point to a number of advantages which the mediation process has over the domestic court. In fact, it must be acknowledged that ADR usually takes place when at least one of the parties is unreasonable. Helping the parties to see the reason is a useful social role. The difference between this methods of resolving disputes would be so that the purpose of a conciliator, mediator or arbiter, would be to encourage the parties themselves to understand what benefits they can get from resolving the case out of court in which way they deem most appropriate.

Historical scientific methods are used in this research. The theory part it is presented with concrete cases from practice of both judicial and non-judicial ways of resolving conflicts, logical system, method of analysis and synthesis. In this paper as well are used formal-legal and comparative-legal methods. The writing is guided by the provisions of the conceptual theory of international arbitration law and domestic law. Research methods were used, of simple presentation of facts to argue the concrete point of view and the characteristics of the clarification of this research.

Key words: *ADR, judicial, methods, domestic, court, mediation, arbitration, law*

Introduction

In the system of separation of powers system, the courts are linked to the legislative and executive power of the obligation to enforce laws and other normative legal acts, as well as to the appointment of judges to their positions. The work of the judge is of special importance and he has a great responsibility. Excessive litigation will delay the process and will be less effective for delayed justice for citizens.

Article 41/2 of the Albanian Constitution says: Everyone has the right to a transparent and public process for the protection of the rights of the people. According to the Code of the Civil Procedure: judges try to resolve dispute amicably. Dispute resolution, in addition to court, is done with other alternative methods such as: negotiation, mediation and arbitration.[2] The state it is the regulator and the guarantor of the regular process in resolving disputes. Individuals seeks the achieve Justice by the Courts as a public good. The state has the duty to regulate all legal provisions for this function.

The judiciary must be understood as an essential element of modern developed state and on the other hand the courts have the competence to give binding decisions. Historically states do not have much interest in the civil judicial system, so it is important to note that good and deep reforms have consequences and they have not been successful so far. The sates has the obligation to be engaged in the

[2] Law No 9090 / 2003 has replaced 10385/2011, amended 26/2018 On mediation approximated with the EU Directive 2008/52 / EC.

modernization of the policy. According to the fact that the state plays the main role in overseeing and guaranteeing the standard of civil justice provided by private professionals of the field. Nowadays in Albania there are problems with the Courts: This because the civil process it is more expensive a lot more complex and leads to month and sometimes years of delays. So, individual get frustrated by not getting the justice on short time. This we can explain by a few reasons:

Many of the reforms are done wrong and they are not based on a concluded research of the professionals, lawyers, specialists (or evaluation). The Solution it is clearly and necessarily: Alternative dispute resolutions has to be promoted (less cost, no stress, no delays, a more effective and faster process) Cela E. (2022). Disputes-Arbitration is an alternative form of justice by the courts.

Arbitration as a concept is known in most legal systems but does not always take the same form in different countries. Inevitably, each different form reflects significant problems and sometimes a different approach to the entire legal system. In addition to the legal systems of civil law (*diritto scritto, droit ecrit*) and customary law systems, there are other legal systems, such as those of the former socialist countries, Islamic law and the countries of the Far East[3].

Depending on the different jurisdictions of the states, the opinion regarding the duties of the arbitrator is also different. According to some, the task of the arbitrator is simply to come up with a decision, while according to some others it is to decide on the decision equally, is based on the principle of natural justice. But the term arbitration covers a variety of mechanisms both in theory and in practice. Arbitration in fact aims to meet an important need not only at the national level (rule of law), but also internationally. There has been extensive discussion in the Doctrine as to the nature of arbitration. Various theories have been developed. One theory is that, since arbitration derives from a clause or agreement, its nature is contractual - contractual theory.

Another theory is that since arbitration proceedings are judicial, its nature is jurisdictional - the theory of jurisdiction. These theories were further institutionalized in the courts as auxiliary resources in the process of establishing the norms of the arbitration procedure.

Efficiency of Arbitration over Courts

It is a private court composed of one or several arbitrators to whom the parties, by mutual agreement, entrust the resolution of their dispute, whose decision is final and binding on the parties.

[3] Likewise, arbitration procedures which are not regulated by legal provisions are not treated as arbitration in some legal systems.

When the parties voluntarily decide to resolve their dispute that has arisen or may arise in the future through arbitration or through mediation procedure; so as a general rule - the jurisdiction of state courts to resolve these dispute is excluded.

Ordinary courts are excluded when they find that the Arbitration Agreement is invalid or impossible to implement.

Arbitration

- The arbitral process is consensual, based on an agreement between the parties;
- includes arbitrator and administrative costs;
- informal even though this is decided through arbitration rules;
- the final settlement of the dispute is decided by the arbitrators or the sole arbitrator;
- focusing on past events and circumstances used to determine factual or legal matters;
- the solutions are limited to the initial agreement of the parties and are usually limited to monetary costs or security measures;
- in a three-person panel, each party shall appoint one arbitrator and the two arbitrators shall appoint the presiding arbitrator, all of whom shall be appointed to adjudicate a dispute;
- arbitrators review cases through written submissions but also in a hearing through a due process of law;
- the key role in arbitration is played by lawyers in the representative role of the parties, where the parties themselves have a secondary role;
- The arbitrator is the master of his own procedure;
- The arbitrator must act in accordance with the rules of natural justice;
- An arbitral award is binding upon the parties.

Advantages

- More access to justice;
- The parties have procedural freedom;
- Cost and time efficiency;
- Confidentiality;
- Neutrality;
- Final and enforceable decision;
- Predictability;
- Expertise;
- Flexibility;
- Finalization.

