

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



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ABSTRACT

The two main pillars of the justice reform package include the amendment of articles of the Constitution and the adoption of a package of laws, including the law on the re-evaluation of judges and prosecutors, determining the creation of new judicial institutions². Through the re-evaluation process popularly known as the 'vetting process', whose aim is to fight corruption and clean up the justice system, restoring every citizen's confidence in their independent and impartial institutions, as one of the basic conditions of Albania's membership in the European Union. Effectively, this process started at the beginning of 2018, materializing the first decisions on evaluating judges and prosecutors based on three criteria of declaring wealth, image, and professional ability³.

In this context, this paper aims to examine the vetting process with a focus on its procedural aspects and the applicability of various vetting institutions. The evolution of the vetting process is evidenced by the data provided by reporting entities, alongside the challenges that have arisen throughout this process. Particular emphasis will be placed on the legal framework, serving as a comparative analysis between the operations of vetting bodies and the rulings of the European Court of Human Rights.

Keywords: *Law Reform, Vetting Process, Independent Qualification Commission, Special Appellate Panel, ECtHR Jurisprudence.*

2 Ministry of Justice, Detailed Information by Sectors of the Justice System, (January 2015)

3 https://drejtesia.gov.al/wp-content/uploads/2017/10/Analiza_e_sistemit_te_drejtesise_FINAL-1.pdf

INTRODUCTION

The Progress Report of the European Commission, which emphasized for the umpteenth time the need to intervene concretely in the justice system, set the highest legislator body in motion of the Assembly of Albania, which in 2015 established the Special Parliamentary Commission for Justice Reform⁴. This is closely related to the aspiration of the Albanian State to join the European Union, where the reform of the judicial system, among others, is one of the essential conditions to be fulfilled⁵. Albania has demonstrated a commitment to justice reform by continuously cooperating with the Venice Commission to improve the standards of independence, accountability, and professionalism of the system⁶.

One of the main principles that justice reform aims to achieve is strengthening the impartiality of the judicial system, increasing the effectiveness and professionalism of the system, as well as public trust in the justice system. The aforementioned goal is planned to be achieved through a two-stage process: re-evaluation of existing judges and prosecutors and the introduction and creation of new self-governing judicial and anti-corruption institutions⁷.

In its evolutionary meaning, the Vetting process was seen as a necessity by the Albanian government based also on the evidences of allies and the lag of Juridical system efficiency with our major European partners and the United States. In particular, several conditions were considered to raise the Vetting:

First, the endemic corruption in the juridical system: Judges and prosecutors were frequently accused of accepting bribes, allowing organized crime to operate with impunity, and favoring powerful politicians. In this sense, the public's trust in the legal system has been severely eroded.

Second, the recommendations from allies and partners and the EU Progress Reports: The European Union, along with various international entities, has expressed concerns regarding the Rule of Law and accountability within Albania's Justice System, as highlighted in recommendations from EU audits, progress reports, and the Department of State of the United States (DASH). Since becoming a NATO member in 2009, Albania has set its sights on European Union membership. In this context, there have been calls for significant reforms aimed at establishing a judiciary that is independent, professional, and credible.

4 https://drejtesia.gov.al/wp-content/uploads/2017/10/Analiza_e_sistemit_te_drejtesise_FINAL-1.pdf.

5 Maxhuni, B. and Cucchi, U., *An Analysis of the Vetting Process in Albania, Policy Analysis* (No. 01/2017)5; click for more, <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/An-Analysis-of-the-Vetting-Process-in-Albania.pdf>.

6 European Commission, *Albanian Progress Report*, 17

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf.

7 Haxhiu, D., and Karamuço, E., *The Influence Of The Justice Reform of Albania Towards European Union Integration*, pg.40-41; click for more <https://namibian-studies.com/index.php/JNS/article/view/2011/1376>

Third, political Deadlock: The inefficient judiciary exacerbated Albania's political division. Reforming the court was viewed as a means of breaking the political gridlock and establishing a more open and accountable administration.

Fourth, Public Outcry: Citizens had long been frustrated with the absence of justice and pervasive corruption. In this line, transparency, justice, and loyalty toward the public remained one of the biggest challenges for the existing legal bodies, demanding a new and more robust social engagement through the Vetting process.

In the same path, neighboring countries have given some pieces of evidence for the Albanian Vetting process. For example, in Montenegro, criminal proceedings were initiated directly against some top-level judicial officials accused of corruption and abuse of office. The Albanian process was more indirect, with vetting used to cleanse the judiciary first, followed by potential criminal investigations.

In a comparison view with our neighboring countries, Albania's approach was structured around building new institutions like SPAK and the National Bureau of Investigation (BKH) to handle corruption at the highest levels. Over time, these institutions have become more active in prosecuting individuals in positions of power, including former judges and prosecutors.

Numerous public opinion polls and surveys conducted in Albania indicate a prevalent perception of corruption within the judiciary. These assessments have often been carried out by various local and international entities, including the European Commission, Transparency International, and other organizations focused on governance and corruption issues. Following are some key points of their methodologies and findings:

1. *General Public Perception pervasive mistrust:* According to public opinion polls, the Albanian population has little trust in the judiciary, owing primarily to perceptions of pervasive corruption. People believed that judges and prosecutors were frequently influenced by bribes, political connections, or organized crime.

Gallup Balkan Monitor: Several Gallup Balkan Monitor surveys done in past years revealed that Albanians judged corruption to be one of the country's most severe challenges, with the court regarded as one of its most corrupt institutions.

2. *Surveys by International Organizations-Transparency International:* According to Transparency International's Corruption Perception Index (CPI), Albania has a high level of corruption, particularly in the judiciary. Although the index does not name specific institutions, corruption in the judiciary is frequently identified as a major issue in Albania's country reports.

3. *Surveys Before and After Vetting-Pre-Vetting Survey:* Before the screening process, which began in 2016, studies showed that a large majority of Albanians thought judges and prosecutors were corrupt. Many people believed that the judiciary favored the privileged and wealthy, leading to a lack of trust in the rule of law.

4. *Post-Vetting Perception:* Even after the vetting process began, the public expressed concerns. Some surveys suggested that the public was supportive of the screening procedures and saw them as necessary to clean up corruption.

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5. *National surveys* undertaken by the Institute for Development Research and Alternatives (IDRA) in 2016 revealed widespread public perception of judicial corruption. For example, one of its surveys revealed that more than 90% of respondents thought the judiciary was corrupt, with judges being seen as the most corrupt professionals in the system.

6. *UNDP Albania*: Surveys conducted by the United Nations Development Programme (UNDP) in Albania confirmed these findings, with a considerable proportion of respondents believing that corruption was widespread among judges and prosecutors.

7. *European Commission Reports*: The European Commission's annual progress reports on Albania repeatedly cited a high public impression of judicial corruption. These reports underlined the need for judicial reform, citing the public's lack of trust in the court system as a result of widespread corruption.

The new law approved as a requirement of the Justice Reform has created several new institutions to maintain the balance of the separation of powers (the basic principle of the Constitution), independence, impartiality and transparency, and the self-governance of the judiciary⁸. The Judicial Appointments Council and the Supreme Judicial Council, among others, will guarantee a fair and orderly process of appointing members of the Courts⁹ in general and in particular the Supreme Court and the Constitutional Court¹⁰. The Supreme Council of Justice with the Constitutional amendments is replaced by the Supreme Council of the Judiciary¹¹. It is in this spirit that the amendments to the Constitution bring about the establishment of new bodies such as the High Council of Prosecution¹², the Special Anti-corruption Unit, alongside which the necessity for the adoption of laws for the new bodies created by the Constitution was born¹³.

8 <https://eeas.europa.eu/delegations/albania/56092/koha-p%C3%ABr-ndryshim-n%C3%AB-gjyq%C3%AB-sorin-shqiptar-nj%C3%AB-v%C3%ABshtrim-pas-nj%C3%AB-viti-t%C3%AB-procesit-t%C3%AB-vettingut_sq>-December 2019. "Council of Appointments in Justice, which will be responsible for verifying the fulfillment of legal conditions and professional and moral criteria of non-judge candidates of the High Judicial Council, non-prosecution candidates of the Larle Prosecution Council, candidates for High Inspector of Justice, as well as candidates for members of the Constitutional Court".

