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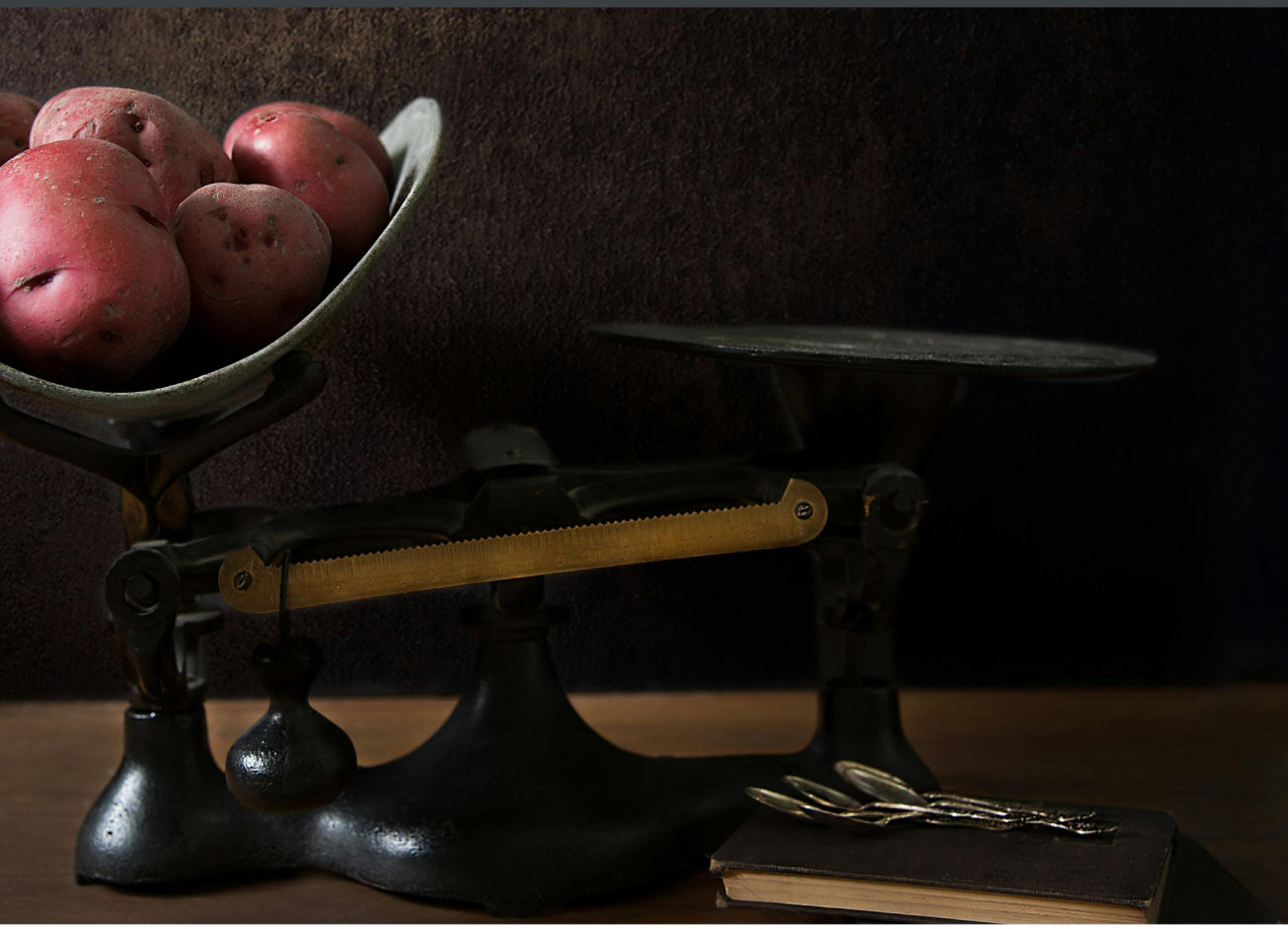

JUDICIAL ECONOMY

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Content

EDITORIAL

Judicial Economy

Assoc. Prof. Dr. Juelda LAMÇE

This edition of Jus & Justicia is dedicated to judicial economy, a crucial means for strengthening the rule of law and fostering economic growth and stability. The efficiency of the justice system, particularly in terms of delivering timely and fair decisions, has a direct impact on public trust. By ensuring that justice is delivered promptly and fairly, judicial economy strengthens the rule of law and contributes to the overall prosperity of democratic societies. Judicial economy's main challenges - such as delays and backlog in courts, corruption, lack of resources, complex legal procedures, limited access to justice, judicial independence and technological gaps – are professionally explored in the articles of this edition, offering stimulating insights and recommendations.

Albania's journey from a totalitarian state to a democratic nation has been a long and challenging one, especially when it comes to reforming its judicial system. According to the 2023 Global Rule of Law Index, Albania's justice system ranks poorly, with delays in legal processes, weak enforcement of the law, and rampant corruption stalling progress. As the country looks to align itself with the European Union, comprehensive reforms are not just necessary—they are essential for Albania's democratic and economic future. Judicial accountability is another pressing issue. A lack of independence within the Albanian judiciary has allowed corruption to flourish, with serious consequences for both the economy and public confidence. As Albania transitions from a centralized to a free-market economy, corruption in strategic sectors has weakened the country's economic foundation, resulting in high levels of tax evasion, informality, and a stagnant business climate. Judicial corruption not only undermines the rule of law but also erodes investor confidence, making it harder for Albania to attract foreign investment and develop its economy.

Other valuable academic papers concern religious freedom and privacy rights, administrative justice, especially fairness and transparency in Albania's tax system, climate change and related legal framework (the case of Nigeria) and military

law in Albania during the Italian occupation (1939-1943). They all contribute to restoring public trust in governmental institutions.

In conclusion, improving judicial efficiency, accountability, and independence are crucial for restoring public trust and creating a conducive business environment. As Albania continues to navigate its complex path toward modernization, learning from both its own history and the experiences of other nations will be vital for ensuring a successful future.

Improving judicial performance in Albania

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Abstract

Restoring public trust in the judicial system remains a major challenge for Albanian society. Statistical data show that justice systems are weaker in 2023 and that delays in the delivery of justice and issues in implementation are key factors. According to the latest World Rule of Law Index, Albania performs poorly, especially in the fight against corruption and the enforcement of the law. In this regard, further interventions are necessary to improve performance. Judicial efficiency, often measured by the length of the process, is closely related to access to judicial services and legal certainty of court decisions, thus increasing public trust. It ensures the enforcement of contracts as well, which are the basis of commercial transactions. In this way, the judiciary and the rule of law are the main priorities for improving the business environment.

Given the analysis and theoretical debate on models for increasing judicial efficiency, the current situation in the country - as evidenced by statistical data from local and international detailed reports - the comparison with Western Balkan and EU countries, the measures taken and policies proposed in these countries, and the aspiration to be part of the EU, increasing public trust in justice is the fundamental change for which measures should be taken.

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For these reasons, improving judicial performance, ensuring higher quality, faster, and cheaper justice, would contribute to restoring society's trust in justice, effectively guaranteeing fundamental rights and freedoms, as well as improving the business climate in the country.

***Keywords**: judicial performance, justice system, accountability, transparency, public trust.*

Introduction

The European Network of Councils for the Judiciary (ENCJ) emphasizes that *high performance in the judiciary is directly linked to accountability* (OECD, 2023). This reflects a broader need for reform and improvements in the Albanian justice system, focusing on transparency and professionalism to rebuild confidence in legal institutions. Statistical data (World Justice Project – Rule of Law Index 2023) show that justice systems are weaker in 2023.

Approximately 1.5 billion people are unable to resolve their legal problems. Regarding civil justice, the index scores fell for 66% of countries, compared to 61% last year. Delays in delivering justice and issues in implementation are the main factors. Regarding criminal justice, index scores dropped for 56% of countries, compared to 55% last year. Similarly, data from the last 7 years (2016-2023) show that 7 out of 8 factors of the rule of law have declined in more countries than those that have improved. The categories showing the largest declines are related to: Government Powers Limitation (74%), Fundamental Rights (77%), and Criminal Justice (74%).

In the 2023 Global Rule of Law Index, Albania ranks poorly in comparison to other countries, positioned at 91st out of 142 states. The country performs particularly weakly in combating corruption, ranking 108th, and in law enforcement, where it is placed 112th. Civil justice ranks 102nd, while criminal justice stands at 91st. However, Albania performs better in areas such as order and security, ranking 53rd, and fundamental rights, ranking 68th. Regionally, Albania is one of nine countries experiencing a decline in the Rule of Law Index, surpassing only North Macedonia, Bosnia and Herzegovina, and Serbia. Conversely, Kosovo and Montenegro show improvements in their respective indices. These rankings highlight Albania's significant challenges, particularly in governance, legal transparency, and anti-corruption efforts.

An analysis of domestic and international reports on Albania reveals that despite the implementation of justice reform and some significant achievements in this regard, certain interventions are considered essential for a faster, less costly, and

higher-quality justice administration. To identify priority sectors for intervention, the theoretical debate on efficiency models in justice, the current situation in the country derived from detailed domestic and international statistical reports, comparisons with Western Balkan countries and EU countries, and the measures undertaken, and policies proposed in these countries were considered, along with the aspiration to join the EU. Restoring public trust in the justice system is a fundamental change for which measures must be taken. Proposed interventions and the careful allocation of funds must center around the citizen and aim to increase public trust in justice. Considering the difficulties encountered in improving the efficiency of the judiciary in Albania, the weakest points include the duration of court processes, the still-low number of judicial and support staff, low participation in training, and the use of technology.

Studies recommend *the need for changes towards a justice system centered on the needs of the citizen and modernized, which can be achieved through collaborative leadership, careful use of technology, and modernization of financing models* (PwC, April 27, 2022). The first involves cooperation between prosecutors, judges, lawyers, police, and parties involved in the process. The second emphasizes investment in the information technology (IT) system, to access information in real-time. The third relates to the fact that financing models in justice organizations are mainly based on the number of resolved cases, a model that does not stimulate innovation or collaboration. These models should focus on the citizen and increasing trust in the justice system (The new global imperative to modernize justice systems, *PwC Global*, 27 April 2022). Regarding the acceleration of procedures, studies have shown the strong potential of applying Operational Management (OM) methodologies in public policy settings in general and judicial environments in particular. The application of the Theory of Constraints (TOC) in the judicial system in Israel has yielded results in alleviating court workload (Azaria, Ronen, Shamin, 2023). According to the authors, the main premise of TOC is that only a small portion of the resources involved in a system process are responsible for inefficiency and delays. As a result, TOC offers a methodology to identify these constraining resources, improve their efficiency, and restructure the related process.

Judicial Efficiency and Public Trust: doctrinal debate

The need for a more efficient judiciary—characterized by speed, cost-effectiveness, and quality—is evident worldwide. This section explores the concepts of judicial efficiency and public trust, drawing on the works of various authors, and offers a comprehensive understanding of these issues. Buscaglia and Dakolias (1999) investigate how public trust is affected by judicial reforms. They contend that

to restore public confidence in the judiciary, extensive reforms that enhance the caliber, efficiency, and speed of judicial proceedings are required. With this regard, accountability and transparency play a crucial rule. Judicial effectiveness is also crucial for fostering social and economic stability in addition to making contract enforcement easier (Djankov et al., 2003). They argue that efficient legal systems promote economic growth by reducing transaction costs and creating an atmosphere more favorable to investment.

Judicial efficiency calls for procedural and structural interventions of the justice system. While procedural reforms frequently concentrate on streamlining legal procedures to cut down on costs and delays, structural reforms may involve strengthening the judicial institutions' independence and accountability. Procedural improvements have been shown to be crucial for enhancing public trust and judicial efficiency by Buscaglia and Dakolias (1999). Important steps in this direction include streamlining legal processes, cutting bureaucracy, and utilizing technology to enable quicker case handling (for example, putting online case tracking and electronic filing systems into place)

The relationship between government intervention and judicial independence is depth analyzed by Rose-Ackerman and Palifka (2016). They argue that excessive government interference can significantly impair the independence of the judiciary. They point out that individuals and companies are more likely to interact with the legal system and look to the courts to resolve their conflicts when they believe that the judiciary is unbiased and independent.

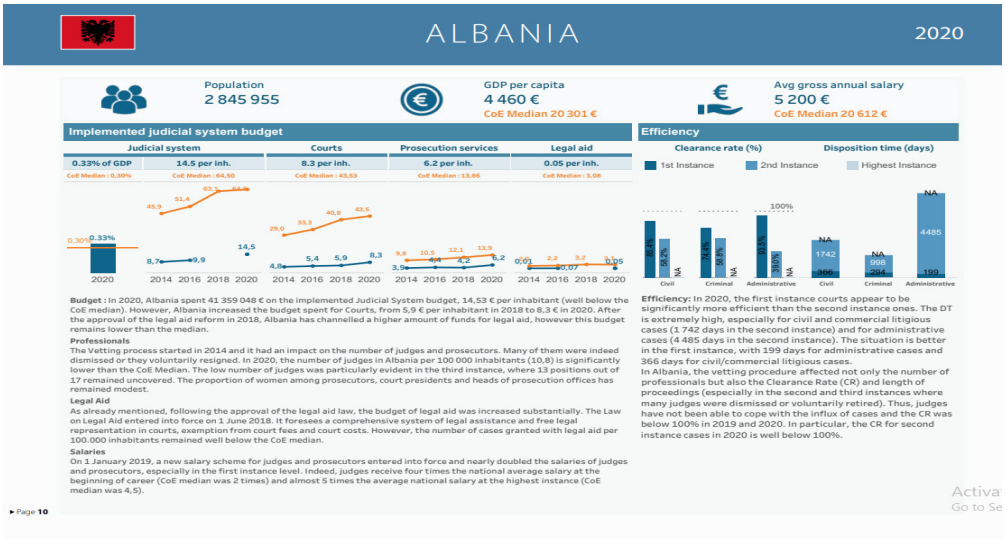
The effect of human rights abuses on judicial accountability is covered by Carothers (2006). He explains that injustices committed by judges frequently take the form of biased decisions, arbitrary detentions, and unjust trials, all of which damage the public's trust in the legal system. With this regard, a major issue continues to be property rights violations, which highlights the need for comprehensive reforms in property registration laws, particularly concerning the cadastre and transitional property processes.

A widespread issue that compromises the effectiveness of legal institutions is corruption. Kaufmann, Kraay, and Mastruzzi (2010) demonstrate how corruption weakens public confidence, impedes justice, and distorts legal procedures. They stress that bribery, favoritism, and the manipulation of court decisions are only a few examples of the many ways that corruption in the judiciary can appear. In addition, thy emphasize how judicial corruption has wider social and economic ramifications. Corrupt legal systems discourage investment and economic activity because they are unable to uphold property rights and enforce contracts in an effective manner.

The efficiency of the Albanian justice system: current situation

The justice system in Albania faces significant challenges primarily due to corruption, human rights violations, and government interference. Restoring public trust in the administration of justice is a critical issue, not only in Albania, but worldwide.

TABLE 1 – Performance of the justice system in Albania for 2020



Source: The Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) for Albania for the 2022 cycle, with data up to 2020. Part 2 Country Profile[2], p. 9.

The Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) for Albania for the 2022 cycle, with data up to 2020, evidence the following data:

a) *Allocation of Funds (Budget)* – In 2020, Albania spent 41,359,048 euros on implementing the Budget of the Judicial System, which equates to 14.53 euros per capita (significantly below the Council of Europe's average of 64.5 euros). However, Albania increased its spending on Courts, from 5.9 euros

[2] Retrived from, https://www.coe.int/en/web/cepej/special-file-report-european-judicial-systems-cepej-evaluation-report-2022-evaluation-cycle-2020-data-?p_p_id=56_INSTANCE_Pec933yX8xS5&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_pos=1&p_p_col_count=2, accessed on 12.04.2024

per capita in 2018 to 8.3 euros in 2020. Following the adoption of the legal aid reform in 2018, Albania allocated a larger sum of funds for legal aid, although this budget remains below the CoE average. *The budget for justice institutions in Albania has doubled compared to 2016. In 2024, 26.2 billion leks are allocated for planned investments, with 632 million leks specifically for the rehabilitation of minors.* (Gjediku, 2023).

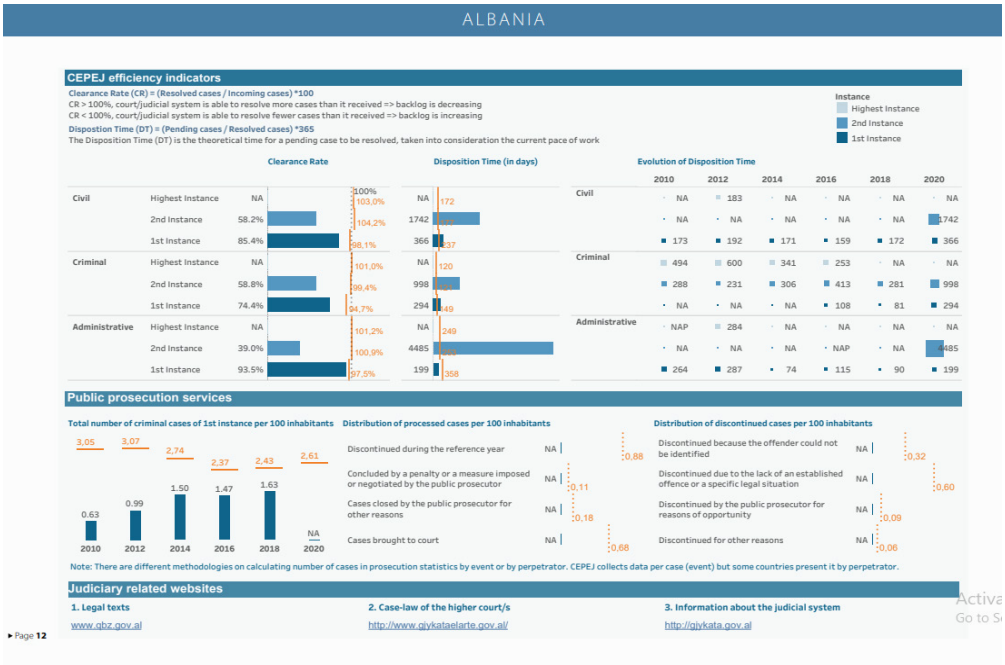
b) *Number of Professionals* – The "vetting process", which began in 2014, had an impact on the number of judges and prosecutors. Many were dismissed or resigned. In 2020, the number of judges in Albania per 100,000 inhabitants (10.8) was significantly lower than the CoE average. The low number of judges was particularly evident in the third tier, where out of 17 positions, 13 were vacant. The percentage of women among prosecutors, court presidents, and heads of prosecution offices has remained modest.
c) *Legal Aid* – With the approval of the law on legal aid, which came into force on June 1, 2018, the budget for legal aid significantly increased. It provides a comprehensive system of legal assistance and representation in courts, as well as exemption from court fees and costs. However, the number of cases covered by legal aid per 100,000 inhabitants remains significantly lower than the CoE average.
d) *Salaries* – On January 1, 2019, a new scheme for judges and prosecutors came into effect, which almost doubled their salaries, especially those at the first instance level. In fact, judges receive four times the national average salary at the start of their careers (the CoE average is double) and almost five times the national average salary at the highest instance (the CoE average is 4.5).
e) *Judicial efficiency* – According to the 2020 report, first-instance courts were much more efficient than second-instance courts. In Albania, the "vetting process" impacted not only the number of professionals but also the dismissal rate and the duration of procedures (especially in the second and third instances, where many judges were dismissed or resigned).

CEPEJ Report for Albania: Indicators of the judicial efficiency in Albania (dismissal rate and decision time) compared to the European average

With regards to the *indicators of the efficiency of the judiciary in Albania for the year 2020 (dismissal rate and decision time) compared to the European average*, the Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) for Albania for the 2022 cycle, evidences the *Clearance Rate (CR)*, which indicates the number of resolved cases in relation to the number of incoming cases. If CR > 100%, the judicial system can resolve more cases than it receives, and the

backlog is decreasing. If CR < 100%, the judicial system can resolve fewer cases than it receives, and the backlog is increasing.

TABLE 2 - Indicators of judicial efficiency in Albania for 2020 (clearance rate and disposition time) compared to the European average



Source: The Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) for Albania for the 2022 cycle, with data up to 2020. Part 2 Country Profile, p. 10.

In Albania, the "vetting process" affected not only the number of professionals but also the clearance rate and the duration of procedures (especially in the second and third instances, where many judges were dismissed or resigned). For this reason, judges found it difficult to manage the case load, and CR was below 100 in both 2019 and 2020. Specifically, the CR for second-instance cases in 2020 was significantly below 100%.

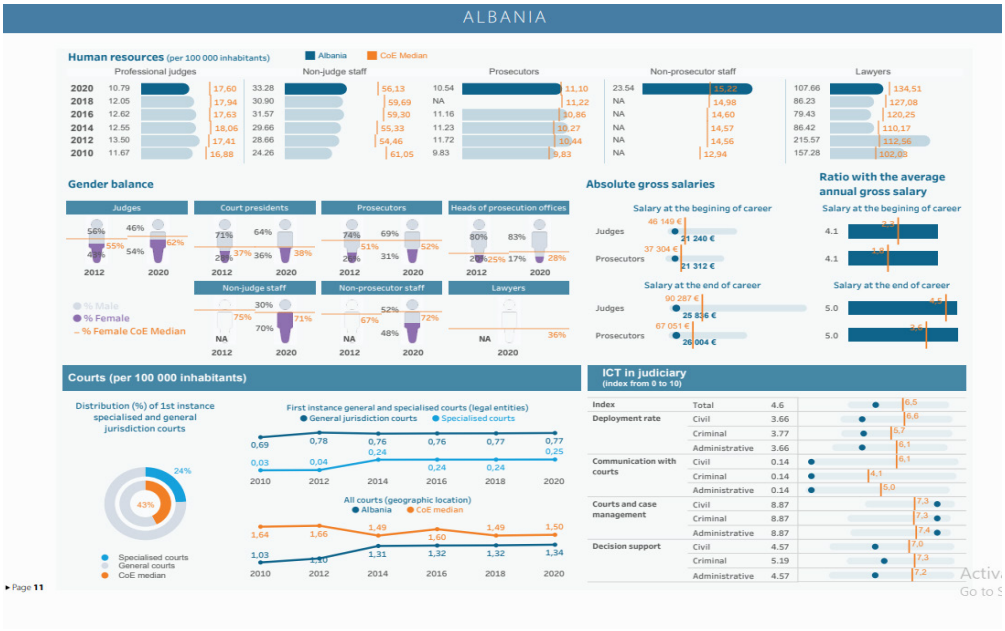
The clearance rate was significantly lower for second-instance cases compared to the European average (CoE), especially for administrative cases. In the first instance, for civil cases – 85.4%, compared to the European average (CoE) of 98.1%; for criminal cases – 74.4%, compared to the CoE average of 99.4%; for administrative cases – 93.5%, compared to the CoE average of 97.5%. In the second instance, for civil cases – 58.2%, compared to the CoE average of 104.2%; for criminal cases – 58.8%, compared to the CoE average of 99.4%; for administrative cases – 39%, compared to the CoE average of 100.9%. *Decision Time* was extremely

high, especially for cases reviewed in the second instance. In the first instance, or civil cases – 366 days, while the CoE average is 237 days; for criminal cases – 294 days.

Distribution of Human Resources and General and Specialized Courts per 100,000 Inhabitants in Albania for 2020

With regards to the *distribution of Human Resources and General and Specialized Courts per 100,000 Inhabitants in Albania for 2020*, the Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) for Albania for the 2022 cycle, show a low number of human resources in the judicial system in the country compared to the CoE average.

TABLE 3 - The distribution of human resources and general and specialized courts per 100,000 inhabitants in Albania for the year 2020



Source: The Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) for Albania for the 2022 cycle, with data up to 2020. Part 2 Country Profile, p. 11.

The most critical situation is regarding the *number of judges*—10.79 judges in the country, compared to the CoE average of 17.6—and their support staff, 33.28 instead of 59.69 as per the CoE average. In the specific: 10.79 judges in the country, compared to 17.6 of the CoE average; 33.28 non-judge staff in courts in the country, compared to 59.69 of the CoE average; 10.54 prosecutors in the country, compared

to 11.11 of the CoE; 23.54 non-prosecutor staff in the prosecution offices in the country, compared to 15.22 of the CoE average of; 107.66 lawyers in the country, compared 134.51 of the CoE average.

Gross annual salaries at the beginning and end of the careers of judges and prosecutors depend on the fact that they're at the beginning or at the end of their career. At the beginning of the career, the annual salary of Albanian Judges is €21,420 compared to €46,149 of the CoE average; for Albanian Prosecutors, €21,312 compared to €37,304 of the CoE average. At the end of the career, the annual salary for Albanian Judges is: €25,386 compared to €90,287 of the CoE average; for Albanian Prosecutors: €26,004 compared to €67,051 of the CoE average.

The distribution of general and specialized courts per 100,000 inhabitants in the country is 24%, compared to the CoE average of 43%. The Information and Communication Technology (ICT) system in courts also shows a low level of use, especially in communication. Specifically:

Information and Communication Technology (Index from 0 to 10): The level of distribution in the country is almost half of the CoE average. For civil courts, 3.66, while the CoE average is 6.6; for criminal courts 3.77 while the CoE average is 5.7; for administrative courts, 3.66, while the CoE average is 6.1.

Communication with courts in the country is critical compared to the CoE average: For civil courts, 0.14, while the CoE average is 6.1 (around 43 times smaller); for criminal courts, 0.14, while the CoE average is 4.1 (around 23 times smaller); for administrative courts, 0.14, while the CoE average is 5 (around 36 times smaller).

Court case management is lower than the CoE average: for civil courts 8.87, while the CoE average is 7.3; for criminal courts 8.87, while the CoE average is 7.3; for administrative courts 8.87, while the CoE average is 7.4. *Decision-making support* is significantly lower than the CoE average: for civil courts 4.57, while the CoE average is 7.0; for criminal courts 5.19, while the CoE average is 7.3; for administrative courts 4.57, while the CoE average is 7.2.

Court functioning during the period 2022–2023

With regard to the High Judicial Council (HJC) analysis, most courts operated with a reduced capacity of judges, below 70% (25 out of 38 courts), while at the national level, only 56% of the judges' positions were effectively filled during 2022 (Gjykatat në 2022, çështjet e reja ranë me 12%, por ngarkesa e punës mbetet ende e lartë, 03.05.2023)[3].

[3] According to this analysis: "The workload in the courts was handled by only 228 judges, or 8.2 judges per 100,000 inhabitants. This ratio is less than 40% of the European standard (22.2 judges per 100,000 inhabitants). The courts have tried to maintain the pace of case resolution, with the national average clearance rate increasing to 104% (compared to the average rate of 68% in 2021) to keep the case backlog under control. However, these efforts have not yielded results, as there is a 31% increase in cases awaiting judgment nationwide. In absolute terms, the approved budget for 2022 is approximately

According to the analysis of the 2023 Annual Report of the High Court (Deklaratë për Median e Kryetarit të Gjykatës së Lartë, Z. Sokol Sadushi, 29 Dhjetor 2023), highlights that "the High Court has exceeded the international standard of case clearance for more than two years, achieving a case clearance rate of approximately 425% in 2023"[4]. In terms of improving procedural quality, the High Court notes that there is a reduction in the submission of new appeals that are clearly unfounded, as in 2023, 42% of appeals in the administrative field were assessed as clearly unfounded[5].The report on the performance of the Prosecution Service in Albania and the evaluation of key mechanisms for an efficient and effective system (Center for the Study of Democracy and Governance, 2023: 44) highlights, among its main findings, that, as a result of the transitional re-evaluation process, temporary and permanent vacancies in the prosecution service continued into 2022, reaching 42%[6].