The arbitrators must be independent and impartial in accordance with codes of ethics and conduct. A breach of that duty may result in the arbitrator being challenged and eventually removed by the court, or by the arbitration institution concerned. It may also lead to the annulment of the award.

Most international arbitration rules provide power in the arbitrator to act as an 'amiable compositor'. This gives the arbitrator power to act not only in accordance with rules of law, but also with principles of equity.

Court Procedures

Several factors are responsible:

The developed nations of the world were making new advances and breakthrough in technology and inventions. The rise in economic, especially commercial activities, has necessarily resulted in the increase of commercial contracts the breach of which creates disputes which have to be resolved. These disputes being business in nature require quick resolution which the adjudication process of the Courts do not ensure.[4]

Court procedure has become rather expensive and bogged down with procedural delay, especially with its system of appeals. These are some of the circumstances that have led to the gradual moving away from court litigation to arbitration in the area of business disputes. Other factors have also led to greater leaning towards arbitration in international transactions as we shall see shortly (Slos, D. 2009).

Advantages

- At the end of the process there is a final decision, which is binding
- Procedural rules are designed to ensure a fair legal process
- Judges are trained and professional
- Judges are obliged to respect the legal framework and protect the rights of individuals

Disadvantages

- The litigation is costly
- Delay until the final decision
- Opportunity to break the relationship between the parties
- The parties have no control over the process and the outcome

[4] At the level of the United Nations regime, Article 33 of the UN Charter obliges parties to any dispute, "the continuance of which is likely to endanger the maintenance of international peace and security", to seek a solution by, inter alia, arbitration.

- The parties do not have the opportunity to elect a judge
- Process severity and outcome uncertainty
- Corruption
- High costs
- Delays
- Not efficient
- Judicial reform is being implemented
- Budget for the implementation of this reform

Cross-sectoral strategy of justice - DCM 773, dated 2.11.201698 mil Euro (2017-2020) for the implementation of the reform; 467 intermediaries - except 63 of them are active; Mediation provided as a service till in Albania remains limited.

Improving and encouraging the mediation process - nothing about domestic or international arbitration, other than drafting a new law which has not yet been approved.

- People decide voluntarily about the rules of procedure
- They have flexibility
- Pay less in regards to resolving the dispute
- The process is friendlier than in the courts

Not all disputes have a standard, while in the courts there is a standard that leads to precedent setting. People have the right to go to court, but they have the right to give up from the court.

- Strain Greek Refineries and Stratis Andreadis v. Greece (1994) (ECHR set a minimum of procedural guarantees under Article 6/1 of the ECHR);
- Lithgou & others v. UK (1986) every trial panel and not just state courts, but also bodies set up to deal with a number of specific cases;
- Bramelid & Malmstrom v. Sweden (1979) - The state should provide a mechanism to check the fairness and correctness of arbitration proceedings;
- Suda v. Czek Republic (2010) - Applicant may not be required to submit to an arbitration for which he has not previously agreed;
- Suovaniemi & other v. Finland (1999) - waiver of an applicant's rights to an impartial judge should be seen as effective for the purposes of the Convention;
- Tabanne v. Switzerland (2016) - the applicant voluntarily and without obligation waives the opportunity to file a dispute in the ordinary courts Cela E. (2021).

ADR - International and European Standard

ADR- Negotiation, Mediation and Arbitration

The sources of the law of arbitration lie in a number of international conventions, international model laws and model rules, and institutional rules such as those of the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA). To these may be added domestic legislation, reports of awards and academic writings.

According to the New York Convention of 1958, States parties should unify internal arbitration rules - UNCITRAL model, the ICC rules (mandatory procedures). Geneva Convention of 1961 states that: States Parties shall develop their own domestic law relating to arbitration for the settlement of cross-border trade disputes(https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/). ICSID Convention- Investment disputes referred to bilateral agreements, European Community - ADR priority and development; Tampere 1999- call for alternative and extrajudicial proceedings (https://icsid.worldbank.org/resources/rules-and-regulations).

2002 - The Commission presents the Green Paper on ADR;

2008- Directive 2008/52 / EC "On some aspects of mediation in civil and commercial matters";

2013-Directive 2013/11 / EU "About consumer ADR";

Digital Agenda for Europe 2010 (COM (2010) 245) Consumer Protection-improvement of ADR system for e-commerce;

Regulation 524/2013 (ODR);

New EU legal system CADR have a great potential to provide not only an effective solution, but also fast and cheap among consumers and traders;

Independence and impartiality; transparency of proceedings; effectiveness; legality and justice Cela E. (2021).

Mediation[5]

The parties in mediation process have procedural freedom. This means that the parties may organize their proceedings as they like and may choose an adversarial or inquisitorial procedure as they like.

[5] Law No. 10 385, dated 24.2.2011 "On Mediation in settlement of disputes" (amended by law no. 81/2013, dated 14.2.2013, no. 26/2018, dated 17.5.2018). The parties have procedural freedom.

Advantages

- The parties have procedural freedom;
- Costs of parties in the process;
- The parties together with the mediator decide on the level of formality;
- The final settlement of the dispute is decided by the parties themselves, accepting or not the proposal of the mediator, which simply facilitates the negotiations between the parties;
- The variety and number of elections depends on the will of the parties;
- there are no designated authorities as the parties themselves negotiate the dispute directly;
- There is no relationship between the designated authorities and the parties, as there are no designated authorities;
- the key role in the process is played by the parties.