9 Judicial Appointments Council, which will be responsible for verifying the fulfillment of legal conditions and professional and moral criteria of non-judge candidates of the High Judicial Council. candidates no <<https://www.reporter.al/wp-content/uploads/relacion-shtesa-dhe-ndryshime-ne-ligjin-nr.-84172c-date-21.10.1998-kushtetu-ra-e-r.sh-te-ndryshuar.pdf>>.

10 Law No. 76/2016, dated 22.7.2016 On some additions and changes to Law No. 8417, dated 21.10.1998, Constitution of the Republic of Albania, amended and Law No. 99/2016, On some additions and changes to Law No. 8577, dated 10.2.2000, On the Organization and Functioning of the Constitutional Court of the Republic of Albania, amended by Law 96/2016, Articles 7(a)-7(dh). "The Constitutional Court consists of 9 members. 3 (three) members are appointed by the President of the Republic, 3 (three) members are elected by the Assembly and 3 (three) members are elected by the Supreme Court. The members are selected from among the candidates ranked in the first three places of the list by the Judicial Appointments Council, according to the law. We note that with the constitutional reform and the law "On the organization and functioning of the Constitutional Court, there are changes regarding the procedure and institutions that are included in the drafting of lists of candidates until their final appointment."

11 The Constitution and the Law Nr.115/2016, date.03.11.2016, "On the governing bodies, article 147, 147(a), 147(b), 147(c), 147(ç).

12 Of the Constitution and Law Nr.115/2016, dt.03.11.2016 "On the governing legal bodies " article 149, 149(a), 149(b).

13 1998 Constitution, updated with Law Nr.137/2015, on 17.12.2015 and Nr.76/2016, on 22.07.2016, Annex *Re-evaluation of judges and prosecutors*.

Before the implementation of judicial reforms in Albania, the appointment of judges and prosecutors was conducted by entities such as the High Council of Justice (HCJ) and the Prosecutor General's Office. Nonetheless, these bodies faced significant criticism for their susceptibility to political influence and their ineffectiveness in maintaining the integrity of the judiciary. A summary of the principal distinctions and motivations for altering the appointing authorities may encompass:

Lack of independence: The old bodies, such as the High Council of Justice, were significantly influenced by political actors and failed to provide an independent and impartial judiciary. Appointments were frequently based on political connections or corruption, rather than merit. *Failure to Correctly Address Corruption:* Previous bodies lacked adequate accountability measures. Disciplinary measures and dismissals were infrequent, allowing corrupt judges and prosecutors to function freely.

In this framework, the new institutional bodies accounted for:

High Judicial Council (HJC) and High Prosecutorial Council (HPC): These new bodies were established as part of the 2016 constitutional revisions, replacing the previous institutions. They are intended to be politically neutral and are in charge of appointing, disciplining, and dismissing judges and prosecutors using clear, merit-based criteria. *Specialized Anti-Corruption Institutions:* New organizations, such as the Special Prosecution Office Against Corruption and Organized Crime (SPAK), were formed to handle high-level corruption cases and manage investigations into judicial misconduct. These institutions are primarily focused on combating corruption in the judiciary, which the previous bodies were unable to successfully handle.

However, even after the adoption of the law on the transitional reassessment of judges and prosecutors in the Republic of Albania¹⁴, its implementation has not been without any obstacles¹⁵. The case has been submitted to the Venice Commission that stated that the "*Constitutional Court of Albania is the one that decides on the interpretation and implementation of the Constitution and the compatibility of national laws with it. For this, it must be understood that the Constitution itself has changed, so this law (the Vetting) is by the Constitution*"¹⁶. In light of the recommendation made by the Venice Commission, the vetting process for judges and prosecutors was implemented. The initial findings indicate that this process holds significant importance for enhancing the accountability

14 Law No. 84/2016 "*On the transitional reassessment of judges and prosecutors in the Republic of Albania*".

The opposition party has asked the Constitutional Court to declare the vetting law unconstitutional as incompatible with the European Convention on Human Rights. In October 2016, the Constitutional Court decided to suspend the implementation of the vetting law. For the above, the President of the Court has addressed the Venice Commission to come up with a rationale on the compatibility of the vetting law with the standards of the European Union, with the ECHR and the Constitution of Albania. The questions addressed to the Venice Commission by the President of the Constitutional Court referred to the fact that all judges are subject to the vetting law and whether their participation in the examination of this case could be considered a conflict of interest. The second issue raised was about whether this law violated one of the basic principles of the rule of law, the separation of powers, raising the question of whether the independence of the judiciary was at risk with the involvement in the process of re-evaluation of judges and prosecutors under the control of the bodies of the executive power. Thirdly, was the vetting law in accordance with Article 6 of the ECHR in relation to the right to a fair trial and the possibility to address in domestic courts their claims under Article 6 of the ECHR. The fourth issue referred to the compatibility of the law with the standards guaranteed by Article 8 of the ECHR.

15 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)036-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)036-e).

16 Ibid...

and responsibility of both the judiciary and the prosecution. However, it is essential to recognize that this process represents merely one aspect of the broader justice framework and is characterized as transitory and exceptional in its efforts to foster public trust.¹⁷

In addition to progressing in time and numbers, this process must also provide decision-making which is by the Constitution, Law 84/2016 *“On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”* as well as the standards of a process legal order. Only in this way, this process will make it possible to clean the system of judges and prosecutors who have problems in terms of wealth, integrity, and professional skills¹⁸.

In meeting the Constitutional Guarantees, the vetting process followed Albania’s 2016 constitutional reforms, which set a framework for judicial reform. These reforms established the concepts of impartiality, transparency, and accountability, which were incorporated into the screening procedures. The Independent Qualification Commission (ICQ), the screening organization, has largely complied with these assurances. International observers have watched the process to verify its impartiality and compliance with legal requirements. As more than 80% of the screening has been completed, the process is largely viewed as authentic and efficient; however, several key judicial positions remain under review. The finalization of the vetting process is critical to the judicial reforms in Albania, which are being monitored closely by both national and international stakeholders, especially the European Union. In general feedback from academia, although the vetting process for numerous officials has proven to be effective, it has faced significant delays and legal challenges, especially in cases where dismissed judges and prosecutors sought to contest the outcomes. While certain individuals argued that the vetting system was excessively severe or influenced by political motives, the Constitutional Court of Albania upheld the validity of the framework.

Why is this reform necessary?

Different studies argue that justice reforms are considered a key element for the membership of Albania and the Western Balkans in the EU as a process driven mainly by EU assistance. Meanwhile, the recent vetting law for judges and prosecutors in Albania is considered to be of “vital importance for Albania’s political future, determining how quickly and quickly its path to EU membership will be and how much credibility it will gain in the face of in front of the Albanian people for the judicial system”¹⁹.

The analysis of the problems faced by the judiciary shows that the crisis of the judiciary is also a crisis of democracy. The progress of the judiciary is closely related

17 Law No. 76/2016 On some additions and changes to Law no. 8417, dated 21.10.1998, Constitution of the Republic of Albania, amended, Article 179(b)(i).

18 Albanian Committee of Helsinki, *“Vetting process within the framework of the obligations of integration in the European Union”*, February 2022, pp. 6-7.

19 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4316134 Aurela Anastasi, *The Albanian justice reform in the framework of the European integration process*, December 31, 2021, pp.2

to the implementation of the constitutional principles of separation of powers and guarantees for the protection of human rights. Political interference and judicial politicization affect the judicial system, weakening it. Moreover, conflicts of interest and cases of corruption have destabilized judicial effectiveness and public confidence in the judicial system²⁰.

