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ALBANIAN JUSTICE REFORM IN THE FRAMEWORK OF THE EU ACCESSION PROCESS

The accession to the European Union is a guarantee for the future of Albania. It will provide numerous advantages once Albania becomes a full member. The rule of law holds an important place in the sustainability and equity of democratic governance, especially considering the European Union's accession process to the Republic of Albania. The vetting process in Albania is considered a mechanism that will ensure the rule of law in the judicial decision-making process and be an important condition that the country should overtake in ensuring an uncorrupted judiciary system. The justice reform and especially the vetting process is considered to as the main component of the accession talks with the European Union. The reform carries major objectives and benefits whose outcomes hope to quell several issues the candidate country is facing, aspiring to reach the equitable level of changes and proper harmonization on European Union's standards. The evaluation process is based on a three-criteria where temporary vetting organs conduct the investigation for each magistrate. Following this process, the dismissed judges have filed complaints to the European Court of Human Rights based on the right to due process.

Keywords: vetting, International Monitoring Operation, First Instance Commission, EU, SPAK (Special Anti-Corruption and Organized Crime Structures), European Court of Human Rights, harmonization, rule of law.

1. INTRODUCTION

The rule of law holds immense importance of the sustainability of the democratic systems, and especially considering the European Union's accession process of candidate countries such as Albania. As a result, the Justice Reform, a rigorously specified and acted upon

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procedure of thoroughly investigating and evaluating the judicial authority of the country, is considered the main step to be taken prior to accession talks with the European Union (hereinafter: EU).¹ It is expected that the reform would solve several issues the candidate country is facing on the road of achieving equitable changes and proper harmonization with the EU standards.

Primarily, the EU's institutions stated the complete political reform of the Albanian judiciary system, known as the Justice Reform, was the only condition left to be satisfied by the government before the accession talks.² More precisely, the EU has set several prerequisites for Albania, among others, the Justice Reform in the framework of the negotiation talks. The Albanian government has been capable of achieving moderate effectiveness on key issues emphasized by the EU institutions during the last three years, with judicial reform remaining the country's main stumbling obstacle.³ The Albanian Parliament aims to establish a more independent and well-structured, judiciary.⁴ On that road, it approved a total of seventeen constitutional amendments, as had been requested by the reform of the judiciary.

These amendments gave rise to the application of the so-called Vetting Law in Albania, also referred to as the non-permanent reassessment of its judges and prosecutors. The establishment of two distinctive institutions has turned out to be necessary and mandatory for the judges, and the prosecutors since they have been the main concern of the re-evaluation process, which includes a First Instance Commission (hereinafter: IQC) and an Appeal Chamber (hereinafter: AC).⁵ As a consequence of that, the involvement of the ordinary court system from the vetting process is excluded. These institutions are observed by an International Monitoring Operation body (hereinafter: IMO) established by foreign magistrates from the Member States of the EU or the United States of America (hereinafter: USA). This supervisory institution with no executive power has a supporting and advising role in the vetting process.⁶ This article will be focused on three main issues of Justice Reform in Albania: institutional reformation, vetting process, and EU accession process.

2. REFORMING THE JUDICIARY THROUGH INSTITUTIONAL REFORM

The sustained promotion of the broader reform process by the EU and the USA, have helped through multiple initiatives.⁷ The majority of cases are decided by a panel of three judges in the SPAK courts (Special Anti-Corruption and organized crime structure). The Special Anti-Corruption and Organized Crime Structures are linked to the SPAK courts,

¹ European Council. 2016. *Albania Amicus Brief Statement for The Judicial Branch on The Law on The Periodic Re-Evaluation of Prosecutors and Judges (The Judicial Reform)*. Affirmed by the Venice Commission.

