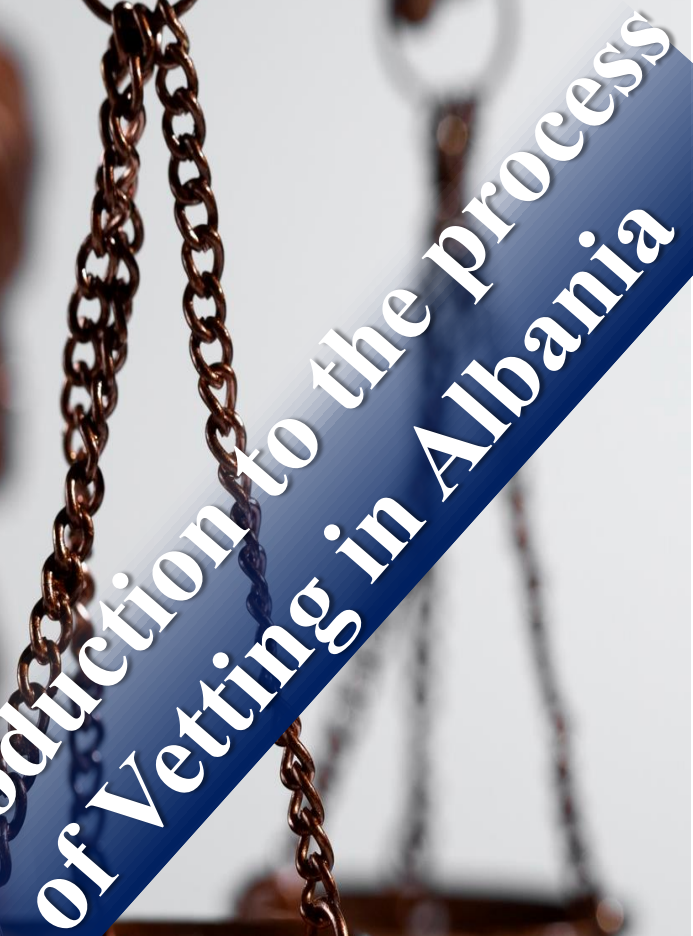


**“LEGAL AND PRACTICAL DIMENSIONS OF THE
RE-EVALUATION PROCEDURE FOR JUDGES
AND PROSECUTORS IN ALBANIA
FROM AN ANALYTICAL PERSPECTIVE”**



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Introduction to the process of Vetting in Albania

- The EU recently recognized the implementation of appropriate anti-corruption strategies by nations undergoing accession processes to the European Union as a specific prerequisite. In the case of Albania, it has constituted one of the five principal priority domains since 2016.
- In the same year, the European Commission underscored that the pervasive corruption in Albania was significantly attributable to the corruption within the judiciary itself (based on Transparency International Reports), which has been characterized as a “*sector afflicted by a high incidence of corruption and substantial politicization.*”
- Consequently, in conjunction with the various anti-corruption initiatives undertaken by the Albanian Government, it is precisely through the newly instituted Vetting process for the justice system that more severe measures have been enacted.

➤ **WHY VETTING IN THE JUSTICE SYSTEM?**

- 1) High level of corruption in Albania;
- 2) Low level of quality of work in the Justice System;
- 3) Dysfunction of existing control mechanisms of judges and prosecutors.

➤ **EVOLUTION OF THE VETTING DRAFT LAW.**

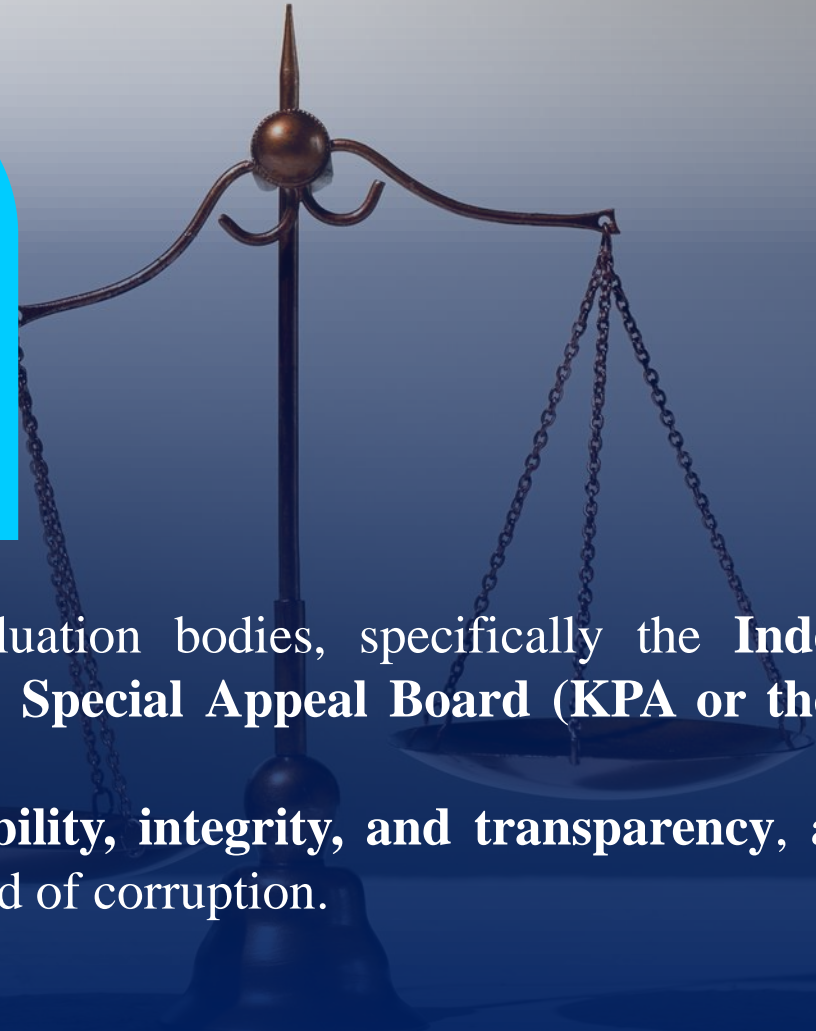
- The Vetting draft law has undergone an extensive process of consultation and deliberation.
- The establishment of a re-evaluation system for judges and prosecutors was implemented to ensure the effective operation of the rule of law, uphold the independence of the judiciary, and restore public confidence in the institutions associated with this system.
- The Venice Commission has indicated that Albania is encountering an exceptional circumstance, which has resulted in legislation of a distinct character that should be addressed accordingly.
- The Albanian Constitution has undergone amendments, thus rendering the Vetting draft law compliant with its provisions.
- One of the key requirements that Albania must meet to join the EU, as recommended by international stakeholders including the United States and the European Union, is the re-assessment of judges and prosecutors, commonly referred to as the vetting process.
- The vetting process cannot serve as a definitive solution to eliminate corruption from the justice system; however, it represents a significant and unprecedented advancement in the historical context of Albania and potentially all neighboring countries to define a trustful justice.