Trade, investment, consumer disputes - ADR solution with the will of the parties to the dispute

The result of mediation is not only reaching an agreement, but also the relation between the parties after the process; public institutions are more responsible to the public interest than private individuals a well we should pay attention that, Public authorities do not intend to be efficient but private entities does etc.

Disadvantages

- Mediation does not adequately safeguard the legal rights of the disputants;
- It lacks the procedural safeguards which attend in court trial;
- A failed mediation simply adds to delay and increased costs in finally resolving the dispute;
- Its consensual nature makes it a vulnerable process;
- Mediation is not suitable for certain types of disputes which involve, for example, serious crimes, sexual offences and constitutional infringements;
- mediation detracts from the case law jurisprudence which underpins the common law, since no precedents are established in mediations.

It is further acknowledged that even where a deal is not reached, the process of mediation allows the parties the opportunity to clarify their interests and, thus, help with the eventual resolution of the dispute. In a matter of comparing mediation with arbitration, an agreement to enter into arbitration will be enforced by the courts, whereas an agreement to enter into a mediation will generally not be enforced by the courts. This is because in mediation, the parties are free to leave at

any time. Arbitration has the quality of delivering a final and binding award. The arbitrator has the legal authority to make a binding award, but the mediator has not. Whereas arbitration is subject to an extensive statutory regime, mediation is generally not so regulated.

Negotiations

Among the claimed advantages are the following:

- consensual nature of the mediation process;
- personal involvement of the parties in the process;
- the parties' participation in arriving at mutually acceptable solutions;
- savings in time and money;
- deceleration of emotional stress;
- creation of a less intimidating atmosphere;
- maintenance of a continuing relationship;
- risk-free involvement in the process;
- acceptable win-win outcomes, as opposed to win-lose outcomes;
- freedom to put as many issues as possible on the table;

Negotiation procedures are free of charge; the parties decide on the level of formality, the final settlement of the dispute is decided by the parties themselves; the final purpose is the interests of the parties and their future relationship; the variety and number of solutions depends on the will of the parties; the mediator is appointed with the consent of both parties to facilitate negotiations on the matter; the mediator works directly with the parties to find a solution acceptable to both parties; the key role in the process is played by the parties through active participation in the process.

Reconciliation and Mediation as two out-of-court peaceful means of resolving conflicts

This procedure consists of an attempt by a third party, appointed by the litigants, to reconcile them either before going to court (either in court or arbitration), or afterwards. The attempt to reconcile is generally based on telling each side the opposite sides of the dispute, in order to unite each party and reach a solution, which will usually be found between the positions of both parties.

Conciliation procedures can take various forms and in some legal systems which are presented in a modern way. However, in essence, even with this new

look, we are always presented with a traditional reconciliation, the merits of which are undoubtedly indisputable when the parties are persuaded to become more reasonable. In fact, it must be acknowledged that litigation usually takes place when at least one of the litigants is unreasonable. Helping the parties to see the reason is a socially beneficial role of reconciliation. Conciliation, because of its importance, is mentioned in the most recent Arbitration Conventions. The 1965 Washington Convention provides that a conciliation committee shall be set up, at the request of a Contracting State, or of an entity of a Contracting State, and governs its procedure:

Article 34. (1) It is the duty of the Commission to clarify matters in dispute between the parties and to try to conclude agreements between them on terms acceptable to both parties. To this end, the Commission may recommend the parties at any stage of the proceedings and from time to time. The Parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions and to pay more serious attention to its recommendations. (2) If the parties reach an agreement, the Commission shall draw up a report noting the issues in the dispute and record that the parties have reached an agreement. If, at any stage of the proceedings, it appears to the Commission that an agreement between the parties is unlikely, it will close the proceedings and draw up a report noting the submission of the dispute and recording the failure of the parties to reach an agreement. If a party fails to appear or participate in the proceedings, the Commission shall close the proceedings and draw up a report stating that the party has failed to attend or participate. Article 35. Unless the parties to the dispute otherwise agree, neither party to a conciliation proceeding shall have the right in any other proceeding, whether before arbitrators, or in a court or tribunal, to invoke or rely on any expressed views or statements or acceptances or offers of solutions made by the other party to the conciliation proceedings, or report or any recommendation made by the Commission. The first part of the rules of the International Chamber of Commerce (1988) ICC, dedicated to reconciliation, opened with a clear statement in its favor: settlement is a desirable settlement of disputes of a commercial nature.

However, an attempt to resolve is not a prerequisite of arbitration. The first of the various provisions of the ICC (1988) rules on compliance stated: Article 5 - The conciliator shall conduct the conciliation process as he sees fit, guided by the principles of impartiality, equality and justice.By agreement of the parties, the conciliator shall designate the place of conciliation.The conciliator may at any time during the conciliation proceedings request a party to provide him / her with additional information that he / she deems necessary. ICC Rules of Conciliation and Arbitration 1975:

Article 1. Any business dispute of an international character may be the subject of a request for settlement by amicable settlement through the Administrative

Conciliation Commission established at the ICC International Chamber of Commerce. Each National Committee may nominate from one to three members of the Commission, from among its nationals residing in Paris; they will be appointed for a term of two years by the President of the International Chamber of Commerce. *The difference between the two methods of resolving disputes would be so that the purpose of a conciliator would be to encourage the parties themselves to understand what benefits they can get from resolving the case out of court in which way they deem most appropriate.* In fact, if a real distinction is to be made between these two peaceful methods of resolving conflicts, it is alleged to lie in giving the third party the authority to come up with a binding solution.