² *Ibid.*

³ *Ibid.*

⁴ Mykaj, E. 2020. *Judicial vetting: a vital policy tool to fight corruption in Albania*. U4 Anti-Corruption Resource Centre.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Maxhuni B. & Cecchi U. 2017. *An Analysis of the Vetting Process in Albania*. Policy Analysis No.01/2017. Available at: <https://www.legalpoliticalstudies.org/> (29. 9. 2022).

which are assisted by the Special Prosecutors Office, as a judicial authority, and the National Bureau of Investigating, as a subsidiary research agency. The SPAK is solely responsible for the investigation and trial of cases that fall under the SPAK courts' jurisdiction. The SPAK courts have jurisdiction over corruption, organized crime, and charges against a large group of high-ranking officials, according to Article 135 paragraph 2 of the Constitution. The SPAK courts' capabilities are further defined in Article 75a of the Criminal Procedure Code, which defines "organized crime" to encompass terrorist-related offenses. As a result, the SPAK courts now have most of the corruption-related powers that were formerly shared in the already existing court system. In 2020, the Special Prosecution Office will file 70 cases involving 260 defendants to the SPAK courts, out of which 53 cases involve about 100 defendants being tied to corruption.⁸

The number of vetting bodies' layoffs and dismissals to date demonstrate that the assumption of a high level of judicial impropriety was true. Several confirmation decisions made by the FIC were rejected by the AC, resulting in high numbers of dismissed magistrates. The examples will be discussed in the following chapters of the article. The recruitment and retention of magistrates have now become a new concern because of the rising resignations.

Several constitutional institutions were subject to change during the Justice Reform. These are the High Judicial Council, the High Prosecutorial Council, and the Constitutional Court.⁹ The High Judicial Council consists of 11 members, who were elected three months after the entry into force of the law. Six members will belong to the ranks of the judiciary and five others will be lawyers, who will be elected with 3/5 of the votes in the Assembly.¹⁰ When it comes to the Constitutional Court, there will be nine members with a nine-year term. Three members are elected by the President, three are elected by the Assembly with 3/5 of the vote, while another three members come from the Supreme Court. The High Court Justices are appointed by the President of the Republic via the proposal of the High Judicial Council with a non-renewable nine-year mandate.¹¹ This court regained its quorum in March 2020.¹²

The High Prosecutorial Council is composed of 11 members, six from the corps of prosecutors and five from jurists. The High Prosecutorial Council proposes to the Assembly three candidacies for the Prosecutor General. The High Prosecutorial Council

⁸ Law On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime, *Official Gazette of the Republic of Albania*, no. 95/16, 47/21.

⁹ Constitution of the Republic of Albania, *Official Gazette of the Republic of Albania*, no. 8417/97, 9675/07, 9904/08, 88/12, 137/15, 76/16, 115/20. Available at: <https://www.parlament.al/Files/sKuvendi/kushtetuta.pdf> (29. 9. 2022).

¹⁰ Map of justice reform; new institutions in the judiciary and prosecutor's office 2016. Available at: <https://www.reporter.al/2016/01/07/harta-e-reformes-ne-drejtesi-institucionet-e-reja-ne-gjyqesor-dhe-prokurori/>; (29. 9. 2022). Constitution of the Republic of Albania, *Official Gazette of the Republic of Albania*, no. 8417/97, 9675/07, 9904/08, 88/12, 137/15, 76/16, 115/20. Available at: <https://www.parlament.al/Files/sKuvendi/kushtetuta.pdf> (29. 9. 2022).

¹¹ Constitution of the Republic of Albania, *Official Gazette of the Republic of Albania*, no. 8417/97, 9675/07, 9904/08, 88/12, 137/15, 76/16, 115/20. Available at: <https://www.parlament.al/Files/sKuvendi/kushtetuta.pdf> (29. 9. 2022), Art 136/a.

¹² European Commission. 2021. Albania 2021 Report. Available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Albania-Report-2021.pdf> (29. 9. 2022), p. 4.

is established within six months from the entry into force of this law.¹³ The Prosecutor General is appointed by 3/5 of the members of the Assembly among three candidates proposed by the High Prosecutorial Council. He is appointed within two months after the constitution of the High Prosecutorial Council and no later than the last date of the mandate of the acting Prosecutor General.¹⁴

When it comes to the anti-corruption structure, it is established within two months after the constitution of the High Prosecutorial Council. The Special Anticorruption and Organized Crime Structure consists of the Special Court of First Instance, the Special Court of Appeal, the Office of the Prosecutor, and the National Bureau of Investigation. The Prosecutor General has no authority over this structure.¹⁵

The Judicial Appointments Council performs the verification of non-judge candidates for members of the High Judicial Council, the High Prosecutorial Council, as well as candidates for members of the Constitutional Court.¹⁶