VETTING AS PART OF THE JUSTICE REFORM

A primary aim of this reform initiative is to enhance integrity and accountability within the public sector, thereby reinstating confidence in national institutions and governmental bodies. This endeavor is especially pertinent to segments of the public sector that are more susceptible to human rights infringements, including the police, correctional facilities, the military, and notably, the judiciary.

The Constitution and the Vetting Law have instituted re-evaluation bodies, specifically the **Independent Qualification Commission (KPK or the Commission)** and the **Special Appeal Board (KPA or the Appeal Board)**.

These entities operate under the guiding principles of **accountability, integrity, and transparency**, aiming to foster an independent and professional judicial system that is devoid of corruption.



Highlights on the Status of the Vetting bodies:

- ❖ Members of the Commission and Public Commissioners enjoy the status of a member of the Supreme Court in Albania.
- ❖ Judges of the Appeals College enjoy the status of judges of the Constitutional Court in Albania.

The legislation confers the authority of a conclusive ruling to the determinations made by the Appellate Board, which become effective immediately and transform into an enforceable title.

The sole avenue for contesting this decision, as established by the Vetting law and the Constitution, pertains to the ability of individuals to submit their claims to the **European Court of Human Rights**.

- The proposed Constitutional amendments seek to actualize justice reform, thereby enhancing the efficacy of the institutions responsible for administering or facilitating justice.’
- The process of vetting was established with the constitutional aim of reinstating public trust in the judicial system by purging corrupt officials from the ranks of the justice system.
- The hearings are conducted in a public forum, and the institutions ensure that the public is kept apprised of the rationale underlying the vetting decisions.

❖ The assessment procedure for the subjects undergoing re-evaluation is conducted by the Commission, the Appeals College, public commissioners, and in collaboration with international observers.

❖ The re-evaluation process is carried out based on 3 criteria:

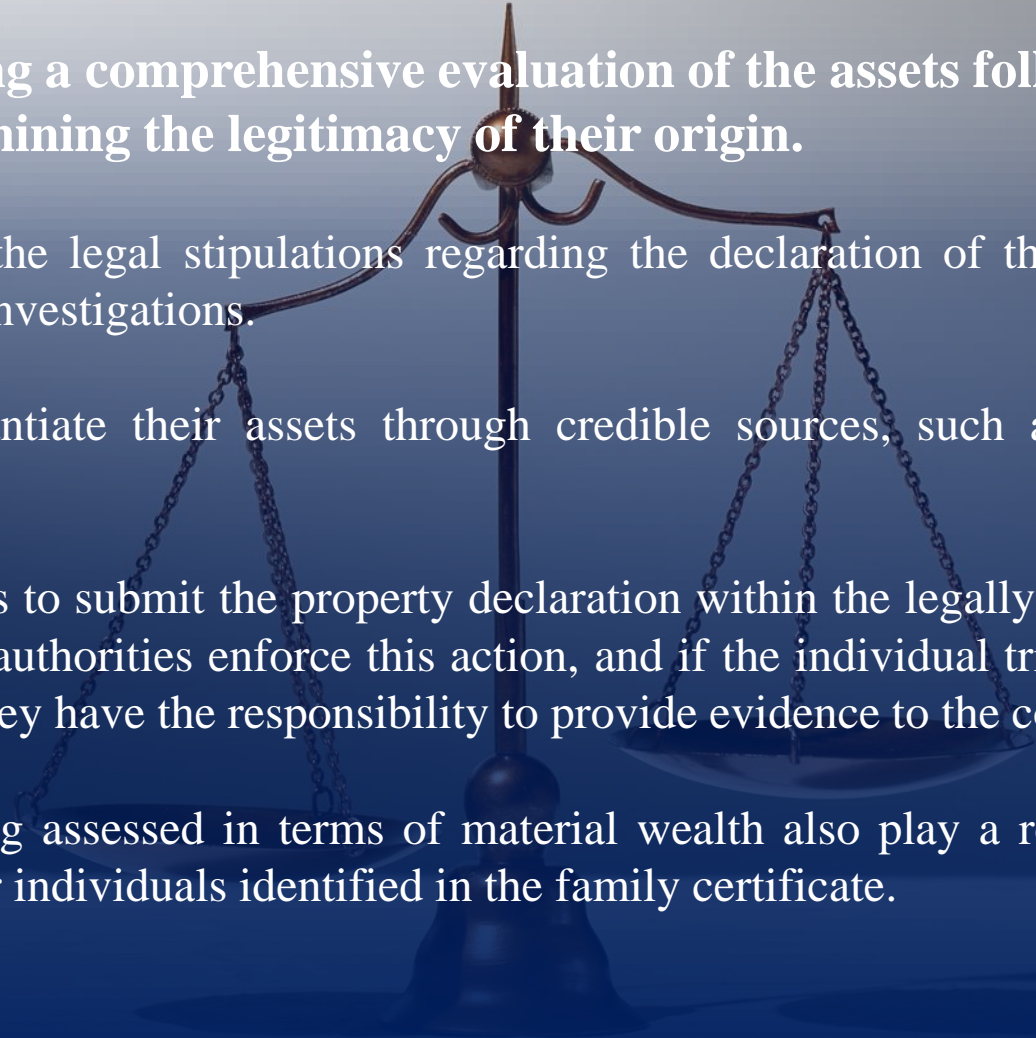
a) property assessment; b) evaluation of the image; c) assessment of professional ability.