1. Institutions and the “Vetting- process”

The constitutional changes aim to transform the justice reform into a real reform, which will increase the performance of the institutions that deliver or help deliver justice²¹. The constitution and the vetting law have established re-evaluation institutions, namely the Independent Qualification Commission (hereinafter the ICQ or the Commission) and the Special Appeals College (hereinafter the THE APPEAL CHAMBER / The Appeal Chamber or the Appeals College), which exercise their responsibilities based on the principles of accountability, integrity, and transparency²² for the creation of an independent and professional judicial system free from corruption. On the other hand, there are the Public Commissioners, (No, Public Commissioners are **not** members of the Independent Qualification Commission (ICQ). They are a separate entity in Albania’s judicial vetting process which have the role of **appealing** decisions made by the ICQ. If they believe that a decision by the ICQ does not adequately serve justice or does not align with the constitutional requirements, Public Commissioners can challenge the decision by filing an appeal to the Special Appeals Chamber (This ensures an additional layer of oversight and helps safeguard the fairness of the vetting process). The Public Commissioner is an active actor in the process of re-evaluation of the subjects of the justice system where, in addition to monitoring, the right to be known and to receive information, to come up with conclusions, and the right to appeal the decisions of the ICQ to the The Appeal Chamber²³. The unique nature of

20 **Members of the Independent Qualification Commission (ICQ):** These are the officials who directly carry out the vetting process of judges and prosecutors. They are responsible for investigating and evaluating the qualifications, integrity, financial assets, and professional background of judicial officials. Based on their findings, ICQ members make decisions on whether an individual should remain in office, be dismissed, or be promoted within the judiciary. - Their primary duty is **decision- making** based on the evidence they gather during the vetting process. They examine the background of each judge or prosecutor and make a determination on their fitness to serve in the judicial system. **Public Commissioners:** Public Commissioners act as a form of oversight to the ICQ’s decisions. Their primary role is to **appeal decisions** made by the ICQ if they believe the outcome is flawed, unjust, or inconsistent with constitutional guarantees. They review the ICQ’s rulings and decide whether to bring an appeal before the Special Appeals Chamber (The Appeal Chamber), which has the authority to uphold or overturn the ICQ’s decisions. Rather than making initial decisions, Public Commissioners are responsible for **oversight**. They ensure that the decisions made by the ICQ are consistent with legal standards and the goals of the reform process. If they find discrepancies or believe an error has been made, they have the power to challenge these decisions carry the status of a member of the Supreme Court. Judges of the Appeals College carry as well the status of judges of the Constitutional Court. Law nr 76/2016, Article F(8).

21 Paraphrased from the words of Prof. Dr. Aurela Anastasi <<https://www.parlament.al/Files/Informacione/Revistanr.3.pdf>> 27.

22 The principle of transparency, in addition to other forms that are applied, is also present with the updating of the official pages of the reevaluation institutions, in which most of the information on the vetting process is revealed, from the history, legislation, announcements, media communications, publication of the dates of the selection of the members of the vetting institutions that take the case under investigation, the subjects under re-evaluation, the announcement of the decisions, etc. and in particular, a space is dedicated to public denunciations, helping them through a form to properly address their concern or claim about the vetting process and concrete subjects.

23 Law No. 84/2016, “On the transitional reassessment of judges and prosecutors in the Republic of Albania”, Article 63.

these institutions is characterized not only by their operational domains, duration, and jurisdictional authority but also by the distinctive status of their members. This is particularly evident in the case of the members of the Commission and the Public Commissioners²⁴.

Unlike what happens with the jurisdiction of ordinary courts where a decision is appealed, in the present case, both the Commission and the Appellate Panel have jurisdiction to review the case from the ground up and to administer the evidence and any information they consider valuable for the process, case by case. The law recognizes the power of a final decision issued by the Appellate Board which takes effect immediately and turns into an executive title. The only space that the vetting law and the Constitution create for appealing this decision refers to the access of subjects to submit their claims to the European Court of Human Rights²⁵.

The key purpose of the vetting process is to restore citizens' trust in the justice system. In this regard, transparency, accountability and the involvement of citizens following the law in this process are important elements²⁶. The obligation to implement these essential principles does not end with the two main decision-making institutions in the vetting process, with the same commitment and applicability they must also be convincingly reflected by the auxiliary bodies of the vetting process, otherwise, the credibility of this reform will swing²⁷.

The International Monitoring Operation (hereinafter ONM), consisting of highly qualified senior experts from the USA and the EU, plays a powerful monitoring role of the vetting process²⁸, through findings, information gathering, conclusions, recommendations to the revaluation bodies, but in no case does it make executive decisions. The role of ONM guarantees the transparency and impartiality of this process, taking into consideration the wide range of attributes that the Annex to the

24 Members of the Independent Qualification Commission (ICQ): These are the officials who directly carry out the vetting process of judges and prosecutors. They are responsible for investigating and evaluating the qualifications, integrity, financial assets, and professional background of judicial officials. Based on their findings, ICQ members make decisions on whether an individual should remain in office, be dismissed, or be promoted within the judiciary. - Their primary duty is decision-making based on the evidence they gather during the vetting process. They examine the background of each judge or prosecutor and make a determination on their fitness to serve in the judicial system. Public Commissioners: Public Commissioners act as a form of oversight to the ICQ's decisions. Their primary role is to appeal decisions made by the ICQ if they believe the outcome is flawed, unjust, or inconsistent with constitutional guarantees. They review the ICQ's rulings

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25 Law nr 76/2016, Article F(8).

26 Albanian Helsinki Committee, Report: Vetting in the Monitoring of the Albanian Helsinki Committee, Findings and Statistics September 2017 – April 2018 (30 April 2018) 4
<https://ahc.org.al/wp-content/uploads/2018/06/Final_Report-per-Monitorimin-e-vettingut_KShH_Shtator-2017-Prill-2018.pdf>.

27 In Albania's judicial vetting process, **auxiliary bodies** are institutions or entities that provide essential support to the Independent Qualification Commission, Public Commissioners, and the vetting process as a whole. These bodies do not directly engage in decision-making but instead provide critical information and expertise that aid the vetting authorities in carrying out their duties. Here are the primary auxiliary bodies)

28 <https://eeas.europa.eu/delegations/albania/20207/deklarata-shtyp-e-kreut-te-imo-pas-takimit-themelues-te-bordit-menaxhues_sq> reviewed for the last time on December 2019.

Constitution²⁹ and the Vetting Law recognize for this monitoring body with wide access, with the exception of decision-making³⁰. The setting up of the ONM started after the invitation of Albania, in this respect the ONM plays a decisive role in the credibility of the whole process³¹.

The re-evaluation process of prosecutors and judges of all courts, including the Constitutional Court is carried out based on three criteria³²: a) property evaluation; b) image control; c) assessment of professional skills. Below we refer to each criterion in a summary analysis of the findings based on the concrete cases produced by the vetting process and materialized in the decisions of the Commission and the Appeals College.

2. The first Vetting criterion - Property assessment

The assessment of assets is the first component of the vetting law and the one that has created the most resistance from judges and prosecutors, with the number of resignations to avoid vetting procedures greatly increasing as a result. The asset assessment criterion is to perform a general control of the assets, after a declaration, assessing the legitimacy of the source of their creation. All judges, prosecutors and counselors adhere to the law's requirements in declaring their assets allowing the institutions to conduct an asset investigation. The Commission is assisted by the High Inspectorate of Declaration and Control of Assets and Conflict of Interest (hereinafter ILDICQI) checks the declaration of assets and submits to the Commission a report on the legality of the assets, on the accuracy and completeness of the declaration, according to the law³³. Anyone under assessment must be able to justify assets based on legitimate sources (ie income and tax returns)³⁴.

The appraisal, in addition to the statement of assets, will present all the necessary documents to justify its authenticity and legitimacy. If the subject of the re-evaluation does not submit the declaration of assets in time according to the law, he is dismissed from office, this measure is applied and if the subject of the re-evaluation tries to conceal or misrepresent the assets in his ownership, possession or use, this the latter bears the burden of proof to prove otherwise³⁵.