However, nothing prevents the parties from giving such authorization to a conciliator or mediator. The doctrine suggests that in this broader authority, rather than in an internal distinction between conciliation and mediation, one can perhaps see a real difference between the two terms. In most legal systems the role of the conciliator or mediator is simply to try to bring the parties together. An analysis of the various International Conventions on Arbitration shows that there is a preference for the place where the decision is issued.The 1927 Geneva Convention deals with decisions given in the territory of another contracting state. The 1958 New York Convention deals with the recognition of judgments given in the territory of a state other than the one in which recognition is sought. The 1961 Geneva Convention refers to the states in which, or under the law of which the decision was given.

Conclusions

International courts have developed tools to strengthen the impact of their decisions that must be accepted in domestic courts. Civil justice is not provided only by state authorities. The state has failed to provide an efficient judiciary, provide a budget for the courts, and implement long-term reforms that guarantee an effective judiciary. People need flexibility, speed and as little cost as possible as a guarantee of a smooth process. Fatigue with the courts and strengthening of the ADR. The principle of due process in the ADR as well as in court. A realistic vision in the organization and functioning of ADR. In parallel, efforts to strengthen civil justice as a public good, which meets the expectations of the social purpose in the effective execution of individual rights, which is healthy in a society. On the other hand, the interpretation of international Law by Domestic Courts proves the growing role of domestic courts in the interpretation of international law and the complex relation between each other.

Albania is in the phase of implementing justice reform. There is no strategy for promoting and strengthening ADR in Albania. An assessment of the situation so far needs to be made to realize a strategy for the future.

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Eastern Crisis and Georgia

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Abstract

The Eastern crisis is an early issue. It is based on the clash of interests of the great powers in the territories of Southeast Europe. Its return to the nineteenth century came due to the weakening of the Ottoman Empire and the resistance of the peoples who were under this empire, as well as the growing interests of the great powers of Europe. Germany appeared in the Near and Middle East, which affected the interests of France, Britain and Russia. It entered into agreements with Austria-Hungary, Italy and then Turkey, while France made alliances with England, Russia and the United States. Under the Treaty of Kainarja, the Ottoman Empire was forced to relinquish part of its possessions. With this treaty, Russia for the first time secured significant territorial gains, which provided it with access to the Black Sea. These would then inevitably lead to its empowerment. Georgia in this period was a battlefield according to the interests of the Ottoman, Russian and Persian empires, but also of other great powers, such as Britain, France, etc. A series of Russo-Turkish wars for territory took place. Behind them, what benefited most, was Russia, which annexed Georgia, while Turkey Islamized the population of the lands in possession, part of which later emigrated to the Ottoman Empire.

Keywords: *Eastern Crisis, Georgia, Russia, Great Powers, treaties and agreements, war*

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I. Introduction

Europe has been facing the Eastern Crisis or the Eastern Question since ancient times. Over the centuries its essence has not changed, but, from time to time, it has acquired different aspects. At the root of this crisis lies the clash in the territories of Southeast Europe between the customs, ideas and prejudices of East and West. Scholars find traces of it in the Greco-Persian conflict, marked by the battles of Marathon, Thermopylae or Salamis. In Roman times this issue was represented by the conflict of the Hellenic monarchies, in the Middle Ages by the war between Islam and Christianity, the culmination of which was the battle of Tours (October 732) or otherwise the battle of Poitiers (Poitiers). which saved Western Europe from invasion and Islamization. The issue is renewed with the crusades of the West, which manifest the rivalry between the Cross and the Crescent.

II. The resurgence of the eastern crisis

In the nineteenth century, the essence of the Eastern crisis became the presence of a very important factor in Europe, the Ottoman power, which, according to J. A. R. Mariott (1917), was imposed on several issues:

a) first, its passage of the Hellespont (Dardanelles) in the middle of the fourteenth century;
b) second, the position of the Balkan states, such as Greece, Serbia, Bulgaria and Romania (which appeared gradually as the Ottoman influx slowed down), Montenegro or Bosnia, Herzegovina, Transylvania and Bukovina, which were annexed by the Habsburgs. ;
c) third, the problem of the Black Sea, the entry and exit from it, the command of the Bosphorus and the Dardanelles, and, above all, the main problem of the conquest of Constantinople;
d) fourth, Russia's position in Europe, its natural impulse towards the Mediterranean, its repeated efforts to secure permanent access to that sea from the straits, its connection with its fellow-believers under the influence of the sultan, in particular with them with Slavic nationalities;
e) fifth, the position of the Habsburg Empire, in particular, its anxiety about access to the Aegean and its relations, on the one hand, with the southern Slavs in the provinces of Dalmatia, Bosnia and Herzegovina, as well as with the nearby kingdoms of Serbia and Montenegro and, on the other hand, with the Romanians of Transylvania and with Bukovina;

f) finally, the attitude of the European powers in general and of England in particular, towards all or any of the issues listed above.

U. Trumpener (1968) states that the emergence of imperial Germany in the the Near East and the Middle East further aggravated the rivalry of the great powers for that region. The newly formed German Reich, on the other hand, was trying to get involved in the "Eastern Question", the armaments industry had successfully competed with the sultan's traditional suppliers and had become an important supplier in Constantinople, on the other hand, industrial and financial consortia had secured markets or concessions and spheres of influence in the territory of the Empire, even Kaiser himself, Wilhelm II, had traveled twice to the Ottoman Empire. These developments had fueled the desire to increase German influence, especially the Pan-German League speaking openly of the need to expand German influence in the Ottoman Empire. All this had raised the suspicions of France, Britain and Russia, to whom this fruitful Ottoman-German relationship threatened the interests they had in the region. This protagonism of Germany in the Near East and the Middle East had considerably increased the frictions in Russia's relations with Britain and less so with France.