THE FIRST VETTING CRITERION: ASSESSMENT OF PROPERTY AND ASSETS

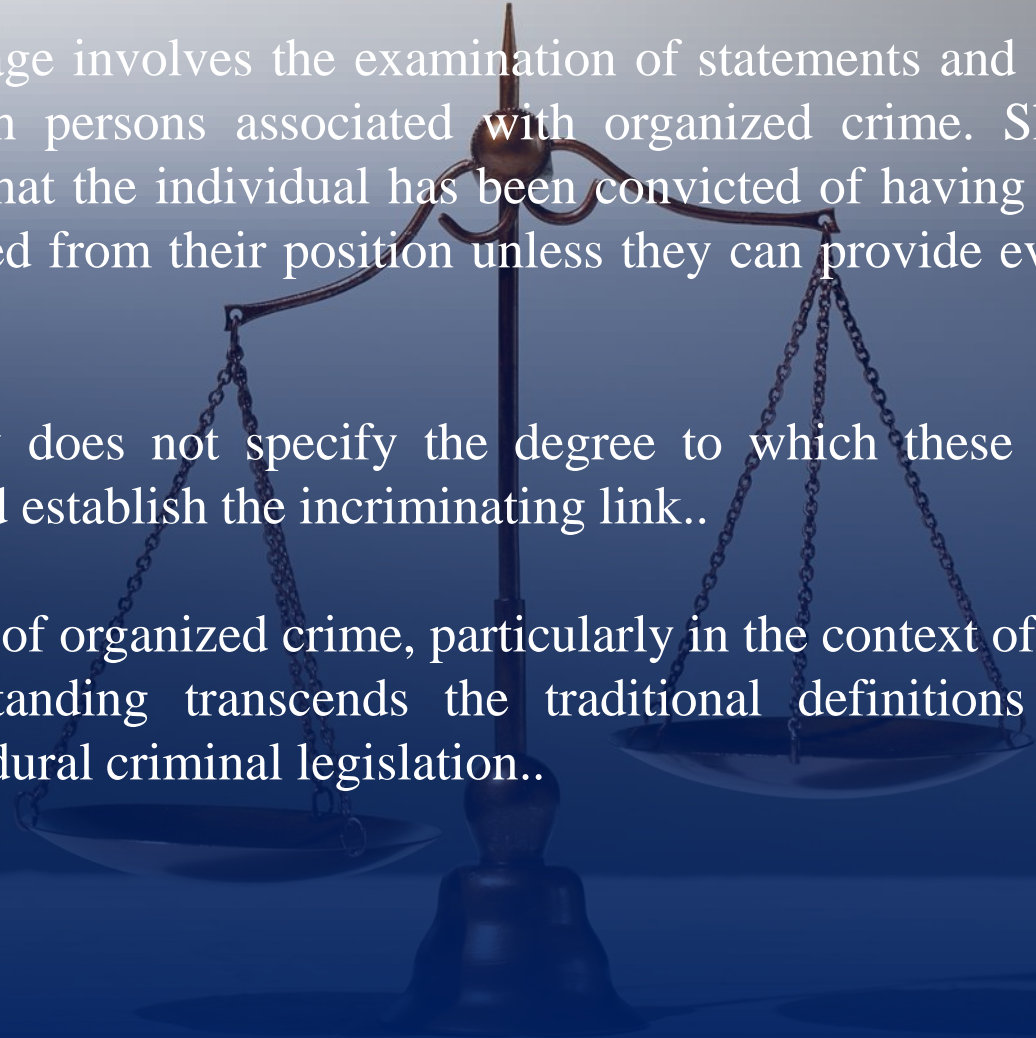
The criterion for asset assessment involves conducting a comprehensive evaluation of the assets following a declaration, with the aim of determining the legitimacy of their origin.

- All judges, prosecutors, and legal advisors comply with the legal stipulations regarding the declaration of their assets, thereby enabling institutions to perform asset and property investigations.
- Individuals undergoing evaluation are required to substantiate their assets through credible sources, such as income statements and tax returns.
- In the event that the individual undergoing revaluation fails to submit the property declaration within the legally stipulated timeframe, they shall be removed from their position. The authorities enforce this action, and if the individual tries to hide or misrepresent their owned, possessed, or utilized assets, they have the responsibility to provide evidence to the contrary..
- Those associated with the subject of revaluation and being assessed in terms of material wealth also play a role in this evaluation. This includes the spouse, children, and any other individuals identified in the family certificate.