The purpose of this criterion is the declaration and control of assets and the examination of the legality of their sources. Individuals related to the subject of the re-evaluation and the object that is evaluated in the context of material wealth are also part of this evaluation. The law stipulates that the starting point of the declaration of assets is the date when the judge or prosecutor is appointed to office, but the law also recognizes the right to control assets placed earlier than this date³⁶. In the case

29 ANNEX, Transitional reassessment of judges and prosecutors, Article B.

30 See the provisions of Law 84/2016.

31 <https://eeas.europa.eu/delegations/albania/56092/koha-p%C3%ABr-ndryshim-n%C3%AB-gjyq%C3%AB-sorin-shqiptar-nj%C3%AB-v%C3%ABshtrim-pas-nj%C3%AB-viti-t%C3%AB-procesit-t%C3%AB-vettingut_sq> reviewed for the last time on december 2019.

32 Ibid., Article 4.

33 See Article D para. 2 of the Annex to the Constitution, Transitional Reassessment of Judges and Prosecutors.

34 See Decision No. 12, dated 17.12.2018, with subject B. Dedja.

35 See Article Ç item 5 of the Annex to the Constitution.

36 See Decision No. 19, dated 26.07.2019.

of dismissal decisions, the ICQ did not have a consequence of evaluating one or three evaluation criteria³⁷. It is important to note that not all instances of dismissal among candidates can be attributed solely to the property assessment test.

The vetting process in Albania assesses judges and prosecutors through three primary criteria:

1. **Property Assessment (Asset Verification)**: This involves a thorough examination of the candidate's financial disclosures and wealth to confirm that their assets have been acquired through legal and transparent means. A candidate's inability to demonstrate the legality of their assets may serve as a basis for dismissal.

2. **Background and Integrity Assessment**: This criterion entails an investigation into any connections to organized crime, previous criminal activities, or other behaviors that could undermine the candidate's integrity. The objective is to ensure that judges and prosecutors are devoid of any criminal affiliations or unethical conduct.

3. **Professional Competence**: This aspect evaluates the candidate's qualifications, including their legal knowledge, performance history, and compliance with ethical standards. It encompasses a review of the decisions made by the judge or prosecutor to verify that they align with legal requirements and judicial best practices.

In these sporadic cases, the ICQ has decided to complete the re-evaluation process for the subject only on the criterion of wealth, not completing and not taking into consideration the investigations on the criterion of image evaluation and that of professional³⁸ skills³⁹. In these decisions, based on the results of the administrative investigation of the property, the judicial bodies have assessed that the property criterion is sufficient for the decision-making process related to the transitory re-evaluation of the relevant entities⁴⁰.

The wealth criterion continues to serve as the primary determining criterion in most of the investigations in the decision-making of the ICQ/THE APPEAL CHAMBER. Regarding this criterion, we appreciate the fact that the ICQ has carried out an in-depth administrative investigation in all cases, not taking for granted the findings presented by the ILDICQI report, as well as reaching, in a large number of cases, different conclusions with it⁴¹.

37 See Decision No. 51, dated 30.07.2018, with subject B. Avdullai.

38 In the case with subject I. Mustafaj, the subject's request for the investigation of other evaluation criteria of the judge was not accepted, Decision no. 180, dated 18.07.2019, ICQ.

39 See Decision No. 15, dated 17.07.2019, subject D. Reshka (Prosecutor).

40 See Decisions no. 12, date. 23.03.2018 and no. 14, date. 13.04.2018, no. 15, dated 20.04.2018.

41 See: Decision 404, date 23.06.2021, Decision no. 352, dated 01.03.2021, Decision no. 392, date 28.05.2021 and the Albanian Helsinki Committee, "The vetting process in the framework of the obligations of integration in the European Union", February 2022, p. 25.

2.1 The second Vetting criterion – Evaluation of the image

The evaluation of the image of the re-evaluated subject consists of the verification of evaluation statements and other data aimed at identifying links with individuals involved in organized crime. If the assessment, after verification, finds that the subject has been found guilty of having clear links with organized crime figures, he is dismissed from office if he is unable to prove the opposite⁴². In this case, inappropriate relationships between judges and prosecutors with individuals involved in organized crime threaten national security and public safety⁴³. Image control, or as it is otherwise known, the inappropriate contact of reassessment subjects with persons involved in organized crime, even though it has been the subject of discussion in a relatively low number of examined cases, has attracted quite a bit of public attention⁴⁴.

Assessing the situation is complex, as the law requires not only the demonstration of non-random interactions with individuals associated with organized crime but also the documentation of exchanges involving favors, money, gifts, and other forms of wealth. Furthermore, the law deems evidence of contact, such as photographs of individuals being re-evaluated alongside those with criminal records, as insufficient. However, it remains unclear to what degree these elements will substantiate and establish a culpable connection. The initial topics addressed during the hearings conducted by the ICQ concerning inappropriate associations with organized crime have sparked extensive public discourse. Notably, the vetting legislation indicates that the definition of organized crime, particularly in the context of assessing judges and prosecutors, has broadened beyond the traditional understanding typically recognized in criminal and procedural law. This legal examination of organized crime appears to have been acknowledged in the ongoing practices of the vetting authorities⁴⁵.

The aspect of the image of judges and prosecutors is a delicate issue that requires a very careful and objective analysis of the evidence and information provided. Dismissal according to the vetting law for the image criterion can come as a result of inappropriate contact, if this contact is serious that makes it impossible for the subject to continue the task or as a result of insufficient, i.e. incomplete, declaration of subject-related to inappropriate contacts with persons related to organized crime⁴⁶.

The image criterion continues to have a small influence on decision-making, in relation to other criteria. For the year 2021, it turns out that only 1 subject was dismissed due to the assessment of the image as inappropriate. As an instance, one

42 Lex Feranda (2016), "What is the Vetting process, how does it function and why is it necessary in Albania?" <<http://www.360grade.al/politike/item/39417-cfare-eshte-procesi-ivettingut-si-funksionin-dhe-pse-duhet-ne-shqiperi>>.

43 Bardha Maxhuni and Umberto Cucchi, *An Analysis of the Vetting Process in Albania, Policy Analysis*, (No. 01/2017)12 <<http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>>.

44 Albanian Helsinki Committee, *Study Report Monitoring the Vetting Process of Judges and Prosecutors in the Period* (January 2017 – June 2018) 18.

45 Albanian Committee of Helsinki, *Study Report Monitoring the Vetting Process of Judges and Prosecutors in the Period* (January 2017 – June 2018)" 19.

46 Albanian Helsinki Committee, "Vetting process within the framework of the obligations of integration in the European Union", February 2022, p.12

notable case involved a judge whose phone records revealed numerous calls and messages exchanged with a person implicated in organized crime activities. The nature and frequency of these communications raised suspicions about potential influence or bribery.

Proof Found Reliable:

-*Phone Records:* Detailed call logs and message records that demonstrate frequent and possibly inappropriate contact with individuals of concern.

-*Financial Records:* Evidence of unexplained wealth or financial transactions linking the judge to known criminals or suspicious sources.

- *Witness Testimonies:* Credible accounts from whistleblowers or other witnesses who can testify to the nature of the relationship or provide evidence of undue influence.

- *Documented Corruption Evidence:* Any documentation or correspondence that indicates the judge was involved in or received bribes or favors from individuals connected to criminal activities. The vetting process aims to ensure the integrity and independence of the judiciary by examining such factors meticulously) AHC has noticed that in some cases this criterion has been given a general treatment and in some sporadic cases it is not transparent to the public.⁴⁷

2.2 The third Vetting criterion - Assessment of professional ability⁴⁸

Aptitude assessment provides ethical and professional assessment. In the case of judges, they will be evaluated on their judgment skills, while in the case of prosecutors, they will be evaluated on their ability to conduct investigations. The ability assessment will also ensure to assess the organizational skills, ethics and personal qualities of all assesses based on the standards provided by law. Individuals with subjects assessed as “deficient” are recommended to participate in a training program at the “Magistrate School”, while those assessed as unsuitable for a certain skill are dismissed from their duties⁴⁹.

Until now, no subject has been dismissed explicitly due to unsuitability for professional skills, according to article 61, point 4 of law no. 84/2016⁵⁰. However, there have been cases when the professional re-evaluation criterion has been linked to the violation of public trust in the justice system and the subject has been dismissed, among others, according to article 61, point 5 of law no. 84/2016. This provision foresees the

47 Albanian Helsinki Committee, “Vetting process within the framework of the obligations of integration in the European Union”, February 2022, p.12.