The High Inspectorate of Justice starts functioning three months after the creation of the High Prosecutorial Council. It is responsible for investigating disciplinary violations against judges and prosecutors at all levels. It consists of five members, out of which three are from the ranks of the judiciary, while two are from the ranks of the prosecution. The Disciplinary Tribunal of Justice decides on disciplinary measures for members of the High Judicial Council, High Prosecutorial Council, Prosecutor General, and members of the High Inspectorate of Justice.¹⁷

3. VETTING PROCESS IN THE FRAME OF THE APPLICATION OF JUSTICE REFORM IN THE REPUBLIC OF ALBANIA

The immense tension of corruption in the Republic of Albania led to the issuance of the famous package on Justice Reform, as a pre-condition for opening and extending the EU accession negotiations with Albania. As constantly reported by the European Commission through its progress reports, the EU has always identified the judicial system as a sector with a high index of corruption in Albania.¹⁸ ¹⁹ Albania has never been in line with the Copenhagen criteria regarding the fight against corruption in the judicial sector.²⁰

After the consultative and legislative processes, Albania issued the famous package of the Justice Reform, to comply with the requests and recommendations of the European

¹³ *Ibid*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Upon all the problematics around the political and economic era of Albania, the utmost with very high index of corruption among the public sectors, was the judicial system. It has been reported throughout the progress reports of the EU Commissions since 2014, when Albania granted the status of candidate country for EU.

¹⁹ Hoxha A. 2020. The EU rule of Law initiative Towards the Western Balkans, *Hague Journal on the Rule of Law*, 13(1), p. 17.

²⁰ *Ibid.*

Commission for further accession to the EU. It is noteworthy that the package on Justice Reform was approved and enacted in 2016 with the inclusion of 46 new constitutional articles, which referred to the reorganization of the judicial system.²¹

Among others, one of the main issues and changes was the issuance and establishment of the so-called *Vetting Law* in 2016. The referred *Vetting Law* is titled “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.²² The purpose of the *Vetting Law* is to lay down certain rules and regulations for the transitional re-evaluation of all the subjects being part of the judicial system (prosecutors and judges), to strengthen and guarantee the application and implementation of the rule of law, due process, and independence of the judiciary. Moreover, it aimed to restore the trust of the public for institutional access and proper functioning, as already proclaimed also in Article 179/b of the Albanian Constitution.²³ Besides that, its scope also covers the role of some specific state organs that are strongly connected with the vetting process such as the First Instance Commission (FIC), AC, IMO, and the Public Commissioner.

The said legal package also included the Law “On the Status of the Judges and Prosecutors in the Republic of Albania” (Law No. 96/2016). However, this paper will remain predominantly focused on the analysis of provisions of the *Vetting Law* and its implementation. *Vetting* has regularly been considered a practical organizational tool for transitional majority-rule governments to assess appropriateness of judges and prosecutors for open employment.²⁴ One of the major objectives of this reformatory process is to strengthen the responsibility of the performance of judges and prosecutors to restore legal certainty within society. The new Albanian *Vetting law* provides a legal ground for intensive examination and assessment of abilities, competencies, personality, resources, and other specified perspectives of a given person.²⁵ Staff being involved in exercises that poses questions concerning their judgment and professionalism, incur the sanctions, such as removal from the office, and post-employment prohibition of engaging in similar work assignments.

Two special bodies have been established to carry out the review process. The IQC and the Appeals Chamber Court (hereinafter: ACH). In other words, this process does not occur within the existing regular court system since the judge is subject to evaluation. These bodies are supervised by an IMO composed of judges and prosecutors elected by different EU Member States. Such a international oversight force reviews the process playing an oversight and support role throughout the process.²⁶ In line with this strategy, IMO is with no decision-making powers and sticks to the observing and supporting role in the

²¹ Refer to: www.reformanedrejttesi.al/ndryshimet-kushtetuese (29. 9. 2022).

²² Law on the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania, *Official Gazette of the Republic of Albania*, no. 84/16. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)062-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)062-e) (29. 9. 2022).

²³ Law on the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania, *Official Gazette of the Republic of Albania*, no. 84/16, Art. 1. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)062-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)062-e) (29. 9. 2022).