THE SECOND VETTING CRITERION: ASSESSMENT OF IMAGE

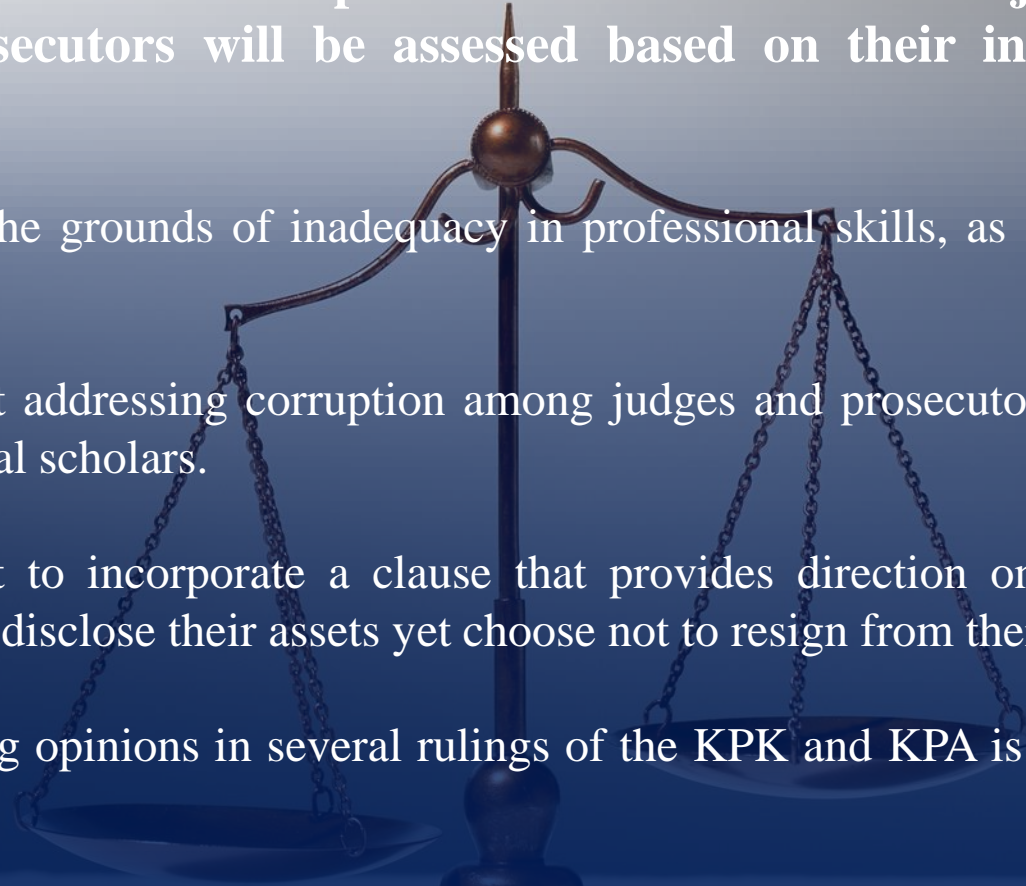
- The assessment of the re-evaluated individual's image involves the examination of statements and additional information intended to uncover connections with persons associated with organized crime. Should the evaluation, following this examination, determine that the individual has been convicted of having definitive ties to organized crime figures, they will be removed from their position unless they can provide evidence to the contrary.
- Assessing the situation is challenging, as the law does not specify the degree to which these facts (the photographs related to the case) will substantiate and establish the incriminating link..
- The vetting law reveals an expansion of the concept of organized crime, particularly in the context of assessing judges and prosecutors. This broadened understanding transcends the traditional definitions typically recognized and evaluated within criminal and procedural criminal legislation..



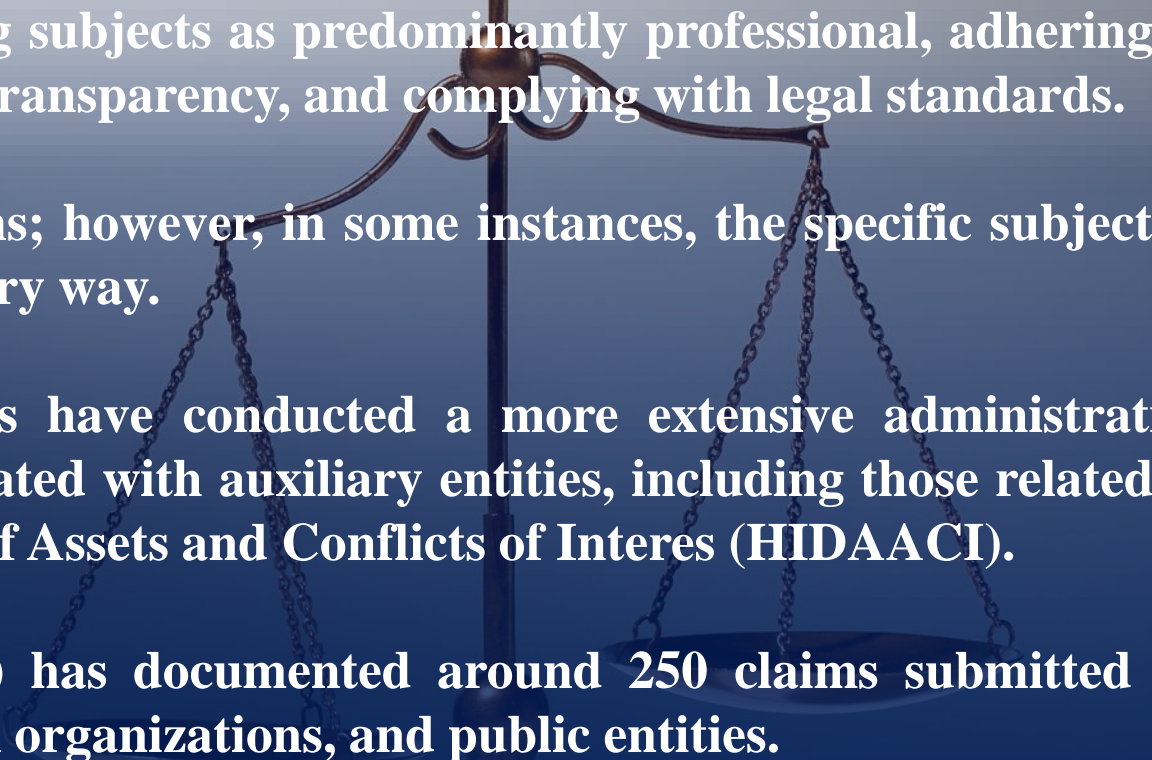
THE THIRD VETTING CRITERION: THE ASSESSMENT OF PROFESSIONAL ABILITIES

The assessment of aptitude provides a framework for ethical and professional assessment. For judges, the focus regards their evaluative skills, whereas prosecutors will be assessed based on their investigative capabilities..

- To date, no individual has been explicitly dismissed on the grounds of inadequacy in professional skills, as stipulated in Article 61, Section 4 of Law No. 84/2016.
- The vetting law, despite its stringent appearance aimed at addressing corruption among judges and prosecutors, reveals a significant gap, according to the research conducted by legal scholars.
- The legislative framework for the vetting process ought to incorporate a clause that provides direction on addressing situations involving judges and prosecutors who decline to disclose their assets yet choose not to resign from their positions.
- The presence of commissioners with minority or dissenting opinions in several rulings of the KPK and KPA is viewed as a positive aspect.
- The Vetting Declaration, along with the information it encompasses, serves as the foundational legal document from which the responsibilities of the subject regarding disciplinary infractions are established, as stipulated by the Albanian Constitution.