48 Article E of the Annex and Article 42 of Law No. 84/2016.

49 Article 42 of Law No. 84/2016. Lex Feranda (2016), “What is the Vetting process, how does it function and why is it necessary in Albania?”

<<http://www.360grade.al/politike/item/39417-cfare-eshte-procesi-ivettingut-si-funksionin-dhe-pse-duhet-ne-shqiperi>

50 Decision Nr.10, dated 18.04.2019, subject A.Th.

dismissal of the subject if the overall evaluation of the criteria results that the subject has violated public trust in the justice system and such deficiency may not be remedied through the training program⁵¹.

The vetting law, as cruel as it seems to corrupt judges and prosecutors, according to the findings of legal scholars, contains a vacuum. The law provides the possibility of resignation for judges and magistrates no later than three months from the entry into force of the law translating into a *'free pass'* for all judges or prosecutors who have resigned⁵² in time-saving, *'de-facto'*, from assessment to process. So far, more than a hundred judges and prosecutors in Albania have used this opportunity to resign, citing "career focus" or "health issues". In this regard, the resignation should be seen as an indicator that should compel law enforcement agencies to investigate their past actions regarding their assets and links to organized crime.

In the February 2018 - November 2023 Report, it is observed that 109 subjects, or 15.5% of the subjects called for vetting resigned from their duties before or during the development of the Among those subjects are 63 judges, 28 prosecutors, 12 legal assistants, 4 legal advisers and 2 inspectors⁵³.

Compared to previous years, it has been observed that the assessment of professional skills has been given greater importance. In almost all analyzed decisions, the ICQ has administered from the HCJ and the KLP the report for the evaluation of the professional ability of the subject of the reassessment and the Commission has fully reflected the treatment of all indicators in the reports of the HCJ or the KLP⁴⁵. Also, the fact that there is an effort to evaluate the criteria of the professional skills of the subjects is considered decision No. 21/2019 of the THE APPEAL CHAMBER, which elaborates the standards, methodology and indicators, on the basis of which the assessment of the professional skills of the reassessment subjects will have to be carried out⁵⁴.

The professional ability criterion turns out to have had a decisive role in decision-making in some of the dismissal cases during 2021. During this period, based on the professional ability criterion, the ICQ has only decided in one case the suspension of a prosecutor magistrate for a period of 1 year, providing for the obligation to follow the training program, according to the curricula of the School of Magistracy⁵⁵.

51 Albanian Helsinki Committee, Study Report Monitoring the Vetting Process of Judges and Prosecutors in the Period (January 2017 – June 2018) 20.

52 Decision Nr.5, dated 10.09.2018(JR).

53 <https://icq.al/wp-content/uploads/2023/12/RAPORTI-STATISTIKOR-2018-nentor-2023.pdf>

54 Independent Qualification Commission, Statistical report, Nr. 415, dated 07.07.2021

55 Albanian Committee of Helsinki, Study Report Monitoring the Vetting Process of Judges and Prosecutors in the Period (February 2022 pp 12.

3. Progress and effects of the Vetting process in Albania: Issues and Challenges

In some dismissal decisions, it has been observed that the ICQ has decided to complete the re-evaluation process for the subject only on the property criterion, not completing and not taking into consideration the investigations on the image evaluation criterion and that of professional skills, as we discussed above. The largest number of dismissals is for the criterion of wealth control and insufficient declaration. Specifically, 61.18% of dismissed subjects are due to the property criterion and only 31.58% of subjects were dismissed for more than one criterion provided for in Article 63 of Law no. 84/2016⁵⁶.

From February 8, 2018 to June 30, 2024, 772 decisions were issued by the ICQ in the vetting process, of which 352 were confirmation decisions. Of these confirmations in office, 164 are judges, 162 prosecutors, 2 former inspectors of KLD, 2 inspectors of KLJ and 22 assistant legal advisers. In relation to the decisions on dismissal from office, the figures are 257 decisions for 143 are judges, 1 former judge in GJL, 108 prosecutors, 1 inspector in KLJ and 4 legal assistants⁵⁷.

The narrow difference in the confirmation/dismissal ratio is noted, which gives us concrete results about the cleaning of the justice system from corrupt subjects. Moreover, the fact that more than 133 of the decisions given were taken unanimously⁵⁸ adds to the confidence in the institutions of re-evaluation, but also the seriousness of decision-making in this process.

From the results of the statistics, the decision-making based on the three evaluation criteria is much higher compared to the decisions based only on the investigation and ascertainment of 1 or only two criteria⁵⁹.

The decision-making progress expressed in statistics has been with stable curve mobility without large differences. It is noted that after the pandemic in 2021, the highest number of decisions was made in the years 2022-2023 - 165 of them, and we have a reduction and currently with 52 decisions for 2024⁶⁰. The pandemic has affected the slowing down of the process, however it has continued at a pace with the return of post-Covid-19 circumstances to normality. The few cases of decision-making by the ICQ in 2024 should not be read as final since we still do not have a complete statistic for 2024, but on the other hand this process is slowly coming to an end, so the issues being considered are coming to an end.

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**

56 The figures refer to the decisions published on the official pages of the reevaluation institutions

57 Independent Qualification Commission, Statistical report, February 2018 - June 2024, p.1

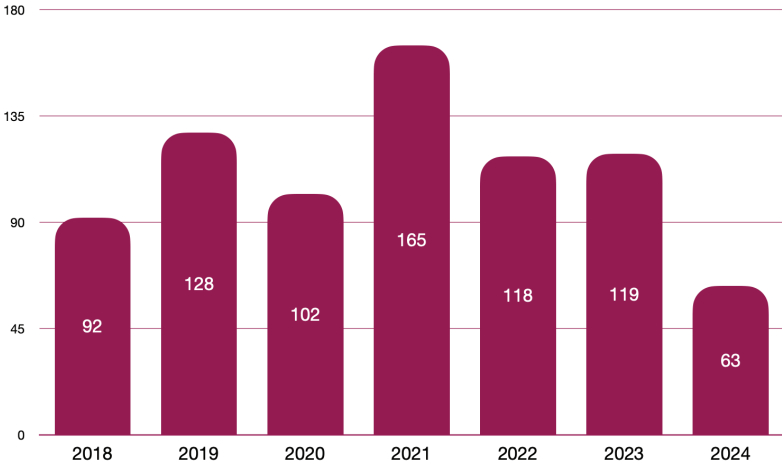
58 Albanian Committee of Helsinki, Study Report on the Decision-Making of the Institutions of Transitional Reassessment of Judges and Prosecutors (Vetting) for the period February - October 2018 (November 2018), 5

59 1 Bid and decisions on one criterion are 16, 10 based on two criteria, on three criteria there are 83 decisions.

60 Independent Qualification Commission, Statistical report, February 2018 - June 2024, pg.5.

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.**⁶¹



The cases from February 2, 2018, to July 31, 2024.

The ratio between decisions on confirmation in office and dismissal from office from 2018 (42 confirmations in office - 35 dismissals from office), 2019 (52 confirmations in office - 47 dismissals from office), 2020 (40 confirmations in office - 32 dismissals from office) , are indicative of a non-marginal ratio. In 2021, we have a change in this ratio, where dismissals have been more numerous than decisions for confirmations in office (67 dismissals from office - 57 confirmations in office). Subsequently, in the last three years, we have a prevalence of decision-making for confirmation in office, and there have been fewer decisions for dismissal from office. Specifically, the graph of the report reflects for the year 2022 (57 confirmations in office - 36 dismissals from office), the year 2023 (67 confirmations in office - 29 dismissals from office) and for the year 2024 (37 confirmations in office - 12 dismissals from office)⁶².

⁶¹ Independent Qualification Commission, Statistical report, February 2018 - June 2024, pg.1.

⁶² Independent Qualification Commission, Statistical report, February 2018 - June 2024, pp. 5-8, chart from 9-15.

The ratio between final and appealed decisions is 174 decisions to 250⁶³. On the other hand, the decision-making of the THE APPEAL CHAMBER Special Appeal Board for the period 2018-2024 has resulted in decisions that leave in force the decisions of the KPC to the extent of 75% or 188 decisions and 25% or 63 decisions for which he decided on the annulment, change or annulment of the appealed decisions⁶⁴.