The HJC report on the state of the judiciary and the activity of the HJC for 2023 (Raport mbi gjendjen e sistemit gjyqësor dhe veprimtarinë e Këshillit të Lartë Gjyqësor për vitin 2023) highlights that: "The case clearance rate for the Court of Appeal of General Jurisdiction is not satisfactory"[7]. According to the 2023 European Commission Report for Albania, by October 6, 2023, 57% of "vetting" files resulted in dismissals, resignations, or the end of mandates. The report highlights the need to take measures against: impunity, especially criminal prosecution against judges and prosecutors whose "vetting processes" revealed criminal elements; long case durations and workload; insufficient human resources (with only 40 new magistrates appointed in October 2023); the high number of unresolved cases, particularly in civil and administrative appeals courts.

€11.2 per inhabitant, while the average in European countries is €45.8 per inhabitant. The average case resolution per judge nationwide in 2022 was around 561 cases per judge, marking an increase of 25 cases (536 in 2021) compared to the previous year".

[4] According to this data: "Within just three years of recovery, 24,688 decisions have surpassed the backlog, which has significantly reduced to 24,120 cases. For 2023, 7,848 judicial decisions were issued, four times more than the average output per judge, of which 2,931 belong to the Administrative Chamber, 2,689 to the Civil Chamber, and 2,228 to the Criminal Chamber. Each judge has managed a workload of about 440 decisions per year—a record number. Attention has also increased towards decision-making quality, with more decisions issued for unification, development, and change of judicial practice. During 2023, procedures began for 13 unification decisions (4 from the Criminal Chamber, 2 from the Civil Chamber, and 7 from the Administrative Chamber)".

[5] There were 468 requests were submitted for the withdrawal of appeals, of which 384 came from public institutions and 84 from individuals, divided as follows: 261 in the administrative field, 177 in civil and 30 in criminal.

[6] According to this report, "In 2022, 34% of prosecutors did not participate in any training sessions organized by the School of Magistrates. (…) A total of 21,865 criminal proceedings were carried over, representing a 20.19% increase compared to the cases carried over in 2021".

[7] According to this data, "It is observed that, "compared to the previous year, there has been a decrease in the clearance rate. The data show that the clearance rate for civil cases has decreased by 38% and for criminal cases by 12.1%. The Administrative Court of Appeal has achieved higher clearance rates. The indicator for this court in 2023 is 43%".

In April 2024, the CEPEJ Working Group on Judicial Time Management discussed tasks related to: tools for assessing cases; measuring system workload; reducing wait times in judicial systems; potential effects of Artificial Intelligence (AI) on court efficiency; tools for work-life balance in the judiciary. The Intersectoral Justice Strategy 2021-2025 highlights the following objectives: professional functioning of governance institutions of the justice system; ensuring independence, efficiency, and accountability; strengthening transparency, competence, access, and efficiency in the judiciary; coordinated and effective management of the justice system across institutions and sectors.

The 2023 report of the Albanian Helsinki Committee on the effects implementation of the justice reform on the New Judicial Map in Albania (Albanian Helsinki Committee, 2023: 16) criticized not only the procedural aspects of the lack of broad consultation during the drafting of the New Judicial Map but also the efficiency of this reform. According to this report: "If we compare the data on efficiency during 2022 against that of 2023, which marks the beginning of the effects of the new judicial map, we observe a further decrease in the efficiency of the new courts, even though the proposal to abolish the courts aimed for the opposite"[8].

Comparative Studies in the EU on Judicial Efficiency for the Period 2010-2018

Comparative studies in the EU for the period 2010-2018 (Kapopoulos & Rizos, 2023) have shown that, the operational inefficiency of judicial systems endangers economic growth by weakening their ability to enforce private contracts and effectively guarantee property rights. According to this report, the failure to protect property rights: a) jeopardizes savings and investments through weak protection of their profits; b) creates obstacles to attracting foreign investments; c) leads to productivity and capital losses; d) worsens the business climate and eliminates necessary funds used for financing investment plans. On the other hand, poor enforcement of private contracts: a) increases transaction costs; b) creates a lack of incentives for private agents to participate in financial transactions; c) presents barriers to the expansion of firms' size; and d) raises liquidity barriers, limiting credit supply and increasing interest rates.

[8] According to the data available to AHC, "for the period from February to September 2023, the only General Jurisdiction Appeal Court in Tirana reviewed 1,712 fewer cases compared to the same period the previous year, from the six appellate courts that have now been abolished. We also note a lower judicial efficiency in the First Instance Courts of General Jurisdiction, which after the merger, adjudicated 4,260 fewer cases or around 85% of the number of cases reviewed during the same period before the merger. Finally, the Administrative Courts of First Instance resolved only 75% of cases, or 451 fewer cases compared to the same period from July to September 2022".

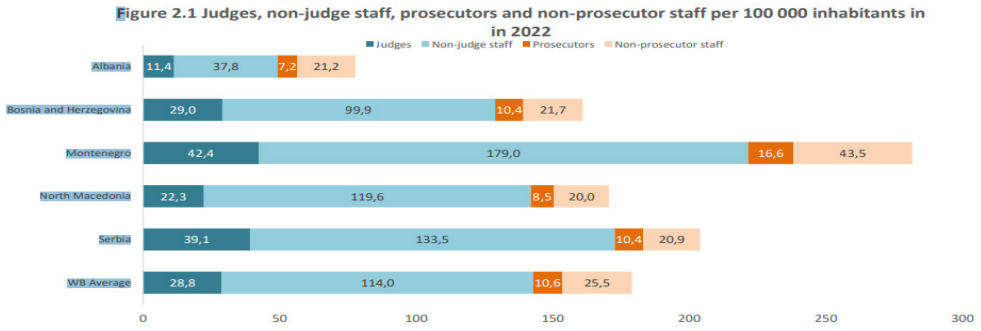
The 2017 European Commission report summarized the challenges many European countries face in efficiently administering justice, addressing specific recommendations for Croatia, Cyprus, Italy, Portugal, and Slovakia (European Commission, 2018). According to this report, among the good practices for improving judicial efficiency were the creation of a communication center for the distribution of judicial documents in Slovenia, the creation of a portal for open access to court decisions at all levels in Romania, and the creation of an electronic services portal for courts in Latvia, with a simple user interface for submitting online applications, completing forms online, tracking cases, receiving notifications, and checking the availability of lawyers and prosecutors.

Issuing timely decisions is essential for businesses, investors, and consumers. The quality of the judicial system is also a key determinant of a country's economic performance. This includes: a modern case management system (information technology – IT); raining of judges and staff; monitoring and evaluation of court activity; use of surveys on the satisfaction level of services provided; financing and human resource capacities.

Comparative Data for Western Balkan Countries (2022)

Comparative studies by CEPEJ on the results of judicial reform efforts in Western Balkan countries (CEPEJ – HFIII, 2023) show that:

TABLE 4 – Judges, non-judge staff, prosecutors and non – prosecutor staff per 100000 inhabitants in 2022



Source: European Commission for the Efficiency of Justice – CEPEJ – HFIII (2023): Towards a better evaluation of the results of judicial reform efforts in the Western Balkans – phase II "Dashboard Western Balkans II", Data collection 2022, CEPEJ(2023)3REV1, Strasbourg, 21/07/2023[9], p. 86.

[9] Retrived from https://rm.coe.int/20230721-wb-dashboard-deliverable-1/1680ad53aa, accessed on 06.04.2024.

- The average number of judges in Albania is 11.4, while the average for Western Balkan countries is 28.8; the average number of non-judicial staff in Albania is 114, compared to the average for Western Balkan countries of 37.8.
- The Case Management System (CMS) index in Albania is the lowest in the region at 6, while the average for Western Balkan countries is 10.1.
- Free legal aid in Albania is 36.7 euros, while the average for Western Balkan countries is 152.5 euros.
- The number of trainings in Albania is 78, while the average for Western Balkan countries is 188; the number of judges participating in training in Albania is almost half of the average for Western Balkan countries, 881 compared to 1,676; online training participation in the e-learning platform was absent from Albania, while the highest number for Western Balkan countries was for participants (judges and prosecutors) from Bosnia and Herzegovina.

In the criminal sphere, OSCE in the "Report on Monitoring Judicial Processes in the Western Balkans" for the review period, June 2021 - March 2024, identified the following challenges: efficiency, effectiveness, and capacity in handling serious and complex Organized Crime (OC) cases; independence and impartiality of judicial officials and institutions regarding the interests of both public and private actors; irregular practices regarding transparency and access to information on cases of public interest; inefficiency, among other reasons due to poor case management and a lack of procedural discipline; adequate quality in trial demands and decisions; asset confiscation, which is underutilized; plea bargains are often not used strategically and rarely ensure the confiscation of illegal gains.

Judicial Efficiency Indicators in Albania for 2022 (case discharge rate and resolution time) in relation to Western Balkan countries – Judicial Staff

With regards to the Judicial Efficiency Indicators in Albania for 2022 (case discharge rate and resolution time) in relation to Western Balkan countries – Judicial Staff, the Evaluation Report of the European Commission for the Efficiency of Justice (CEPEJ) for Albania for the 2022 cycle, evidences that, compared to other Western Balkan countries, for 2022, Albania ranks last and has a significantly lower number of both judges and non-judicial staff.

The Italian model has been chosen as a comparative model for Albania for two reasons: first, due to the similarity between legal systems, as both are part of the Civil Law system (in drafting legal codes, Italy has often been used as a model); second, because at the European level, the Italian justice system functions much

more slowly compared to other member states regarding procedural time, as evidenced by the latest report from the European Commission for the Efficiency of Justice (CEPEJ).

For this reason, measures have been proposed to make the judicial system more efficient by reducing the duration of court proceedings and bringing Italy closer to the EU average (Italia Domani - Piano Nazionale di Ripresa e Resilienza. The reform of the Courts). A more effective and efficient justice system, apart from being fairer, cannot be achieved only through reforms in judicial procedures. For this purpose, indispensable and complementary interventions are required at the organizational level, in the non-procedural dimension, and in the legal process dimension. The Italian strategy for increasing efficiency in civil justice includes (Italia Domani - Piano Nazionale di Ripresa e Resilienza. The reform of the Courts): reducing workload; simplifying existing procedures; increasing the productivity of offices; using alternative dispute resolution tools, primarily arbitration and mediation; simplifying the appeal process by strengthening the admissibility filter, increasing cases where a single judge is competent to decide, and ensuring the effective application of mandatory procedural deadlines; temporary employment to ensure a reduction in workload.

The strategy for increasing efficiency in criminal justice focuses on: reducing the time of criminal procedures; simplifying existing procedures; increasing the productivity of offices; expanding the use of digital technology; predicting short deadlines for preliminary hearings; revising the notification system. Among the features of the Italian system are the competencies of the "Justice of the Peace", which could serve as a model for reducing workload and handling cases in a shorter time in Albania (Occhipinti, 2020).

Use of Mediation as an Alternative Dispute Resolution Mean

Mediation, as an instrument of Alternative Dispute Resolution (ADR), is recommended by academics and international experts as an important tool for the effective resolution of disputes. In recent years, there has been a global push for the use of ADR, especially mediation in family matters. The benefits and usefulness of mediation as a dispute resolution mechanism compared to the judiciary have been widely discussed by scholars (Higgs Howarth & Caruana, 2017). A recent study concluded that the goals of Directive 2008/52/EC on mediation in civil and commercial matters were achieved only in countries that introduced mandatory mediation (Korsakoviene et al., 2023). According to this analysis, 74% of EU countries have implemented various theoretical frameworks for mandatory family mediation (such as discretionary, quasi-mandatory, contractual, and mandatory).

In developing and consolidating democracies – such as those in the Western Balkans, where the judiciary faces efficiency challenges – the use of ADR (including family mediation) is even more important, reducing the backlog of cases in courts. Encouraging judges to promote mediation is one of the European ADR strategies (European Parliament, Report "Quantifying the cost of not using mediation – a data analysis" 2011).

Although some pro-mediation regulations have been proposed and adopted at both the EU and national levels, the use of mediation and ADR is still far below its full potential (De Palo and Canessa, 2016). EU Member States have been required through the 2008 EU Directive "On Mediation in Civil and Commercial Matters" to engage and achieve a "balanced number of relationships" between civil judiciary and mediation. According to CEPEJ Reports of 2018, "Recommendations and Guidelines for Family Mediation have had a significant to very significant impact in their respective countries" (European Commission for the Efficiency of Justice, Working Group on Mediation – CEPEJ-GT-MED, 2018). Recently, CEPEJ adopted "Guidelines for Online Alternative Dispute Resolution" (December 4-5, 2023), specifying that "mediation has become increasingly important to the point that, in some jurisdictions, participation in an initial mediation session is a prerequisite to filing a court case, according to so-called opt-out mediation." The Court of Justice of the European Union (CJEU) has specified that "the imposition of mandatory mediation as a prerequisite to accessing judicial proceedings is not excluded by the EU legal framework for ADR" (Case C-75/16). This is conditional upon the fact that access to the judicial system is not hindered.

Studies on family mediation in Albania (Albanian Institute for Legal and Territorial Studies – A.L.T.R.I, 2020) concluded, among other things, that judges in most cases do not refer to mediation; the professional level of mediators is considered insufficient; specialization of mediators by areas of law is necessary, and exemptions from fees for groups in need are required. Albania is one of the few countries (11 out of 35) that does not provide legal aid for mediation services (European Commission for the Efficiency of Justice, 2022:36).

Conclusions and Recommendations

From the above, it is observed that there is a general decline in the level of trust in the administration of justice, not only for Albania but globally. The challenges for our country are even greater due to the specific situation related to the justice system reform and the "vetting process", essential in the fight against corruption and law enforcement. Comparative studies in the EU for the period 2010-2018 have shown that the operational inefficiency of judicial systems threatens economic growth,

weakening their ability to enforce private contracts and effectively guarantee property rights. These, in turn, risk savings and foreign investment attraction, loss of productivity, and capital.

Regarding the situation in the country, the 2020 statistical data reported an alarming situation concerning trial delays in the Courts of Appeal: civil cases – 1742 days, about 10 times higher than the CoE average of 177 days; criminal cases – 998 days, about 8 times higher than the CoE average of 121 days; administrative cases – 4485 days, 17.7 times higher than the CoE average of 253 days. The 2023 report by the National Resource Centre for Civil Society in Albania concluded that the issues in the justice system still relate to the quality of final court decisions; the length of procedures, the increased workload, and the high number of pending cases, which remains significant (The courts with the most pending cases are the Supreme Court, the Court of Appeal, and the Administrative Court of Appeal); citizens' awareness of ADR; the assessment of the impact of the new judicial map (Lamçe, 2022: 37-38) on the efficiency of the judiciary.

Similarly, international reports (European Commission, 2023: 19) highlight problems related to integrated case management, poor court performance, the need for enhancing the quality and regulation of judicial acts, measures for addressing limited public access, allocation of sufficient resources, ensuring transparency, and effective communication with the public; the need for strengthening capacities, independence, and efficiency of independent self-governing judicial bodies.

Given the analysis and theoretical debate on models for increasing efficiency in justice, the current situation in the country as evidenced by statistical data from local and international detailed reports, comparisons with Western Balkan and EU countries, the measures taken and policies proposed in these countries, and the aspiration to be part of the EU, it appears that increasing public trust in justice is the fundamental change for which measures should be taken. Proposed interventions and the careful allocation of funds should center on the citizen and aim to increase public trust in justice.

Considering the difficulties encountered in improving the judiciary's efficiency in Albania, it is evident that the weakest points are the duration of processes, the still-low number of judicial and auxiliary staff, the still-low level of transparency, the limited use of mediation procedures, the still-low participation of judges/ prosecutors in training, and the limited use of technology. To reduce the time to resolution, it is necessary to take measures such as increasing the number of human resources (judges and auxiliary staff), using alternative dispute resolution mechanisms (the Italian case is indicative of the impact of mediation on reducing court workloads), and incentivizing their use through interventions in the normative framework for speeding up civil and criminal procedures. Based on the above, interventions are proposed through:

- Filling the number of judges, prosecutors, advisors, and assistants in the courts, including temporary staff hiring in the courts (e.g., the Italian model); coordinated planning of the number of judges/prosecutors in coordination with the School of Magistrates and avoiding delays in appointments by the High Judicial Council (HJC)/High Prosecutorial Council (HPC) due to double "vetting process"; in this regard, it is recommended that the "vetting process" for magistrates be conducted only once (upon entry), after which they should be subject to declaration in the ILDKPI (currently the "vetting process" for magistrates is carried out twice, causing delays in their appointment).
- The use of alternative dispute resolution mechanisms (mediation/arbitration); it is recommended that mediation for certain cases be mandatory and provided free of charge (example: Montenegro). In fact, recent studies show that the goals of Directive 2008/52/EC "On Mediation in Civil and Commercial Matters" were fulfilled only in countries that introduced mandatory mediation and that in some jurisdictions, participation in an initial mediation session is a prerequisite to filing a case in court, according to the so-called opt-out mediation.
- Treating certain low-value civil cases and low-risk criminal cases in expedited procedures. For example, for civil cases with claims below the value of 3,000,000 lekë and for criminal misdemeanors, the Italian model of the "Giudice di Pace" could be followed.
- Improving technology and information systems by creating an automated data system related to judicial cases; this would, among other things, improve communication with the courts, the level of which is currently quite critical in Albania compared to the CoE average.
- Increasing transparency through access to information, such as effective public consultation of laws, public reporting by judges, and taking measures.

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Judicial accountability and independence: their relationship with economic growth and effects of judicial corruption on the economy

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Abstract

The purpose of this article is to examine the responsibilities and independence of the judicial system, referring to the Albanian judicial system, its connection to corruption, and the consequences it has on the economy. Albania transitioned with difficulty from a totalitarian system to a democratic one, striving to leave behind a dark past where fundamental human rights were denied. The reform of the justice system and the cleansing of these institutions from corrupt officials, based on new legal initiatives, are expected to bring long-awaited results. Moreover, the international factor, led by the European Union and the United States, has played a key role in advancing justice reform as a non-negotiable condition for Albania's accession to the larger European family. The negative role played by corruption in the Albanian economy cannot be denied, causing significant damage to strategic sectors with a direct impact on the country's stability and internal security. As a result of the transition from a centralized economy to a free market economy, the Albanian economy quickly faced

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high levels of corruption, tax evasion, and informality, suffering significant setbacks that left Albania in the state of a developing economy. The methodology used in this paper is based on the interpretation of the theoretical framework and the analysis of different authors' approaches and perspectives, as well as various studies.

Key words: *judicial independence, corruption, justice reform, economic growth.*

Introduction

Discussing about the judicial system today is one of the most heated issues, particularly when it comes to the Albanian state and its justice system. Emerging after over 45 years of a harsh communist dictatorship, which virtually isolated the country from the region, Europe, and the world, with laws, codes, and procedures resembling those established in countries like the Eastern Bloc, Albania in the early '90s faced significant challenges in transitioning to democratic changes. For 45 consecutive years, the system of the "red commissioners" dictated law enforcement in the prosecution and judicial organs in a biased manner, strictly adhering to directives from the Political Bureau of the Albanian Labor Party. Thousands of people were arrested, interned, and even executed without any legal procedure or court decision. The state party, under the leadership of Enver Hoxha, ruled the country with an iron fist, controlling all branches of legislative, executive, and judicial power.

The fall of the Berlin Wall and the complete destabilization of the Soviet bloc influenced Albania as well. The revolt of students from the University of Tirana began to take on a strong political character, shaking the communist leadership. As a result of the open rebellion against the communist system initiated by the students, strongly supported by the people of Tirana, the wave of anti-communist rebellion awakened throughout Albania. March of 1992 would mark the end of the dictatorship of the proletariat installed in Albania and implemented along Marxist-Stalinist lines. The country was moving towards new democratic changes and opening up to the Western world.

As a result of the numerous changes that occurred in Albania, the justice system could not escape reformation, which for 45 consecutive years had operated like the sword of Damocles over the lives of Albanians. The new democratic-based governing structures, although still very fragile, unanimously decided that the past justice system, which had openly violated human rights and fundamental freedoms, denied the right to defense, and abolished the role of the lawyer, needed to be removed once and for all. For these reasons, as well as due to the increasing international pressure, the People's Assembly of Albania, by means of Law no.

7491, dated 29.04.1991, "On the main constitutional provisions," decided that the structure of the judicial system in Albania would consist of the Court of Cassation, the Court of Appeal, the First Instance Court, and the Military Court.

New justice, old norms

Today, after 30 years of democracy and seemingly with an independent judiciary but much talked about for issues of corruption, the judicial system has entered another stage. The Albanian Justice System consists of Courts of First Instance, Courts of Appeal, and the Supreme Court. Each level deals with civil, criminal, commercial, and administrative cases. The military justice system is integrated into the criminal justice system. Our Justice System includes 346 judges distributed in 29 Courts of First Instance, 6 Courts of Appeal, 1 Military Court of Appeal, and the Supreme Court (Gjykata e Shkallës së Parë e Juridiksionit të Përgjithshëm Tiranë, Pushteti gjyqësor në Shqipëri).

Despite the great willpower to reform and restructure the Albanian judicial system in the early '90s, based on clear Western principles, it seems that something went wrong along the way, and this sector, so vital for rule of law and democratic state, took a wrong turn, turning into a major and unresolved wound for many consecutive years due to rampant corruption, which almost led to the complete gangrene of the justice structures and beyond. Numerous cases of corruption, ranging from the most minimal to the terrifying ones involving millions of euros and dollars, infiltrated the offices of judges and prosecutors, openly influencing their legal decision-making on issues ranging from the most sensitive criminal to administrative matters.

Instances of corruption in judicial decisions handed down by the courts increased excessively, in exchange for large sums of money or other material goods given under the table to prosecutors and judges. In this way, besides the rapid enrichment of justice officials, local organized crime evolved in an escalated manner. The corrupted judiciary entrenched a culture of impunity through its actions and inactions. Considering the recent convictions of high-ranking officials or politicians, we can observe that this culture has been implemented with meticulous precision. People's perception and public opinion in Albania gradually began to lose trust in the institutions of justice and to feel increasingly unprotected against individuals/groups with high social risks who continued their illicit activities freely and unabated. The upheavals of the dark March of 1997 dealt a fatal blow not only to the justice system in the country but also to the Albanian state itself, the consequences of which are still felt today. The almost complete collapse of state structures and the territorial control by armed gangs/clans dealt a major

blow to public order and security in Albania. The Albanian state was challenged by gangs and organized crime, the latter supported and amnestied by individuals within the justice system as well as by individuals with political power.

Political interference in the affairs of the justice organs can be openly characterized as one of the most fatal interventions, which not only politicizes and partisans the issue but also directly undermines the effectiveness of the justice institutions, pushing them back to the time of communist dictatorship. The resurgence of state and governmental structures failed to cleanse the judicial system from corrupt individuals within their ranks. According to a survey conducted by IDRA2 in 2005 (made public in June 2006), among 17 institutions and groups studied based on public perceptions, the most corrupt groups were: deputies, customs and tax officials, doctors, and judges. The least corrupt groups were the President of the Republic, religious leaders, and military personnel (Anastasi *et al*, 2007).

If we look at it from a comparative perspective, using the former Soviet countries of the East as a basis, we will see that corruption in state structures, especially in the justice system, has been significant. One of the most flagrant cases, with a problematic past in the area of a corrupt justice system, is Romania. Since 2007, Romania has been a full member of the European Union. Romania has struggled to secure the independence of its judiciary since the early 2000's, when the country was in serious talks with the European Union. In 2004, Romania was rocked with a scandal Freedom House has dubbed Romania's "Watergate" (Freedom House, 2005). In November 2004, Romania was scheduled to hold presidential and legislative elections. The party in power at the time was the Social Democratic Party (PSD). The former communist party enjoyed a majority in parliament and former-PSD Prime Minister, Adrian Nastase, was looking to extend the party's political control in the upcoming presidential election (Swink, 2017:94-95).

Just like in Albania, in Romania, high-ranking state and government officials sought to extend their influence over the courts and the prosecution by limiting their independence as much as possible, directly protecting their corrupt officials and their interests, which were not only political but also monetary. Thus, as can be understood, the traces of the past justice system, of the Ceaușescu-Soviet type, were reemerging before the Romanian people. The revealed transcripts clearly indicated high-ranking politicians from the PSD, openly attempting to protect their colleagues within their ranks from justice, as well as revealing their involvement in illegal influence on the justice process.

As if this scandal, which took on international dimensions, were not enough, officials and politicians from the ruling party took action to manipulate not only the disclosed transcripts but also to use all anti-corruption state agencies to cover up their serious offenses. The scandal highlighted the failure of Romania's anti-

corruption institutions to properly investigate these allegations. The Prosecutor General and the Head of the National Anti-Corruption Directorate (PNA) disappeared from the public eye for several weeks during the outbreak of the scandal and did not take sufficient steps to investigate the matter until after the national elections were concluded. This scandal had profound implications for Romanian politics, contributing to public sensitivity toward corruption and influencing the outcomes of the 2004 presidential and legislative elections. The scandal helped underscore the need for deeper reforms in the judicial system and in the fight against corruption in Romania.

With the political changes that took place in the country in 2005, following the rise to power of Prime Minister Călin Popescu and the appointment of Monica Macovei as Minister of Justice, main policy initiatives included: increasing judicial independence from "political mechanisms" and removing "the institutional and personal influence of the old nomenklatura on judicial workings" (Hipper, 2015, 160). Macovei passed a three-law package on judicial reform in July 2005. The three laws included: the Law on the Superior Council of the Magistracy, the Law on judicial organization, and the Law on the Status of the Magistrates (Hipper, 2015, 162-3). The package was crucial in increasing judicial autonomy, as it "envisaged the transfer of powers from the Ministry of Justice to the Superior Council of the Magistracy…[and] ensured the protection of the judiciary from political pressure" (Hipper, 2015, 166). In particular, the Ministry of Justice lost its power to appoint judges, vote in the Superior Council of the Magistracy, and other powers pertaining to the suspension of judges (Hipper, 2015, 166). The laws sought to change the process in which members of the Superior Council of the Magistracy were elected. Previously they were chosen by Parliament, but under Macovei's reforms the members were required to pass competitive exams in order to move forward with the selection process (Swink, 2017:98-99).

This scandal is a clear example of the challenges faced by many transitioning states, such as Albania and Romania, with a shared Marxist-Stalinist past, as they attempt to implement reforms to strengthen democratic institutions and combat corruption. Unfortunately, the latter remains a tangible and pervasive issue in the Albanian institutional culture. Unlike Albania, Romania has made some progress in maintaining the autonomy of the judiciary, but it is clear that brief moments of progress have not contributed to an overall reduction in judicial corruption levels. The court does exercise its authority to carry out its mandate under certain times of extreme political duress. The Constitutional Court was largely successful in its efforts to insulate itself from politicization during the 2012 Constitutional Crisis (Swink, 2017:110).

Justice Reform - The last chance

The change of several governments as well as the initiatives undertaken by them to cleanse the justice system from unsuitable elements who had abused with their duty and the law, as well as the measures taken to increase the efficiency of justice issues, did not produce the desired results. For these reasons, on November 27, 2014, the Special Parliamentary Commission for Justice System Reform began its work at the Albanian Parliament. Given that corruption was one of the key pillars that had struck the Albanian justice system and had almost maximally diminished its credibility before citizens and international peer institutions operating in or focusing on Albania, the experts concluded that: (Kuvendi. Komisioni i Posaçëm Parlamentar për Reformën në Sistemin e Drejtësisë, Grupi i Ekspertëve të Nivelit të Lartë, 2015):

> Justice reform will create conditions for the judiciary and prosecutors to meet the highest standards of integrity and ethics through the rigorous conception, approval, and implementation of systems for continuous monitoring and testing of the moral, ethical, and psychological integrity of judges and prosecutors as criteria for their tenure. Meanwhile, systems for measuring the professional performance of judges and prosecutors will be perfected, and their results will become exclusive criteria for the career progression of magistrates.