Germany entered into agreements with Austria-Hungary and Italy, which were later joined by Turkey. France opposed the alliance over the Alsace-Lorraine affair, and in response allied itself with Britain, Russia, and the United States. Russia, still weak, hoped to use the alliance of which it was a part to achieve Constantinople and control of the Dardanelles. G. Agoston and B. A. Masters (2009) think that the origins of the "Eastern Question" can be traced back to 1774, when the Russo-Turkish War (1768-74) ended with the defeat of the Ottoman Empire, whose fate was decided with the Treaty of Little Kainarja, in 1774. The Russo-Ottoman War (1768-1774) gave the Russian Empire of Catherine II the possibility of a military expedition to the Caucasus and Crimea, in order to put an end to Ottoman legal claims in the Caucasus. The Crimean Khanate was a vassal of the Ottoman Empire and with the Treaty of Little Kainarja, in 1774 became independent. The treaty defined the Cuban River as the new Ottoman-Russian border.

The Treaty of Kainarja is one of the most important treaties of European diplomacy, as through it the Ottoman Empire was forced to relinquish part of its possessions. In addition to the Cuban area, he also left Terek, which until then was the vassal khanate of Crimea under Ottoman rule. Turkey also liberated the port of Azov at the mouth of the Don along with the fortresses of Kerç and Yenikala, which controlled the straits joining the Sea of Azov and the Black Sea. An important victory for Russia was a small area between the Bug and Dnieper rivers, along with the latter's gorge. So, with this treaty, Russia gained for the first time a land, albeit small, that provided access to the Black Sea. These were very

significant territorial benefits for Russia, but not the most important achievement of the treaty, as it aimed to have freedom of navigation for its ships in the Black Sea, which until then had been closed to non-Turkish ships since the late 16th century, as and the right of its merchant ships to navigate freely through the Bosphorus and Dardanelles Straits. The treaty provided for Russia's right to build an Orthodox church in Constantinople, and a secret article forced the Turkish government to pay a reparation of four and a half million rubles. (J. A. R. Marriott, 1917)

The terms of this treaty were humiliating and catastrophic for the Turks. Russian territorial gains, war reparations, the construction of the Orthodox Church in Constantinople, the free navigation of Russian merchants in the Black Sea could have more serious implications, as they severely damaged Turkish honor and, no doubt, would provoke similar requests from Western European countries. All of this would inevitably lead to the great empowerment of Russia. Although it had managed to expand the territory where it would exercise its authority, Russia, dissatisfied with this border (the Cuban River), annexed Crimea in 1783. This decision was not a surprise, but the High Gate's failure to react immediately.

Then there were other agreements, which regulated the situations between them and determined the outcome of the wars: the Ainali Kavak Convention between Russia and the Ottoman Empire in 1779, the sendei of Sultan of 1783 and the hatti-sheriff of 1802, which confirmed and fulfilled the provisions of Little Kainarja. Eventually, there were some agreements reached between the great powers, including territorial compensation at the expense of others, especially Poland in 1772, 1793 and 1795 or, as in the case of Wallachia, in some cases simply foreseen. (I. Biliarsky et al. 2012)

III. Georgia in the period of the eastern crisis

The fate of Georgia was linked to the so-called "Eastern Question" from the middle of 1760-1802. G. Agoston and B. A. Masters (2009) write: "The first Eastern Question was invented at the Congress of Vienna (1815) by Russian delegates to describe the growing tensions between the Ottoman sultan and his Greek subjects, this phrase gained popularity during the 19th century, as diplomats debated the fate of the fall of the Ottoman Empire. In short, the "Eastern Question" revolves around the question of how to eliminate the vacuum in Eastern Europe, the Balkans and Southern Europe and the modern Middle East, which was created with the fall of the Ottoman Empire and the partition of Poland, without damaged the delicate balance of power in Europe. There is no consensus among historians as to when the "Eastern Question" arose, or when - or even if - it was resolved. "Diplomatic circles in the 19th century understood it as a matter of contemporary politics and tried to find the best solution." (p. 190)

According to I. Biliarsky et al. (2012), this term from European chancelleries refers to the weakening of the Ottoman Empire and the concern of the great powers of Europe to maintain international stability, their interests in the region, as well as to find a worthy successor to this empire. The most suitable heir would be the Russian Empire, which aimed to open up to the Black Sea and dominate its trade routes, the West, to extend its influence as far as Southern Europe, as well as to establish a base south of the Caucasus, to enable further progress in the Near East. But Russia's desire for enlargement had troubled Britain and France, who preferred to help maintain the Ottoman Empire's status quo. So, in addition to Russia's wishes, the Ottoman Empire, still powerful, had its claims on Georgia, as well as Iran, so the fate of Georgia would depend on how the "Eastern Question" would develop.