From February 2018 to April 2019, 22 decisions were taken by the THE APPEAL CHAMBER, most of which left the Commission's decisions in effect and only 5 were decision changes⁶⁵. Four months later, 10 decisions were made on the appealed issues. Only for four consecutive months from April to August 2019, 48 decisions taken by the ICQ were recorded, 45 of which were decided unanimously by the members of the Commission. The ratio of approvals/dismissals is 25 to 16. In total, in the period of one and a half years from February 2018 to August 2019, 189 decisions were made and other subjects are in the process⁶⁶.

Extending the mandate, firstly, enables maintaining the same standards in the re-evaluation process; secondly, it allows the vetting to be completed more quickly, as long as these institutions have dedicated and specialized human resources, as well as a consolidated work practice, and thirdly, it will not overload new institutions such as KLP, KLJ, SPAK, affecting their efficiency and the fulfillment of their duties vis-à-vis the judiciary, the prosecution or in the administration of justice. As a result, the extension of the mandate of the vetting institutions in the evaluation of the AHC brings the progress of the reform in justice and therefore progress in the fulfillment of the obligation that originates from the new methodology of the expansion of the European Union⁶⁷. On February 10, the Assembly of the Republic of Albania approved with the required majority the constitutional amendment necessary to extend the mandate of the vetting bodies in the first instance until the end of 2024. In its opinion dated December 14, 2021, the Venice Commission concluded that the delay of the vetting procedure by the vetting institutions insofar as it is caused by the pandemic or other objective reasons is easily understandable and provides a sufficient objective justification for the extension of the mandate of the transitional vetting bodies, which is in accordance with the European standards.

The Vetting Institutions are expected to continue to refer all cases where there is evidence of criminal offenses to the prosecution bodies⁶⁸. Although the vetting of members of the judiciary is an administrative process, it is giving results in the fight against corruption as judges and prosecutors dismissed, as a result of the vetting, are also brought to justice. Albania has made the most efforts to create a solid track-record in the fight against corruption, although it remains an objective that requires political will and further structured and sustainable actions⁶⁹. Convictions in cases

63 Independent Qualifications Commission, Statistical report, February 2018 - June 2024, chart from 18.

64 Independent Qualification Commission, Statistical report, February 2018 - June 2024, chart 16.

65 Ibid., 6

66 Independent Qualification Commission Report, Statistical Report (February 2018-August 2019)1 <<http://ICQ.al/>>.

67 The Albanian Committee of Helsinki, "Vetting Process in the context of the obligations of integration in the European Union", February 2022, pg. 20.

68 Albanian 2021 Report, Strasbourg, 19.10.2021, pg.4-5.

https://neighbourhood-enlargement.ec.europa.eu/document/download/7532fb68-5bd9-4620-ae9c-1df47d34b919_en?filename=Albania-Report-2021.pdf

69 Albanian 2021 Report, Strasbourg, 19.10.2021, pg.5.

involving high-level officials remain limited, fostering a culture of impunity within the highest levels of the state⁷⁰.

Corruption is widespread in many areas of public and business life and remains a matter of serious concern.

Referring to the analysis of the selected decision-making, the fact that in most of them, the vetting bodies have respected the principle of proportionality, the principle of equality of legal arms, the right to be heard and to defend the subjects, is evaluated with positive marks. as the main principles that should guide this process, both by nature and within the standards of due process.

4. Conclusions

- The verification process in Albania, as it is claimed that it started with a great degree of optimism, should not be seen as an “institutional asset” that will magically wipe out the entire judicial system from corruption. Filtering the judicial system requires removing political interference and control from public institutions and establishing operational independence as well as public accountability⁷¹. Seen this in the prism of a cost assessment and reflection that despite the optimism at every step, it must be kept in mind that every action undertaken serves to guarantee the future of this system.

- We can say that we have produced a more effective justice system based on the results of cleaning it from subjects who did not justify their position as guardians of the law and defenders of human rights, proving this as in the case of voluntary resignations or with the decision of dismissal from office for failure to fulfill the three essential evaluation criteria.

- Regarding transparency, both the re-evaluation institutions and the supporting entities have significant progress to achieve. The judicial bodies need to recognize that this initiative does not serve as an internal disciplinary mechanism aimed at scrutinizing judges and prosecutors. Rather, this reform was established by citizens for the benefit of citizens, with the primary objective of restoring public confidence 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, the confidence of all citizens of Albania in the independence, accountability, professionalism, and impartiality of the judiciary will be fully restored⁷².

https://neighbourhood-enlargement.ec.europa.eu/document/download/7532fb68-5bd9-4620-ae9c-1df47d34b919_en?filename=Albania-Report-2021.pdf

⁷⁰ Albanian Committee of Helsinki, “Process of vetting within the obligations of integration in the European Union”, February 2022, pg.10

⁷¹ Bardha Maxhuni and Umberto Cucchi, *An Analysis of the Vetting Process in Albania, Policy Analysis* (No. 01/2017) 14 <<http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>>.

⁷² <https://eeas.europa.eu/delegations/albania/66467/z%C3%ABri-amerik%C3%ABs-intervist%C3%AB-me-genoveva-ruiz-calavera-drejtoresh%C3%AB-p%C3%ABr-ballkanin-per%C3%ABndimor-n%C3%AB_sq> last reviewed on December 2019

- The easy and successful completion of the vetting process will help Albania to address the shortcomings in the justice sector. Also, it will enable the country to advance on its path towards European integration, by the conditional recommendation of the European Commission for the opening of membership negotiations⁷³.
- From a formal point of view, these decisions have met the requirements provided for in Law No. 84/2016 (on vetting). However, in the formal aspect, it is noted that the structure of the decisions of the commissions does not list in the same way the elements required according to Article 57 of Law No. 84/2016. In general, the descriptive-reasoning part of these decisions is not clearly structured according to four aspects⁷⁴. The standard that the judicial bodies have followed in terms of the structuring and reasoning of the decision, we think that it needs to be unified, in terms of the logic of the reasoning, legal analysis, concise and clear disclosure of the facts, evidence and arguments of the subject of the revaluation and of the Commission.
- In several decisions of the ICQ/THE APPEAL CHAMBER some commissioners remained in the minority or had parallel opinions is considered positive. Minority and parallel opinions are always an integral part of studied decisions. In general, these decisions are fully justified. We believe that these opinions are indicative of the external and internal independence of the vetting institutions⁷⁵.
- An important role in the vetting is attributed to the Albanian citizens themselves, who can contribute to the re-evaluation process. Citizens can report corruption through an official form approved by vetting bodies and submit it online or offline. These institutions are obliged by law to check the information received.
- The institutions for judicial self-governance continued to be fully functional and functioned effectively throughout the reporting period, including the High Judicial Council (HLC), the High Prosecution Council (HPC), and the Judicial Appointments Council (KED). The HCJ has progressed with the appointments of judges to the vacant positions created by the vetting process in the courts and adopted a significant number of by-laws that regulate the activities of the judicial system and the courts. KKP has continued with the promotions of district prosecutors. The KLJ should ensure the approval of detailed regulatory acts and the KLP should ensure close cooperation with the General Prosecutor's Office more transparently⁷⁶.

73 <https://eeas.europa.eu/delegations/albania/20141/node/20141_sr> last reviewed on December 2019 .