At last, after years of denial, state structures openly admitted that the justice system in Albania had been captured by organized crime groups and political power, which facilitated the flourishing of corruption and the collapse of the justice system. Given these circumstances, according to these experts (*Ibid*),

> (…) the main aim of the reform (...) among others, is the establishment of a self-cleansing system within the ranks of the justice system, especially the judiciary and the prosecution, from corrupt elements, through effective monitoring of their professional abilities and their moral and ethical integrity. Only in this way can the institutions of the justice system unleash their potential in the fight against corruption in society, especially within the ranks of high-ranking officials.

The establishment of new justice institutions was also a challenge in itself for the Albanian justice system and its fight against corruption and organized crime. As a result of the justice reform, several specialized institutions were created to combat organized crime and corruption, such as the National Bureau

of Investigation (BKH), the Special Prosecution Office, also known as the Special Anti-Corruption Structure (SPAK), as well as the Special Court against Corruption and Organized Crime. All these newly formed and uninfected institutions by the disease of corruption have the fundamental duty of investigating and adjudicating high-level state officials involved in corruption scandals and criminal acts related to organized crime. Law no. 95/2016, "On the organization and functioning of institutions to combat corruption and organized crime," in article 135, clearly defines the establishment of the Special Court, which will adjudicate criminal acts related to corruption and organized crime, including criminal charges against high-level officials who are still in their respective positions or have been removed from office, including a range of institutions such as the President of the Republic, the Prime Minister, the Speaker of Parliament, Members of the Council of Ministers, Judges of the Supreme Court and the Constitutional Court, the General Prosecutor, Mayors, etc. This law, in article 148, also establishes the creation of the Special Prosecutor's Office and the Special Investigative Unit with the aim of investigating and prosecuting citizens/officials involved in corruption and organized crime cases as well as criminal cases against high-ranking officials and former officials. The purpose of establishing the Special Prosecutor's Office is the necessity of a responsible and specialized prosecution to efficiently investigate and prosecute complex cases of corruption and organized crime, as well as crimes committed by important officials, independently and without any inappropriate influence.

The Special Prosecutor's Office consists of at least 10 prosecutors, appointed by the High Council of Prosecution for 9 years, without the right to reappointment. Special prosecutors are independent in conducting investigations and criminal prosecution from any other prosecutor, including the General Prosecutor himself, and even from the Head of the Special Prosecutor's Office. Special Prosecutors of the Special Prosecutor's Office individually may direct the actions of the National Investigation Bureau. The law guarantees the independence and necessary autonomy to make decisions during the exercise of their constitutional and legal functions by prosecutors, regardless of any unlawful, internal, or external influence from any public or private authority. When they have reasonable suspicions of committing a criminal offense, these prosecutors may investigate and criminally prosecute even prosecutors of the Special Prosecutor's Office or judges of the courts against corruption and organized crime (Reforma në drejtësi, 2018).

An important point that requires increased attention from the government is also the treatment of all employees who are part of these structures, so that they and their families feel protected from any external threats and can work peacefully with their respective duties. Another important aspect is the financial treatment that these employees should receive, the necessary infrastructure, as well as other

benefits and facilities due to the special importance of their duties. According to the report of the Institute for Policy & Legal Studies (2021):

> The amendments to law 95/2016, in March 2021, where the Parliament approved increases and strengthening of the financial treatment of the Director of the National Bureau of Investigation, the Deputy Director of the National Bureau of Investigation, the investigators of this institution, and the civilian employees in special courts for the adjudication of criminal acts of corruption and organized crime, in the special prosecution office, and in the National Investigation Bureau, were necessary to ensure an independent investigative system free from any political influence, impartial, responsible, fair, and professional ones.

The Vetting process, both within the judiciary system and within the State Police structures, although slow, has yielded promising results in purging the ranks of the judiciary, the Prosecutor's Office, and the State Police from unsuitable individuals for performing their duties due to their unjust actions or inactions in violation of the law, unjustified material and monetary assets/properties, as well as their association/exposure to figures/exponents of organized crime. In fact, the vetting process brought significant slowdowns in the daily work of existing justice institutions, also due to the high number of magistrates who chose to resign from their duties.

A significant part in the implementation and functioning of the justice reform was also played by the international factor, which followed events in Tirana with increased interest. For years, the Albanian justice system was considered by our strategic partners such as the European Union and the United States to be corrupt and with pronounced problems in the implementation of the law and the rule of law. Encountering their insistence on the reform of the Albanian justice system, as well as seeing the official Tirana's willingness to implement and enforce the justice reform, the European Union took on the task of securing the necessary funds and providing technical expertise, offering full assistance to the Albanian authorities. Given that the primary aim of Albanian foreign policy as well as the longstanding aspiration of Albanians has been membership in the larger European family, the implementation and finalization of the justice reform have been among the key conditions that the European Union has presented to Albania in order to advance in the integration process. The European Union itself has made it clear in its official positions regarding Albania that the success of this reform is an irreversible condition for the long-awaited opening of membership negotiations.

Another significant factor has been the United States of America, which, through their diplomatic representation in Tirana, has offered extensive technical and political support. The International Criminal Investigative Training Assistance

Program (ICITAP) and the Justice Sector Assistance Program (JSAP) have played effective roles in strengthening the justice institutions and have offered a wide range of valuable training for Albanian judges and prosecutors. The U.S. diplomatic mission in Tirana has long established its grant and donation program for non-governmental organizations operating in the country, which are engaged in monitoring the justice reform process, promoting the fight against corruption and organized crime. In their official statements, U.S. ambassadors have openly declared that the United States of America will strongly support the steps taken for the reform of the Albanian justice system and that any resistance to it aimed at proclaiming old forms and methods of justice will receive a harsh response, including sanctions and the prohibition of entry into the United States for responsible individuals. This is also one of the reasons why the United States Embassy in Tirana has closely monitored the progress of the justice reform in real-time and, based on the decisions and the steps taken, has offered recommendations regarding the continuity and progress of the process.

Despite nearly 8 years having passed since the start of the justice reform, if we refer to the latest report (2023) from the U.S. Department of State regarding Albania, it concludes that corruption has been present in all branches and levels of government. Despite this negative indicator, the report highlights that the justice structures have played a crucial role and have made effective progress in their fight against corruption and impunity.

Corruption in the judiciary - an open wound for the Albanian economy

Given that the justice system has been infected by active corruption for over 30 years, its consequences have also been felt in the country's economy. The transition from a centrally planned economy to a free-market economy was as challenging as it was liberalizing for Albania and its people. After the fall of the communist system not only in Albania but also in Central and Eastern Europe, which had applied the same economic model for decades, the question posed by the political scientist Ivan Krastev was rightfully raised: How could people, politics, and voters be given the power to undertake "democratically" policies and reforms that primarily led to price increases, increased unemployment, deepening social disparities, etc.? This question, which was also raised before Albanian intellectuals and government officials, for a relatively long time did not receive a clear, effective, or stable answer.

The free market economy gradually began to feel the impact of corruption, which was creating significant challenges for institutions working towards economic growth. Its consequences have always been detrimental, both in

developed economies, which are the engine of the world, and in developing economies, where the consequences have often been even more severe, severely impacting the country's prosperity. Upon analyzing the statistical data spanning from 2012 to 2022 as provided by (Transparency International, 2022), it can be observed that the year 2013 recorded the lowest Corruption Perceptions Index (CPI) of 31/100, indicating a significant prevalence of corruption. In contrast, the year 2016 recorded the highest CPI of 39/100, indicating a significant improvement. According to the 2022 statistics, Albania's corruption index stands at 36 out of 100, placing it in the 110th position among 180 countries. These statistics suggest that corruption is still a prevalent problem in Albania, despite some improvements in recent years (Mahilaj, Cenaj, 2023: 71-79).

The fight against corruption has been at the forefront of all governments, undertaking legal reforms as well as establishing specialized units to combat corruption in both the public and private sectors. Specialized units within the State Police, State Intelligence Service, and various ministries have been engaged in detecting/identifying and targeting individuals and factors involved in corruption, money laundering, tax evasion, as well as conducting unlicensed private activities (NIPT), often yielding satisfactory results in the fight against informality.

Seeing that over the years the class of justice officials was rapidly and seemingly endlessly enriching themselves as a result of under-the-table incomes, it was quickly noticed that many of these officials began to invest the ill-gotten gains in illicit forms such as undisclosed properties, private businesses, or joint ventures with third parties in strategic sectors, significantly impacting the country's economy. Corrupt practices such as nepotism, favoritism based on family relations or gender connections, or clientelism, where benefits are secured in exchange for loyalty or political affiliation, are a common phenomenon. There have also been cases where favors and privileges were granted based on regional criteria or friendship relations. "This aspect of corruption makes it visible not only from a social perspective but also a political one." (USAID, 2007).

As a result of these actions, "Albania introduced important anti-corruption legislation by adopting the Law on Declaration of Properties by Officials (2002) and the Law on Prevention of Conflict of Interest (2005), which gave the High Inspectorate for the Declaration and Auditing of Assets (HIDAA), established in 2003, the legal infrastructure to fulfil its purpose, that is the fight against corruption (United Nations Office on Drugs and Crime, 2013).

Despite all these measures taken against corruption among judicial officials, aiming to minimize its consequences on the Albanian economy, the local economy has still experienced significant fluctuations, remaining in the stage of a developing economy. Albania needs many years of significant, sustained economic growth to approach EU income levels. Since this growth can only be accomplished by a

robust, competitive private sector, Albania must create and maintain a business environment free of corruption and volatile politics to grow and prosper and, importantly, to provide jobs for a large and growing youth population (USAID, n.d.).

Economic indicators show the impact of direct corruption on hindering fair competition and the lack of equal opportunities for economic operators to expand their activities in Albania. According to Dafa *et al* (2021), key sectors of the economy affected by high-level or political corruption in the cases we have selected include (i) energy, (ii) infrastructure (transport and waste management), (iii) defense, and (iv) healthcare. These are crucial sectors for the security, development, and well-being of the country. The privatization process of public services and property has been steeped in corruption and mismanaged through contracts from which private contractors have benefited to the detriment of the public interest.

Corrupted economies are just not able to function properly because corruption prevents the natural laws of the economy from functioning freely. As a result, corruption in a country's political and economic operations causes its entire society to suffer (Dossier: Corruption, Informality, and Economic Growth, 2023).

Conclusions

The justice system in Albania remains one of the most problematic issues and an "open wound" in Albanian society today. The lack of fair and transparent decisions for a long time, as well as favoritism towards individuals/groups with criminal records, leading to acquittals in exchange for monetary/material benefits, has led to the degradation of the Albanian justice system and the loss of citizens' trust in these institutions. The change in systems in Albania in the early '90s was seen as a positive sign to dismantle the totalitarian past and to affirm the fundamental freedoms and rights of individuals, which were once again shining upon the Albanian sky after 45 years of isolation. The new justice system, oriented towards Western codes and procedures, began to take shape and form the first institutions of justice based on democratic principles. However, it quickly became apparent that these institutions would falter and suffer a severe blow, especially in 1997, but also thereafter. Corruption within the judiciary would undermine the Albanian justice system from within, resulting in biased decisions and eroding the prestige of judicial bodies in the eyes of the Albanian public opinion.

As a result of the ever-increasing corruption, the developing Albanian economy experienced significant fluctuations, unable to achieve overall stability but only temporary stability. Corruption continues to remain a key factor influencing the business climate in Albania. Corruption is of course one of the prevailing factors

contributing to the stagnation of the Albanian economy today, but seen in the macro context, it is just one among many other factors operating within the Albanian environment. Judicial reform as well as the new institutions in the fight against corruption are the latest tools for the reorganization and restructuring of the Albanian judiciary according to contemporary Western standards and legislation. From the above, we can say that judicial reform has partially achieved its goal. It is understandable that its path is long and difficult, considering the environment in which it operates, which has been deteriorated and almost on the verge of complete collapse for many years. Despite all these harsh realities, this does not mean that the road to creating a new justice system, with Western laws and norms where everyone, whether high-ranking officials or ordinary citizens, will be equal before the law, should be endless.

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Protection of religious freedom in the digital era

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Abstract

The duty of confidentiality is considered one of the highest and oldest obligations of ministers of religion, and in line with its great importance, it has been protected by numerous legal provisions, within the framework of the protection of religious freedom, since confessional secrecy requires procedural support in the form of rights to refuse to testify and prohibitions on arrest searches, otherwise it would degenerate into a de facto 'empty shell', due to the general obligation to testify in court or the possibility of seizing documents. But society, with the rapid and universal development of digital techniques, is undergoing a revolution, the consequences of which are likely to alter the current paradigms resulting from the industrial revolution. Society will be transformed in the same way it was transformed in the 19th century, during the industrial revolution. This ongoing revolution will change our view of public and private freedoms. The legislation put in place by the French Revolution to define and protect the rights and freedoms of man and citizen must evolve in the face of the contribution and influence of new technologies and their consequences on these freedoms. If public freedoms are affected by the digitization of society, so are individual freedoms. By unifying the laws of the Member States, the General Data Protection Regulation is a first step towards universal protection throughout the European Union.

Keywords*: Privacy, religious freedom, confessional secrecy, digital era.*

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Introduction

The idea, the *utinam*, the desire on the part of power, of the constituted authority (Angeli – Mesnier, 2014), to know everything, to control everything in order to be able to prevent everything (with alternating fortunes: from Armodius and Aristogitones to the conspiracy against Julius Caesar, to the conspiracy of the dust, etc.) has very ancient roots; from the myth of the dog Argus, controller with a hundred eyes, sung by Ovid in the first book of the Metamorphoses, to the Panopticon designed by Jeremy Bentham, to the infinite number of spies that Alexandre Dumas attributes to Cardinal Richelieu, to the law on suspicions of 17 September 1793, during the period of the Terror initiated by Robespierre to the secret police born in the 20th century, from the Tsarist Ochrana to the Leninist Čeka, with the subsequent evolutions, consecrated in the cinema by the famous films '*Enemy of the State*', 1998, and '*Das Leben der Anderen*', 2006 (with the DDR's STASI), and in literature by the paradigmatic '*Nineteen Eighty-Four*' by George Orwell (Watt, 2021; Ramonet, 2024).

The world imagined by Orwell in 1949, with "*Big Brother*" permanently "*is watching you*", has today substantially become a reality: between surveillance cameras (Cherqaoui, 2024) and mobile phones, in fact, we are nowadays really being watched all the time (Vitalis, 2024; Sofski, 2021): where we are, what we are doing, and above all what we are saying, both through verbal communication in presence, which can be picked up by bugs, and through telephone communication stricto sensu, and through telephone communication lato sensu, i.e. through apps that allow us to phone and send messages (Veliz, 2024; Wojnowska-Radzinska, 2023).

The progressive computerization of world society, the advances in technology that make bugging ever smaller and more easily concealable, and the omnipresence of mobile phones, which can in turn - wisely used - become real bugs, making 'traditional' ones superfluous, do indeed pose problems of scenario, which, however, essentially are not (yet) substantially perceived by the population, which, on the contrary, voluntarily inserts in their homes household appliances increasingly capable of capturing and collecting information (and transmitting it), up to the apotheosis of devices such as Alexa, which listen to everything, know everything about the house and the family around them, but do not transmit any information outside the home, as their manufacturers assure (Guerrier, 2021; Lindau, 2023).

There is therefore, at least for the moment, a certain trivialization of widespread surveillance, which has become a cliché: the internet has become part of people's daily lives, giving them access to knowledge and exchanges, and allowing them to participate in the constant flow of information, often without taking into account that the internet does not work one way: it is certainly a prodigious tool that - on the inbound side - brings us the information we need, but - on the outbound

side - it also brings our information to the outside world, from our purchases to the programmes we watch, to the topics we research on, to the possibility of transmitting to unauthorized eyes and ears the speeches and images we pick up (Arendt, 1976)[2].

In our globalised and digital society, the defence of freedoms and privacy remains an ongoing struggle. Technology *per se ipsa* is neutral, as is the Internet: in the European Union, in fact, the principle of net neutrality is enshrined in legislation, Regulation (EU) 2015/2120 of 25 November 2015.

Surveillance is a worldwide phenomenon and has become institutionalized in contemporary societies. It has even become the main feature of contemporary culture in crisis, and it seems almost as if this was the price paid, more or less consciously, to permanently enjoy what Arendt called 'the leisure industry confronted with gargantuan appetites' (Arendt, 1976): in that case, however, if people had really sold their confidentiality, their privacy, ultimately their freedom (Maclay, 2010), in exchange for more conveniences (domotics in the home, the possibility of watching films and TV series, playing games (Ferenbach, 2023; Porcedda, 2024), etc. even outside the home, practically anywhere, to receive a constant and immense flow of information, which 90% are not interested in (Montalban, 2024; Benkler, 2024; Simitis, 1995; Schütz, 2021), one would perhaps have a repetition of the gesture of Esau, who sold his birthright for a plate of lentils[3].

Overview of the situation in Albania

After the Second World War, Albania became a socialist State, but its first post-war Constitution, that of 1946, still provided for religious freedom (Art. 18)[4]; and

[2] It caused a stir years ago when a photograph was taken of the founder of Facebook, a person who was certainly knowledgeable about the subject and who had the means to procure the best protection systems, but who preferred to entrust his privacy to the adhesive tape with which he had covered the camera and microphone of his computer: https://www.rainews.it/archivio-rainews/media/Che-succede-Mark-Zuckerberg-mette-scotch-anti-hacker-su-videocamera-e-microfono-30c4da69-e49c-4f1d-aeab-ddbd68977137.html

[3] Gn, XXV, 30-34, https://www.vatican.va/archive/ENG0839/__PR.HTM

[4] "All the citizens are guaranteed the freedom of conscience and of faith.
The church is separated from the state.
The religious communities are free in matters of their belief as well as in their outer exercise and practice.
It is prohibited to use the church and religion for political purposes. Political organisations on a religious basis are likewise prohibited.
The State may give material aid to religious communities.
For all Albanian Constitutions cited, see M. SCHMIDT-NEKE (ed.), *Die Verfassungen Albaniens,* Wiesbaden, 2009, pp. 40 ff.

likewise, that of 1950, both in its initial version (Art. 18)[5] and in the amendments of 1955 and 1958 (Art. 18)[6].

In the 1976 Constitution, on the other hand, a preamble[7] is introduced that also formally expresses a decisive alignment with Marxism-Leninism: if Marx's ideas on religion are famous (Codevilla, 1973; Ocáriz Braña, 1976; Pellicani, 1988; Frosini, 2014; Cottier, 1959; Böckenförde, 2019; Feuerbach, 2021.), Lenin's are perhaps less well known (Bociurkiw, 1969; Krupskaia, 1956; Carrère d'Encausse, 2013.), but no less assertive:

> "Religion is one of the forms of spiritual oppression which everywhere weighs down heavily upon the masses of the people, over burdened by their perpetual work for others, by want and isolation. […] Religion is opium for the people. Religion is a sort of spiritual booze, in which the slaves of capital drown their human image, their demand for a life more or less worthy of man [...]" (Lenin, 1905), as well as "The philosophical basis of Marxism, as Marx and Engels repeatedly declared, is dialectical materialism, which has fully taken over the historical traditions of eighteenth-century materialism in France and of Feuerbach (first half of the nineteenth century) in Germany-a materialism which is absolutely atheistic and positively hostile to all religion. […] Let us recall that in his essay on Ludwig Feuerbach, Engels reproaches Feuerbach for combating religion not in order to destroy it, but in order to renovate it, to invent a new, 'exalted' religion, and so forth. Religion is the opium of the people-this dictum by Marx is the corner-stone of the whole Marxist outlook on religion. Marxism has always regarded all modern religions and churches,

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[5] "Il est garanti à tous les ressortissants la liberté de conscience et de religion.
L'église est séparée de l'Etat.
Les communautés religieuses sont libres dans les questions ayant trait à leur confession ainsi qu'à son exercice et sa pratique extérieure.
Il est interdit d'abuser de la religion et de l'église à des fins politiques.
Les organisations politiques, fondées sur la religion, sont également interdites.
L'Etat peut aider matériellement les communautés religieuses."

[6] "All the citizens are guaranteed the freedom of conscience and of faith.
The church is separated from the state.
The religious communities are free in matters of their belief as well as in their outer exercise and practice.
It is prohibited to use the church and religion for political purposes.
Political organisations on a religious basis are likewise prohibited,
The State may give material aid to religious communities.

[7] "[...] the triumph of the great October Socialist Revolution and with the spread of communist ideas, which marked a decisive turning point for the fate of the Albanian people, too. [...] In the fire of the war for freedom, on the ruins of the old state power, the new Albanian state of people's democracy emerged as a form of the dictatorship of the proletariat. [...] The people's revolution triumphed and a new epoch, the epoch of socialism, was opened. [...] The foundations of religious obscurantism were smashed. [...] The Albanian people have found constant inspiration in the great doctrine of Marxism-Leninism [...]'.

and each and every religious organisation, as instruments of bourgeois reaction that serve to defend exploitation and to befuddle the working class" (Lenin, 1909).

On the basis of these theoretical premises (Riegel, 2005; Beljakova – Bremer – Kunter, 2016), therefore, and the unfolding of historical events (Skarovsky, 2003; Roccucci, 2011; Fouilloux, 2016), we see that the Preamble to the 1976 Constitution continued by stating that in the new Albania "*The foundations of religious obscurantism were smashed*", secondly, it stated, ex art. 37, that "*The State recognises no religion whatever and supports atheist propaganda for the purpose of inculcating the scientific materialist world outlook in people*", and finally, ex art. 55, established that: "*The creation of any type of organisation of a fascist, anti-democratic, religious, and anti-socialist character is prohibited.Fascist, anti-democratic, religious, war-mongering, and anti-socialist activities and propaganda, as well as the incitement of national and racial hatred are prohibited*'.

After the fall of the Communist regime, however, Albania began a progressive rapprochement with the European Union and its regulatory principles (Lamçe, 2020; Kellermann, 2016; Mesi, 2006; Töpfer, 2023; Mückl, 2017; Ventura, 2008; Ivaldi, 2012; Fede, 1994), initiating numerous legislative changes also in the area of religious freedom (Cavana, 2000; Cimbalo, 2015; Santoro, 1990; Dammacco, 2015; Messineo, 1950), yet another demonstration of the fact that "*It would be very simple to say that politics and religion proceed on different levels, that it is better to keep them separate. This is in fact not the case, because both deal with human life, one immanently, the other transcendentally, that is, responding to two different* needs" (Tedeschi, 1996; Ayuso Guixot, 2022).

The previously very hostile regulatory framework towards religion and the Churches becomes friendlier (Musaj, 2011; Biscaretti di Ruffia, 1985; Belgiorno De Stefano, 2014; Rance, 2007; Senko, 2008). In the new Constitution of 1998 (*Ligji nr. 8417, datë 22.11.1998*), in fact, already in the Preamble we find two important differences: there is talk of "*faith in God*" and "*religious coexistence and tolerance*", which is also included under Article 3 among the fundamental values of the State. Individual and collective religious freedom*, secondly,* is guaranteed under Articles 10 and 24; the organisations of religious communities can directly appeal to the Constitutional Court (under Article 134, paragraph 1, letter g); finally, any explicit reference to atheism (now comprehensively included in the "*philosophical beliefs*" protected under Article 18) has disappeared (Bellini, 1987; Bellini, 1985; Croce, 2013; De Lubac, 1992; Bushi, 2009; Del Re, 1995).

In this changed legislative-constitutional framework, therefore, here is the protection of religious freedom in the digital age: Article 226, paragraph 2 of the Code of Criminal Procedure establishes that the interception *of conversations*

or communications of those who are obliged to keep *the* secrecy *because of their profession or* duty *may not be used, except when such persons have already testified on the same facts or have disclosed such information in any other* way' (Piwnica, 2017; Ventre - Guillot, 2023; Brink - Mitsdörffer, 2018; Grifantini, 2024).

Article 159(1)(a) of the Code of Criminal Procedure, in first place in the list of protected professional secrets, the widest area in which - given the influence of canon law in European law (Fumagalli Carulli, 1988; Bellini, 1991; Erdö, 1995; Erdö, pp. 687 ff.; Erdö, 2022)- it is generally included in the legal systems of European countries (Boni, 2021; Palomino, 2021; Pree, 2021; Torfs, 2005; Du Puy-Montbrun, 2012; Anderle, 1956; Almeida Lopes, 2006) and those with European legal roots (Zubacz, 2010; Jenkins, 2021; Carnì, 2021; Rothe, 2021): "*1. They cannot be forced to testify as far as they know because of their profession, except in cases where they have the obligation to refer to the prosecuting authorities: a) representatives of religious beliefs, whose statutes are not contrary to the Albanian legal order'.*

The professional secrecy of clergy

Although this protection, as a phenotype of individual religious freedom, concerns and embraces clergy of potentially all religious denominations (d'Arienzo, 2021; Stein, 1998; Hambroer, 1928; Martin Luther, 1883; Martin Luther, 1888)*, stricto sensu* confessional secrecy has been and always is central to the law of the Catholic Church (d'Arienzo, 2018; Cappello, 1929; Gaudemet, 1985; Gaudemet, 1984; Munier, 1984; Bernhard, 1984; Tarantino, 2016), of which confession (Catechism of the Catholic Church, no. 1467) is one of the seven sacraments (d'Arienzo, 2005; Arrieta, 2000; Berthe, 2020; Ferrari da Passano, 1993; De Paolis, 1990; Miragoli, 1990; Pighin, 2014; Ponce, 2012; Condorelli, 2012; Ventrella Mancini, 2008; Testa Bappenheim, 2020).

The point of great importance is not so much the recognition of professional secrecy *per se*, since this (for lawyers and doctors) is envisaged to protect professionals in two sectors, Justice and Health, which are internal to the State apparatus and necessary for its proper functioning; but rather the recognition of the social-religious factor, which was also envisaged in the legal systems of some other socialist states (Tedeschi 1969; Kaczynski – Tedeschi, 1986; Consorti, 1987).

It is worth noting the extreme delicacy of the situation in which a priest[8] finds himself. On the one hand, he must certainly protect the secret of the believer who has confided in him, but on the other hand, he could ensure that a crime - perhaps violent, perhaps lethal - is not committed, or, again, he could help Justice to identify

[8] By 'priest' and 'clergy', unless otherwise specified, is meant ministers of Catholic, Protestant, etc. worship.

and convict the guilty party, thus avoiding the conviction of an innocent person, a hypothesis that should be all the more distressing for a priest if he were the real culprit: it is a situation masterfully described by the two priests that Graham Greene made the protagonists of his *The Power and the Glory.*

Indeed, the protection of confessional secrecy, *amplius* of the professional secrecy of clergy, on the one hand responds to the constitutional principles of protection of religious freedom, pursuant to Articles 10 and 24 of the Constitution, on the other hand, however, if it made it impossible to prevent a crime that might still be committed, it could develop friction with the constitutional principle of the protection of life (Article 21 of the Constitution) or of private property (Article 11 § 2 of the Constitution), just as the impossibility of making a Catholic priest or a Protestant pastor reveal what he had learned as such could compromise the right of defense and the right to a fair trial, ex art. 31(b) of the Constitution (Gullo, 2014; Filippi, 2021; Benvenuto, 2021; De Stasio, 2010).