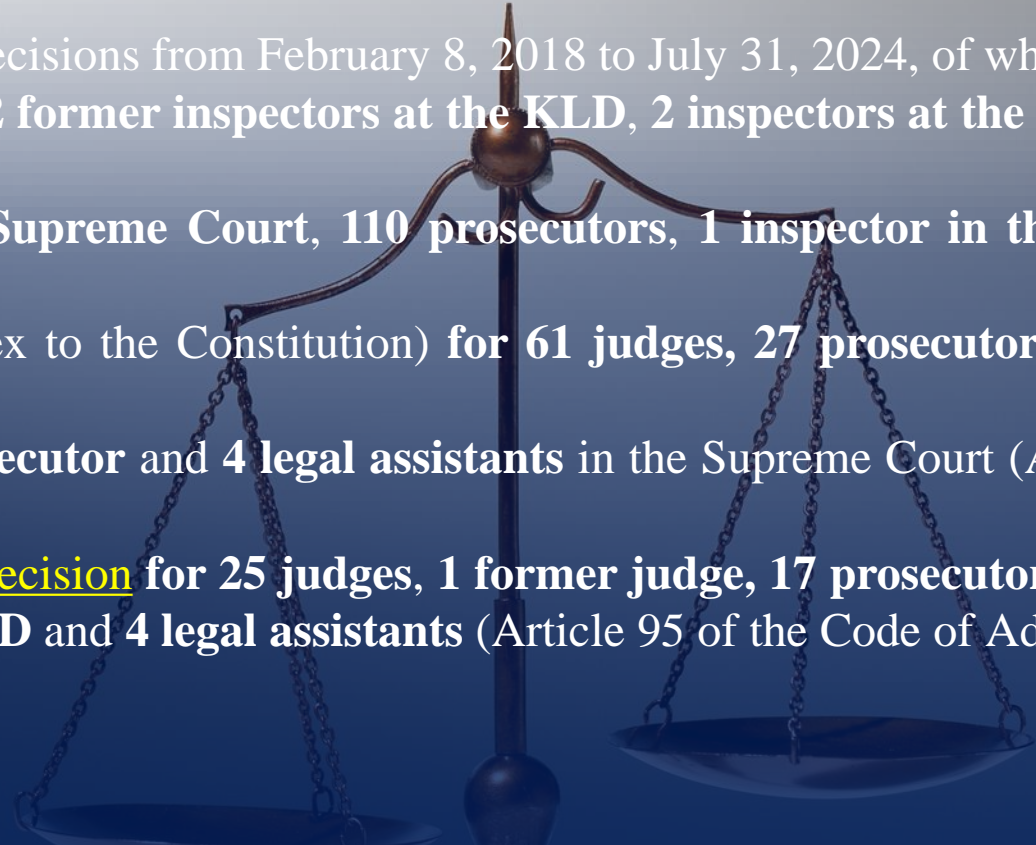
PERFORMANCE AND REAL EFFECTS OF THE VETTING PROCESS

- Observers characterize hearings involving vetting subjects as predominantly professional, adhering to the principles of solemnity and ethics, exhibiting transparency, and complying with legal standards.
 - Many decisions issued incorporate citizens' claims; however, in some instances, the specific subject of these complaints is not revealed, even in a summary way.
 - It is encouraging that the vetting commissions have conducted a more extensive administrative inquiry, scrutinizing the findings and data associated with auxiliary entities, including those related to the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interes (HIDAACI).
 - The International Monitoring Operation (IMO) has documented around 250 claims submitted by individuals, private businesses, non-governmental organizations, and public entities.
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PERFORMANCE AND REAL EFFECTS OF THE VETTING PROCESS: SOME DATA

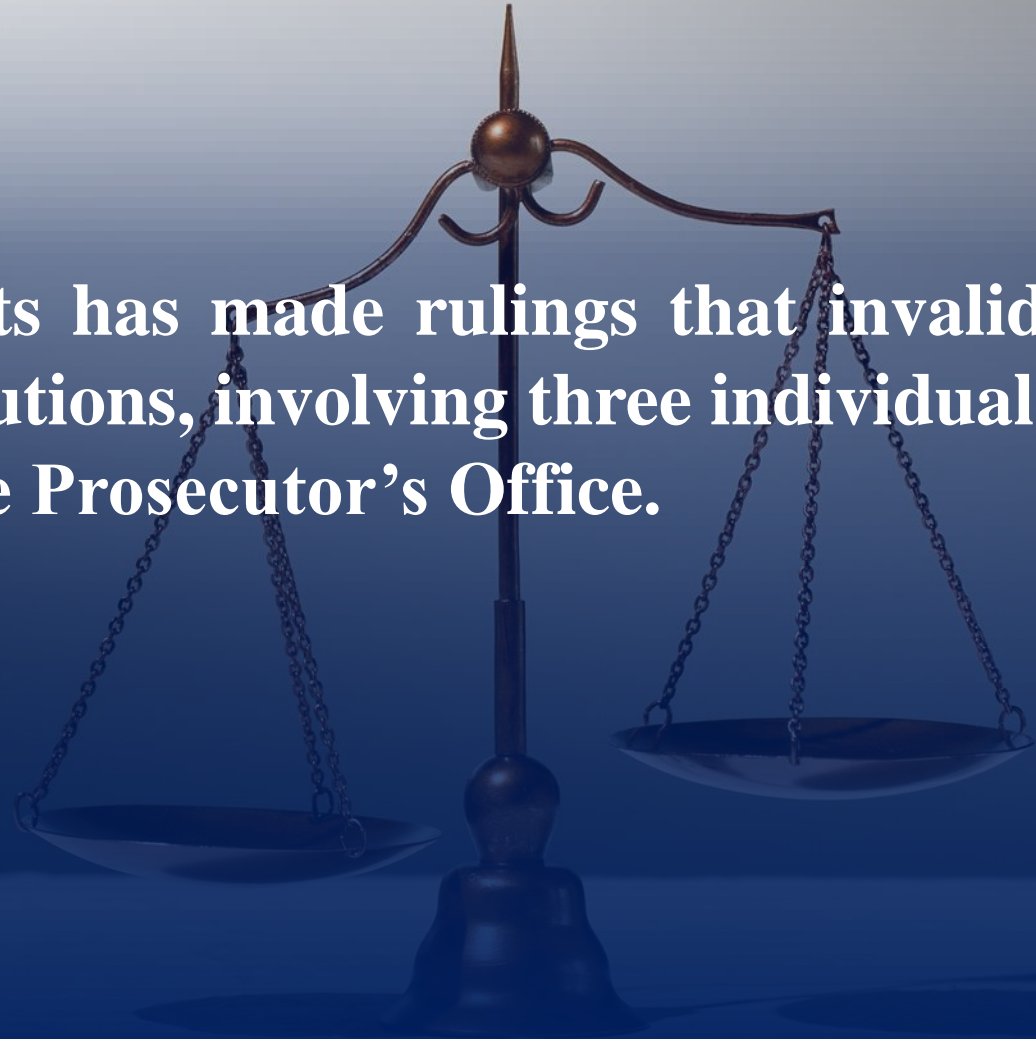
- The Independent Qualification Commission (ICQ) issued 783 decisions from February 8, 2018 to July 31, 2024, of which:
- **358 confirmation decisions** for 165 judges, 163 prosecutors, 2 former inspectors at the KLD, 2 inspectors at the KLJ and 26 assistants/legal advisors
 - **261 dismissal decisions** for 145 judges, 1 ex-judge in the Supreme Court, 110 prosecutors, 1 inspector in the Supreme Court and 4 legal assistants;
 - **103 decisions to interrupt the process** (Article G of the Annex to the Constitution) for 61 judges, 27 prosecutors, 1 former prosecutor, 13 legal assistants, 1 former inspector in the KLD;
 - **8 decisions on suspension of proceedings** for 3 judges, 1 prosecutor and 4 legal assistants in the Supreme Court (Article 56 of Law No. 84/2016);
 - **50 decisions on the termination of the process without a final decision** for 25 judges, 1 former judge, 17 prosecutors, 1 former chief inspector in the KLD and 2 former inspectors in the KLD and 4 legal assistants (Article 95 of the Code of Administrative Procedures and Article 64 of Law No. 96/2016);
 - **3 decisions on the suspension from office** for 3 prosecutors.