74 Article 57 determines that the descriptive-explanatory part contains four aspects: *a) the circumstances of the case, as assessed during the process and the conclusions drawn by the court; b) evidence and reasons on which decisions are based; c) report and recommendation of the relator; c) the legal provisions on which the decision is based*

75 Albanian Committee of Helsinki, Study Report on the Decision-Making of Institutions of Transitional Reassessment of Judges and Prosecutors (Vetting) for the period February - October 2018 (November 2018)< reviewed on 15 November 2019 <http://www.ahc.org.al/wp-content/uploads/2019/03/RAPORT-STUDIMOR-P%C3%8BR-VENDIM-MARRJEN-E-INSTITUCIONEVE-T%C3%8B-RIVLER%C3%8BSIMIT-KALIMTAR-T%C3%8B-GJYTAR%C3%8BVE-DH-E-PROKUROR%C3%8BVE-VETTING.pdf>>last

76 Albanian 2021 Report, Strasbourg, 19.10.2021, pg.20.

https://neighbourhood-enlargement.ec.europa.eu/document/download/7532fb68-5bd9-4620-ae9c-1df47d34b919_en?filename=Albania-Report-2021.pdf

- The lack of a quorum in the Constitutional Court has been a high price to pay for the transition and we should not be surprised by the fact that the re-evaluation process has had implications and consequences in the judiciary at all levels⁷⁷. This monumental undertaking and the large number of dismissals led to the postponement of the formation of new judicial institutions and affected the functioning of judicial institutions. But, as problematic as they are, the temporary limitations in the functioning of the justice system, which have even resulted in the loss of the quorum in the Constitutional Court, are inevitable to build a judiciary that Albanian citizens can trust to respect the state of right above all else⁷⁸.

- The vetting process has continued to give tangible results. The legislative framework has been further strengthened to ensure a more efficient dissemination of justice. Operational efforts against corruption are bringing some results. Additional efforts are needed to further increase confiscations and confiscation of assets stemming from corruption and the development of history at high levels of cases. In terms of fundamental rights, there has been progress in most areas, although efforts must be made to continue implementation. As for property rights, progress must first be made to further property registration and transitional ownership processes transparently and comprehensively⁷⁹.

- Despite the challenges posed by the COVID-19 pandemic, the comprehensive transitional reassessment of all judges and prosecutors progressed steadily since 2016 and produced tangible results, contributing substantially to the consolidation of the system's independence, impartiality, professionalism, and accountability judicial.

- The overall implementation of the justice reform has also continued with good progress, in line with the recommendations of the European Commission. The process of creating independent institutions of judicial governance, such as the High Judicial Council (HCC), the High Prosecution Council (KLP), and the High Inspectorate of Justice (IKL) has been completed and these institutions are fully functional⁸⁰.

- On February 10, the Assembly of the Republic of Albania approved with the required majority the constitutional amendment necessary to extend the mandate of the vetting bodies in the first instance until the end of 2024. In its opinion of December 14, 2021, the Venice Commission concluded that the delay of the vetting procedure by the vetting institutions insofar as it is caused by the pandemic or other objective reasons is easily understandable and provides a sufficient objective justification for the extension of the mandate of the transitional vetting bodies, which is by the European standards⁸¹.

77 https://eeas.europa.eu/delegations/albania/63073/reforma-e-drejt%C3%ABsis%C3%AB-dhe-vettingu-p%C3%ABr-qytetar%C3%ABt-me-qytetar%C3%ABt_sq

78 https://eeas.europa.eu/delegations/albania/56092/koha-p%C3%ABr-ndryshim-n%C3%AB-gjyq%C3%AB-sorin-shqiptar-nj%C3%AB-v%C3%ABshtrim-pas-nj%C3%AB-viti-t%C3%AB-procesit-t%C3%AB-vettingut_sq.

79 Albanian 2021 Report, Strasbourg, 19.10.2021, pg.18

https://neighbourhood-enlargement.ec.europa.eu/document/download/7532fb68-5bd9-4620-ae9c-1df47d34b919_en?filename=Albania-Report-2021.pdf

80 <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>

81 https://neighbourhood-enlargement.ec.europa.eu/system/files/202212/C_2022_9165_F1_ANNEX_EN_V3_P1_2342871.PDF_pg_5.

- The GRECO⁸² report states that Albania has satisfactorily implemented or satisfactorily managed four of the ten recommendations included in the Fourth Round Evaluation Report. The other six recommendations have been partially implemented⁸³.
- The temporary re-evaluation of all judges and prosecutors (the vetting process) has progressed steadily, continuing to produce tangible results, thus fulfilling the condition for the first KNC. Under the auspices of the European Commission, the International Monitoring Operation has continued to oversee the process. So far, more than 286 files have been processed, leading to 62% dismissals, mainly for matters related to unjustified assets or resignations. During the period of isolation due to COVID-19, verification institutions have continued to carry out some important investigative activities in the distance. Vetting institutions have resumed public hearings in June 2020⁸⁴. In the February 2018-November 2023 report: 109 subjects or 15.5% of the subjects called in a vetting were dismissed from their duties before or during the development of the process. Among the subjects are 63 judges, 28 prosecutors, 12 legal assistants, 4 legal advisers and 2 inspectors.⁸⁵
- Some of the recommendations from the international monitoring instance on the continuity of the re-evaluation process consisted of further advancement of the process of re-evaluation of judges and prosecutors (vetting) and speeding up the procedures, especially on the appeal, considering the quality of the process. Consolidating efforts to improve the efficiency of all courts and prosecution services and reduce the number of backlogs, including filling open vacancies, improving the functioning of courts and simplifying court procedures, further decisive action to set up a modern integrated case management system and create a strong implementation and communication plan for the new judicial map that ensures respect for the right to access to justice and the legal framework in force, in particular on transfers and promotions; continue to strengthen the capacity and independence of the judicial system and the governing institutions themselves, making improvements to the quality and efficiency of the School of Magistrates, including the revision of the entrance exam following the European standards⁸⁶.

82 GRECO abbreviation of The Group of States against Corruption (GRECO) is the Council of Europe anti-corruption body; See more <https://www.coe.int/en/web/greco>.

83 Fourth Evaluation Round, Prevention of crime related to members of parliament, judges and prosecutors Second Compliance Report Albania Approved by GRECO at the 80th Plenary Meeting, (Strasbourg, 18-22 June 2018), p.18 pg. 82.

84 The Report on Albania 2020 which accompanies the Communication from the Commission to the European Parliament, the Council The European Economic and Social Committee and the Committee of the Regions 2020 Communication on EU enlargement policy, Brussels, 6.10.2020, pg.6.

85 Independent Qualification Commission, Statistical Report February 2018 - November 2023. See more <https://icq.al/wp-content/uploads/2023/12/RAPORTI-STATISTIKOR-2018-nentor-2023.pdf>

86 https://neighbourhood-enlargement.ec.europa.eu/system/files/2023_11/SWD_2023_690%20Albania%20report.pdf, pg. 18-19.

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Bibliography

1. Law No. 115/2016, 03.11.2016 “On the governing body of the service system”.
2. Law No. 99/2016, On some additions and changes to the law No. 8577, Date 10.2.2000, “On the Organization and Functioning of the Constitutional Information of the Republic of Albania”.
3. Law No. 84/2016 “On the transitional reassessment of governments and prosecutors in the Republic of Albania”.
4. Law No. 76/2016, Date. 22.7.2016 On some additions and changes to Law No. 8417, dated 21.10.1998, Constitution of the Republic of Albania.
5. Constitution of the Republic of Albania 1998 ANNEX “Transitional reassessment of governments and prosecutors”.
6. Law No. 137/2015, dated 17.12.2015 On Some Changes and Additions to Law No. 8417, Date 21.10.1998, Constitution of the Republic of Albania, other.
7. Law No. 10 192, dated 3.12.2009 “On Preventing and Fighting Organized Crime, Trafficking and Corruption Through Preventive Measures Against Wealth”.
8. “Report on recent changes in the law on constitutional provisions in the Republic of Albania”, Venice Commission, CDL-INF (98) 9
9. Venice Commission, CDL-AD(2010)040 <[https://www.venice.coe.int/ëebforms/documents/default.aspx?pdffile=CDL-AD\(2016\)036-e](https://www.venice.coe.int/ëebforms/documents/default.aspx?pdffile=CDL-AD(2016)036-e)>
10. Albanian Helsinki Committee Vetting in the Monitoring of the Albanian Helsinki Committee Findings and Statistics September 2017 - April 2018, (30 April 2018). <https://ahc.org.al/wp-content/uploads/2018/06/Final_Raport-per-Monitorimin-e-vettingut_KShH_Shtator-2017-Prill-2018.pdf>.
11. Albanian Helsinki Committee, Study Report Monitoring the Vetting Process of Judges and Prosecutors during the Period (January 2017 - June 2018).
12. Albanian Committee of Helsinki, Study Report on the Decision-Making of Institutions of Transitional Reassessment of Judges and Prosecutors (Vetting) for the period February-October 2018 (November 2018)<<http://www.ahc.org.al/ëp-content/uploads/2019/03/raport-studimor-p%c3%8br-vendimmarrjen-e-institucioneve-t%c3%8b-rivler%c3%8bsimit-kalimtar-t%c3%8b-gjyqtar%c3%8bve-dhe-prokuror%c3%8bve-vetting.pdf>>
13. Albanian Helsinki Committee, “Vetting process within the framework of the obligations of integration in the European Union”, February 2022.
<https://ahc.org.al/wp-content/uploads/2022/05/Final_Policy-Paper-1- -Vetting-Process.pdf>