The right to religious freedom

The fundamental right to freedom of religion is one of the most traditional fundamental rights in the European legal tradition, as well as one of the original fundamental rights of humanity (Tedeschi, 1989).

Today, no catalogue of fundamental rights can do without the guarantee of the rights summarized under this collective term, since they are part of the oldest corpus of fundamental rights and are fundamentally linked to human dignity and the sphere of personality: faith, conscience and religion, in fact, are existential phenomena that do not exist outside the human being (Tedeschi, 1993).

Article 10 of the Constitution, in conjunction with Article 24, obliges the Albanian State to remain neutral in matters of religious or ideological confession and not to jeopardize the religious peace in society, which has been regained after decades of dictatorship (Alicino, 2008).

The particularly high status accorded to the fundamental right to religious freedom today is also due to the strenuous developments of recent decades, reinforced by the experience of past persecution of individuals and institutions in Albania on the basis of their religious beliefs (De Gregorio, 2002; Morozzo della Rocca, 1990).

In addition to the fundamental values of the human personality and its *forum internum,* therefore, freedom of testimony and confession are also protected, since faith, conscience and religion belong to the processes that take place within a person; they would, however, be legally irrelevant if they could not find outward phenotypical expression, and this public form of religion has become one of the

most powerful forces in the universe, both culturally and spiritually, politically and legally.

The fundamental right to freedom of religion, as defined by Article 10 in conjunction with Article 24, is a fundamental right that must be understood comprehensively: after the religious persecution by the Communist regime, in fact, the intention of the constitutional legislature was probably to restore and fully guarantee religious freedom.

The terms used can no longer be clearly distinguished from one another, but overlap, or overlap in some respects: the freedom to form a belief, for example, presupposes its communication and practice (Gerosa, 2011).

The definition of religion as the object of religious freedom is neither clear nor unambiguous (Croce, 2019). The Constitution itself does not provide one: in fact, in the preamble it speaks of God ("*with faith in God*") without specifying which one.

The difficulties of a definition derive from the fact that the self-understanding of believers and the Church plays an important role: in principle, a State without an official religion (ex-Article 10(1)) has no right to judge the theological content and spiritual value of a potential denomination.

The self-conception of the holder of the fundamental right must, therefore, be taken into account, since the state authorities must be able to make a binding judgement on the application of the Constitution in order to protect the certainty of fundamental rights, which include the fundamental freedom to form one's own concept of religion, to define a connection between beliefs and actions, and thus to qualify actions as the practice of religion. It is therefore contrary to the protection of the self-concept of the members of a religion under the Constitution if a belief formed within this framework or an action performed within this framework, such as the sacrament of confession, were to be denied recognition as a religious activity.

Article 24 paragraph 2 of the Constitution also guarantees freedom of confession, i.e. the freedom to proclaim, express and disseminate religious content: *'Everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals'*. About the object of confession, then, reference can be made to freedom of belief. The differences are not in the content, but in the manner of conduct. Freedom of religion goes beyond the *forum internum* and concerns the *forum externum*. In addition to '*having and holding' (confiteri*), the '*expression and proclamation' (profiteri*) of religious conviction is also guaranteed, i.e. the manner of speaking and proclaiming. This can take place both privately and publicly, either alone or in community.

The performance of all legally possible ritual acts, as well as the observance and practice of religious customs, is guaranteed, as is the possibility of aligning one's

entire behaviour with the teachings of one's faith and acting in accordance with one's inner conviction of faith', and since religion is directed towards realization in practical life, the realization of religious conviction in individual life conduct is an indispensable component of religious freedom (Jaeger, 2016).

In addition to numerous other religiously motivated behaviours, then, confession is also a ritual act and a protected religious custom: both the penitent and the confessor practice ritual acts or religious customs in the context of the confession or spiritual counselling session, and thus act within the framework of the freedom to practice religion.

Maintaining the secrecy of confession also undoubtedly falls within the aspect of faith-based conduct of life and thus within the scope of *religious practices* protected by Article 24 paragraph 3: "*No one may be compelled or prohibited to take part in... religious practices...*'.

It is worth noting that this protection is linked to religious freedom: if the Catholic priest or a Protestant pastor were to learn of news of a crime in preparation or that had already taken place, not in his capacity as Catholic priest or a Protestant pastor, but as a simple citizen, by pure chance, this would not entail any difficulty as regards the obligation to testify.

In general, however, clergy, especially the Catholic one, which has the sacrament of confession as its own, are bound by special obligations of confidentiality about what has been confided to them by the faithful in this context, which stand in the way of a general duty to testify in court.

Clergy, therefore, must not only abide by the state laws that apply to all, but also the obligations of the respective religious law: these religious teachings about God, man and the world are protected within religious communities by freedom of religion and the principle of the absence of a state church, hence protection against state interference and coercion to conform. In the common secular legal sphere of pluralist society, however, including its universally valid constitutional order, Catholic priests or Protestant pastors are citizens of a state without an official religion, so they are bound to observe the Constitution and laws: it is clear that if the legal requirements of the secular and religious sides diverged, clergy could find themselves in a difficult situation of conflict (Incitti, 2021).

The general obligation to give evidence, pursuant to Article 157(1) of the Code of Criminal Procedure (except in the cases provided for in Articles 156, 157(2) and 158 of the Code of Criminal Procedure) is diametrically opposed to the duty of confidentiality laid down in the religious law.

This initial situation is a harbinger of great potential for conflict, as monotheistic religions traditionally link the attribution of meaning to a claim to absoluteness (sometimes stronger, sometimes weaker). This claim extends not only to the spiritual realm, but often also to the secular one. Even state law has such a claim to

rule in the secular sphere, so religion and law are two systems that claim absolute validity, at least for some areas of human life. If the legislature were to accept this legal situation and take no further legal precautions to eliminate this conflict, it would be left to the Catholic priest or a Protestant pastor alone to decide which law to break and which to remain faithful to, plunging them into a conflict of conscience (Martens, 2002).

The professional secrecy of lawyers and doctors: differences

We must bear in mind, however, that not even lawyers (Article 159(1)(b) of the Code of Criminal Procedure), doctors and all those engaged in the health profession (Article 159(1)(c) of the Code of Criminal Procedure), nor - with certain limitations - journalists (Article 159(3) of the Code of Criminal Procedure) are required to disclose what they have been entrusted with, and in these cases their right to professional secrecy cannot be based on religious freedom.) are obliged to disclose what has been entrusted to them in this capacity, and in these cases their right to professional secrecy cannot be based on religious freedom: we must therefore search for an *ubi consistam* that goes beyond the dichotomy between Church and State (Jemolo, 1983; Saja, 1983).

In order to assess the possible differences in the professional status of clergy compared to the other professional categories protected by Article 159(1), however, it is necessary to take a closer look at these professional groups.

Lawyers are independent organs of the administration of justice, and the exercise of the legal profession is subject to the free and unregulated self-determination of the individual lawyer. The personal relationship of trust between lawyer and client refers to a profession that excludes state subordination: as an organ of the administration of justice, the lawyer has an independent function in the 'fight for justice' in a liberal constitutional state (Ferrajoli, 2011).

It is an independent organ of the administration of justice, with a status equal to that of the public prosecutor and the court. The institution of criminal defense is guaranteed by the principle of the rule of law, pursuant to Articles 28(1) and 31 of the Constitution. The relationship of trust is considered an indispensable basis for effective criminal defense also in the relationship between lawyer and client. Measures that may disturb or exclude this basis and create collisions in conflict with the effective representation of the client's interests by the defendant therefore interfere with the defendant's freedom to exercise his profession. At first sight, therefore, there are many parallels between the position of a Catholic priest or a Protestant pastor and that of lawyers and defense counsel.

Doctors and therapists in general are also subject to confidentiality obligations in a special way, provided not only by law, but also by professional ethics: *'I WILL RESPECT the secrets that are confided in me, even after the patient has died',* as stipulated in the Hippocratic Oath, or Geneva Declaration of 1948, in its revised version of 2017. This modern version of the Hippocratic Oath is a global code of ethics, taken from the International Code of Medical Ethics[9], and obliges doctors to confidentiality; doctors all over the world refer to this document, which in many countries is part of the medical code of ethics and in some even has the character of law.

If, as we have seen, the professional secrecy of doctors and lawyers responds to the internal functioning needs of the State apparatus, i.e. Justice and Health, we can perhaps say that the professional secrecy of clergy responds to the needs of the State-community: in fact, since religious freedom is not only a matter of weighing earthly and tangible goods and duties, but also of taking into consideration extra-legal aspects that, yes, play a not insignificant role in other professional groups, but lacking the transcendental reference.

The spiritual and religious mission is a specific characteristic of the Churches and their ministers of religion, which distinguishes them from other large social groups; ministers of religion, moreover, and especially Catholic priests, understand their spiritual ministry as a holistic existence. On the basis of the ordination, they have received (or a similar call to ministry), they have publicly committed themselves before their God and the assembled people, according to the teachings of their religion, to devote their lives entirely to the service of preaching and of their neighbors. Thus, to this end, they adopt a lifestyle that also gives a visible sign that they are dedicating their lives entirely to the ecclesiastical ministry (Licastro, 2016; Milani, 2008; Palomino, 1999).

This is therefore a fundamental difference from, for example, lawyers or doctors: however passionately they may exercise their profession and however close it may be to a vocation, it remains a professional activity, by its very nature limited in time, which serves to create and maintain a livelihood, and which in principle can be interrupted or modified at will. The activity, then, always takes place in a context that is definitively regulated by the applicable state law and is not influenced by extra-legal obligations.

The special professional ethical standards governing the practice of law and medicine, and the position these professional groups occupy due to the undoubted importance of their activities, are not equivalent to the understanding of the office and duties of a priest.

[9] "In concordance with the WMA Declaration of Geneva: The Physician's Pledge and the WMA's entire body of policies, it defines and elucidates the professional duties of physicians towards their patients, other physicians and health professionals, themselves, and society as a whole".

The moral obligation to influence the person seeking spiritual comfort by attempting to make him or her desist from the intention to commit a crime or to induce the offender to turn himself or herself in and confess is to be seen from a transcendental perspective, as it has a stronger degree of obligation than the lawyer and the doctor (Nykiel, 2019; Piacenza, 2021).

Protective functions of the professional secrecy of clergy

This provision of the Code of Criminal Procedure, according to doctrine, has a dual protective purpose: individual and collective.

On the one hand, in fact, it is intended to protect the relationship of trust between the parties involved in pastoral care (i.e. the bearer of the secret and the Catholic priest or Protestant pastor) as individuals, but, on the other hand, one could also consider the protection of the social functions associated with relationships of trust, and thus see in it a collective protective purpose. There are arguments in favor of both positions, as we shall now see.

Proponents of the idea that the rule pursues an individual protective purpose see the basis of the rule in the relationship of trust between the professional, here the priest, and the person who, as it were, requests spiritual counselling, to whom the privilege is linked. The rule reflects the particular conflicts of interest that exist because of the professional obligation on the one hand and the obligation to testify on the other. Taking into account the principle of proportionality, this conflict is resolved in favor of the clergyman and his duty of confidentiality. Accordingly, Article 159(1)(a) of the Code of Criminal Procedure pursues the protection of the individual interests of those involved in pastoral care, and thus the rule serves the interest in confidentiality of both the person seeking spiritual counselling and the cleric, in accordance with the CIC and the Catechism of the Catholic Church

Other authors, *in secundis*, hypothesize, conversely, that the rule pursues a collective protective purpose: there would, in fact, be a predominant need for protection in order to allow secrecy, since otherwise socially important institutions such as pastoral care in situations of personal crisis, or effective criminal defense, etc., would not function; Art. 159 para. 1 lett. a of the Code of Criminal Procedure would therefore protect the social functions and institutions associated with pastoral care, which are so important because the State has the task of providing guidance and help in answering the question of how to live, but - since it has no State religion - it would not be able to do so. would thus protect the social functions and institutions associated with pastoral care, which are so important because the State has the task of providing guidance and help in life to answer the question of how to live, but - not having a State religion - it is no longer able to deal with the

question of meaning and contingency on its own, and therefore can no longer be certain of religious truths (Bon Valsassina, 1960).

The state must therefore rely on the (various) religious communities in these areas, and this provision in the Code of Criminal Procedure strengthens public confidence in the members of these socially valuable professions, so that the tasks incumbent on them can actually be performed.

Firstly, therefore, the absolute confidentiality of information entrusted to clergy in the context of pastoral work is protected. This is typically considered part of the confidant's private sphere, which is thus protected.

The protection of the relationship of trust is closely linked to the protection of professional freedom. The relationship of trust is the basis for the exercise of pastoral care and listening to confessions. These in turn are an essential part of the 'profession' of a priest. An obligation to disclose in court, following an obligation to testify, could undermine this basis, i.e. the relationship of trust, to such an extent that it would undermine the scope of protection of Articles 10 and 24 of the Constitution.

If this were to happen, trust in the clergy would be deeply shaken. This, in turn, would limit the clergy's ability to exercise their profession, and thus would be a violation of Articles 10 and 24 of the Constitution.

It is true that the public interest is also great, which is why the legislature has also taken into account the strengthening of general trust in the members of this professional group, which should enable professionals to perform their tasks effectively in the public interest: the State, which has no official religion and is therefore religiously neutral, relies on religious forces and institutions to instill in its citizens the ability and willingness to adhere to certain moral standards. In part, the values of the churches are congruent with the constitution; in part, the churches also assume tasks of general welfare.

The purpose of Article 159(1)(a) of the Code of Criminal Procedure, moreover, is in particular to avoid existential conflicts of duties, i.e. between the duties to testify at trial and the moral duties arising from the relationship between the cleric and the faithful.

The latter regularly rely on the absolute confidentiality of the clergyman and can only disclose information for that reason. On the other hand, the duty of disclosure is also in significant conflict with the clergyman's obligations of religious confidentiality. The latter, in particular, may give rise to an existential unease of conscience on the part of the clergy. This is due, in no small measure, to the consequences that confessional law (especially canon law) imposes on clergy in the event of a breach of the duty of confidentiality.

The exemption of the clergy from the collision of duties through exemption from the obligation of revelation is in turn closely related to the protection of the freedom

to practice religion. Confession as the original form of pastoral counselling, at least in Christianity, is an important part of their religion for both clergy (listening) and faithful (confiding and confessing). If what is confided in were no longer protected, neither the priest nor the faithful could practice confession in the form prescribed by their religion without violating the law of the State, so that this form of religious practice is protected by Article 24, paragraph 3 of the Constitution.

The individual and collective protective purposes potentially pursued are, as we have seen, closely interconnected. This applies in particular to the protection of the existing relationship of trust and avoidance of a conflict of interest on the part of the priest, as an individual protective purpose, and to the trust of the general public in the functionality of socially important institutions, as a collective protective purpose. A decision in favor of one and against the other would amount to drawing an arbitrary boundary, and this should be avoided.

Article 159(1)(a) of the Code of Criminal Procedure thus pursues several protective purposes: among them, the protection of pastoral care in its form of 'professional activity' and religious practice, the trust of the general public in the professional and personal status of clergy, the protection of the privacy of the person entrusting the matter and the confidentiality of information, the relationship of trust *in se ipso* and, in particular, the prevention of an existential conflict of duties on the part of clergy.

Since confession and pastoral care are constitutionally protected by Articles 10 and 24 of the Constitution, it follows that the respective components of these forms of religious practice are also covered by constitutional protection, namely the privacy of the confidant, the confidentiality of information and the relationship of trust itself. If the protection of these individual components were waived, the institutions of confession and pastoral care would not enjoy the protection provided by the constitutional text. The avoidance of the clergy's existential need for conscience is also based on the protection of religious freedom. This is because the duty of confidentiality is as much an elementary component of confession and pastoral care as the other aspects mentioned (Allred, 1953).

The constituent elements

Article 159(1)(a) of the Code of Criminal Procedure is an exception, as it grants ministers of religion the privilege of silence and makes an exception to the general duty to testify at trial; as a *lex specialis,* therefore, the rule is generally interpreted restrictively. On the other hand, however, the purpose of the rule is to provide comprehensive protection for confession and pastoral care, which precludes a restrictive interpretation. Consequently, there is a tension between comprehensive

protection and the exceptional nature of the rule, and this tension must be resolved by taking reasonable account of all aspects.

The group of persons covered by the term 'ministers of religion' pursuant to Article 159(1)(a) of the Code of Criminal Procedure benefit from exemption from the obligation to testify, it is therefore essential to clearly define the term 'priest, or clergy'.

This, however, is proving to be a difficult challenge, since, especially in the light of structural changes in the Churches, many uncertainties arise in this context, which ultimately work to the detriment of those working in pastoral care, because their legal status is often unclear. Indeed, due to the shortage of priests in recent times, there has been an increasing need in the Catholic Church to entrust lay people with tasks that fall within the core area of pastoral care (Baura, 2011; Valdrini, 1987; Arrieta, 1985). The functions of pastoral care are therefore increasingly being performed by other people working in church organizations who do not hold clearly defined, full-time priestly positions. They often perform their duties independently and are thus equated in function and responsibility with full-time clergy in the area of pastoral care, falling under the protection of Articles 10 and 24 of the Constitution, not least because, on the other hand, confessional/professional secrecy is also extended to ministers of religion of confessions that do not have the sacrament of confession (Visioli, 2024).

With regard to laypersons working full-time (Schouppe, 1998), in fact, the doctrine holds that a lay person, although not sacramentally ordained by the Catholic Church, but who nonetheless performs tasks on behalf of the Church (e.g. as a prison chaplain) directly related to pastoral care is a minister of religion within the meaning of criminal procedural law, since in this case too, an independent relationship of trust is created between the pastoral counsellor and the person seeking pastoral care. Lay persons working in this way perform their duties on behalf of the ordained clergy and may be exposed to the same difficult pastoral situations. Their responsibility in this field is therefore comparable to that of a Catholic cleric or an ordained Protestant pastor. This may justify extending the personal scope to non-ordained persons under the conditions mentioned above.

Therefore, the State, recognizing that there is nothing to prevent a clergyman from fulfilling his duty to God, recognizes his right not to reveal what he learns as a priest, not as a privilege to this or that Church (which would have no reason to exist, since Albania does not have a State religion), but as protection of the religious freedom of the State-community, and specifically of the concrete persons who make it up.

The faithful can only be effectively encouraged to go to confession if they can rely on confidentiality and trust in the pastoral care of their Church: confession is described as a conversation between the person concerned and God before a

human witness, and it, as a rite and (for the Catholic Church also) sacrament, lives on the credibility of its fulfilment: the believer is obliged to confess his sins in full, and this freedom is given to him by the absolute confidentiality of the clergy (Congregation for the doctrine of the faith, 1988: 1367).

Maintaining this confidentiality is therefore essential for confession. Even if this initial situation cannot be transferred to general pastoral talks without a sacramental character (the faithful are not required to fully disclose their transgressions), the result is nonetheless valid: the reason why a person can open up fully in pastoral talks lies in their trust in the confidentiality of the person they are talking to. Any exception to this confidentiality, to whatever extent and for whatever purpose, would compromise this trust to the utmost: it would inevitably mean that those seeking spiritual counselling could no longer rely on the confidentiality of the priest, and we would have a violation of religious freedom.

The content of pastoral conversations, moreover, is subject to the special protection of the general right of personality: according to the doctrine, in fact, there is a central area of private life that is protected by the guarantee of human dignity, provided for in the Preamble and Articles 3 and 28 of the Constitution, a guarantee that includes the possibility of expressing inner processes such as sensations and feelings, thoughts, opinions, points of view and experiences of a highly personal nature without the fear of being controlled by state authorities, and this freedom also includes communication with other trusted persons.

It follows, according to the doctrine, that these internal processes of a highly personal nature are traditionally discussed with the clergy, so that the protection of confession or conversations of a confessional nature is part of the constitutional content of the human dignity of the exercise of religion.

Conclusions

The focus on the religious social factor, not bound to a specific confession, is a fundamental achievement of European history, from Augsburg to Westphalia, and is a characteristic of all legal traditions rooted in European history.

One of the phenotypes of this attention is the protection of the professional secrecy of ministers of religion, which embraces not only Catholicism, which has its own ad hoc sacrament, but all religions.

After several decades of governments attempting to wipe out any religious feeling in the population, and despite a general secularization that has called into question the concepts of secularism and neutrality of the State (Tedeschi, 2002; Rivéro, 1949) and that of religious freedom, here is that the protection of the professional secrecy of ministers of religion, also under the new case of eavesdropping, is included in

the new code of criminal procedure by Albania, progressively moving closer to the EU, because Europe has historical-cultural roots and values linked to religion (Schillebeeckx, 1965; López Alarcón, 1989; Ratzinger, 1992).

It is important to bear in mind a further specificity of professional secrecy linked to the pastoral activity of a priest: the knowledge he obtains from the person seeking pastoral assistance is additional knowledge. Without the offer of confession or pastoral assistance and the protection of confidentiality guaranteed by the Church, this information would probably not be revealed before the crime is committed, nor afterwards.

In such a case, the person who was planning the crime would not be offered the opportunity to go back and reflect on his or her criminal plans, and possibly desist from them, just as in an interview following their implementation, the possibility of inducing repentance, repentance and the possibility of turning oneself in to prevent the conviction of an innocent person would be lost.

The clergy should be able to influence those who are planning to commit or have committed an offence, also because, in general, it can be assumed that those who seek to speak with a moral authority on their own initiative are in any case open to a conversation from a spiritual perspective and are interested in receiving guidance on how to remedy the wrong committed.

In this case, in fact, the initiative to turn to the priest on comes from the person who has already - or not yet - committed the offence, and the very fact that this person has felt the need to turn to a priest means that the decision to act (in this case to commit the offence) is therefore presumably not yet so binding, or that she feels an inner turmoil as a result of her action, which could lead her to repair the damage done by the offence, and possibly to turn herself in to avoid the conviction of an innocent person, like Jean Valjean in Victor Hugo's *Les Miserables* (Ladaria, 2020).

From this perspective, then, we see that the confessional secrecy of ministers of religion is an instrument that can be useful both to the State-community as a whole (if it succeeds in avoiding the execution of the crime), and to the State-court, namely the service of Justice, (if it avoids the conviction of an innocent person).

It is equally evident that society would lose this opportunity for influence if denominational secrecy, the professional secrecy of ministers of religion, were to be abolished. If the person seeking spiritual counselling could not be sure of the absolute confidentiality of the clergy to whom he or she would turn, he or she would probably not even seek an interview, because it is precisely the bond of confidentiality that creates the necessary basis of trust.

A person who seeks pastoral assistance before committing a crime, or immediately after committing a crime, is open to moral appeals and alternatives, and in such cases the clergy can exert the influence he has on the believer through

his role and religious function, since a clergyman has - or should have - a higher feeling, a higher conception of moral duty (Puig, 2014), even if the child abuse scandal has eroded trust in the clergy (d'Arienzo, 2022; Lo Iacono, 2023; Comotti, 2021; Bettetini, 2019; Rimoldi, 2012).

The options of the clergy to influence the person seeking spiritual assistance may, therefore, be more useful to Justice than an obligation to testify, and to give up these additional possibilities 'on principle', so to speak, by repealing professional secrecy for ministers of religion would therefore be a matter of pure principle of aggressive secularism (Visioli, 2020)[10] and would probably do more harm than good to the State and potential victims (Jaeger, 2015; Corso, 2020).

In a democratic State, digital techniques can be used to spy on people's conversations, but they can also be used by the State for untargeted mass surveillance, as revealed by Edward Snowden. Laws introduced to combat common crime, organized crime and terrorism restrict the fundamental freedoms of individuals in the name of the general interest and the public good. If their enforcement is controlled, they can coexist with a democratic regime. These democratically passed laws could be used during a change of authoritarian executive regime to muzzle any opposition, benefiting from this 'democratic anointing'. The great dictatorships of the last Century came to power in a constitutionally compliant manner or at the behest of the people, and only after coming to power did, they unfold their dictatorial character: what could the secret police of the now defunct dictatorial regimes not have done if they had had today's wiretapping techniques and technology?

In a society that spies on every movement, every move, every written word of an individual, what remains of free will and freedom? Knowing they are being watched, individuals will try to hide or censor their actions. Freedom under surveillance is no longer freedom.

While the digitization of society has a strong economic value, it may be a vehicle to consolidate certain public freedoms, but it may reduce the protection of an individual's freedom and his or her private and family life. The General Data Protection Regulation considers the technical developments of the 21st century. This generalized protection in the European Union must remain effective in the face of the increasing intrusion of connected objects.

But the individual remains the central figure in this protection. He must be aware of the risks inherent in digital techniques that, to improve certain aspects of his life, obtain information on his habits, health, feelings and desires. No text, not even the most restrictive, can force a person to disclose this information.

[10] See APOSTOLIC PENITENTIARY, Note on the Importance of the Internal Forum and The Inviolability of the Sacramental Seal {The Seal of Confession}, 29 Juny 2019, https://t.ly/zZICi

If the digital society can limit public and individual freedoms, it is up to individuals to react and governments to protect them: a clear barrier to the police State is the religious freedom, here declined in the essential aspect of the absolute confidentiality of information revealed to a minister of religion, thus comes in handy once again as a barrier to the police State, to the plunge into the abyss of the Orwellian perspective, because "*if you look too long into an abyss, the abyss will also look into you*" (Nietzsche).

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The administrative appeal of tax acts: a fundamental right ensuring fair treatment and transparency in the tax system

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Abstract

The right to appeal administrative acts is a fundamental aspect of ensuring justice and accountability in the tax administration. This right is embedded in various constitutional principles and legal frameworks aimed at protecting the rights and freedoms of individuals. Modern tax systems are built on the principles of justice and transparency, providing effective mechanisms for appealing administrative decisions. Procedural justice in the context of administrative appeals is essential for ensuring fairness and transparency in decision-making processes. The principle of equality before the law grants taxpayers the right to be treated equally and to appeal any perceived unfair decision. The appeal process helps protect them from potential inaccuracies, arbitrary actions, or misunderstandings that may arise during tax assessments. *The "Law on Tax Procedures in the Republic of Albania" outlines the procedures and mechanisms for appealing tax acts issued by tax authorities. It lays the foundation for a fair and efficient system of resolving tax disputes in Albania. Additionally, the Administrative Procedures Law sets forth the general principles and rules governing administrative procedures, including those related to tax appeals. It ensures that administrative actions, including tax assessments, are conducted*

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transparently, impartially, and timely. The jurisprudence of the European Court of Human Rights and the Constitutional Court of Albania plays a significant role in shaping and ensuring the right to appeal administrative acts, offering legal clarity and protection for individuals involved in the administrative process.

Keywords: *administrative appeal, acts, tax system, accountability, obligations, deadlines*

Introduction

Taxpayers have the fundamental right to appeal to the administration when they believe there has been an error in the assessment of their taxes or any other decision affecting their tax obligations. This right serves as a crucial mechanism to ensure fair treatment and maintain transparency in the tax system.

This paper delves into the intricate framework of Albania's tax legislation, emphasizing the pivotal role of appeal procedures in the tax administration, focusing on the rights and procedures available to taxpayers to challenge administrative decisions related to their tax obligations. Albania's legislative structure, particularly the "Law on Tax Procedures," establishes a comprehensive system for generating, collecting, and enforcing tax obligations, catering to both small business taxpayers and corporate entities.

The analysis begins by exploring the principle of the taxpayer's right to appeal. In any case where the taxpayer disagrees with an administrative act and believes the tax administration has not correctly applied the law, they have the right to appeal to the Tax Appeals Directorate. The study delves into the legal framework governing tax appeals, describing the criteria that must be met for a taxpayer to appeal an administrative decision.