²⁴ Maxhuni B. & Cecchi U. 2017. *An Analysis of the Vetting Process in Albania*. Policy Analysis No.01/2017. Available at: <https://www.legalpoliticalstudies.org/> (29. 9. 2022).

²⁵ *Ibid.*

²⁶ *Ibid.*

process. The Public Commissioner Institution represents and protects the public interest in the re-evaluation process. It is guided by the principles of independence and impartiality.

The Public Commissioner does exercise its activity in accordance with the Constitution of the Republic of Albania, the law on the reevaluation, all the relevant pieces of national legislation, and ratified international agreements. It rigorously respects the principle of due process and aims to develop a transparent activity, that stores the private data of the parties involved in the re-evaluation process of vetting.

Every member of the judiciary and prosecution shall pass the vetting process to stay in the system.²⁷ The IQC and the AC, as provided by Article 179/b, paragraph 5 of the Constitution, are the institutions that will decide on the final evaluation. The decision shall be based on one or several components or on an overall evaluation of all three key components.²⁸

When it comes to the main objectives concerning this viable institutional procedure, first and foremost to be considered is to bring appropriateness for public employment by evaluating judges and prosecutors. This reformative measure nourishes coherence, unification, and integrity in public sector and re-establishes trust in the government and institutions by the whole population. The process relates to public sector areas since those areas such as the army, police and judiciary are more subject to the infringement of rights. The Vetting Law lays down criteria for controlling the evaluation and investigation skills of the judges and prosecutors. The vetting process might involve one or more institutions, where human rights violations have taken place. The screening process and practices are introduced by the vetting procedures to prevent violations of law. These measures seem important and inevitable to finally align the framework governing the Albanian judiciary with the European standards.

Under Article 179, paragraph 5 of the Constitution, the assets, background, and proficiency of judicial subjects are the three main elements taken into consideration in the assessment and evaluation of the vetting procedure. The two foreseen institutions, the FIC and the AC, decide based on these three components, completing an overall evaluation. The assets are included in an all-inclusive audit of properties, further followed by a declaration which verifies the legitimacy of their origin. When it comes to the third element, the background consists of the verification of other data which are used to identify potential associations with other individuals who are involved in organized crime. Lastly, the so-called proficiency element consists of making sure that every subject will go through a process of evaluating his/her professional skills. This assessment also includes the estimation of organizational and ethical skills, as well as individual qualities which are anticipated by law.

According to the Albanian Constitution, the IQC will conclude the vetting process in five years (by the year 2022) in the first instance, and the AC will fulfill it in nine years in the second instance. The IQC undertakes an unbiased investigation of each magistrate and makes a conclusion based on the evaluation requirements. The magistrate or the Public

²⁷ *Ibid.* Law on the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania, Official Gazette of the Republic of Albania, no. 84/16, Art. 4. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)062-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)062-e) (29. 9. 2022).

²⁸ Law on the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania, *Official Gazette of the Republic of Albania*, no. 84/16, Art. 6. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)062-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)062-e) (29. 9. 2022).

Commissionaire, who advocates for the public concerns in the vetting process, may pursue the matter to the AC. The Constitutional Court's AC may affirm, modify, or invalidate the IQC ruling after finally hearing the evidence in the second instance. The Vetting Law proclaims in its provisions the three main criteria upon which the bodies of the process, specifically the IQC and AC will conduct the re-evaluation process for the subject.²⁹ The Vetting Law stipulates that the vetting process for the related subjects has been conducted or will be conducted under one or the three below-mentioned criteria:



In this regard, the Vetting Law describes the three pillars of controlling and verification process:

- assets (information relating to the person's assets and their origin, a description of the person's income and liabilities, and a list of other related persons);
- background (information relating to the person's particular details, address history, education and other qualifications, employment history, and questions concerning links to organized crime);
- proficiency (requires evaluation and assessment whether their ethical and professional activities follow the Vetting Law).³⁰

Until 24th of January 2022, the FIC has issued 496 decisions (approximately 62%), consisting of 194 confirmations in office; 183 dismissal decisions; 75 terminations of the process; 34 conclusions of the process; and two decisions on suspension from office. The number of dismissals and terminations from the vetting bodies to date indicates that the perceived high level of judicial corruption was correct. It is the obligation of the established Prosecution Office to conduct the proper investigation of the dismissed judges as indicated by the vetting institutions for possible criminal incrimination. The fact that corrupted magistrates are dismissed does constitute a positive step, but on the other hand, a solution for the recruitment of new magistrates has yet to be found. The Justice Reform is still an ongoing process, but European Commission's recommendation stands for the continuation of the re-evaluation vetting process.