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

14. Independent Qualification Commission Report, Statistical Report (February 2018- April 2019) 1 <<http://ICQ.al/>>.
15. Independent Qualification Commission Report, Statistical Report (February 2018-August 2019) 1 <<http://ICQ.al/>> .
16. The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary General. UN Security Council S/2004/616, 23 (August 2004) <<http://www.un.org/en/sc/documents/sgreports/2004.shtml>>.
17. Special Parliamentary Commission for Justice System Reform, “*Analysis of the justice system in the Republic of Albania*”, June 2015.
18. Read Feranda (2016), What is the Vetting process, how does it function and why is it necessary in Albania? <<http://www.360grade.al/politike/item/39417-cfare-eshte-procesi-ivettingut-si-funksionin-dhe-pse-duhet-ne-shqiperi>>.
19. Anastasi, A., *The Albanian justice reform in the framework of the European integration process*, December 31, 2021. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4316134>
20. Prof.Dr.Aurela Anastasi <<https://www.parlament.al/Files/Informacione/Revistanr.3.pdf>>.
21. Haxhiu, D., and Karamuço, E., “*The Influence of The Justice Reform of Albania Towards European Union Integration*,” pg. 40 41, <<https://namibian-studies.com/index.php/JNS/article/view/2011/1376>>.
22. <<https://ba.boell.org/en/2018/08/01/vetting-judges-and-prosecutors-albanian-experience>>.
23. Maxhuni, B., and Cucchi, U., *An Analysis of the Vetting Process in Albania, Policy Analysis*, (No.01/2017) <<http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>>.
24. Ministry of Justice, Detailed Information by Sectors of the Justice System, (January 2015) <https://drejtesia.gov.al/wpcontent/uploads/2017/10/Analiza_e_sistemit_te_drejtesise_FINAL-1.pdf> reviewed for the last time on November 15th 2019.
25. European Commission, Albanian Progress Report <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf>.
26. Albanian 2021 Report, Strasbourg, 19.10.2021 <https://neighbourhood-enlargement.ec.europa.eu/document/download/7532fb68-5bd9-4620-ae9c-1df47d34b919_en?filename=Albania-Report-2021.pdf; <https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021-en>>.
27. Institute for Development Research and Alternatives (IDRA), Corruption in Albanian, Perceptions and Experiences. (2015-2016).
28. <<https://www.idrainstitute.org/files/reports/Corruption%202016/Gjetjet%20Kryesore%20Studimi%20i%20Korrupsionit%20IDRA%20Grafike.pdf>>.
29. The Parliament (Nr. 3, 2015) <<https://www.parlament.al/Files/Informacione/Revistanr.3.pdf>>

30. Albania: Re-evaluation of judges and prosecutors, amid criticism and debates <<https://www.zeriamerikes.com/a/albania-vetting/5034314.html>>
31. <<https://www.reporter.al/wp-content/uploads/relacion-shtesa-dhe-ndryshime-nel-ligjin-nr.-84172c-date-21.10.1998-kushtetura-e-r.sh-te-ndryshuar.pdf>>.
32. <<https://eeas.europa.eu/delegations/albania/56092/koha-p%C3%ABr-ndryshim-n%C3%AB-gjyq%C3%ABsorin-shqiptar-nj%C3%AB-v%C3%ABshtrim-pas-nj%C3%AB-vitit%C3%AB-procesit-t%C3%AB-vettingut-sq>>.
33. <https://eeas.europa.eu/delegations/albania/20207/deklarata-shtyp-e-kreut-te-impas-takimit-themelues-te-bordit-menaxhues_sq>.
34. <https://eeas.europa.eu/delegations/albania/63073/reforma-edrejt%C3%ABsis%C3%AB-dhe-vettingu-p%C3%ABr-qytetar%C3%ABt-me-qytetar%C3%ABt_sq>.
35. <https://eeas.europa.eu/delegations/albania/20141/node/20141_sr> Independent qualifications Commission, Statistical Report February 2018 - November 2023. See more.
36. <https://ICQ.al/wp-content/uploads/2023/12/RAPORTI-STATISTIKOR-2018-mentor-2023.pdf>
37. Independent Qualification Commission, Statistical Report, February 2018 - June 2024 Independent Qualification Commission Report, Statistical Report (February 2018 - August 2019)1 <<http://ICQ.al/>>.
38. <<https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>>
39. https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-12/C_2022_9165_F1_ANNEX_EN_V3_P1_2342871.PDF
40. <https://www.coe.int/en/web/greco>
41. Fourth Evaluation Round, Prevention of crime related to members of parliament, judges and prosecutors Second Compliance Report Albania Adopted by GRECO at the 80th Plenary Meeting, (Strasbourg, 18-22 June 2018)
42. The Report on Albania 2020 which accompanies the Communication from the Commission to the European Parliament, the Council.
43. The European Economic and Social Committee and the Committee of the Regions 2020 Communication on EU enlargement policy, Brussels, 6.10.2020 https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_690%20Albania%20report.pdf
44. Decision No. 12, dated 17.12.2018, with subject B. Dedja.
45. Decision No. 19, dated 26.07.2019.
46. Decision No. 51, dated 30.07.2018, with subject B. Avdullai.
47. Decision no. 180, dated 18.07.2019, of the ICQ.
48. Decision No. 15, dated 17.07.2019, subject D. Reshka (Prosecutor).
49. Decisions no. 12, date. 23.03.2018 and no. 14, date. 13.04.2018, no. 15, dated 20.04.2018.
50. Decision No. 3, dated 17.07.2018, subject to F. Lulo (Judge of the Constitutional Court).
51. Decision 404, dated 23.06.2021, Decision no. 352, dated 01.03.2021, Decision no. 392, dated 28.05.2021

52. Decision of the ICQ No. 404, dated 23.06.2021.
53. Decision No. 10, dated 18.04.2019, subject to A.Th.
54. Decision No. 52, dated 30.07.2018, subject Sh. Selimi
55. Decision No. 5, dated 10.09.2018 (JR).
56. Decision No. 17, dated 25.07.2019.
57. Decision of the ICQ No. 415, dated 07.07.2021
58. Decision of the ICQ No. 402, dated 17.06.2021
59. Decision of the ICQ No. 404, dated 23.06.2021 *Xhoxhaj v. Albania*, Application no.15227/19, Strasbourg, 9 February 2021.
60. <https://hudoc.echr.coe.int/#%22fulltext%22:%22albania%20vetting%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-208053%22>
61. *Nikëhasani v. Albania*, Application no.58997/18, Strasbourg, 13 December 2022.
<https://hudoc.echr.coe.int/#%22fulltext%22:%22albania%20vetting%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-221479%22>
https://prd-echr.coe.int/documents/d/echr/CP_Albania_ENG .
62. *Thanza v. Albanian*, Application no.41047/19, Strasbourg, 04 July 2023.
<https://hudoc.echr.coe.int/#%22fulltext%22:%22albania%20vetting%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-225653%22>
63. *Cani v. Albanian*, Application no.37474/20, Strasbourg, 04 October 2022.
64. *Antoneta Sevdari v. Albania*, Application no.40662/2019, Strasbourg 13 December 2022.
<https://hudoc.echr.coe.int/#%22fulltext%22:%22albania%20vetting%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-221482%22>

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