Throughout the paper, various examples of administrative decisions that can be appealed, such as tax assessments, compensation claims, refund requests, and calculation errors, are examined in detail. Moreover, the paper highlights the key actors involved in the tax appeal process, including taxpayers, taxpayer representatives, and tax agents. Additionally, it sheds light on the time frame within which tax complaints must be filed and the documentation requirements for a valid appeal.

The role of the Directorate or the Tax Appeals Commission in reviewing and making decisions on tax appeals is elaborated, emphasizing the importance of providing reasoning for their decisions. The paper describes the procedures and criteria for taxpayers' appeals against administrative tax decisions issued by tax authorities. It covers various aspects of the appeal process, including the types

of administrative acts that can be appealed, the requirements for submitting an appeal, necessary documentation, time limits for filing an appeal, the role of the Tax Appeals Directorate, and the right to further appeal in the judicial system. The paper also addresses the procedure for refunding overpaid taxes, interest, and penalties in case the appeal is successful. Overall, this paper serves as a valuable resource for taxpayers, tax professionals, and tax authorities seeking to understand the intricacies of administrative tax appeal procedures and ensure a fair and transparent process for resolving tax disputes.

Methodology

This study aims to comprehensively analyze the legal framework, tax procedures, administrative procedures, and practical challenges related to appealing acts issued by tax authorities in Albania. The scope extends to exploring legislative advancements, their effectiveness, and their impact on various stakeholders, including taxpayers, third parties, and the Tax Administration. The methodology of this paper is primarily based on the review of legal documents, case studies, and practical applications within the context of tax appeal procedures.

Literature and Legal Analysis

The content discusses the fundamental right of taxpayers to appeal administrative acts within the framework of the tax administration, as well as the principles and framework of the right to appeal. It also explores the concept of procedural justice in the context of administrative appeals, drawing on both European legislation and the jurisprudence of the Albanian Constitutional Court. The methodology used includes:

Research Approach

The research adopts a mixed-methods approach using qualitative and quantitative analysis. This approach facilitates a comprehensive understanding of the procedures for appealing tax administrative acts, the legal intricacies, and the practical ramifications of these mechanisms.

Legislative Review

The paper extensively reviews Albanian tax legislation, including the "Law on Tax Procedures" and the "Law on Administrative Procedures," recent amendments,

and relevant legal provisions. It also examines European legislation such as the European Convention on Human Rights (ECHR) and jurisprudence from the European Court of Human Rights (ECHR) concerning the right to appeal administrative acts.

Key Areas of Focus

The right to appeal**,** Acts that are subject to appeal**,** Administrative acts that cannot be appealed**;** Deadlines for tax appeals and documentation requirements**;** Justification of decisions by the Tax Appeals Directorate**;** Refund of tax obligations if the decision of the Tax Appeals Directorate or Commission is in favor of the taxpayer.

Judicial Practice Analysis

The paper aims for a critical review of judicial practice to understand the judicial interpretation and application of tax laws. This includes analyzing decisions that clarify the application of law in practices followed. It explores the jurisprudence of the European Court of Human Rights on the right to appeal administrative acts, referencing key cases such as:

Ferrazzini v. Italy (2001), Jussila v. Finland (2006), Bendenoun v. France (1994), Öneryıldız v. Turkey (2004), Kapetanios and Others v. Greece (2015).

It also analyzes the jurisprudence of the Albanian Constitutional Court on the right to appeal administrative acts, referencing specific decisions such as:

Decision No. 29/2010, Decision No. 37/2011, Decision No. 15/2014.

Administrative Procedures

The paper provides an in-depth exploration of the processes and strategies used by the Albanian Tax Administration to implement appeal procedures. This includes reviewing official guidelines, procedural manuals, and administrative directives.

Analysis

Collected data are analyzed to identify patterns, trends, and correlations. Legislative analysis and judicial practice provide a legal basis, while administrative review offers practical perspectives. The paper focuses on reviewing and analyzing existing legal literature, including references to authors such as Richard M. Bird, Michael Lang, and Tom R. Tyler concerning European jurisprudence, as well as authors like Zaganjori, Vorpsi, and Sadushi concerning the jurisprudence of the Albanian Constitutional Court.

The methodology used in this paper combines legal research, judicial practice analysis, and exploration of theoretical frameworks related to administrative appeals, aiming to provide a comprehensive understanding of the legal principles and practices related to the right to appeal administrative acts in the context of tax administration.

The right of the taxpayer to appeal administrative acts

The taxpayer's right to appeal administrative acts is a fundamental aspect of ensuring justice and impartiality in the tax administration. This right is incorporated into various constitutional principles and legal frameworks aimed at protecting the rights and freedoms of individuals. Modern tax systems are built on the principles of justice and transparency. According to Richard M. Bird, "a fair tax system must provide effective mechanisms for appealing administrative decisions, offering a balance between the interests of the state and the rights of the individual" (Bird 2014). This process not only helps protect taxpayers' rights but also contributes to the improvement of administrative procedures and enhances the accountability of the tax administration. Michael Lang states, "an effective appeal procedure requires a well-organized system supported by adequate resources, including legal assistance for taxpayers" (Lang 2010).

Due process of law (CoE 2001), as a constitutional principle, guarantees that no person should be deprived of liberty or property without due process of law. This implies that taxpayers must have a fair opportunity to challenge any administrative act affecting their tax obligations. According to the principle of equality before the law, taxpayers have the right to be treated equally. Any administrative decision that a taxpayer considers unfair can be appealed to avoid unequal or discriminatory treatment. In this sense, taxpayers have the fundamental right to appeal to the administration when they believe there has been an error in the assessment of their taxes or any other decision affecting their tax obligations (Instruction No. 6 dated 25.02.2019). This principle serves as a crucial mechanism to ensure fair treatment and maintain transparency in the tax system (EP 2015). By providing taxpayers the opportunity to challenge decisions made by tax authorities, the appeal process helps protect them from potential inaccuracies, arbitrary actions, or misunderstandings that may arise during the tax assessment process. It also promotes accountability within the administration by allowing independent review and oversight of their decisions, ultimately fostering trust in the tax system (Mateli 2016).

The appeal process typically involves submitting a formal request for review along with supporting documentation to the relevant tax authority or administrative body. Taxpayers have the right to a clear and impartial review of their case, where

they can present their arguments, provide evidence, and address any concerns they may have regarding the initial decision. The administration is then responsible for conducting a thorough and objective review of the complaint, considering all relevant information, and issuing a reasoned decision based on the merits of the case. This process not only empowers taxpayers to challenge erroneous decisions but also helps improve the overall quality and consistency of the tax administration by identifying and correcting errors, clarifying regulations, and promoting a fairer implementation of tax laws for all individuals and businesses.

Procedural justice in the context of administrative appeals

In the field of administrative law, the theory of legal rights (OSCE 2015) plays a crucial role in ensuring justice, accountability, and the exercise of governmental power. According to this theory, legal rights in administrative appeals emphasize the importance of due process (Vorpsi 2011), procedural justice, and the rule of law in protecting the rights and freedoms of individuals within the administrative framework. Legal rights provide a framework for balancing the interests of the state with the rights of individuals, ensuring that administrative actions are conducted in accordance with the law and established procedures. Through the theory of legal rights, administrative appeal mechanisms function as essential safeguards against abuse of power and as a means to promote the rule of law within the administrative state (OSCE 2015).

Procedural justice in the context of administrative appeals is a fundamental concept that ensures fairness and transparency in the decision-making process. It revolves around the idea that individuals involved in an administrative appeal have the right to be heard, to be treated with respect, and to have their case examined impartially (OSCE 2015). Central to procedural justice is the notion that the process itself must be fair, regardless of the outcome (Solum 2015). This means that individuals should have access to relevant information, the opportunity to present their case, and be given reasons for the decisions made. Upholding the principles of procedural justice in administrative appeals strengthens confidence in the fairness and legitimacy of the administrative system, fostering trust between the government and its citizens.

Moreover, procedural justice serves as a safeguard against arbitrary or biased decision-making in administrative appeals (CoE 2001). By adhering to the principles of procedural justice, administrative bodies can ensure that decisions are made based on relevant evidence, legal standards, and established procedures. This helps prevent misunderstandings, reduces the likelihood of errors, and enhances the perceived legitimacy of the administrative process. When individuals feel that they have been treated fairly and their concerns addressed through a transparent

and impartial process, they are more likely to accept the outcome even if it is not in their favor. Ultimately, implementing procedural justice in administrative appeals promotes accountability, trust, and a sense of fairness, which are essential for maintaining the rule of law and public confidence in the administrative system.

According to Tom R. Tyler, "procedural justice is important not only for the fair outcome of individual cases but also for the legitimacy of the entire administrative system" (Tyler 2006). In many countries, including Albania, efforts have been made to improve procedural justice in the context of administrative appeals. Law No. 44/2015 "On the Code of Administrative Procedures" in Albania clearly defines the procedures to be followed and guarantees the rights of parties involved in the administrative process. According to Martin Shapiro, "to improve procedural justice, it is important to simplify bureaucracy and increase awareness of procedural rights among citizens" (Shapiro 1986). Administrative appeals are a key mechanism for ensuring justice and transparency in the relationships between citizens and the public administration. This process is fundamental to protecting individual rights and ensuring fair and effective governance. According to Jerry L. Mashaw, "administrative appeals are a necessary mechanism for protecting citizens' rights and improving administrative procedures" (Mashaw 1983). The tax system must provide effective mechanisms to challenge administrative decisions. According to Richard M. Bird, "a fair and reliable tax system should include equal opportunities for all taxpayers to appeal and challenge administrative decisions" (Bird 2014).

In conclusion, the right to appeal administrative acts is a critical component of a fair tax system, supported by constitutional principles, procedural law, and specific legal provisions such as those found in Law 9920 on tax procedures. These mechanisms collectively ensure that taxpayers can challenge administrative decisions they consider unfair, thereby protecting their rights and freedoms.

The right to appeal administrative acts according to European legislation

The right to appeal administrative acts is a fundamental element of the rule of law and the protection of individual rights against public administration. European legislation has established a clear framework to guarantee this right, including various means and mechanisms to ensure a fair and equal process. The European legal framework for the right to appeal administrative acts is primarily based on the European Convention on Human Rights (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR). Article 6 of the ECHR guarantees the right to a fair trial, while Article 13 guarantees the right to an effective remedy. One of the most important aspects of the right to appeal is the assurance of procedural rights. According to European legislation, individuals must have the opportunity

to present their appeals before an independent and impartial body (Craig and De Búrca 2020). This body must have the authority to review and decide on the legality of the administrative act. The guarantee of an independent and impartial trial is another essential aspect.

Authors such as Harlow and Rawlings (2014) emphasize the importance of the independence of judicial and administrative bodies from political and administrative influences. Courts must be equipped with the necessary means to ensure a fair and transparent process. Access to justice is another key component. European legislation requires that appeal procedures be accessible to all individuals regardless of their economic or social status (Flogaitis 2003). This includes providing legal aid for those who cannot afford to protect their rights. Transparency and accountability are important elements to ensure public trust in the administrative and judicial systems. Bovens (2007) emphasizes the importance of transparency in administrative decision-making and the need to hold the administration accountable for its actions. Article 13 of the ECHR guarantees the right to an effective remedy before a national authority for violations of rights and freedoms recognized by the convention. Janse (2017) highlights that this article is fundamental to ensuring effective protection of individual rights against public administration. The European Court of Human Rights has played a significant role in developing the right to appeal administrative acts. The Court has broadly interpreted the right to a fair trial and the right to an effective remedy, expanding the protection of individuals against administrative actions (Brems 2005).

Jurisprudence of the European Court of Human Rights on the right to administrative appeal

The right to appeal administrative acts is an essential aspect of protecting individual rights against public administration. The European Court of Human Rights (ECtHR) has developed rich jurisprudence in this field, setting high standards to ensure a fair and effective process. This chapter examines some of the most important ECtHR decisions related to the right to administrative appeal and mentions contributions from key authors. The ECtHR has addressed a considerable number of cases related to the appeal of tax acts. These decisions have shaped the standards for the right to a fair trial and for effective remedies, ensuring that member states respect the fundamental rights of individuals in the context of tax issues.

Summary of ECtHR Decisions on the Appeal of Tax Acts

Ferrazzini v. Italy (2001): An important case related to the right to a fair trial under Article 6 of the ECHR. The ECtHR ruled that tax matters do not fall under "civil

rights" and therefore are not subject to the protection of Article 6. The Court argued that tax procedures are part of the state's administrative relations with citizens and not a civil matter.

Jussila v. Finland (2006): In this decision, the ECtHR acknowledged that Article 6 of the ECHR applies to administrative tax procedures, especially when they have a punitive nature. The Court emphasized that guarantees for a fair trial must be respected even in the context of administrative tax procedures.

Bendenoun v. France (1994): The ECtHR ruled that a heavy fine for tax violations constituted a criminal charge, and consequently, the individual had the right to a fair trial under Article 6 of the ECHR. This decision highlighted the importance of protecting procedural rights in cases of high tax penalties.

Öneryıldız v. Turkey (2004): While this case does not directly relate to taxes, it addresses the right to a healthy environment and the state's responsibility to protect citizens from pollution and other risks. This decision has significant implications for tax issues, emphasizing that states must ensure fair and effective administrative procedures to protect citizens' rights.

Kapetanios and Others v. Greece (2015): The ECtHR found violations of Articles 6 and 13 of the ECHR due to administrative tax penalties imposed without a fair judicial process. The Court emphasized that any administrative penalty with serious consequences must be treated with the guarantees of a fair trial.

These decisions have shaped the standards for the right to a fair trial and for effective remedies, ensuring that member states respect the fundamental rights of individuals in the context of tax issues.

The object of tax administrative appeal

According to Article 106 of the Tax Procedures Law, a taxpayer can appeal against any administrative act of the tax administration that concerns the taxpayer and affects their tax obligation. All three of these requirements must be met (Law 9920, 2008). Administrative acts are considered to include all acts (not just written ones) issued by the tax administration bodies that cause legal effects for each taxpayer individually (Sadushi, 2013). Administrative decisions that can be appealed concerning the taxpayer and their tax obligation include any tax assessment notice issued after a tax audit (Article 84/5, Law 9920, 2008), any other administrative act affecting the taxpayer's tax obligation, including compensation requests, refund requests, requests for tax relief, errors in calculating interest rates (Article 76/4, Law 9920, 2008), imposition or errors in calculating the amounts and types of penalties, as well as notifications for the taxpayer's registration under a tax liability.

Administrative acts that do not concern the taxpayer or do not affect their tax obligation cannot be the object of an appeal (Article 41, UMF No. 24, 2008).

Such cases will be considered administrative acts for initiating the audit of a tax declaration, administrative acts rejecting the taxpayer's request for an audit, administrative acts related to the collection of obligations, and administrative acts blocking the taxpayer's activity (Article 41, Law 9920, 2008). A tax obligation or an act or omission of the tax administration for which the Tax Appeals Directorate or the Tax Appeals Commission (Decision No. 11, 2017) has previously decided cannot be subject to an administrative appeal again, regardless of whether it is reflected in a new administrative act (Article 603.3, UMF No. 24, 2008). The acts of the Tax Appeals Directorate or the commission resulting from the appeal procedure cannot be the object of an administrative appeal. These decisions can only be appealed in court (Article 106, Law 9920, 2008).

An appeal can only be made by the taxpayer (Article 605.5, UMF No. 24, 2008), by the taxpayer's representative, and the tax agent. The taxpayer has the right to appoint a representative with a power of attorney who represents them in relation to the tax administration. The taxpayer remains personally responsible for fulfilling the tax obligations even when appointing a representative with a power of attorney. An appeal can also be made against an omission by the tax administration that affects the taxpayer's tax obligation. Such a case would constitute an act not approved within the period specified by law, regardless of whether the taxpayer has made a request regarding it (Article 606.6, UMF No. 24, 2008). If the tax administration has issued several administrative decisions related to the same taxpayer, each can be appealed separately. The taxpayer can appeal two decisions or acts in the same appeal when they meet the requirements for an appeal, and the Tax Appeals Directorate or the commission has the right to group several appeals together, provided that this reduces the cost and increases the effectiveness of the appeal procedure (Article 606.7, UMF No. 24, 2008).

Measures for the forced collection of tax obligations

Taxes are essential for the existence of states. In democratic societies, taxes are paid to build and maintain a modern social system and society, ensuring public services related to health, education, protection, order, infrastructure, and protection from natural disasters (Mateli, 2017). Article 88 of Law No. 9920, dated 19.5.2008, "On Tax Procedures in the Republic of Albania," as amended, states: "The tax administration has the authority to forcibly collect unpaid tax obligations when it finds that the taxpayer has not paid their tax obligations on time." In this sense, tax authorities must engage in an effective process to ensure that tax debts are collected as quickly and cost-effectively as possible. Consequently, measures for the forced collection of tax obligations are not subject to administrative appeal to

the Tax Appeals Directorate (Article 606.8, UMF No. 24, 2008), except for appeals exercised by the taxpayer in accordance with the provisions of Article 92 of the Tax Procedures Law concerning the "Appeal of the Security Measure of the Tax Obligation." Appeals are made only in cases where the decision to execute the security measures has not been executed properly. Article 92 initially provides for an appeal to the Director of the Regional Directorate, and then, if the taxpayer does not accept their decision, allows for an appeal to the Tax Appeals Directorate or the commission.

The law provides the following acts of forced collection measures for tax obligations: blocking orders of bank accounts and requests for the payment of unpaid tax obligations (Article 90), notification to a third party according to Article 97 of the Law (Transfer of the Tax Obligation to a Third Party), or notification to a third party according to Article 98 of the Law (Right to Claim Obligations from the Third Party), etc. In such cases, the act or decision cannot be the object of an administrative appeal because these decisions relate to the best method of collecting tax obligations as provided in Chapter XI (Articles 88 to 104). Additionally, the administrative act of confiscation held under Article 122, paragraph 4 of the law, which allows the confiscation of goods for breaking the blocking signs, is not subject to appeal to the tax appeal structures in the Ministry of Finance. In accordance with the Code of Administrative Procedure, appeals are made administratively to the structures of the General Directorate of Taxes (UMF No. 24, 2008).

Submission of tax administrative appeals

Appeals are submitted to the Tax Appeals Directorate or commission and can be delivered in person or sent by registered mail. The date of receipt of the appeal by the Tax Appeals Directorate or commission is considered the date of its registration at the Ministry of Finance for appeals submitted in person (Article 606.2, UMF No. 24, 2008). For appeals sent by registered mail, the date of submission by the taxpayer is considered the date of mailing. In cases where the appeal is submitted to an incompetent body, such as a regional tax office or the General Directorate of Taxes, the appeal period is considered respected if the request is submitted on time to the incompetent body (Article 606.2, UMF No. 24, 2008). Appeals must be in writing and signed by the appellant. Non-material spelling errors or omissions that do not affect the validity or substance of the appeal and do not hinder its effective consideration do not constitute grounds for refusing to consider the appeal (Article 606.2, UMF No. 24, 2008). The requirement for submitting a written appeal is met if the appeal is sent by fax but not if it is sent by email (Article

606.2, UMF No. 24, 2008). The written appeal and accompanying documentation must include the taxpayer's name and address, the taxpayer's registration number, the administrative act issued or not issued by the tax authority that is the subject of the appeal, including the relevant tax period and the amount of the tax obligation, proof of payment of the contested tax obligation or a bank guarantee, reasons for the appeal, supporting information (such as the audit act, minutes, any other document the appellant deems important), and the appellant's signature (Article 606.4, UMF No. 24, 2008).

If any of the requirements mentioned above are not met, the Tax Appeals Directorate or commission will request the taxpayer to resubmit the appeal correctly with the required information within 15 calendar days (Article 606.6, UMF No. 24, 2008). If the taxpayer does not comply with the requirements and procedures, the Tax Appeals Directorate or commission has the right to refuse the appeal (Article 606.6, UMF No. 24, 2008).

Timeframe for tax appeals

Appeals must be submitted within 30 calendar days from the date the administrative act is received or is deemed to be received. The deadline is extended to the next working day if the last day of the period falls on a non-working day or public holiday. The tax administration considers that the taxpayer receives the notice sent to them within ten calendar days after the day of mailing. The date of mailing is considered the date the document is received by the postal service (Article 23.3, Law 9920, 2008). If the taxpayer did not receive the assessment notice due to an error in the notice by the tax administration, the 30-day appeal period begins on the day the recipient proves through relevant documentation that they became aware of the notice (Article 606.3, UMF No. 24, 2008). If the administrative act lacks the notification informing the taxpayer of their right to appeal the administrative act, including the timeframe and the appeal channel, contrary to the law, the taxpayer may appeal within three months from the date the administrative act is received or is deemed to be received (Article 603.2, UMF No. 24, 2008). In the event of inaction by the tax administration (refusal to issue an act), the appeal procedure begins three months after the initial request for the issuance of the administrative act. The appeal must be submitted no earlier than 7 days and no later than 45 days from the end of the three-month period, which is considered the deadline for completing the administrative procedure (Article 603.3, UMF No. 24, 2008).

If the appeal to the Tax Appeals Directorate or commission is not submitted within the specified period, it is considered inadmissible and rejected, except in cases where the period is extended in accordance with Article 109 (paragraph 4) of the Tax Procedures Law. The reinstatement of the period referred to in Article

109 of the Law is determined by Articles 54 and 55 of the Code of Administrative Procedures. The request for reinstatement of the appeal period must be made within 15 days of receiving the assessment notice, simultaneously submitting the appeal and paying or providing a bank guarantee for the contested tax obligation (Article 109, Law 9920, 2008). The request for reinstatement of the period must contain reasonable grounds and supporting documentation for not submitting the appeal within the appeal period. If the address to which the tax administration sent the contested act matches the address declared by the taxpayer and one of the reasonable grounds mentioned above is not proven, the failure to receive the notice within the 10-day period specified in Article 23 of the law is the taxpayer's responsibility (Article 606.3.4, UMF No. 24, 2008).

Submission of appeal documentation

The taxpayer submits the appeal to the Tax Appeals Directorate or commission, which must register the appeal request with the relevant data in the tax system (Article 106.4, Law 9920, 2008). A taxpayer who wishes to appeal (Article 106.1, Law 9920, 2008) must, along with the appeal, pay the full amount of the tax obligation or provide at least a six-month bank guarantee for the full amount of the tax obligation specified in the tax administration's assessment notice. The amount provided as a bank guarantee excludes penalties included in the contested tax assessment and calculated interest. The appeal is considered only when the taxpayer has paid the tax obligation that is the subject of the appeal or has presented the bank document confirming the provision of the guarantee (Article 107.1, Law 9920, 2008).

The taxpayer cannot appeal an administrative act in court if it is the subject of an appeal at the Tax Appeals Directorate without having a decision from this directorate (Article 16, Law No. 49/2012). The Tax Appeals Directorate or commission reviews and makes independent decisions on appeals submitted by taxpayers. It bases its decisions on the evidence and arguments presented by the taxpayer and the tax administration. The Tax Appeals Directorate or commission may request additional information, such as other documents from the taxpayer, the tax administration, and third parties, and may request or conduct verifications that help in the fair review and resolution of the case. In such cases, the appeal review period is extended by 30 days (Article 108.3.1, UMF No. 24, 2008). The directorate or commission may take other measures to clarify facts, such as meeting with the appellant. The directorate or commission limits the review to the issues raised during the appeal. If new facts are discovered during the procedure proving that the determined tax obligation is insufficient, the Tax Appeals Directorate or commission cannot itself increase the tax obligation. Instead, it

informs the administrative body that issued the contested decision about the new circumstances (Article 108.3.2, UMF No. 24, 2008).

Decision on tax administrative appeal

The Tax Appeals Directorate or the Tax Appeals Commission reviews the tax appeal and makes a decision based on the evidence and arguments presented by the taxpayer and the tax administration. The decision of the Tax Appeals Directorate must be signed and stamped by the director of the Tax Appeals Directorate or the acting official in accordance with the law on the organization and functioning of the state administration (Law No. 90/2012). The decision of the Tax Appeals Commission must be signed by all members in accordance with the provisions of the Council of Ministers' decision "On the procedures of the functioning of the Tax Appeals Commission" (Decision No. 11, 2017). The decision must include a written explanation of its basis, including the reasoning. The reasoning of the decision must be clear as provided in Article 108 of the Law on Administrative Procedures. After reviewing the case, the Tax Appeals Directorate or commission may decide to reject the appeal as inadmissible, dismiss the appeal, cancel the contested administrative act by accepting the appeal, or accept the appeal (partially or fully) and amend the contested administrative act (Decision No. 11, 2017).

If the Tax Appeals Directorate or commission finds that, considering the proven facts during the procedure, the tax administration's decision should be changed, the directorate or commission cancels the administrative act and decides on the case itself or requests the tax administration to resolve it. The tax administration must accept and implement this decision (Article 108.3.6, UMF No. 24, 2008). The decision contains a provision informing the taxpayer and the tax administration of their right to appeal

the decision in court, and it is sent to the taxpayer and the administrative body that made the assessment or issued the contested decision. Decisions of the Tax Appeals Directorate or commission can only be appealed in court (Article 16, Law No. 49/2012). If the Tax Appeals Directorate or commission does not issue a decision within 60 days of receiving the properly completed appeal, the taxpayer may initiate a judicial appeal even in the absence of a decision from the Tax Appeals Directorate or commission (Article 109.2, UMF No. 24, 2008). A judicial appeal by the appellant is accepted only if the appellant was partially or fully unsuccessful in their administrative appeal according to the decision of the Tax Appeals Directorate. For an administrative act that is the subject of an appeal, the administrative appeal phase cannot be bypassed to appeal directly to the court (Article 16, Law No. 49/2012).

Refund of tax obligation, interest and penalties

If the decision of the Tax Appeals Directorate or Commission is in favor of the taxpayer, the overpaid tax obligation and interest on the overpaid taxes, calculated from the date of payment of the tax obligation until the date of the refund, will be refunded to the taxpayer within 30 calendar days from the date the decision of the tax appeals directorate or commission is received or is deemed to be received (Article 110.1, UMF No. 24, 2008). If the taxpayer has provided a guarantee for the payment of the obligation, it will be released entirely or partially according to the decision of the relevant tax appeals structure within 30 calendar days from the date the decision is received or deemed to be received (Article 110.2, UMF No. 24, 2008). If the tax appeals directorate or the Tax Appeals Commission upholds the tax administration's decision and the taxpayer accepts the decision, any tax obligation, including tax not paid but guaranteed, interest, and any calculated penalties, must be paid by the taxpayer within 30 calendar days from the date the decision on the administrative appeal is received or is deemed to be received.

Jurisprudence of the Albanian Constitutional Court on the right to administrative appeal

The Constitutional Court of Albania plays a crucial role in protecting and promoting human rights, including the right to administrative appeal. This right is fundamental to ensuring transparency and accountability in public administration. This chapter will review key decisions of the Constitutional Court of Albania and analyze contributions from several Albanian and international authors in this field. Contributions from Albanian and international authors are essential for deeply understanding the impact and significance of the jurisprudence of the Constitutional Court of Albania and international courts.

In his works, Zaganjori often refers to the international standards set by the European Court of Human Rights (ECHR). One of Zaganjori's main contributions is the analysis of the right to a fair trial, which includes access to an independent and impartial judiciary and the right to a public trial within a reasonable time. He argues that an efficient administrative appeal system is vital for protecting individual rights and strengthening trust in the judiciary system (Zaganjori X., 2011).

Vorpsi, through her detailed analyses and studies on judicial and legal practices in Albania, has emphasized that an efficient and prompt process is essential for protecting individual rights in administrative procedures. She argues that unnecessary delays can constitute violations of individual rights (Vorpsi A., 2011),

which is in line with international practices and standards described by Janis, Kay, and Bradley.