The examination of the chosen decision-making processes reveals that the vetting bodies have largely adhered to the principles of proportionality, equality of legal arms, and the rights of individuals to be heard and to defend themselves. This adherence is assessed positively, as these principles are fundamental to guiding the process in accordance with both inherent qualities and the standards of due process.



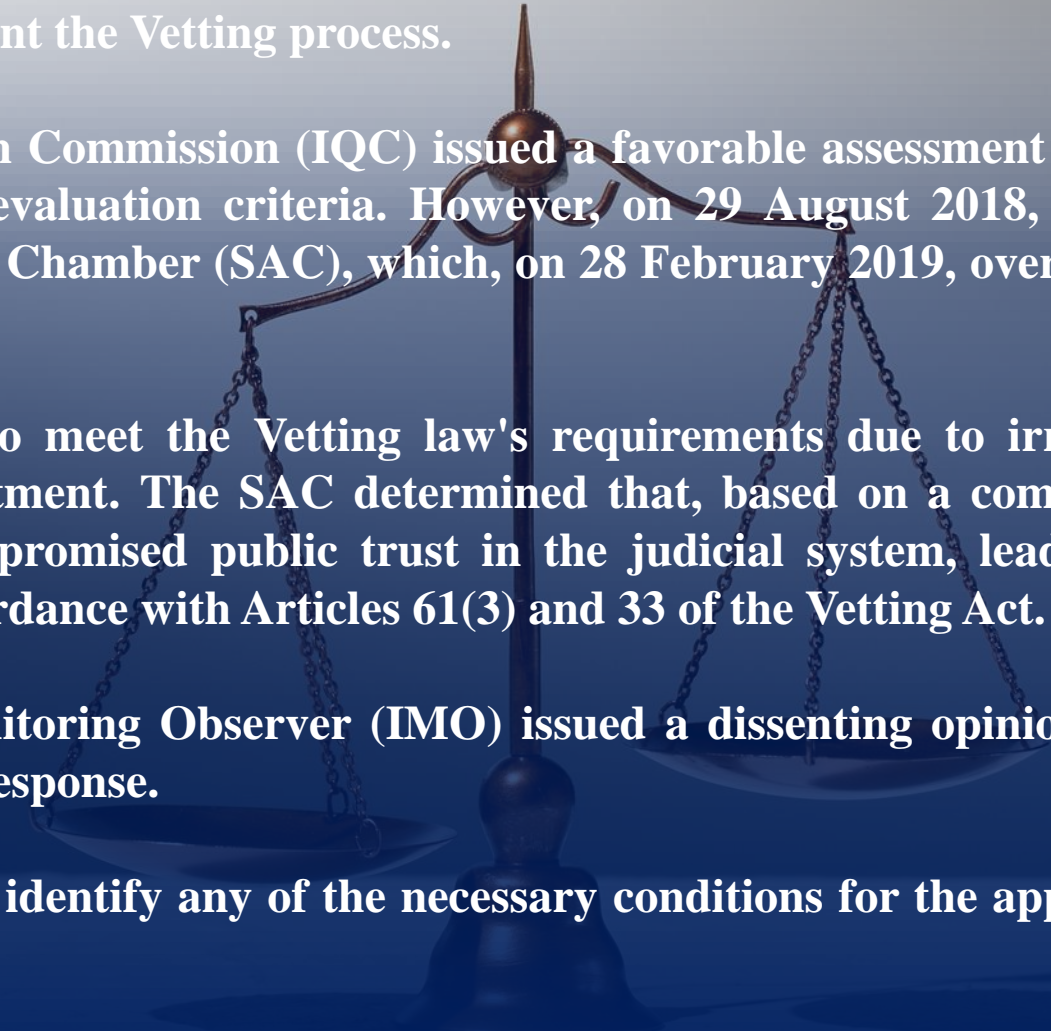
VETTING PROCESS AND HUMAN RIGHTS

The European Court of Human Rights has made rulings that invalidate the procedures followed by Albanian institutions, involving three individuals: two prosecutors from the First Instance Prosecutor's Office.