3.1. Case Study: Justice Reform Before the European Court of Human Rights: Justice of the Constitutional Court of Albania: Mrs. Altina Xhoxhaj

Mrs. Altina Xhoxhaj was one of the five members of the Constitutional Court who was dismissed by the vetting process. She was the first of the dismissed judges that land the case to the European Court of Human Rights (hereinafter: ECtHR). The ECtHR rendered the

²⁹ Law on the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania, Official Gazette of the Republic of Albania, no. 84/16, Art. 4. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)062-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)062-e) (29. 9. 2022).

³⁰ Skëndaj, E. et.al. 2020. *Vettingu i gjyqtarëve edhe prokurorëve (Për vendimmarrjen dhedynamikën e veprimtarisë së institucioneve të rivlerësimit kalimtar)*. Albanian Helsinki Committee.

decision in the case *Xhoxhaj v Albania*, finding that the entire process was not in violation of the European Convention on Human Rights (hereinafter: ECHR).³¹

Following the internal procedures, after appealing to the AC, Mrs. Xhoxhaj filed a lawsuit in the ECtHR, invoking alleged violation of Article 6 paragraph 1, and, Article 8 of the ECHR considering the decision of the FIC, that dismissed her from the position of the justice of the Constitutional Court of Albania and prohibited her to be part of the judicial and prosecutorial system for almost 15 years.

The ECtHR came to the conclusion that there was no violation of Article 6 paragraph 1, since the procedures had been regular, the vetting bodies (FIC and AC) had been independent and impartial, while the examination of the petitioner's appeal in a public hearing by the AC had not been necessary and the principle of legal or judicial certainty was not violated at all.³² Moreover, the ECtHR found that there was no violation of Article 8 of the ECHR, as the dismissal from office had been proportionate and the permanent legal prohibition to re-enter the justice system due to serious disciplinary violations had been consistent with the guarantees of the integrity of the figure of the magistrate and with public trust in the justice system.³³

- *Case of Married Judges in the System: Niko Rapi- Miliana Muca*

One of major problems that has been faced during the re-evaluation process was the application of double standards by the FIC in some cases where examined judges, or prosecutors turned out to be spouses. In that context, the case of Rapi-Muca and the case of Reka-Reka will be analyzed.

Mrs. Miliana Muca, judge of the Special Court Against Corruption and Organized Crime, faced the re-evaluation process at the IQC. Mrs. Muca, who was investigated in terms of all three criteria, was asked for explanations only regarding the source of the parents' income in 2008 and regarding the declaration of the contract for the purchase of a house with a delay of one year.³⁴ The FIC and AC qualified her for the position of Judge in the Special Court Against Corruption and Organized Crime and confirmed her tenure.³⁵ On the other hand, her husband Mr. Niko Rapi was dismissed with the reasoning as follows:

“ In line with Article 4, paragraph 2 of the Law No.84/2016, “On the Transitional Reassessment of Judges and Prosecutors in the Republic of Albania”, the judging panel of the

³¹ Strasbourg rejects the complaint of former judge Altina Xhoxhaj 2021. Available at: <https://www.reporter.al/2021/02/09/strasburgu-hedh-poshte-ankimin-e-ish-gjyqtars-altina-xhoxhaj/> (29. 9. 2022).

³² ECHR judgment 2021. Judgment of February 9, 2021. Application no. 15227/19, *Xhoxhaj v Albania*. Available at: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-208053%22> (29. 9. 2022).

³³ ECHR judgment 2021. Judgment of February 9, 2021. Application no. 15227/19, *Xhoxhaj v Albania*. Available at: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-208053%22> (29. 9. 2022). Strasbourg rejects the complaint of former judge Altina Xhoxhaj 2021. Available at: <https://www.reporter.al/2021/02/09/strasburgu-hedh-poshte-ankimin-e-ish-gjyqtars-altina-xhoxhaj/> (29. 9. 2022).