Sadushi highlights the importance of the independence and impartiality of administrative courts to ensure a fair and unbiased process. He emphasizes the importance of access to documents and information during administrative procedures. He argues that to ensure a fair process, individuals must have access to all relevant documents and information (Sadushi S., 2005), citing studies by international authors such as Laurence Helfer and Loucaides.

Summary of Decisions of the Albanian Constitutional Court on Administrative Appeals

Decision No. 29/2010: This decision addresses the right to a fair and effective trial in the context of administrative procedures. The Constitutional Court ruled that every individual has the right to a fair and effective process, including access to effective means to appeal administrative decisions.

Decision No. 37/2011: This decision focuses on the independence and impartiality of administrative bodies handling appeals. The Constitutional Court ruled that the independence of these bodies is essential to ensure a fair and transparent process.

*Decision No. 15/2014***:** This decision addresses the right to access documents and information during the administrative appeal process. The Court ruled that the lack of access to important documents constitutes a violation of the right to a fair process.

The decisions of the Constitutional Court are a cornerstone in Albania's legal jurisprudence concerning the right to administrative appeal. These decisions emphasize the importance of the independence and impartiality of administrative bodies and the provision of effective judicial review to ensure that administrative decisions comply with the law and individual rights.

Conclusions and recommendations

The right of the taxpayer to appeal administrative acts is a fundamental aspect of a fair and transparent tax system. Ensuring a fair and effective process for appealing administrative decisions increases public trust in the tax system and contributes to the overall improvement of administrative procedures. By addressing existing challenges and leveraging opportunities for improvement, we can ensure that this right is accessible and effective for all taxpayers.

European legislation and jurisprudence have established high standards for ensuring a fair, impartial, and transparent process. The European Court of Human Rights has a significant impact on protecting and promoting human rights in Europe. Its decisions have helped set high standards for protecting individual rights and have influenced the development of national legislation. Contributions from key authors in this field are essential for deeply understanding the impact and significance of the ECtHR's jurisprudence.

The ECtHR's decisions on the appeal of tax acts have set important standards for the right to a fair trial and effective legal remedies. These decisions emphasize the importance of the independence and impartiality of administrative bodies and ensuring fair procedures for individuals challenging administrative tax decisions.

The Constitutional Court of Albania plays a crucial role in protecting human rights and ensuring a fair and transparent process in the context of administrative appeals. Its decisions have helped set high standards for protecting individual rights and have influenced the development of national legislation. Contributions from Albanian and international authors are essential for deeply understanding the impact and significance of the jurisprudence of the Constitutional Court of Albania and international courts.

The right to appeal tax acts is a fundamental aspect of ensuring justice and transparency in the tax administration system. The legislative framework in Albania provides a comprehensive system for appealing tax acts with specific procedures and criteria to be followed. Administrative Appeals of Tax Acts play a crucial role in protecting the rights of taxpayers and promoting accountability within the tax administration.

Tax authorities must ensure clear communication with taxpayers regarding their appeal rights, procedural deadlines, and criteria for successful appeals to maintain transparency and fairness in the process. Mechanisms should exist to address any delays in the appeal process and provide guidance on how to proceed in such situations to prevent unnecessary difficulties for taxpayers.

It is advisable for taxpayers to seek professional assistance or legal advice during the tax administrative appeal process to ensure that their appeals are well-structured and effectively presented. Taxpayers should keep detailed records and documentation to support their appeals, including relevant tax assessments, payment receipts, and any communication with the tax administration.

Continuous monitoring and evaluation of the tax administrative appeal process are essential to identify any obstacles, inefficiencies, or areas for improvement to increase the effectiveness and efficiency of the appeal system. Exploring the possibility of digitizing the appeal process to improve and expedite the resolution of tax disputes.

These conclusions and recommendations aim to facilitate a smoother and more transparent tax appeal process for taxpayers and tax authorities.

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Legal framework for climate change and climate change litigation in Nigeria

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Abstract

Nigeria is very susceptible to the adverse effects of climate change because it relies heavily on climate-sensitive industries like agriculture and water resources. This presents substantial environmental and economic difficulties on a global scale. This study seeks to provide a thorough analysis of Nigeria's legal system on climate change and examine how climate change lawsuits can contribute to improving climate governance. The study used a mixed-methods approach, integrating qualitative and quantitative data obtained from literature reviews, case studies, and analyses of policy documents. The results indicate that although Nigeria has made progress in implementing climate legislation, there are still substantial deficiencies in the enforcement and adherence to these laws. The report points out the detrimental effects of climate change on Nigeria's environment and economy, emphasising the necessity for strong legal and institutional structures. Nigeria's climate governance can

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improve by implementing tactics employed in more developed countries, as evidenced by comparative study with worldwide best practices. The key issues that have been recognised include the presence of legal, procedural, and institutional obstacles that hinder the effectiveness of climate litigation. The study provides suggestions for fortifying Nigeria's legal structure, improving institutional capabilities, and promoting public involvement in climate action. Nigeria can enhance its ability to withstand the impacts of climate change and promote fairness in addressing climate issues by incorporating climate considerations into wider development strategies and utilising global assistance. This study stresses the need for implementing extensive changes and fostering international collaboration to tackle the complex concerns of climate change in Nigeria.

***Keywords*:** *Climate Change; Nigeria; Legal Framework; Climate Litigation; Environment; Policy Reform.*

Introduction

Climate change presents substantial environmental, social, and economic challenges on a global scale, with emerging nations such as Nigeria experiencing a disproportionate burden of consequences of climate change (Ogbuabor & Egwuchukwu, 2017; Okon et al., 2021)carbon emission and forest depletion were used to capture climate change, while changes in government expenditure, domestic private investment and exchange rate were used as control variables. The results indicate that both in the long-run and short-run, carbon emissions affect growth adversely. In addition, forest depletion impacts negatively on growth in the short-run. These results imply that Nigerian government should evolve and implement policies to curb carbon emissions and forest depletion. In particular, a National Climate Change Commission is required in Nigeria to deal with all climate change issues. Furthermore, the finding that domestic private investment and naira-to-dollar exchange rate impede growth in Nigeria means that policymakers and governments at all levels in Nigeria should evolve and implement policies to reverse these undesirable outcomes.Keywords: Climate Change; Economic Growth; Ordinary Least Squares; NigeriaJEL Classifications: Q25; O40; C22; N17"","container-title":"International Journal of Energy Economics and Policy"","ISSN":"2146-4553"","issue":"2"","language":"en"","license":"Copyright (c. Nigeria, with its varied ecosystems and increasing population, is experiencing threatening repercussions from climate change, such as changes in rainfall patterns. These changes pose a serious risk broadly from environmental and economic standpoints and specifically to agriculture, water resources, health, and overall development of the country. Desertification is a nub of the matter in the

Northern part of Nigeria. The Sahara Desert is progressively expanding towards the south, intruding upon fertile regions and reducing the agricultural productivity of the region (Food and Agriculture Organisation, n.d.; Ritchie & Roser, 2024). Consequently, there has been a decline in biodiversity, a decrease in soil fertility, and an increase in dust storms, all of which contribute to further environmental degradation (FAO n.d.). Flooding is having a growing impact on coastal regions, particularly in the Niger Delta region (Ikehi, Onu, Ifeanyieze, & Paradang, 2014; Onuoha, 2023). Climate change intensifies the process of rising sea levels, resulting in the erosion of coastal areas and the infiltration of saltwater into freshwater sources. Intense precipitation in inland areas leads to river floods, affecting both urban and rural communities (Agossou, Yang, & Lee, 2022).

Climate change has a very concerning negative influence on agriculture, which is a fundamental industry for Nigeria's economy and food security (Adamaagashi et al., 2023; Ani, Anyika, & Mutambara, 2021)focusing on Nigeria. Nigeria, as the most populous country in Africa, is highly vulnerable to the impacts of climate change on its agricultural sector. The research conducts a comprehensive literature review and synthetic analysis to identify the key factors that make Nigeria's food production systems susceptible to climate change. Nigeria's diverse climate, influenced by latitude, topography, winds, ocean currents, and the Sahara Desert, contributes to its vulnerability. Agriculture is crucial for food security, economic development, and livelihoods in Nigeria, making it particularly susceptible to climate change. The study examines the relationship between climate change and agriculture in Nigeria, discussing key challenges, possible consequences, and adaptation strategies. Impacts of climate change on Nigeria's food security include increased droughts, desertification, pests and diseases, unpredictable weather, decreased fishery productivity, and limited access to resources and technology. To mitigate these impacts and enhance resilience, the study suggests various adaptations and strategies such as crop diversification, utilization of improved varieties, efficient water management, sustainable soil practices, climate-smart agriculture, capacity building, access to credit and insurance, policy support and coordination, climate information systems, and the establishment of farmer cooperatives and sustainable value chains. These recommendations aim to improve food security, rural livelihoods, and overall resilience in Nigeria's agricultural system in the face of climate change.","container-title":"International Journal of Agriculture and Earth Science (IJAES . Changes in precipitation patterns, extended periods of drought, and exceptional weather occurrences affect the timing of planting and harvesting cycles, resulting in decreased crop production and endangering the source of livelihoods of countless farmers, and in a similar fashion, climate change presents substantial health hazards as well (Mohammed & Tanko, 2018; Yila, Gboku, Lebbie, & Kamara, 2022). Increased temperatures facilitate the proliferation of vector-borne illnesses, such as malaria and dengue fever (Mojahed, Mohammadkhani, &

Mohamadkhani, 2022; Paz, 2024). More so, flooding may result in the transmission of waterborne illnesses such as cholera, as well as heatwaves significantly heighten the likelihood of heat-related ailments and fatalities, especially among susceptible demographics such as the elderly and children (Meena & Jha, 2023). Climate change can lead to environmental degradation and resource scarcity, which in turn can fuel unhealthy migration and conflict. Communities in northern Nigeria for instance, are compelled to migrate towards the south due to desertification and drought, resulting in conflicts over land and water supplies. This has intensified tensions and played a role in clashes between farmers and herders (Mohammed & Tanko, 2018).

Higher temperatures give rise to a hike in the need for energy, particularly for the purpose of cooling (Mojahed et al., 2022). This exacerbates the burden on Nigeria's already precarious electrical infrastructure. This further exposes the nation's dependence on hydropower also, as it is already at risk due to alterations in precipitation patterns and diminished water availability, resulting in variations in the provision of electricity. A report by Sustainable Insurance Forum & Financial Stability Institute, (2019) show that climate change poses heightened hazards to the financial sector as insurance firms face the challenge of dealing with increasing claims associated with severe weather events, resulting in increased premiums and limited coverage options. This has had a huge effect on firms and individuals who depend on insurance as a means of managing risk.

Nigeria has acknowledged the pressing necessity to tackle climate change (The State House, 2023). The National Climate Change Policy 2021-2030 establishes a strategy framework for reducing the socio-economic consequences of the detrimental impacts of climate change Nigeria has submitted its Nationally Determined Contributions (NDCs) under the Paris Agreement, and these NDCs detail the country's efforts to decrease greenhouse gas emissions and improve resilience to climate effects (Federal Ministry of Environment, 2021). A recent report by the United States Agency for International Development (USAID), (2023) indicate that Nigeria's objective is to unconditionally decrease emissions by 20%, and potentially achieve a reduction of up to 45% with international assistance by 2030 (Michael, 2023). Major efforts invested in improving the climate conditioning of the country primarily encompass the enlargement of renewable energy sources, enhancement of energy efficiency, and advocacy for reforestation. The Climate Change Act of 2021 offers a comprehensive legal framework to facilitate climate action in Nigeria, thus requiring the establishment of a National Council on Climate Change, saddling it with the responsibility of coordinating climate policy and establishing targets for reducing emissions. The Act also implements a carbon budget system to effectively govern and diminish greenhouse gas emissions. Nigeria engages in multiple international climate initiatives and accords, such as the United Nations Framework Convention on Climate Change (UNFCCC)

and the Green Climate Fund (GCF). These platforms offer financial, technical, and expert assistance to bolster Nigeria's climate objectives. Implementing these commitments through tangible measures necessitates a synchronized strategy that makes a mix of all tiers of governance, the business sector, and non-governmental organizations. Enacting comprehensive legislation and regulations can establish the basis for sustainable development, safeguard at-risk groups, and contribute to international climate objectives.

This study aims to provide a thorough review of the legal system governing climate change and climate change cases in Nigeria as well as to assess Nigeria's adherence to and effectiveness in tackling climate change by analyzing both domestic and international legal frameworks. This paper analyses the problems and opportunities presented by the current legislative framework and recommend ways to improve the efficacy of climate policies and activities in Nigeria. The primary research questions that lay the groundwork for this paper include an inquiry into the principal legal mechanisms that regulate climate change in Nigeria, the extent to which these legal frameworks have been instrumental in reducing the effects of climate change and advancing sustainability, the major obstacles impeding climate change litigation in Nigeria and how Nigeria's climate policies and litigation procedures compare to those of other jurisdictions.

Additionally, this study seeks to enhance the existing knowledge on climate change legislation and policy by conducting a comprehensive analysis of Nigeria's approach to climate change in relation to global efforts. The analysis will encompass an examination of pertinent international accords, such as the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement, in order to comprehend Nigeria's implementation efforts as well as the country's obligations under these accords. The study will investigate the influence of different stakeholders, such as government agencies, civil society, and the judiciary, in creating and implementing climate policy. The study seeks to provide valuable insights to policymakers, legal practitioners, and scholars by conducting a thorough analysis and also contribute to the current discussion on climate change mitigation and adaptation. This paper seeks to close the divide between theory and practice by evaluating the efficacy of legal frameworks and providing tangible steps for improvement on climate change action.

Literature review

The effects of climate change in Nigeria are evident in a range of environmental and socioeconomic forms that have a substantial impact on the development of the country. The environmental effects takes the form of increased temperatures, altered precipitation patterns, and severe weather events such as floods and droughts

(Adedoyin, Ayoola, Opele, & Ikenweiwe, 2011; Ogbuabor & Egwuchukwu, 2017). The changes have an immediate impact on agriculture, which is a crucial industry for Nigeria›s economy and food security. A class of scholars including Adamaagashi et al., (2023); Kim & Lee, (2023); Raza et al., (2019); Tunde, Amindeh, and Omojola, (2024) have in their research demonstrated that modified precipitation patterns and extended periods of drought disturb the timing of planting and harvesting, resulting in decreased crop production and endangering the livelihoods of countless farmers. The effect on water resources is particularly considerable, with water scarcity becoming a notable concern in several regions of the country, impacting both human consumption and agricultural irrigation.

Climate change not only has environmental consequences but also presents significant socioeconomic difficulties. The rise in temperatures worsens health hazards by promoting the transmission of vector-borne diseases such as malaria and dengue fever. Flooding can result in the occurrence of waterborne diseases, such as cholera. The economic consequences are significant, as sectors such as agriculture, health, and infrastructure face rising expenses as a result of climate-induced damages and disruptions. If sufficient actions are not taken, the World Bank projects that climate change could result in the impoverishment of millions of Nigerians by 2030 (Cervigni, Valentini, & Santini, 2013; Jafino, Walsh, Rozenberg, & Hallegatte, 2020). The social ramifications encompass heightened migration and disputes arising from the scarcity of resources, particularly among agriculturalists and pastoralists in the northern areas of the nation.

The Nigerian government has acknowledged these difficulties and has implemented measures to tackle climate change through a range of laws and programs. The National Climate Change Policy 2021-2030 delineates the nation's strategic approach to alleviate and adjust to the consequences of climate change (Federal Ministry of Environment, 2021). This strategy incorporates mechanisms to mitigate greenhouse gas emissions, bolster resilience, and advance sustainable development. The government has formulated the National Adaptation Strategy and Plan of Action on Climate Change for Nigeria (NASPA-CCN) to provide guidance for climate adaptation endeavors in many sectors (Greenwalt et al., 2021; Kolade, 2023). Nevertheless, the execution of these programs encounters substantial obstacles, such as insufficient financial resources, limited technical expertise, and fragile institutional structures.

International Legal Framework on Climate Change

The United Nations Framework Convention on Climate Change, which entered into force in 1994, is the main international legal framework for addressing climate change (UNFCCC, n.d.). It has near-universal membership and governs the

global affairs climate change issues. Nigeria, being a signatory to the UNFCCC, has undertaken several responsibilities with the objective of tackling climate change. The UNFCCC establishes the structure for international collaboration on climate change, mandating parties to disclose their greenhouse gas emissions, national policies, and actions taken to reduce and adapt to climate change. Thus, Nigeria is obligated under the UNFCCC to provide national communications and regular update reports that comprehensively outline the country's endeavors and advancements in addressing climate change.

The Paris Agreement, ratified in 2015 by the UNFCCC, is another major international accord set up with the primary aim of limiting the rise in global temperatures to less than 2°C above pre-industrial levels, as well as with additional measures to limit the temperature from increasing to 1.5°C (UNFCCC, n.d.-b). The Nationally Determined Contributions (NDCs) of Nigeria, as defined by the Paris Agreement, specify the country's objectives for mitigating greenhouse gas emissions and the approaches it will employ to accomplish these objectives. Nigeria's objective is to drastically decrease its emissions by 20% USAID, (2023) and potentially achieve a reduction of up to 45% with international assistance by 2030 (Michael, 2023). The Nationally Determined Contributions (NDCs) encompass initiatives like as the expansion of renewable energy sources, enhancement of energy efficiency, and the promotion of reforestation. The Paris Agreement also stresses the need for adaptation, as Nigeria delineates strategies to bolster resilience in key areas including agriculture, water resources, and health.

The NDCs of Nigeria draw attention to the relevance of implementing an exhaustive strategy to achieve the set targets for emission reduction. One of the primary objectives is to promote the adoption of renewable energy sources, such as solar and wind power, in order to reduce reliance on fossil fuels. Nigeria aims to enhance energy efficiency in the industrial and residential sectors, promote sustainable farming practices, and execute comprehensive afforestation and reforestation programs. The NDCs bring out the imperative of worldwide cooperation in domains such as finance, technological transfer, and capacity building to achieve these lofty goals. Nigeria is required, as per the Paris Agreement, to submit biennial update reports to track its progress and actively engage in the global stock take process to assess the overall progress made towards achieving the long-term goals of the Agreement.

The Kyoto Protocol, which came before the Paris Agreement, set enforceable targets for reducing emissions for wealthy nations. Although Nigeria, as a developing country, is not obligated to meet specific goals under the Kyoto Protocol (UNFCCC, n.d.), it actively engaged in initiatives like the Clean Development Mechanism (CDM) (Adejonwo-Osho, 2017; Nwozor et al., 2021)especially in developing countries to steer them away from the path of unsustainable development travelled

by developed countries. Article 12 of the Kyoto Protocol established the Clean Development Mechanism (CDM. This mechanism facilitated the implementation of projects aimed at reducing emissions while promoting sustainable development. Another important global agreement is the Kigali Amendment to the Montreal Protocol, which seeks to gradually reduce the usage of hydrofluorocarbons (HFCs), highly potent greenhouse gases (United Nations, 2016). Nigeria's role and adherence to these accords entail not just ensuring its global obligations but also incorporating these objectives into domestic policies and initiatives.

Nigeria actively participates in multiple international agreements and efforts, including the Kyoto Protocol, with the aim of addressing the issue of climate change. Nigeria is a member of the Climatic and Clean Air Coalition (CCAC), an organization entirely devoted to reducing the levels of short-lived climate pollutants such as methane, black carbon, and hydrofluorocarbons. These pollutants possess considerable potential to induce warming and pose serious health risks, emphasizing the need to prioritize their removal for the benefits of both climate and public health. Nigeria's involvement in the Global Methane Initiative (GMI) demonstrates its commitment to reducing methane emissions in key sectors such as oil and gas, agriculture, and waste management (Mahmoud, 2024).

Nigeria guarantees compliance with these international agreements by employing its domestic legal and administrative frameworks. The Department of Climate Change, which falls under the purview of the Federal Ministry of Environment, is responsible for ensuring the implementation of Nigeria's international climate commitments (Federal Ministry of Environment, 2021). This entails the development and execution of regulations, the distribution of resources, and the active engagement of stakeholders to ensure the effective implementation of climate action. The National Council on Climate Change, established under the Climate Change Act of 2021, plays a crucial role in overseeing and coordinating climate policies and activities at all levels and sectors of government. Nigeria aims to enhance its resilience to climate change and contribute to global climate goals by aligning its domestic efforts with international obligations.

Nigeria's participation in the UNFCCC, Paris Agreement, Kyoto Protocol, and other international climate agreements reflects its unwavering commitment to addressing the problem of climate change. Nigeria has set ambitious goals to reduce emissions, implemented a variety of strategies to mitigate and adapt to climate change, and actively participated in international efforts to address this issue, all aided by these frameworks. However, fulfilling these commitments requires continuous efforts, international support, and robust national frameworks to overcome challenges and take advantage of the opportunities presented by climate action. Nigeria's active engagement in these initiatives will significantly contribute to global efforts aimed at mitigating the impacts of climate change. Concurrently,

it will promote sustainable development and enhance resilience to the impacts of climate change.

National Legal Framework for Climate Change in Nigeria

The Constitution of the Federal Republic of Nigeria (as amended), (1999)

The first and perhaps the most important legal groundwork from which climate change in Nigeria is founded is the Nigerian Constitution. However, it does not explicitly acknowledge climate change, however, it does build a fundamental structure for protecting the environment by incorporating provisions on environmental rights and responsibilities. As per Chapter II, Section 20 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN), the state has a mandate to guarantee the safeguarding and improvement of the environment, including the preservation of water, air, land, forests, and wildlife. Although classified as non-justiciable Fundamental Objectives and Directive Principles of State Policy (Okere, 1983), these provision provides a normative framework that guides legislative and administrative activities concerning environmental matters. According to the constitution, the government is obligated to enact legislation and carry out initiatives that mitigate the impacts of climate change and support the advancement of sustainable development. In addition, the constitutional right to life as codified in the Section 33 of the CFRN 1999 (as amended) can be interpreted as include the right to a healthy environment, considering that environmental degradation and climate change pose direct threats to human life and well-being. Legal scholars and environmental activists often cite these constitutional provisions to ensure that the government fulfils its environmental obligations (Okonkwo, 2015, 2017; Umukoro, 2023).

The Climate Change Act 2021

Nigeria has enacted several substantial legislative measures to address climate change and protect the environment. The Climate Change Act of 2021 is an extremely important piece of legislation that establishes a comprehensive legal framework for tackling climate-related concerns in Nigeria. The legislation mandates the creation of a National Council on Climate Change, tasked with coordinating climate policy, setting emission reduction targets, and overseeing the implementation of the national climate action plan. The Act also establishes a carbon budget system, aimed at methodically overseeing and reducing greenhouse gas emissions. Moreover, it emphasizes the integration of climate change concerns

into both national and sector-specific development plans, ensuring a holistic approach to tackling climate change (The Climate Change Act, 2021).

Environmental Impact Assessment (EIA) Decree, 1992

The Environmental Impact Assessment (EIA) Decree of 1992 is another major legislation that requires the assessment of potential environmental effects of proposed projects prior to their approval and implementation. The EIA process ensures the inclusion of environmental considerations, such as the impacts of climate change, in the planning and decision-making processes. This legislation is crucial for mitigating and minimizing the adverse environmental effects resulting from industrial and developmental activities. The National Environmental Standards and Regulations Enforcement Agency (Establishment) (NESREA) Act of 2007 establishes NESREA Act as the principal entity responsible for implementing environmental laws and regulations. NESREA Act is tasked with the establishment and enforcement of regulations pertaining to the preservation of air and water quality, the handling of dangerous waste, and the mitigation of environmental pollution. Implementing these strategies is essential for mitigating the impacts of climate change.

Regulatory Bodies and Agencies

Regulatory entities and agencies such as NESREA Act have a vital function in carrying out and ensuring compliance with climate policies. NESREA's primary mandate is to enforce environmental legislation and regulations, carry out environmental audits, and oversee the measurement and tracking of greenhouse gas emissions. The Federal Ministry of Environment is responsible for supervising the formulation and execution of nationwide environmental policies, particularly those pertaining to climate change (Federal Ministry of Environment, n.d.). These bodies, however, encounter obstacles such as insufficient budget, restricted technical capabilities, and overlapping missions, which can impede the effectiveness of climate governance. Empirical evidence and case studies demonstrate that it is crucial to improve the capacity and coordination of these institutions in order to achieve effective climate action.

Policies and initiatives, such as the National Policy on Climate Change and Nigeria's Climate Change Response Strategy, serve as a guide for tackling climate change (Federal Ministry of Environment, 2021). These documents delineate the nation's strategy for mitigating and adapting to climate change, clearly stating precise objectives, benchmarks, and measures. The National Policy on Climate

Change prioritizes the incorporation of climate change factors into national development planning, advocating for the adoption of renewable energy sources, and strengthening the ability of vulnerable sectors to withstand and recover from climate-related challenges. The primary objective of Nigeria's Climate Change Response Strategy is to enhance its adaptive capability, minimize vulnerability, and harness international assistance. These policies and strategies are backed by diverse national and international financing channels designed to facilitate their implementation.

Apparently, Nigeria's approach to addressing climate change is guided by both global obligations and domestic legislative structures. Nigeria's global climate obligations are governed by the UNFCCC, Paris Agreement, and other international agreements. Meanwhile, domestic climate action is supported by national legislation, regulatory agencies, and policies. Nevertheless, there are still substantial obstacles to overcome in terms of executing, capability, and ensuring compliance. For Nigeria to effectively tackle climate change and achieve sustainable development, it is essential to fortify the legal and institutional framework, increase public engagement, and utilize foreign cooperation.

Methodology

Theoretical framework

This paper's theoretical approach is based on normative and empirical ideas that pertain to legislation concerning climate change. Normative theories provide as a foundation for assessing the moral and ethical aspects of climate policies, with a focus on concepts like fairness, righteousness, and durability. These theories aid in evaluating the extent to which the existing legal frameworks are in line with the overarching objectives of environmental justice and sustainable development. Empirical theories, in contrast, focus on the measurable consequences of climate change and the efficacy of legislative actions. This study seeks to provide a thorough knowledge of the strengths and weaknesses of Nigeria's climate change law by combining normative and empirical viewpoints. The analysis strives to be both theoretically rigorous and practically applicable.

Research Design

The research design employs a mixed-methodologies approach, integrating qualitative and quantitative methods for data collection and analysis. This technique enables a more intricate comprehension of the intricate matters related

to laws on climate change. The use of qualitative research approach according to Teherani and associates, (2015)a program director might say: "I collect data from my residents about their learning experiences in a new longitudinal clinical rotation. If I want to know about their learning experiences, should I use qualitative methods? I have been told that there are many approaches from which to choose. Someone suggested that I use grounded theory, but how do I know this is the best approach? Are there others?"Qualitative research is the systematic inquiry into social phenomena in natural settings. These phenomena can include, but are not limited to, how people experience aspects of their lives, how individuals and/or groups behave, how organizations function, and how interactions shape relationships. In qualitative research, the researcher is the main data collection instrument. The researcher examines why events occur, what happens, and what those events mean to the participants studied.1,2Qualitative research starts from a fundamentally different set of beliefs—or paradigms—than those that underpin quantitative research. Quantitative research is based on positivist beliefs that there is a singular reality that can be discovered with the appropriate experimental methods. Post-positivist researchers agree with the positivist paradigm, but believe that environmental and individual differences, such as the learning culture or the learners' capacity to learn, influence this reality, and that these differences are important. Constructivist researchers believe that there is no single reality, but that the researcher elicits participants' views of reality.3 Qualitative research generally draws on post-positivist or constructivist beliefs.Qualitative scholars develop their work from these beliefs—usually post-positivist or constructivist—using different approaches to conduct their research. In this Rip Out, we describe 3 different qualitative research approaches commonly used in medical education: grounded theory, ethnography, and phenomenology. Each acts as a pivotal frame that shapes the research question(s involve analyzing policy papers, legislative texts including the CFRN 1999 (as amended), the Climate Change Act of 2021 amongst others, and judicial precedents to extract pertinent information about the legal frameworks and how they are put into practice. Quantitative approaches encompass the use of statistical analysis on real-world data, such as greenhouse gas emission levels, deforestation rates, and socioeconomic indicators (Figgou & Pavlopoulos, 2015). These methods allow us to assess the effects of climate policy and track patterns and changes over time.