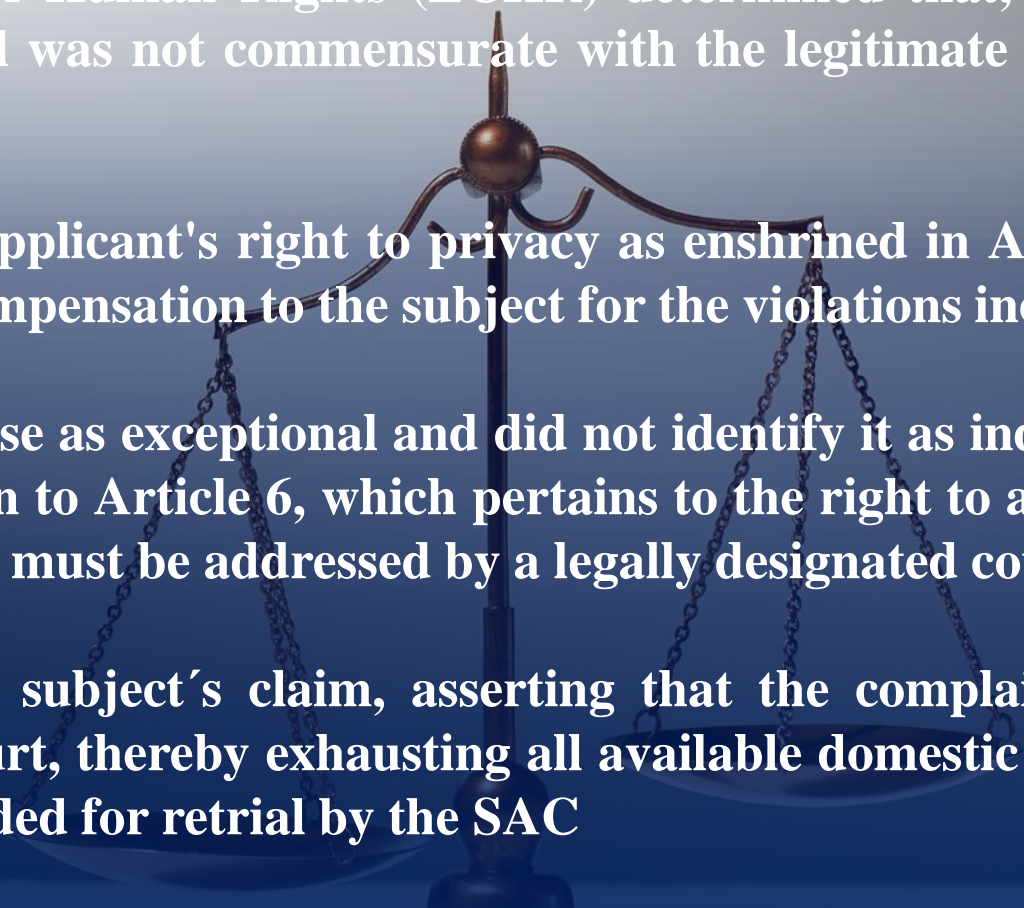


THE VETTING PROCESS AND HUMAN RIGHTS: THE CASE

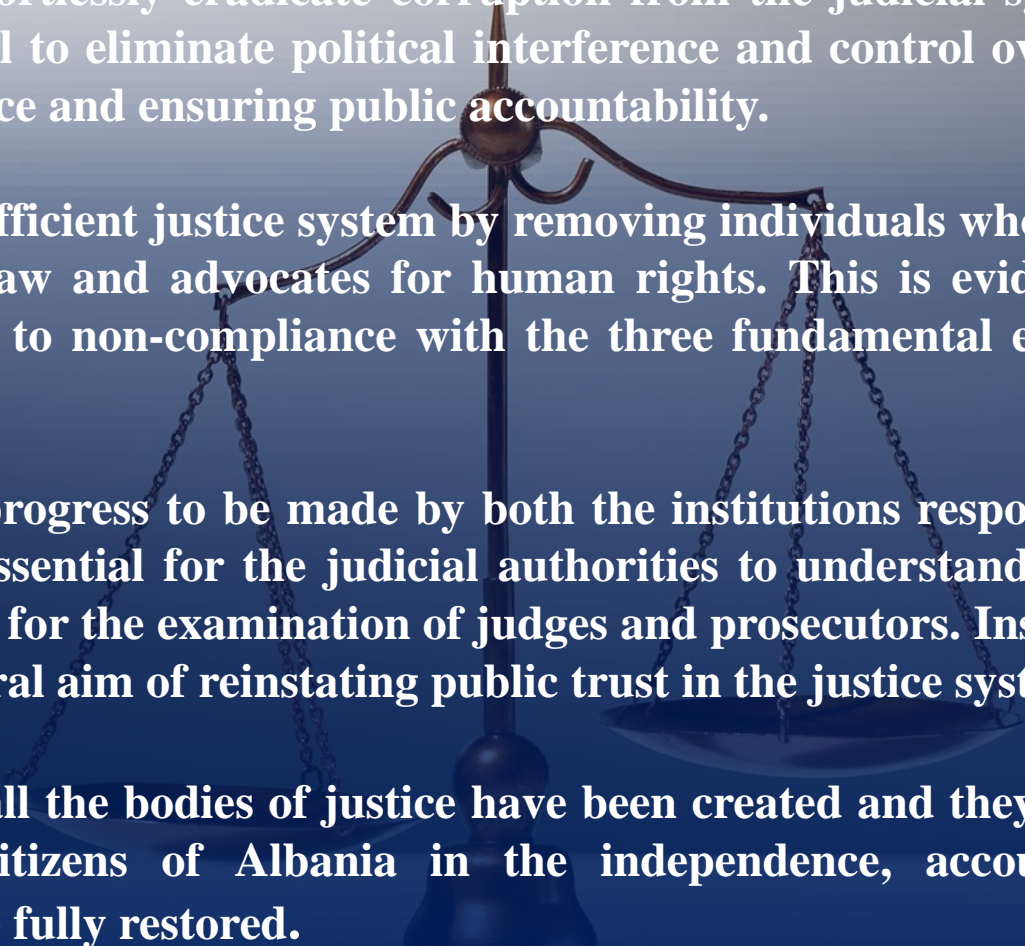
- ❑ The case in question served as a Public Prosecutor from 2003 to 2018 at the Court of Appeal in Durrës and subsequently in Tirana, during which time she underwent the Vetting process.
- ❑ Following this procedure the Independent Qualification Commission (IQC) issued a favorable assessment on 18 July 2018, confirming that she met the three established evaluation criteria. However, on 29 August 2018, the Public Commissioner filed an appeal with the Special Appeals Chamber (SAC), which, on 28 February 2019, overturned the IQC's decision.
- ❑ The SAC dismissed the subject, citing her failure to meet the Vetting law's requirements due to irregularities concerning her husband's wealth prior to her appointment. The SAC determined that, based on a comprehensive evaluation of the three criteria, the subject had compromised public trust in the judicial system, leading to the imposition of the most severe penalty: dismissal in accordance with Articles 61(3) and 33 of the Vetting Act.
- ❑ Additionally, on 25 April 2019, the International Monitoring Observer (IMO) issued a dissenting opinion, arguing that the dismissal was an excessively disproportionate response.
- ❑ The IMO specifically noted that the SAC had failed to identify any of the necessary conditions for the application of Article 61(3).