In the 19th century, Georgia became a battleground because, in addition to the old claims of the Ottoman Empire, the Russian Empire, the Persian Empire, the interests of many other great powers, such as Britain and France, clashed, which saw Russia as dangerous. to control the waters of the Black Sea and for this reason supported the stabilization of the Ottoman Empire's position in the Balkans, the Near East and the North Sea. (W. E. D. Allen and P. Muratoff, 1953)

"The country stretching from the eastern shore of the Black Sea to the borders of Persia, on the one hand, and from the border of Turkey to the foothills of the Cirkalia Mountains, on the other, is one of the most beautiful parts of the earth. It contains the famous kingdoms of the Easy and the classic Fass, from which we have read earlier on the voyage of the strange Argos, which with the strong wind, first through the Euxine seas, held the whole course of Greece. It was divided into several principalities, three of the most important bearing the names of Mingrelia, Imereti and Georgia respectively. These places were inhabited by people whose rare beauty is proverbial all over the world. Their children, who have long been brought in large numbers to Persia and in Turkey through their relations with the people of these lands, were the means to change the tribes, initially remarkable for their ugliness, into beautiful people. and satisfactory, and nowadays the Georgians and Mingrelians are to a large extent doing for the Russian nation what their ancestors did for the followers of AlpAlsran and Timur. This righteous country and its most righteous inhabitants have for hundreds of years been a prey to all the evils that come from a system of weak and barbaric government." (R. G. Watson, 1866, p. 82)

Convinced of the support of the Western powers, the Ottoman Empire declared war on Russia, entered Wallachia, and on November 1, 1853, won the battle of Oltensa. The Ottoman army was no longer the Asian army of the eighteenth century, but was reformed and modernized under the care and advice of Western officers, who were engaged in the training of cadres, but also in the reorganization of the Ottoman navy and in this sense constituted a strong opponent. (W. E. D. Allen and

P. Muratoff, 1953) So, in a way, the Eastern Question can be determined by Russia's relations with Turkey. Russia had begun to show its political protagonism in Europe and, after securing power over the Black Sea, was looking for the opportunity to enter the Mediterranean. The time span from the beginning of the Russo-Turkish War to the complete annexation of Georgia by Russia is a period of war, because all powers in the region were preoccupied for self-expansion and, in cases where diplomacy failed, war was the only alternative. The Russo-Turkish war marks the longest conflict in Europe. At this time Georgia was on the agenda of diplomacy and mediation for the achievement of peace, often even under the protectorate of any of the powers, when the agreements were impossible to achieve. (J. A. R. Marriott, 1917)

Thus, in 1760 Teimuraz went to Russia, where he was received with full honors by Queen Elizabeth, but her promise to send Russian troops to Georgia was not kept, as she died in 1761 and Teimuraz could only survive for two weeks. In 1783 a treaty was signed, by which the Georgian prince renounced alliance with Persia and declared himself a vassal of Empress Catherine, who, in turn, bound herself and her followers to protect Heraclius, son of Teimuras. and to guarantee not only all the current possessions of the king of Georgia, but also of all the lands that could be acquired by him in the future. With the violation of the Treaty of Little Kainarja, Russia became a real threat to the Ottomans due to the strengthening and exit of its Fleet in the Black Sea. The invasion of Crimea, the Treaty of Georgievsk, through which he established a protectorate over the Christian kingdom of Georgia and revived the expansionist policy of Peter the Great (P. W. Schroeder, 1996), made Russia a powerful, non-violent but also European chancelleries. This move, together with the agreement that Heraclius of Georgia made with Catherine II, revived the Ottoman interest in the Caucasus, which the latter had possessed since 1475. (G. Agoston, B. A. Masters, 2009)

Russia's focus on the South Caucasus came during the Russo-Turkish War (1768-1774), when Catherine II of Russia used Georgian military power, aided only by a small Russian military force, to divert Ottoman troops from Europe. Irakli had promised to take part in military operations against Turkey, on the condition that Georgia be placed under Russian protection, but the Russian commitment was not what was promised. Even during the Russo-Turkish war of 1787-1792, Russia again did not engage in the Caucasus, leaving Irakli to face the Ottomans alone. This war ended with the Treaty of Yashi, at the end of 1792. Aga Mahomed was given the opportunity to punish the Georgian rebels when Lutfali Khani, his powerful rival, was no more and when the chief of Kajar had accepted the subjugation of the southern provinces of Persia. Before deciding on the place, he summoned Irakli to return to his post, pay the usual tribute, and appear before his court to take homage and take the oath of allegiance. Irakli's response was that he did not accept any claim. (G. Agoston, B. A. Masters, 2009)

Until now, Russia's interest in Georgia was not great, also because of the problems that Russia itself had (events in Europe and Pugashev's rebellion). Interest grew with Grigory Potemkin (1739-1791), who was an advocate of Russian enlargement and pursued an active policy in Georgia, with the view of having it as a second effective front not only in the relationship between Russia and the Ottoman Empire, but even in trade with Iran and the Middle East, as Russia itself did not want to open a new war front with Iran. Even after the Georgievski Treaty (which made Georgia the formal protectorate of Russia), military engagement in Georgia was not very large and Russia did not fulfill its promises to protect Georgia from attacks. (G. Agoston and B. A. Masters, 2009) Aga Mahomedi was unwilling to relinquish his country's rights over Georgia, so, under these conditions, he gathered a large force and in the spring of 1795 set out from Tehran for Ardebeel, at the head of sixty thousand men. At Ardebeel he divided his force into three troops. One of these sent him to the plain of Moghan, in the direction of Dagestan, to specify the proper oath of allegiance by his chiefs, and to decide arrears of tribute. This force met no resistance and executed all the services required of him.