The data collection methods employed in this study comprise a diverse range of sources in order to guarantee a thorough and all-encompassing examination. Theoretical foundations and contextual backgrounds are provided by literature reviews of scholarly publications, books, and reports from respectable institutions. Examining prominent climate litigation cases in Nigeria and other jurisdictions provides tangible illustrations of how laws are construed and implemented in real-

world scenarios. The Nigerian government's stated pledges and planned actions are analyzed by studying policy papers such as national climate policies and international agreements. In addition, empirical data from government agencies, international organizations, and non-governmental organizations are used to measure the environmental and socioeconomic effects of climate change and evaluate the success of legislative actions.

Data Analysis

The data analysis methodologies utilized in this study are specifically developed to methodically assess the gathered data and extract significant results. Thematic analysis is employed to examine qualitative data derived from policy documents, legislative texts, and interviews. This analytical approach entails the identification, analysis, and reporting of patterns or themes present in the data. This approach facilitates the identification of fundamental problems, difficulties, and potential advantages in the execution of climate change legislation. Quantitative data is examined through statistical methods like trend analysis, correlation analysis, and regression analysis. These techniques help identify connections between variables and assess the effects of climate policies on important indicators such as greenhouse gas emissions, deforestation rates, and socioeconomic outcomes.

Comparative analysis approaches are used to compare Nigeria's climate change legislation and policies with those of other countries. This entails evaluating the legislative frameworks, policy approaches, and implementation techniques of nations that have achieved success in climate governance, such as the United Kingdom, the United States, and South Africa. The study intends to provide practical recommendations for improving Nigeria's climate change law and policy implementation by analyzing the best practices and lessons gained from these countries. The comparative analysis also emphasizes the distinct challenges and opportunities encountered by Nigeria, guaranteeing that the recommendations are customized to the particular circumstances of the country.

In all, this study combines normative and empirical ideas to conduct a thorough examination of climate change legislation in Nigeria. The mixed-methods research strategy integrates qualitative and quantitative methodologies to collect and analyze data from many sources, ensuring a comprehensive and nuanced comprehension of the topics at hand. The study uses thematic, statistical, and comparative methodologies to assess the efficacy of current legislation and policies, identify deficiencies and obstacles, and generate practical suggestions for action. This methodological approach guarantees that the study is firmly based on theory, informed by empirical evidence, and has practical significance, providing vital insights to the subject of climate change legislation.

Results

An examination of environmental and socioeconomic data uncovers a large chunk and diverse effects of climate change in Nigeria. Environmental impacts encompass heightened frequency and intensity of extreme weather phenomena, such as droughts, floods, and heatwaves. These events have resulted in substantial reductions in agricultural production, as crop yields have decreased due to unpredictable rainfall patterns and extended periods of drought. Studies have shown that basic crops like maize and sorghum have suffered yield decreases of up to 30% in certain areas (Durodola, 2019; Ogbuabor & Egwuchukwu, 2017). Moreover, climate change has worsened the process of desertification in the northern regions of Nigeria, resulting in a further decline in fertile land and posing a significant risk to food security (Adamaagashi et al., 2023; Audu & Linus, 2018; Dauda, 2023; Okon et al., 2021; Olagunju, 2015).

The socioeconomic impacts of climate change are equally significant. The agricultural industry, which has a workforce comprising more than 70% of the Nigerian population(Duru, 2022), has experienced significant negative effects, resulting in heightened levels of poverty and food insecurity (Osuji et al., 2023; Etuk & Ayuk, 2021; Omodero, 2021). The decrease in agricultural production has also stimulated rural-urban migration, as farmers and herders pursue improved prospects in metropolitan regions. The process of migration has placed significant stress on urban infrastructure and services, resulting in overpopulation and heightened demands on resources (Sennuga, Barnabas, Alabuja, Dokubo, & Bankole, 2023). Furthermore, climate change has substantial health consequences, since increasing temperatures and altering precipitation patterns contribute to the proliferation of diseases like malaria and cholera (ANWAR et al., 2019; Awad, Masoud, & Hamad, 2024; World Health Organization, 2014). If major mitigation measures are not implemented, projections indicate that climate change could potentially lead to a reduction of up to 11% in Nigeria›s GDP by 2050, resulting in huge economic implications (Federal Ministry of Environment, 2020).

The assessment of Nigeria's legal frameworks for tackling climate change reveals a combination of pledges and obstacles. Nigeria is a signatory to several international agreements like the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement. Nigeria has pledged to decrease its greenhouse gas emissions by 20% unconditionally and by 45% conditionally by 2030 (United Nations, n.d.), as part of its Nationally Determined Contributions (NDCs) under the Paris Agreement. However, the achievement of these targets is contingent upon receiving foreign assistance. The Nationally Determined Contributions (NDCs) prioritize key sectors such as

energy, agriculture, and transportation. The measures outlined in the NDCs involve the scaling up of renewable energy sources, the implementation of reforestation initiatives, and the promotion of climate-smart agricultural practices (UNFCCC, n.d.-a).

Within the country, the legislative structure encompasses the Climate Change Act 2021, which established a National Council on Climate Change to effectively coordinate climate initiatives and enforce the Nationally Determined Contributions (NDCs). The Environmental Impact Assessment (EIA) Act requires evaluations for projects that are likely to have an impact on the environment, while the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act gives NESREA the authority to enforce environmental laws and regulations. Notwithstanding the existence of these frameworks, compliance and enforcement are still inadequate. The challenges encompass insufficient financial resources, limited technical expertise, and inadequate public knowledge. The Climate Change Act's ambitious objectives are impeded by insufficient budgetary resources and the lack of adequate monitoring and reporting methods (Olujobi & Odogbo, 2024).

Climate Change Litigation in Nigeria

The Nigerian courts have seen a number of significant climate change cases, which emphasize the judiciary's responsibility in dealing with climate-related matters. A landmark precedent is the case of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others*, (2005) the Federal High Court sided with the plaintiff and confirmed that gas flaring contravened the constitutional rights to life and dignity. This pivotal ruling underscored the government's obligation to safeguard the environment and the well-being of the population, establishing a standard for forthcoming legal action related to climate issues. One other significant instance is the case of *SERAP v Federal Republic of Nigeria*, (2010), wherein SERAP filed a lawsuit against Nigeria for its failure to effectively prevent environmental degradation in the Niger Delta. SERAP alleged that the Nigerian government infringed upon the rights of the residents of Awori Community in Abule Egba, Lagos State, following a pipeline explosion in 2006. The NGO claimed that the government's noncompliance with environmental rules and regulations, together with oil spills and pollution, were responsible for the violations. The case exposed the deficiencies in Nigeria's climate policies and advocated for stricter steps to meet the country's international commitments under the Paris Agreement. While the court did not provide the exact remedies requested, the case drew considerable attention to the necessity for enhanced climate governance.

The case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*, (2019) specifically examined the effects of oil pollution that were worsened by climate change. The court's ruling emphasized the necessity for regulatory bodies to enhance the enforcement of environmental laws and ensure that polluters are held responsible. These cases demonstrate how the judiciary in Nigeria can have an impact on climate policy and enforcement. However, the small number of cases also highlights the difficulties faced in climate litigation, such as low public awareness and lack of technical understanding.

It goes without saying that climate change in Nigeria has had notable effects on the environment and the economy. This emphasizes the need for prompt and efficient legal and legislative measures to address the issue. Although Nigeria has pledged to adhere to international accords and has implemented a domestic legal framework, it continues to face difficulties in ensuring compliance and enforcement. Examinations of legal cases involving climate change demonstrate both the possibilities and challenges of utilizing the court system to promote efforts to address climate issues. The data presented here offer a thorough comprehension of the present condition of climate change effects and legal structures in Nigeria. This knowledge informs the ensuing debates and recommendations in this study.

Discussion

This paper draws attention to the disturbing effects of climate change on Nigeria›s environment and socioeconomic structure. These findings are in line with previous research, which mostly and consistently emphasizes the susceptibility of African countries to climate change because of their strong dependence on climate-sensitive industries such as agriculture and their poor ability to adapt. The environmental data, which shows a rise in the occurrence and intensity of extreme weather events, aligns with the global patterns documented by the Intergovernmental Panel on Climate Change (IPCC) (Bolan et al., 2024). Nevertheless, the social outcomes, including the worsening of poverty and the movement from rural to urban areas, are particularly severe in Nigeria because of its substantial population and preexisting socioeconomic difficulties.

When comparing Nigeria's legal framework and climate obligations with some global best practices, it becomes evident that there are substantial deficiencies. For example, although Nigeria has passed the Climate Change Act 2021, its approach for putting the law into action and ensuring compliance are not as advanced as those of countries like the UK, which has a more thorough and enforceable legal structure in place with its Climate Change Act 2008. This comparison emphasizes the necessity for Nigeria to not only adopt strong legislation but also guarantee them efficient enforcement through sufficient financial resources, technical

expertise, and institutional backing. In addition, the number of climate litigation case studies in Nigeria is limited compared to more litigious nations such as the USA, where courts have significantly contributed to the advancement of climate policy through significant legal decisions.

Climate change lawsuits have gained major standing in several countries, each with its unique legal systems and judicial approaches. Suits related to climate change have been necessary in promoting environmental advocacy in the United States. A prominent case is that of *Massachusetts v. EPA*, (2007), in which the United States was a party. According to the Clean Air Act, the Supreme Court has ruled that greenhouse gases are classified as pollutants, and as a result, the Environmental Protection Agency (EPA) is obligated to control their emission into the atmosphere. This ruling underlined the role of the court in environmental legislation and set a precedent for future climate-related legal cases. Another notable example is the Juliana v. United States (2015) case, when a group of young plaintiffs argued that the government's failure to take action on climate change violated their constitutional rights to life, liberty, and property. Although facing legal challenges, the lawsuit drew attention to the innovative utilization of constitutional rights in climate litigation.

Climate litigation has gained major notoriety in the United Kingdom. The case of *Friends of the Earth and Others v. Secretary of State for Transport*, (2020) is a prominent example where the Court of Appeal declared the government's plan for a third runway at Heathrow Airport to be unlawful due to its failure to consider the Paris Agreement. This verdict highlighted the judiciary's willingness to uphold the government's duty to fulfil international climate commitments. Furthermore, the Climate Change Act 2008 in the UK offers a robust legal framework for climate lawsuits by legally mandating the government to reduce greenhouse gas emissions. The Act has been instrumental in cases such as *ClientEarth v. Secretary of State for Business, Energy and Industrial Strategy*, (2020), where the government was sued for failing to reach air quality goals.

South Africa has achieved notable advancements in climate litigation, as demonstrated by the groundbreaking case of *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others*, (2017). The High Court has ruled that the government is required to consider the impact of climate change when granting license for new coal-fired power stations. This lawsuit established the precedent that environmental impact assessments must include considerations of climate change, therefore establishing a significant benchmark for future judicial proceedings. The South African Constitution, which includes the right to a healthy environment, has been a significant tool in climate litigation, enabling courts to hold the government accountable for environmental degradation and the impacts of climate change.

Challenges in Climate Change Litigation

A major obstacle in climate change litigation in Nigeria is the presence of legal and procedural impediments that impede the ability to take effective judicial action. The scarcity of climate-related cases can be ascribed to a dearth of public consciousness of environmental rights and the intricacies of establishing causation in climate litigation. Moreover, there exist substantial deficiencies in the legal structure that provide challenges for plaintiffs in achieving favorable outcomes in climate litigation. For instance, although the Nigerian Constitution acknowledges the entitlement to a sound environment, this entitlement is frequently not subject to legal action because of the absence of explicit, enforceable clauses in the enabling legislation.

Organizations such as NESREA and the Federal Ministry of Environment often suffer from insufficient funding and a lack of the requisite technical proficiency to adequately enforce environmental legislation. The lack of enough resources is worsened by bureaucratic inefficiency and corruption, which further undermine the implementation of climate measures. The judiciary encounters problems in its procedural approach, particularly due to a deficiency of specialized understanding of environmental law. This deficiency impairs judges' capacity to efficiently resolve intricate climate disputes. The inefficiencies of the court system and the prolonged duration of legal proceedings discourage potential litigants from pursuing climate lawsuit.

Potential Improvement Strategies

In order to tackle these issues, various possibilities for enhancement have been recognized. To enhance Nigeria's legal framework for climate change, it is necessary to not only alter current laws but also incorporate precise and enforceable regulations pertaining to greenhouse gas emissions, deforestation, and other crucial domains. By adopting strategies used in countries like the UK, Nigeria has the potential to gain advantages by establishing explicit goals for reducing emissions, implementing obligatory evaluations of climate impacts for significant projects, and imposing strict penalties for failure to comply.

These reforms should be accompanied by endeavors to integrate climate action into all sectors of development strategy. Enhancing institutional capacity is equally vital. Targeted training programs, augmented financing, and the supply of modern technologies and procedures can facilitate the accomplishment of this goal in environmental monitoring and enforcement. Collaborating with international organizations and other countries can grant access to specialized knowledge and

resources, thereby strengthening the capabilities of agencies such as NESREA and the Federal Ministry of Environment. Specialized training in environmental law is crucial for the judiciary to adequately prepare judges to successfully manage complicated climate lawsuit issues.

Enhancing public engagement is another crucial aspect that requires development. Involving civil society and communities in climate action can promote increased responsibility and endorsement of climate policies. Methods for improving public involvement encompass raising awareness through educational and promotional projects, engaging communities in environmental decision-making procedures, and providing assistance to local initiatives. Civil society organizations, non-governmental organizations (NGOs), and the media have the potential to significantly impact this matter, as demonstrated by the achievements of community-driven conservation initiatives in other nations. Promoting public engagement can result in policies that are more comprehensive and efficient.

Utilizing international cooperation and alliances is crucial for effectively addressing the worldwide scope of climate change. Nigeria can get advantages by engaging in international agreements and efforts, such as the Paris Agreement, since they offer opportunities to secure finance, obtain technical support, and facilitate the flow of knowledge. Enhancing Nigeria's ability to execute effective climate policy can be achieved by strengthening engagement with international organizations, such as the UNFCCC and the Green Climate Fund. Moreover, gaining knowledge from the experiences of other nations through bilateral and multilateral collaborations can offer significant ideas and exemplary methods for tackling climate change.

Conclusion and Recommendations

Ultimately, the pressing necessity for extensive legal and legislative reforms to tackle climate change in Nigeria cannot be overemphasized. Although the existing legislative structure and institutional processes serve as a basis, substantial enhancements are required to guarantee the efficient execution and enforcement. To effectively tackle the complex difficulties of climate change, Nigeria should improve its response by amending legal regulations, reinforcing institutions, and promoting public engagement. By utilizing international assistance and adopting successful strategies from around the world, Nigeria can strengthen its efforts to fulfil its climate obligations and safeguard its environment and people from the negative effects of climate change.

This study has exposed the diverse effects of climate change on Nigeria, with a particular focus on the environmental and economic consequences. The key

findings include a rise in the frequency and intensity of extreme weather events, negative impacts on agriculture, water resources, health, and the economy, and the worsening of poverty and rural-urban migration. These effects emphasize the need for strong measures to address climate change and for well-designed legal systems to reduce its impact and adjust to it. The evaluation of Nigeria's domestic and international legal systems revealed notable deficiencies in the implementation and adherence to laws, indicating the necessity for more robust regulatory mechanisms and institutional capabilities. Furthermore, the limited case studies of climate change litigation in Nigeria offer unique insights into the difficulties and possibilities of using legal channels to promote climate justice.

Comparing Nigeria's climate legislation to international best practices reveals that although Nigeria has made progress in enacting the Climate Change Act 2021, its implementation falls behind that of countries such as the UK and the USA. The absence of specific expertise in environmental law among the court, inadequately funded regulatory entities, and procedural hurdles pose substantial challenges to the successful pursuit of climate litigation in Nigeria. These findings emphasize the urgent requirement for extensive changes in legal regulations, institutional capabilities, and public involvement to improve climate governance in Nigeria.

The significance of these results for study, practice, and society is substantial. In order to further research, it is imperative to perform empirical studies that assess the efficacy of climate policies and legal frameworks in Nigeria, thereby bridging the gap between theory and practice. This can facilitate the identification of optimal methodologies and areas that require enhancement, thereby establishing a robust foundation of empirical data for future policy initiatives. Furthermore, conducting comparison studies with other jurisdictions might provide significant insights and tactics for improving climate governance in Nigeria.

Practically, the results highlight the significance of enhancing Nigeria's legislative and administrative structures concerning climate change. This entails not just modifying current legislation but also guaranteeing its efficient enforcement through sufficient financial resources, technical expertise, and institutional backing. In order to successfully address complicated climate litigation matters, it is imperative that the judiciary possesses specialized knowledge in environmental law. In addition, it is crucial to provide sufficient resources and authority to regulatory organizations such as NESREA and the Federal Ministry of Environment to effectively implement climate legislation.

Engaging civil society and communities in climate action is essential for society as it promotes accountability and garners support for climate measures. Increased public awareness and participation have been shown to result in the development of more inclusive and effective policies, as demonstrated by successful community-led conservation projects implemented in other nations. Promoting public

engagement through educational initiatives, advocacy campaigns, and active involvement in decision-making processes might improve the efficiency of climate governance in Nigeria.

Future research and policy efforts should prioritize the development of a more integrated and comprehensive approach to climate governance in Nigeria. This entails integrating climate issues into all areas of development policy, improving the legal environment with clear and enforceable rules, and building institutional capacities. International collaboration and alliances can offer vital assistance and resources for these endeavors. Nigeria can strengthen its ability to tackle the complex issues of climate change by studying the experiences of other nations and utilizing global initiatives.

This study has emphasized the immediate necessity for extensive overhauls in Nigeria's legislative and institutional frameworks in order to effectively tackle climate change. The findings emphasize notable deficiencies in the implementation and adherence to regulations, indicating the necessity for more robust regulatory procedures, institutional capabilities, and public involvement. Nigeria can effectively tackle the challenges of climate change and safeguard its environment and population from its negative effects by improving legal provisions, reinforcing institutions, and promoting public engagement. Future research and policy efforts should prioritize the development of a cohesive and all-encompassing strategy for climate governance. This should involve utilizing international assistance and drawing lessons from successful global initiatives to ensure the implementation of effective climate measures.

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Justice in uniform. Profiles of military law in Albania during the Italian occupation (1939-1943)

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Abstract

The essay aims to present the outline of military justice in Albania during the Italian occupation (1939-1943). It dwells in particular on the analysis of criminal legislation - shaped entirely on the Italian Codes – and addresses the problem of political trials before the Albanian War Courts, through the examination of a series of striking trials, preserved in the General Directorate of Archives. The historical problem of the establishment of Italian military courts in Albania and, especially, that of their practice has never been adequately studied. On the contrary, the archival fonds of Rome and Tirana can provide important indicators about the role and action of military justice. In this article, also on the basis of documents from the Tirana State Archives, are presented the essential institutional and normative coordinates, together with some surveys of the rulings of the Italian Military Courts in Albania.

Keywords: *military justice – Albania – courts – fascism – occupation - archives*

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Fascistization of 'the Bohemia of the Balkans'

Unlike the Military Tribunals of Greece (Santarelli, 2002), the former Yugoslavia (Rovatti, 2018; Saini Fasanotti, 2010; Dominioni, 2009), and Italian East Africa (Dominoni, 2009; Rochat, 2002), those of Albania have not yet experienced the in-depth study that their centrality - within the framework of the Fascist regime's control strategies towards so-called 'colonies' - and the wealth of surviving archival documents certainly deserve. The prominence which the neighboring nation held in the context of the regime's expansionist policies, emerges sharply from the 'sculptural' words uttered by Benito Mussolini at the meeting of 13 April 1939 before the Grand Council of Fascism:

> Albania is the Bohemia of the Balkans, he who holds Albania holds the Balkan region. Albania is a geographical constant of Italy. It assures us the control of the Adriatic [...] in the Adriatic no one enters anymore [...] we have widened the bars of the Mediterranean prison (Gayda, 1940).

This was how the Duce commented on the very recent conquest of Albania, which was to be the launching pad toward Greece for the transformation of the Mediterranean into the 'Mare Nostrum' in a vague re-edition of the Roman Empire coveted by the regime. The theme of Italy's natural interests over Albania was expressed as early as at the end of the Great War, with an anti-Austrian function, by Sir David Lloyd George, who was the head of two governments (1916-1919; 1919-1922) and among the leading figures of the Versailles Peace Conference. On 28 May 1919 he argued that «There was no other country that could well take the mandate for Albania. Greece and Serbia were too closely involved in the politics of Albania. Neither France, Great Britain, nor the United States would care for it, and in his own view, Italy would certainly have the first claim». The occupation was necessary, according to the Duce, to repair the shame of the renunciatory policy in the Albanian question, after the defeat suffered in Vlora in 1920. In the last of four articles devoted to the retreat, titled "Addio Valona", Mussolini expressed all his anger against the Italian government for the disgrace suffered, calling it a «second Caporetto», because «a few thousand Albanian insurgents have thrown a so-called great Power like Italy» into the sea (Mussolini, 1920; De Felice, 1965; Borgogni, 2007).

The Duce aimed at the construction of what Davide Radogno has called the «new Mediterranean order», a project founded on the central role of Mussolini, the charismatic head of a totalitarian regime, but also on the acquiescence

and connivance of the occupied territories' governments (Rodogno, 2003). In the Balkans, more than anywhere else, the aspirations of Germany and Italy intersected, and the 'conflict of interest' between the two nations - not yet allies[2] - manifested itself in all its embarrassing evidence in the ambiguous attempt to share the space of conquest, characterized by the wealth of natural resources, but at the same time economically and politically weak due to the many fragmentations that connoted its fabric. Already since 1925 Italy exercised a kind of monopoly in the field of Albanian oil concessions, as a result of two conventions (March 12 and July 15) between the Government of Tirana and the Italian state (Dal Praz-De Toni, 1915; Moschetti, 1930; Jacobini, 1939). The turning point that determined Italy's desire to further strengthen its influence over Albania occurred following Austria's annexation by Nazi Germany in 1938. The *Anschluss* was perceived by the Fascist government as a first step toward a possible Nazi conquest of the entire Balkan peninsula. In this perspective, the occupation of Albania was intended to counterbalance any possible German expansionist drive. So too, the small Balkan country was destined to become one of the battlefields with which military justice had to contend.

Institutionally, Italy did not treat Albania as an occupied territory, maintaining the simulacra of autonomous governing bodies in Tirana, with the cooperation of part of the local ruling class (Trani, 2007; Eichberg, 1997). Not bombastic proclamations, not brazen displays of interventionism, but simply the astute policy of Galeazzo Ciano, the Duce's son-in-law, helped to ensure that an obligatory course was taken in order to force King Ahmet Zogu – as in fact happened – to make a useful misstep to justify the invasion of the Duce's troops. The crown of Zog, the Albanian ruler who fled upon the arrival of Italian troops in the early hours of April 7, was offered on April 12 to Victor Emmanuel III, as a symbol of 'personal union', by the self-proclaimed Constituent Assembly, in order to foster through a fictitious parity, the communion between the two countries. The Constituent Assembly declared itself «representative of the Albanian people and interpreter of its will» and, by acclamation, presented the following motion:

1°. The existing regime in Albania is lapsed; the Constitution, an emanation of this regime, is abrogated; 2°. A government is nominated by the Assembly and invested with full powers; 3°. The Assembly declares that all Albanians, mindful and grateful for the reconstructive work given by the Duce and Fascist Italy for the development and prosperity of Albania, resolve to associate more intimately the life and destinies of Albania with those of Italy, establishing with it bonds of ever closer solidarity. Agreements inspired by this solidarity will subsequently be concluded between Italy and Albania; 4°. The National Constituent Assembly,

[2] The *Stahlpakt*, which sealed the alliance between the two countries, was signed a month later, on May 22, 1939.

interpreter of the unanimous will of the Albanian people for national renewal and as a solemn pledge for its realization, decides to offer, in the form of a personal union, the crown of Albania to H. M. Victor Emmanuel III King of Italy and Emperor of Ethiopia, for his Majesty and his Royal Descendants» (Annuario del Regno d'Albania: amministrativo, corporativo, sindacale, agricolo, industriale, commerciale, 1940).

> The Albanian text of the Assembly's resolution was not included in Albanian legislation nor ever officially published, but can be found in the Italian language in *Fletorja Zyrtare,* 1939 (Official Gazette of Kingdom of Albania,1939: 10).

While formally the union between the two countries appeared to be an agreement between sovereign states, since Albania retained formally retained its territory, population and sovereignty, however, its total subordination to Italy emerged from the first moment. The definition of the legal nature of the Italo-Albanian union ignited a wide debate in the scholarship of the time between proponents of the royal nature of the monarchical union, who emphasized the perpetual and stable communality of the sovereign, and the proponents of the personal nature, for whom the communality of the sovereign was characterized as accidental and transitory. The prevailing thesis was that advocated by the Paduan jurist and former parliamentarian Guido Lucatello, who called the Italo-Albanian case not «a union of states, but rather a unitary formation and precisely a state, in which the Italian state organization is the holder of the sovereignty of both the Kingdom of Italy and the Kingdom of Albania», the latter exercising autonomously only the executive power, while the legislative power was in fact exercised by Italian bodies. What Lucatello configured was, in essence, a kind of «decentralized state, constituted of a sovereign entity - the Kingdom of Italy - and of an entity subordinate to it - the Kingdom of Albania [...], which is autarkic and semi-autonomous with respect to the Kingdom of Italy, its sovereign entity [...]», because although it enjoys its own territory and its own people it lacked sovereignty (Lucatello, 1943; Arena, 1939, Bassani, 1939; Rizzo, 1939; Cansacchi, 1940).

On April 13, the Grand Council of Fascism, at an extraordinary meeting in Rome, sanctioned the association of the destinies of the two countries «in a deeper and more definitive union» and promised «order, respect for all religious faiths, civil progress, social justice and, with the defense of the common frontiers, peace» (Ambrosini, 1940; Giannini, 1940). The new institutional framework was made official on June 3, 1939, with the solemn granting to Albania by Victor Emmanuel III of a statute, the contents of which were derived from the merger of the 1848 *Statuto Albertino* with the Albanian equivalent of 1928. While the reference to Salic law regulating succession is inherited from the charter of Carlo Alberto, direct

influence of Zog's statute is found instead in the minute provisions concerning royal prerogatives, as well as in the choice - in art. 4 of the 1939 Statute - not to provide for a religion of State, entirely in keeping with the ever-secular tradition of the emerging Albanian state.

The new constitution "octrayèe", consisting of 54 articles as opposed to the 234 of the previous one, was entirely drafted by Italian jurists, a choice that caused quite a bit of discontent on the other side of the Adriatic. Francesco Jacomoni of San Savino (1965) wrote:

> The adoption of the form of handout of a Statute by the Sovereign was part of the custom of the ruling house, but it was the subject of some discussion by a few Albanian leaders, who would have preferred that the Statute come out of the deliberation of a Constituent Assembly, in keeping with local tradition, as had been the case with the union of the crowns.