THE VETTING PROCESS AND HUMAN RIGHTS: THE CASE

- ❑ In the analysis of the case, the European Court of Human Rights (ECHR) determined that, given the unique circumstances of her situation, the dismissal was not commensurate with the legitimate objectives sought.
 - ❑ Consequently, the court identified a breach of the applicant's right to privacy as enshrined in Article 8 of the Convention. The court subsequently awarded compensation to the subject for the violations incurred.
 - ❑ Furthermore, the court characterized the Sevdari case as exceptional and did not identify it as indicative of a broader issue within the vetting process. In relation to Article 6, which pertains to the right to a fair legal process, the court noted that the violation of the debt must be addressed by a legally designated court.
 - ❑ The ECtHR dismissed the request concerning the subject's claim, asserting that the complainant was required to present her claims before a domestic court, thereby exhausting all available domestic remedies. Under these circumstances, the case has been remanded for retrial by the SAC
 - ❑ This marks the inaugural instance in which the SAC has considered an appeal stemming from a Strasbourg decision and has made a ruling regarding a prosecutor reinstatement in light of the ECtHR's findings.
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CONCLUSIONS

- ❖ The verification process in Albania, which is purported to have commenced with considerable optimism, ought not to be regarded as an "institutional asset" that will effortlessly eradicate corruption from the judicial system. To effectively cleanse the judicial framework, it is essential to eliminate political interference and control over public institutions, while also fostering operational independence and ensuring public accountability.
 - ❖ It can be asserted that Albania has established a more efficient justice system by removing individuals who failed to demonstrate their qualifications as protectors of the law and advocates for human rights. This is evidenced by instances of voluntary resignations and dismissals due to non-compliance with the three fundamental evaluation criteria.
 - ❖ In terms of transparency, there remains considerable progress to be made by both the institutions responsible for re-evaluation and the supporting organizations. It is essential for the judicial authorities to understand that this initiative is not intended as an internal disciplinary tool for the examination of judges and prosecutors. Instead, this reform was initiated by their own welfare, with the central aim of reinstating public trust in the justice system.
 - ❖ The greatest success of the process will be when, after all the bodies of justice have been created and they are fully functional and continuous, the confidence of all citizens of Albania in the independence, accountability, professionalism, and impartiality of the judiciary will be fully restored.
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CONCLUSIONS

- ❖ The efficient and successful execution of the vetting process will assist Albania in rectifying deficiencies within its justice sector. Furthermore, it will facilitate the country's progress toward European integration, contingent upon the European Commission's favorable recommendation for the initiation of membership negotiations.
- ❖ From a legal perspective, these decisions comply with the stipulations outlined in Law No. 84/2016 concerning vetting. Nevertheless, it is observed that the format of the commissions' decisions does not uniformly present the characteristics mandated by Article 57 of Law No. 84/2016. Overall, the explanatory and reasoning sections of these decisions lack a clear organization across the four specified aspects.
- ❖ The presence of minority and parallel opinions among some commissioners in various rulings of the ICQ/THE APPEAL CHAMBER is viewed favorably. Such dissenting and concurrent opinions are consistently recognized as essential components of the analyzed decisions. Overall, these decisions are well-founded. It is our assertion that these opinions reflect both the external and internal autonomy of the vetting institutions.
- ❖ The Albanian citizens themselves can play a significant role in the Vetting process by participating in the re-evaluation process. The public can report corruption online or offline using an official form that has been approved by vetting process. These organizations are required by law to verify the information they have been given.

A background image of a pair of scales of justice, with the pans and chains visible. The scales are slightly out of focus, creating a sense of depth. The lighting is soft, highlighting the metallic texture of the scales.

RECOMMENDATIONS:

- ✓ **AD HOC WORKING GROUP TASKED WITH FORMULATING AND OVERSEEING PROCESSES WITHIN THE NATIONAL AND PARLIAMENTARY FRAMEWORK;**
- ✓ **ENSURING THE VETTING LEGISLATION IS CONSISTENT WITH CONSTITUTIONAL PROVISIONS;**
- ✓ **REFORMING THE JUDICIARY FOR JUDGES AND PROSECUTORS ACCORDING TO DEFINED CRITERIA THAT INCLUDE FINANCIAL STATUS, PROFESSIONAL QUALIFICATIONS, AND PUBLIC PERCEPTION.**
- ✓ **ESTABLISHING INDEPENDENT BODIES FOR VETTING, ACCOUNTABILITY, AND MONITORING;**
- ✓ **COORDINATING WITH THE MONTENEGRIN REPRESENTATIVE OF THE EUROPEAN COURT OF HUMAN RIGHTS;**
- ✓ **ENGAGEMENT OF CIVIL SOCIETY AND RELEVANT STAKEHOLDERS IN THE PROCESS.**



THANK YOU!