The Second Corps marched on Yerevan, a country that had accepted the authority of the Tsar of Georgia and organized its defense with fifteen thousand Georgians, under the command of Heraclius's son. The third body was led by Aga Mahomedi himself. With him he marched to take the siege of Sheeshah, a fortress near the Araks in the province of Karabakh, a place where he faced strong and sudden resistance. Failing in his efforts to reduce this fort and corrupt the loyalty of Governor Ibrahim Khaleel Khan, he simply left a force there, while he himself left to join the second corps of arms in Erivanin.

The Russians tried to influence the last Bagratid. This attempt resulted in the document of September 28, 1800 of George III, a document that caused hatred and the curse of the local nobles, because, in his name and that of his descendants, he relinquished the crown in favor of the Emperor of Russia.

R. G. Watson (1866) writes: "His queen was indignant at the weakness of her honest husband and had urged him to comply with the secret demands of the Russian agents and, when they had to arrest her in order to Moscow, the indignant princess had wounded the Russian officer who had tried to capture her. Prince Alexander, George's younger brother, was reluctant to see the crown go away from his father's family without making an effort to secure it for himself. "He tried to start a revolution, but the presidents of the country had no hope of ousting the Russian yoke without the support of Persia or Turkey." (p. 142-143)

But at the moment, neither of these two powers was interested in supporting Georgia, Persia did not want to oppose Russia, while Turkey was concerned about Napoleon's progress. The attempt he made in collaboration with Khan of Kharabag to expel Russia from Georgia was discovered in time by Tbilisi. As

punishment, Russian troops in the Caucasus massacred the modern-day city of Ganja, Elizabethpol. (R. G. Watson, 1866)

King Solomon died in Trebizond in 1815, ending Imereti's troubled existence as an independent kingdom. In about three and a half years thirty kings had ascended the throne of Imereti, twenty-two of them fell (one of them, the blind Bagrat, eight times), seven died in violent death, three were blinded. (Oliver Wardrop, 1888)

Russia's annexation of Georgia strained Russian-Persian relations, the latter unable to regain the lost provinces on its own, entered into an agreement with France. The French ambassador had promised the Persian chess that any treaty to be reached between Napoleon and the Russian tsar would stipulate that the latter should return Georgia and Kharabag to Persia. But in the meantime, word spread in Tehran of a peace treaty between the two emperors (Napoleon and the Tsar of Russia), which did not provide for the return of Georgia and Kharabag to Persia.

Despite limited territorial claims in the Treaty of Edirne, at the end of the Russo-Ottoman War of 1828-1829, Russia owned the entire Black Sea coast, from the Danube to the Poti of Georgia. The inclusion of Ajdara and the coastal area north of Batumi (Kobuleti) in the Ottoman Empire in the 17th century led to the Islamization of the native population, becoming the ancestors of the present-day Islamic community in Georgia, but unlike Meskhetia, Adjara and Kobuleti they never abandoned the Georgian language, thus avoiding direct demographic influence. However, after the Turkish-Russian War (1877-1878) a part of this population was persuaded to emigrate to the Ottoman Empire. (R. Gachechiladze, 1995)

IV. Conclusions

The resurgence of the Eastern Crisis in the mid-1970s, with a greater sharpness than in the past, was influenced by three factors: the weakening of the Ottoman Empire, the rise of the liberation movement, and the intervention of the Great Powers. At the heart of this crisis lay the national liberation of the peoples enslaved by the Ottoman Empire and the division of the possessions of the Ottoman Empire.

Georgia in this period was a battlefield, where not only the old claims of the Ottoman Empire, the Russian Empire and the Persian Empire clashed, but also the interests of other European powers, such as Britain and France, which supported the stabilization of the Ottoman Empire in the Balkans, the Middle East and the North Sea. During the Russo-Turkish war she was on the agenda of diplomacy and peace mediation.

Russian interest in Georgia grew until its annexation, straining Russian-Persian relations, and the end of the Russo-Turkish War (1828-1829) defined Russian and Turkish possessions.

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BOOK REVIEW

"The great clash" by Enver Hoxhaj

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"The years that await upon us can either be a time of loneliness and oblivion for Kosovo or a time of great opportunities. Because this is the time when taboos and rules are broken "

This is the opening remark that sets the inception of Enver Hoxhaj's confession, in the light of new developments and questions that imply the 'great clash' between the West and Russia. The author Enver Hoxhaj, is the longest-serving Foreign Minister of the Republic of Kosovo, as well as a protagonist of many occurrences that have conveyed the freedom and independence of Kosovo and an essential set piece of the still active professional political elite that was produced by the 23-year-long journey of building the state of Kosovo.

"The great clash" seems as though a "prophetic" call towards the "Albanian world" and its allies with the intention to prepare us for the worst-case scenario, that of the escalation and enlargement of the Russian-Ukrainian conflict in the region of Western Balkans, in the core of which will be the Republic of Kosovo.

It is no coincidence that Hoxhaj's book is published in the midst of the Ukrainian war, for it contains warnings of major repercussions in the edifice of international security risen from the ruins of World War II, 77 years ago.

The author, Hoxhaj, has not been caught off guard by all these current events. In his quasi-empirical analysis, he attempts to provide the reader with the relevant clarity on the warned, long-standing goals of Vladimir Putin's Russia and Putinism as an established doctrine. He bases the latter on two main pillars: On the one hand

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the restoration of the Tsarist glory by any possible mean, including the use of force and, on the other, the goal to strike down, degenerate and demolish the supremacy of the US-led model of liberal democracy. All of this, through the infamous hybrid war, the main battlefield of which is the region of the Western Balkans.