The text was drafted not only by the advisor to the lieutenancy, Corradino Berardi, but also by two distinguished university professors: Claudio Baldoni, professor of international law at Bologna (Annuario della Regia Università di Bologna, 1939- 1940), and Tomaso Perassi, jurist, professor and politician (Salerno, 2013).

It reconfirmed the central points expressed by the deliberation of the Albanian Constituent Assembly which, with the decision to offer the crown to the king of Italy, had in fact already outlined both the monarchical-constitutional form and the order of succession to the throne of Albania[3], which was preparing to gradually transform itself into a «geographical constant of Italy». The king, holder of executive power, held the legislative power as well, with the cooperation of the corporatist Fascist High Council, and was head of the judiciary, exercised in his name by magistrates appointed by him. Concretely, after the granting of the statute, Victor Emmanuel III, as King of Albania, directly exercised his royal power only for such minor matters as, for example, the granting of amnesties or the conforming to the Fascist iconography of the coat of arms and seal of the state, as well as the national flag (Trani, 2007). Differently from the Albertine Statute and following the monocratic tradition of the Albanian Parliament already traced by the Statute of Zog, there was no royal-appointed senate. The Fascist Higher Council fully mirrored the Italian *Camera dei Fasci e delle Corporazioni* and its members were chosen by virtue of the hierarchical positions they held in the regime.

[3] Art. 1 «The Albanian state is governed by a constitutional monarchical government. The throne is hereditary according to Salic law in the dynasty of His Majesty Victor Emmanuel III, King of Italy and 'Albania, Imperator of Ethiopia.»

It also gave effect to what was formulated in Article 2 of the Italian law of April 16, 1939 regarding the acceptance of the throne («The King of Italy and Albania, Emperor of Ethiopia, shall be represented in Albania by a Lieutenant General, who shall reside in Tirana»). Even the creation of a body of such primary importance was an expression of a completely Italian decision, as the lieutenancy was established by a special royal law (July 13, 1939, No. 1103), which referred the creation and regulation of its central and peripheral offices to the Minister of Foreign Affairs, without any similar Albanian laws ever being promulgated. The only trace in the Albanian legal system is found in Article 12 of the new Statute. The legal nature of the "Luogotenenza" also aroused great perplexity in scholarship on account of its obvious legal ambiguity, since it was a body belonging both to the Albanian executive power and the Italian executive, dependent on the Ministry of Foreign Affairs. Although, therefore, Jacomoni was politically responsible to the Italian foreign minister, he had total control over Albanian political life, being able, among other functions, to nominate the permanent councilors, appoint and dismiss the Secretary of the PFSH (Albanian Fascist Party), and recognize the membership of two hierarchical bodies of leadership such as the Higher Fascist Corporative Council and the Central Council of the Corporative Economy (Villari, 2010).

The possibility of offering the crown of Albania to Galeazzo Ciano was initially envisaged. But it was subsequently decided to opt for the form of a lieutenancy, and the choice fell on Francesco Jacomoni di San Savino, who was well acquainted with the Albanian environment having worked there, in 1926, as first secretary at the Italian Legation in Tirana and, in 1936, as minister plenipotentiary. In March 1943, Jacomoni was replaced by General Alberto Pariani, also a profound connoisseur of Albania where he had previously been posted, from 1927 to 1933, as military attaché and head of the Italian military mission set up for the reorganization of the Albanian Army and the establishment of the ENGA (National Albanian Youth Authority). This resulted in the appointment of Francesco Jacomoni di San Savino, former Minister of Italy in Tirana, as lieutenant general for the exercise of royal powers in Albania. At the same time, the management of diplomatic relations between the two countries was unified and centralized at the Italian Foreign Ministry headed by Galeazzo Ciano. This was a further step toward the elimination of Albanian autonomy: on June 3, 1939, the management of international affairs for the two countries was unified in the Italian Ministry of Foreign Affairs, resulting in the abolition of the Albanian Ministry of Foreign Affairs (Decreto Luogotenenziale 18 settembre 1939-XVII, n. 94 [«Fletorja Zyrtare», 86 (25 settembre 1939-XVII)], Raccolta di provvedimenti di carattere legislativo riguardanti l'Albania, a cura di R. Bertuccioli, Roma 1941). A State Undersecretariat (SSAA) for 'Albanian affairs' was established within this ministry and entrusted to Zenone Benini, former president of the Italian Steel Corporation and, in fact, Ciano's right-hand man.

The Royal Decree No. 624 of April 18, 1939, establishing the SSAA, which was headquartered in Rome, did not see the participation, during its drafting, of any member of the Albanian government and was not included in local legislation. Benini was responsible for Albania's foreign relations, but also for directing and coordinating the work of the Lieutenant Governor. Despite its fundamental liaison role, this body was dissolved in August 1941 by Royal Decree No. 1048, and its political functions were reabsorbed into the powers of the General Lieutenancy and into those of the Italian Ministry of Foreign Affairs. The institution had a temporary character, in that it was to be replaced by the Italian-Albanian General Body, which, in fact, remained a dead letter. It was again an ambiguous choice, as it evoked to the Albanians the Undersecretariat of the Italian Ministry of Africa: The Italian government guided policy in Tirana through Jacomoni, who was directly accountable to the foreign minister. The complexity and intensity of the relations that were established and welded between Italy and Albania during the years of their Union is evidenced by the richness of the political, diplomatic, judicial and military documentation preserved in the archival fonds of both countries, of which these notes intend to offer a first account, with regard to the fonds in the State Archives Directorate of Tirana.

Military war courts in Albania (1939-1943): structure, trials, proceedings

Once the institutional architecture that was to rule the country according to Rome's wishes had been built, Italy began the process of integrating Albania into the Empire, an integration that could not fail to also run the path of military homologation. The Italian presence in the Albanian military hierarchies was characterized even earlier by progressive control, including through the creation of fascist youth associations - led by General Alberto Pariani - that promoted the teaching of Italian, and the creation of paramilitary groups that would be used during the occupation. The publication of the manual *Lezioni di codice penale per i corsi dei sottufficiali e appuntati albanesi*, Firenze 1939 shoud be read along the same lines. The first act was precisely the merger of the Albanian armed forces with those of Italy, sanctioned by Law 13 July 1939, no. 1115 and which had an eminently propagandistic character. The merger of the armed forces of the two countries and the rules for its implementation, issued by Royal Decree No. 144 of Feb. 22, 1940, resulted in the incorporation of Albanian officers and non-commissioned officers into the institutions and roles of the Italian armed forces (Crociani, 2001). On July 22, pending the definition of the functions of the military command that was to manage also the other armed forces of the 'occupied' country, the *Comando*

superiore truppe Albania was established in Tirana, a provisional body that was to be suppressed on December 1, 1939. There remained, on Albanian territory, only *Comando Corpo d'Armata d'Albania*, which took the name *Comando XXVI Corpo d'armata* (Pirrone, 1979). Substantial changes began to materialize in September 1940, in view of the opening of the Balkan front. The start of hostilities with Greece (Montanari, 1980; Cervi, 1969; Iuso, 2008; Dini 2016), in implementation of the so-called 'Emergency G' plan, determined from October 1940 the second phase of the Albanian occupation, which necessarily required a rearrangement of commands: *Comando Gruppo di armate in Albania* - named a few months later *Comando superiore forze armate Albania* - to which answered the 9A Army, made up of elements of the Po Army, and the 11A, which operated on the border with Greece and, at the end of the conflict, occupied its territories. When Italy declared war and attacked Greece on October 28, 1940, the Italian military presence on the Greek-Albanian border saw a total of about 150,000 men, in eight divisions, under the command of General Sebastiano Visconti Prasca.

Law No. 863 of June 14, 1940, four days after Italy's entry into the war, concluded the process of conforming the Albanian military judicial system to that of Italy. A territorial military court, based in Tirana, was added to the three new territorial military courts in Milan, Verona, and Cagliari, while the Bologna Military Court Section based in Verona was abolished. As had been the case in Libya (Del Boca, 1996; Labanca, 2007), this tribunal was also structured with criteria of stability, to administer the military justice machine over a long period of time and not in an emergency perspective. Destined to replace the Special Military Tribunal of 1925, based in Shkodra, this new judiciary body was competent to hear: «a) crimes provided for by military criminal law, committed in Albanian territory by members of the Armed Forces of the State, deployed there, except those within the jurisdiction of war councils or summary navy councils; b) any crime provided for by Italian or Albanian criminal law committed in the territory of Albania by the persons indicated in the preceding letter» («Gazzetta Ufficiale», n.169, 20 luglio 1940).

In the latter case, if the offense was punishable by both Italian and Albanian law, Italian law prevailed, meanwhile, in case of concurrence in the same offense of military and civilian elements, the jurisdiction belonged to the Military Court.

The composition included a president with the rank of brigadier general, two judge rapporteurs, fifteen judges, officers of the State Armed Forces, including at least four senior officers and the remaining captains. The chairman and judges were identified from among the officers of the Armed Forces serving in the territory and on stationary ships of Albania and appointed yearly from October 28. The panel of judges consisted of a chairman, a judge rapporteur designated by him, and three judge officers, one of whom was at least a senior officer, designated by

the chairman from among the fifteen stationed at the Tribunal (Art. 6). The judge officers of the Royal Army had to belong to the combatant arms and at least two to the same military corps as that of the accused (art. 7). If there were several defendants from different Armed Forces, the corps to which the highest-ranking defendant belonged to or, in case of parity, that of the majority of the defendants was preferred. If the trial was against military personnel of Albanian nationality, at least one of the judges of the Military Court of Albania had to be Albanian. An exception was when a person of Italian nationality was also a defendant (Art. 8).

> Under this military jurisdiction were troop soldiers, non-commissioned officers, and members of the prison guard corps, while officers of both nationalities were to be subject to the judgment of a *collegium* composed of higher-ranking military personnel.

Composition of the College in relation to the rank of the accused. In judgments against officers, the president shall be superior to the accused by at least two ranks; the judges by at least one rank. If the members of the Tribunal do not include officers of the ranks required by the preceding paragraph, provision shall be made by drawing lots from among the officers of the Armed Forces of the State residing in the place where the Tribunal has its seat and, failing that, throughout the territory of Albania, subject, in any case, to the provisions of Articles 7 and 8. The draw shall be held at the superior command of the troops of Albania, in the presence of a representative of the prosecutor and the chief of the General Staff. An officer of the command shall draw up the minutes. Since defendants of different ranks are to be tried, the Tribunal shall be formed in relation to the highest-ranking defendant (art. 9)

If the accused was ordered to be recalled for trial, the superior commander of the military force to which he belongs, deployed in Albania, could request the transfer of the trial to Italy. The Supreme Military Court would decide in chambers, by unreasoned judgment (Art. 10). Unless the law provided otherwise, the provisions in force for the territorial military courts of the Kingdom of Italy applied to the organization and procedure of the Territorial Military Tribunal of Albania (Art. 15). These dated back to the Military Penal Code for the Army of 1869, which, in many respects, had inevitably aged (By Royal Decree No. 5378 of Nov. 28, 1869, and Royal Decree No. 5366 of Nov. 28, 1869), the Military Penal Codes for the Army and Navy were approved, and amended by later regulations (Royal Decree No. 22 die. 1872, n. 1210, r.d. Oct. 19, 1923, no. 2316, r.d. 30 die. 1923, no. 2903 and decree of the same date no. 2948, r.d. Jan. 26, 1931, No. 122, r.d. Sept. 9, 1941, No. 1022).

The military courts retained that name until 1941, when, by Report and Royal Decree No. 1022 of September 9, 1941 on the Military Judiciary, territorial military courts were established at the Army Corps Commands or at the corresponding Commands of the remaining State armed forces. Military justice, following the adoption of the C.P.M.G., was articulated as follows: 1. Territorial Military War Tribunals (art. 252 C.P.M.G.); 2. Military Navy Courts of War (art. 286 C.P.M.G.); 3. Army Military Courts of War; 4 Army Corps Military War Tribunals; 5. Military Courts of War of Stronghold (art. 251 C.P.M.G.). Article 283 C.P.M.G. regulated the infamous Extraordinary Military War Tribunals, which were competent to hear crimes for which the law established the death penalty, when the accused had been arrested *in flagrante delicto* and the commander of the Department where the events took place deemed it necessary to summon him «on account of the necessity of an immediate trial, for the purpose of exemplarity». Such tribunals could not be convened in places where military war tribunals operated, and their judgments were not appealable. But already by October 22 of the preceding year, in correspondence with the opening of hostilities with Greece, the transformation of military courts into military war courts had taken place, as well as the change of territorial constituencies to suit the occupation. As a result, the Military War Tribunal of the 9th Army had been established, as well as the Military War Tribunal of Albania, Rhodes, Greek Armed Forces, later to become the Military War Tribunal of the 11th Army. Both were engaged as a matter of priority in the combat phases and thus had to deal with problems more specifically related to actual war actions (e.g. straggling and desertion in the presence of the enemy). The trial files of the Military War Tribunal of the 11th Army are kept not only in the respective Central State Archives in Rome and Tirana, but also in the Archives of the Historical Office of the Army General Staff (henceforth AUSSME) (Giustizia militare Sentenze 1901-1946, b. 1: 2).

From the archival documentation found so far – awaiting further and more specific investigations - it is possible to infer that precisely the Military Tribunal of the Unified Albanian Armed Forces was destined to be converted in the last months of 1942 into a Special State Tribunal - headquartered in the capital - competent to hear «a) crimes provided for by Decree Law No. 204 of December 31, 1939, converted into Law No. 12 October 1940. 475, committed by outsiders against the Armed Forces; b) other crimes committed by outsiders against the Armed Forces devolved to its specific jurisdiction» (*Arkivi Qendror i Shtetit (AQSH), Ministria e Drejtesise*, [1940], Dosje III-1133). It was given full jurisdiction over political crimes and over those against state security, operating according to wartime criminal procedure, with an inquisitorial process and fewer defensive guarantees: a secret pre-trial phase without attorney support, a pre-trial phase with possible 'secrecy' of court documents, the exclusion of the possibility of bail and means of appeal

with the exception of review. But the real novelty was the provision of privileged access to the ranks for members of the judiciary and law graduates, an aspect that contributed to marking the traits of technical and professional preparation with which the Italian government intended to characterize the emerging Albanian judicial institutions.

Military, civilians, partisans before the Albanian War Courts

Military wartime jurisdiction was governed from the outset of the conflict by the Duce's proclamation of 20 June 1940 concerning the order and procedure of military war tribunals, as well as the subsequent proclamation of 24 July 1940. The aforementioned normative acts assigned to the military courts the cognizance of military offenses committed by anyone in the territories in a state of war or considered as such and that of military offenses committed by anyone and anywhere if they compromised war operations. Under that jurisdiction fell not only the Italian and enemy military personnel, but also Italian civilians and those in occupied territories. German soldiers were excluded from the jurisdiction of Italian military tribunals, for the duration of the 1940-1943 war, by virtue of timely bilateral agreements that respected the principle of 'flag jurisdiction', which is now to be considered acquired in customary international law (Dini, 2016).

The applied legislation operated on a dual track: one criminal-civilian, the other criminal-military. As for the former, it continued the era of the Zogu Penal Code of 1928 - built entirely on the Zanardelli Code (Hoxha, 2012). While the Rocco Code of 1930 was not introduced in the Balkan country - four years of occupation were judged insufficient for such a decision – Italy made a different choice for the Military Penal Codes of War (henceforth C.P.M.G.) and Peace (C.P.M.P.) which came into force on 1 October 1941 and consisted of 300 and 433 articles respectively. They were extended to Albania from December of that year and meant to remain in force there until 1943. Although Albania had been endowed since 1932 with a military criminal code based on the Italian model, there is no doubt that the forced extension of the new military penal codes of peace and war was best suited to the aforementioned criticalities associated with warfare. The peacetime military criminal code - shaped on the Italian model - came into force on 19 June 1932 and consisted of two books. The first contained the general principles and institutions of military criminal law, while the second book provided for the different types of crimes, such as high treason, espionage, disclosure of military secret, disobedience to a superior order and other military offenses. The second part of the second book governed military criminal procedure, consisting of three titles, respectively devoted to the constitution of military courts and their composition, military

jurisdiction and competence, and, finally, military procedural law (Leskoviku, 2007).

Alongside these codes operated an emergency and extraordinary regulatory set, falling under military law of war, based mostly on decrees signed by Lieutenant Francesco Jacomoni (Latini, 2010). Already in December 1939 the Royal Decree No. 288 «On Crimes against the Personhood of the State», published in the Official Gazette No. 14 of January 29, 1940, was issued, under which all crimes it provided for were to be tried by the military courts of the armed forces. Articles 40-43 imposed the death penalty against those who had made an attempt on the life, integrity or personal liberty of the King, the Duce and the Lieutenant General. Law No. 1774 of Nov. 28, 1940, «On the punitive system for military offenses committed by taking advantage of the state of war» - enacted by Royal Decree No. 41 of Feb. 10, 1941 - is imbued with the same normative logic, exacerbating the already heavy penalties (Elezi, 1998; Elezi, 2009). Both were characterized by the severity of punishments, acting as the regime's extreme bulwark against subversive patriotic movements and episodes of dissidence.

The military penal legislation was considered among the most advanced of the time. The CPMG provided, unlike the former Army Penal Code, an entire title devoted to «offenses against the laws and customs of war,» which, in application of the 1908 Hague Conventions on Land Warfare, aimed to protect vulnerable subjects of wars (wounded, prisoners, civilians) from the abuses of belligerents. It was gradually also supplemented by additional regulatory measures adopted in the form of military proclamations to meet the contingent and unforeseen needs of the conflict (Manassero, 1916; Venditti, 1985; Brunelli-Mazzi, 2002). Articles 17-20 of the C.P.M.G. and the so-called 'law of war' gave the power of *bando*, i.e. that of emitting executive legal commands, to the supreme commander, as well as to commanders of large units and commanders of Italian forces occupying foreign territories [Royal Decree No. 1415, July 8, 1938 (Approval of the texts of the Law of War and the Law of Neutrality) published in OJ No. 211, Sept. 15, 1938, and entered into force Sept. 30, where the rules to be followed in the event of armed conflict and the regulation of relations with enemy states, belligerent or neutral are precisely defined]. Italian commands made extensive use of such powers in Albania, with respect to both the military and the civilian population. For example, General Mario Robotti, commander of the 11th Army Corps, ordered the summary execution by firing squad, with the order of May 16, 1942, of «valid males found during combat actions in open country from the front to the line of artillery deployment», as they were to be considered «as rebels or their accomplices». To the same fate were also destined «those found in isolated dwellings, groups of houses or settlements who are not locals» (Conti, 2014).

All Albanian Military War Courts had to deal with the emergence of partisan actions and attitudes that, while they may not have resulted directly in violent actions, were rooted in a widespread feeling of hostility toward the occupier. Those who took part in partisan dissidence represented a *tertium genus*, as they could not be considered military – and afforded the protection of 'legitimate belligerents' - nor civilians, i.e., strangers to the fighting and as such protected from the often-arbitrary violence of troops (Ago, 1953). They were among those who «commit[ted] crimes to the detriment of the Italian Armed Forces or individuals belonging to them, or who [held] other conduct contrary to the orders issued by the occupying military authority». Following the partisan insurrectionary uprisings - predominantly of communist conviction - there was a resurgence of sanctions, which imposed on troops the harshest reaction in the event of armed attack up to the destruction of entire villages. The repression of partisan actions was one of the major engagements of the Military Tribunals: it spared no pains to use death penalties to weaken the poorly organized Albanian resistance, which took a variety of forms: from attacks on patrols of soldiers, to sabotage of telephone lines and military depots, to espionage or defeatist attitudes. For example, General Giuseppe Pafundi, complained - in a note dated 3 July 1941 - that in the face of gunfire by a group of young men who were later arrested, there had been the lack of «that immediate and violent reaction which I have repeatedly prescribed and which is imposed in such cases [...]». He further added that « the fact that there were only arrests indicates that the use of firearms was belated, or shots were fired without attempting to land them, which is deplorable» (AUSSME, L-15 [Comando superiore FF.AA. Albania], b. 18). Also calling for a massive use of weapons was the superior commander General Carlo Geloso, who, in a directive of 1941, extended the legitimacy of armed reaction to cases of vilification of the Armed Forces, the Italian flag or Italian posters (Conti, 2014). In these years many trials were brought against Albanian civilians for conduct of minor dangerousness, such as violating the curfew or stealing Italian military materials. The mere possession of firearms, although unrelated to armed struggle, was in itself sufficient to issue death sentences without the defendants being found responsible for any fighting.

The constant use of summary sentences and hasty judgments responded to directives mandating speed in military justice. Summary shootings of rebels or suspected rebels, public executions, round-ups, and bloody repressions became recurrent practices. A proclamation was adopted on 24 April, which allowed the authorities to exercise hostage reprisals whenever crimes occurred for which the alleged perpetrators had not been arrested. Among the most tragic operations was the one of July 1943 near Mallakastra, in which hundreds of civilians were massacred and which gave rise to charges against high-ranking Italian military personnel and politicians (Archivio della Fondazione dell'Istituto di Storia dell'Età

contemporanea, Fondo Gasparotto: 38). This crackdown was not unrelated with the assassination attempt on Victor Emmanuel III in Tirana on 17 May 1941 by the young Albanian worker Vasil Laci, destined to become a national hero in the decades following World War II. The dossier of the related trial is kept at the State Archives of Albania in Tirana. It was held in a single and, moreover, expeditious hearing on 26 May of the same year. In particular, Laci was charged with «a) attempted premeditated murder of a member of Parliament and Public Official on account of his duties (Articles 403, 404 no. 2 and 405 no. 2 in connection with Art. 62 Alb. Penal Code; b) the crime referred to in Article 36 of Legislative decree 31.12.1939 XVIII no. 228, because on May 17, 1941 shortly before 2 p.m., in Tirana, by firing five shots from a pistol, obtained a few days earlier to carry out such an act, he made an attempt on the life of His Excellency Shefqet Verlaci, Senator of the Kingdom of Italy and member of the Albanian Fascist Corporative Chamber, on account of his duties as President of the Council of Ministers of the Kingdom of Albania, not achieving his objective due to circumstances beyond his control; but thereby consciously endangering the personal safety of the Majesty of King Emperor Vittorio Emanuele III, alongside whom Excellency Verlaci sat in the royal car at that moment; c) unlawful possession of weapons (art. 1 of the order of the Superior Commander FF.AA. Albania Jan. 24, 1941 No. 25, in connection with Art. 1 of the order of the Superior Commander Troops Albania Oct. 28, 1940 No. 3) because he came into possession of the pistol a few days earlier, he still kept it with him on May 17, 1941 in Tirana, without permission of any kind; d) unlawful carrying of a weapon (Art. 515 No. 1 Alb. Penal Code) for carrying the pistol in the aforementioned circumstances of time and place outside his home» (AQSH, Ministria e Drejtesise, [1941], Dosje 60). The judging panel, composed only of Italian nationals, was chaired by General Ferruccio Paganuzzi, president of the Unified Armed Forces Court of Albania in 1940-1942 and then charged with war crimes by the Albanian government in 1945 (AUSSME, N 1-11 [Com missione d'inchiesta per i criminali di guerra italiani secondo alcuni Stati esteri (Gasparotto: 164)] The only Albanian citizen present was sat next to the attacker, namely his public defender, Captain Pjeter Basha: a striking violation of Article 8 of Law No. 863 of June 14, 1940, which requires the presence of at least one Albanian officer, if the accused party was an Albanian national.

The prosecution was entrusted to Major General Umberto Meranghini, Head of the Prosecutor General's Office, a military magistrate, competent and experienced career academic, who shrewdly argued that the target of the attack was not the king of Italy but the Albanian prime minister Shefqet Verlaci (a member of the Italian senate), thereby blandishing the patriotic love of Albanians sympathetic to the regime. Meranghini further emphasized that the offender was indeed an Albanian citizen, but of Greek nationality who «harbored hatred and resentment

against the Albanian government because in May of last year the same had rejected his repeated requests for aid and for the publication of his poems against the past King Zog and the men of his kingdom as well as one extolling the Duce of Fascism». Born in Rome to a wealthy family, Maranghini graduated in law in Urbino (1910) and immediately embarked on a military career. He participated in the Italian-Turkish war campaign (1911-1912) and during World War I held the post of Deputy Secretary of Military Justice in Verona, Udine, and Parma. From 1940 to 1943 he was in Tirana as Advocate and Head of the General Prosecution Office of the Territorial Military War Tribunal in Tirana (later Military Tribunal for the Unified Armed Forces in Albania). Between the wars he devoted himself to teaching, taking up the chair of Military Criminal Law at the University of Trieste (1931-34). His interest in jurisprudence continued long after his early retirement from the military (1945). However, Vasil Laci's fate was sealed. Sentenced to capital punishment, he was hanged - as stipulated in Article 12 of the Albanian Criminal Code after the 1940 reform - in the early hours of 27 May 1941. Article 12 of the Penal Code was amended by Law No. 358 of July 12, 1940, and provided as follows: «the death penalty shall be carried out by hanging in the place designated by the Minister of the Interior without the presence of the public unless the same Minister orders that the execution be public. If the execution is to be carried out against a woman who is pregnant or has given birth less than two months ago, the execution shall be deferred until the woman has given birth or miscarried and the said period has elapsed. If the persons sentenced to the death penalty are more than one, the execution shall be carried out in such a way that one does not see the execution of the other. The execution of death sentences shall take place on the day and time determined by the Minister of the Interior after the sentence has become irrevocable and the possible application for pardon has been provided for. For this purpose, the prosecutor shall urgently provide to the Ministry of the Interior a copy of the judgment and the order rejecting the application for pardon or a statement that no application for pardon has been made» (AQSH, Ministria e Drejtësisë, [1942], Dosje III-1216).

Judgments against Albanian partisans or civilians, even for violations of undoubtedly minor importance, do not exhaust the typology of military tribunal pronouncements, because numerous are the trials for «treason» or for «desertion with passage to the enemy» against Albanian soldiers enlisted in the Italian army, which were followed by multiple death sentences that, being against fugitives, remained largely on paper. The statistical data offered by Sergio Dini is also of interest: he noted that «for the period October 1940-April 1941 alone, as many as 3116 Albanian soldiers were reported for desertion compared to only 201 Italian soldiers» (Dini, 2016). Careful investigations were made regarding the problem of Albanian desertion, so much so that the military prosecutor general, Umberto

Meranghini commissioned the jurist Anselmo Crisafulli and the anthropologist Benigno di Tullio -«both officers at the Military War tribunal of Tirana» - to carry out in-depth investigations «into the particular military psychology of the Albanian people» in order to «better orient the conscience of the judges of the war court on how to consider the military crimes that had been committed in Albania» (Jacomoni, 1965). In the resulting printed report – *Aspetti della criminalità militare nel settore Albanese* - the two intellectuals believed that the phenomenon of desertions of Albanian soldiers had been caused «either by the pain and anger of being disarmed or by the desire to go and fight in the area closest to one's home» (Crisafulli, Di Tullio; 1942). There could be no other explanation according to Crisafulli and Di Tullio, because of the well-known «attachment that Albanians have for arms in general, to which is especially entrusted the defense of that particular feeling of honor whose influence in their intimate and social activity is absolutely preeminent». In conclusion, from the analysis of the evolution of military justice in Albania during the fascist regime, it is clear that the Albanian military courts share a crucial peculiarity with some other military courts of World War II: born as ordinary territorial courts, they would later become war courts, operating before and after the Italian code amendment of 1941. They represented a perfect venue for answering to some of the questions investigated by recent legal historiography: how were the new 1941 military penal codes applied outside Italy? And again, how wartime justice operated in an occupied territory?

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