"There is no longer a common order, but a polycentric world, with some decision-making centers, which ought to be against American hegemony" - this is the Russian motto. The hybrid war is nothing but a collision of liberal democracy and autarchy, with Vladimir Putin being the par excellance representative of the latter, striving to win this battle by any mean possible.

In Hoxha's analysis, it is clear that the entirety of Kosovo's state-building journey, beginning with the gaining of freedom in 1999, after NATO's military intervention and followed by the promulgation of Kosovo's independence, is essential for understanding Putinism as a political doctrine in the field of international relations: "The more we deepen the understanding of why Putin has struck Kosovo in the past twenty years, the more we will be able to understand his worldview."

The author provides us with a summarized historical and analytical excursus of all the defining events that support the above assertion, starting with Putin's emergence in 1999 as a High Security Counsel, to former President Boris Yeltsin and later on his appointment as Prime Minister, aligned with the visits in the bombed Belgrade and his first and only visit to Kosovo. To be continued with his "programmatic" speech in the Conference of Munich in 2007 "on the minimization of international law due to the overuse of force by the USA", the attempt to prevent the declaration of independence of Kosovo, the military intervention in Georgia and Crimea, the escalation of the hybrid war during the pandemic and, last but not least, the unprovoked aggression against Ukraine.

Through analysis and contextualization, the author illustrates, with empirical clarity, the silence and inability of the international community to anticipate and halt the use of force for the purposes of states' relations and the realization of the Russian expansionist agenda.

The border of this essay seems to be the politician Enver Hoxhaj. Being an active figure in Kosovar politics, he has perhaps evited one of the topics that was expected with the most interest by his pen: that of the special court in The Hague, which is in fact one of the battlefields of the "great clash".

The declaration of independence of the state of Kosovo and, above all, its certification by the International Court of Justice in The Hague, relied on the history and legitimacy of the KLA-led war in Kosovo, the aftermath of the genocide and plateau violations of the so-called Jus Cogens norms by Slobodan Milosevic's regime.

This was in short the basis for the recognition of Kosovo as a Sui Generis case by the ICJ and the international community. What is happening in The Hague? Is

the process against the leaders of the Kosovo Liberation Army a fair and honest process? Is there an attempt to rewrite the history of the Kosovo war, through this process? What are the consequences on Kosovo's international subjectivity if the indictments against the leaders are confirmed? Questions that unfortunately remain unanswered in the work of Enver Hoxhaj.

According to Hoxhaj, the exploitation of the conflict in Ukraine will affect all international agreements and the manner of conducting diplomacy. It will first amount to a strike upon the UN Charter, which in the event that it crumbles, will undoubtedly affect the structure of the Security Council in particular. In fact, it is clear that the strategy of the "five gendarmes" who oversee the compliance of the UN Charter and who guarantee the worldwide order for more than 77 years will no longer stand, as long as this explicitly violates the "sacred" principles of the Charter. It is widely known that Security Council resolutions are one of the sources of international law and thus they produce erga omnes international norms. Furthermore, the Security Council has the power to impede the development of international law. When we mention the Security Council, we are referring to its five permanent members, including Russia and China.

The necessity of a Hobbesian approach pervades the entire narrative of Hoxhaj, which in my view constitutes the most pivotal value of the book. He talks about a "repositioning of Kosovo", which is nothing but an invitation for the alignment of the strategic objectives of the Republic of Kosovo in relation to its security and the protection of the international subjectivity achieved so far, for which Hoxhaj does not speak implicitly. Hoxhaj recalls that the distinctive feature of the global circumstances that enabled Kosovo's freedom and independence was driven by the American strength and supremacy. "Kosovo was fortunate in its receival of the American support, especially by the US President George W Bush, whom clearly understood Putin's games; he supported Albania's membership in NATO and Kosovo's independence" he stipulates.

Hoxhaj conveys between the lines that with the weakening of the American supremacy, the region of the Western Balkans has turned into a battlefield for the collision of the the great powers. An important spot in this regard is occupied by China, which, despite refusing to enable the use of force, is as aggressive as Russia, if not an ally in the hybrid war, "with Serbia as its main common stronghold."

Russia and China have largely prevented from the very beginning the consolidation of Kosovo's subjectivity under the threat of the veto and are the leaders of the non-recognition of Kosovo campaign, alongside Serbia.

Under these circumstances, Hoxhaj considers Kosovo's membership in the NATO as almost vital, as the latter is the only organization that offers credibility and guarantees under the threat of the worst-case scenario. "Recognition of independence by all European countries and Kosovo's membership in NATO are the sole tools for weakening Russia's influence in the region."

Built on facts, generally known events, Hoxhaj's book comes as a new synthesis with added cognitive values for developments in Kosovo and the region in the light of Russian aggression against Ukraine. It is no coincidence that the book was written and published as "knowing by heart", within a short time after this aggression. The sensitive sensors of the politician, diplomat and analyst Hoxhaj are immediately enabled to understand and analyze, among other things, or better to say, in the first place, the frequent mention of Kosovo by the Kremlin leader and his ministers as a casus belli to justify the attack against Ukraine. Sounds like a cynical retaliation against the US and NATO for propaganda consumption. Hoxhaj highlights once again the "cosmic" asymmetry between the sui generis case of Kosovo and the typical Nazi alibis of Moscow to attack Ukraine.

"The Great Clash" is a book that is pleasure to read. The author intertwines the deep acquaintance of the subject with the laconic style of expression. It is not customary for such books to be written often by active Albanian politicians. This book enriches the Albanian political literature. Above all, it helps to make the big politics "chewable" and provides useful knowledge even for non-professional readers.