³⁴ Judge Miliana Muca faces the vetting 2020. Available at: <https://www.reporter.al/2020/01/31/gjytarja-miliana-muca-perballet-me-vetingun/> (29. 9. 2022).

³⁵ Independent Qualification Commission of the Republic of Albania. Decision no. 234 of February 4, 2020. Available at: <https://kpk.al/wp-content/uploads/2020/02/Vendim-Miliana-Muca.pdf> (29. 9. 2022).

Independent Qualification Commission found that the subject of the revaluation, with his actions, has violated the public trust in the justice system. The said judging panel decided based on the overall evaluation of the case, considering several aspects, such as the balance between the right to the limited and public interest, the tool used in relation to the situation that dictated it, and the goal that was intended to be achieved. It referred to point and evidence c, paragraph 1 of Article 58, as well as to point d, paragraph 5 of Article 33 and paragraphs 3 and 5 of Article 61, of Law No. 84/2016. By doing so, the trial body of the aforementioned Commission, decided to dismiss the subject of re-evaluation, Mr. Niko Rapi, from the position of a judge of the District Court of Tirana.”³⁶

- Shpetim Reka and Flora Reka

The prosecutor of Durrës, Flora Reka, was confirmed in office by a majority of votes a few weeks after the dismissal of her husband from the position of a judge, for similar findings in the criteria of wealth and figure.³⁷ During the hearings, judge Shpetim Reka was faced with findings on suspicions of concealment of wealth, for the benefit of a land plot in Himara contrary to the law; as well as with other findings about the property for which he gave an explanation.³⁸ The conclusions of two decisions were totally different, since one spouse was confirmed in office, while the other spouse was dismissed, by using the same evaluation criteria.

To the public trust, the double standard review process is very problematic as it goes beyond the aim of the establishment of the Justice Reform and especially of the Vetting Law, and from the legal point of view is an infringement of the main constitutional principles such as legal certainty, the principle of impartiality, the principle of legality etc. The IQC justified the decision on the grounds of proportionality, arguing that two persons could not be punished administratively for the same matters. However, facing such a situation, the IMO has constantly asked the AC to rule on the case, by setting a standard for how these cases will be handled in the future.

4. EUROPEAN PATH OF ALBANIA TO JUSTICE REFORM

The Western Balkan's accession process to the EU has been one of the hardest roads that the region and its people have ever seen. One of its most difficult aspects are contained in the Copenhagen Criteria which are enshrined in Negotiation Chapter 23 for each candidate country respectively.³⁹ These criteria are explicitly connected with the Justice Reform that

³⁶ Independent Qualification Commission of the Republic of Albania. Decision no. 277, on July 21, 2020. Available at: <https://kpk.al/wp-content/uploads/2020/10/Vendim-Niko-Rapi.pdf> (29. 9. 2022).

³⁷ KPK confirms in office the prosecutor Flora Reka 2020. Available at: <https://www.reporter.al/2022/03/25/kpk-konfirmon-ne-detyre-prokuroren-flora-reka/> (29. 9. 2022).

³⁸ KPK: Shpetim Reka violated public trust while exercising his duties as a judge 2022. Available at: <https://www.reporter.al/2022/04/11/kpk-shpetim-reka-cenoi-besimin-e-publikut-gjate-ushtimit-te-detyres-se-gjyqtarit/> (29. 9. 2022). Independent Qualification Commission of the Republic of Albania. Decision no. 512, on February 25, 2022. Available at: <https://kpk.al/wp-content/uploads/2022/03/Vendim-Shpetim-Reka.pdf> (29. 9. 2022).

³⁹ Chapter 23: Judiciary and fundamental rights, Chapter 24: Justice, Freedom and Security & European

each Western Balkan country shall undertake towards the strengthening of the rule of law and fundamental rights in ensuring a stable and functional democracy dignified to join the EU. It should be noted that the vetting formula as presented in Albania can be considered a ‘two-sided coin’ of different values. The first side of the coin is that the EU has required it to be a pre-condition for the country’s accession to the EU nevertheless that it implies entering into a costly process which will be a case study for the rest of the Western Balkan countries on their road to the EU membership.⁴⁰ The other side of the coin is that the reform and especially the vetting process is seen as an erroneous reform which is undesirable for the other countries in the EU accession process, such as North Macedonia, Bosnia, and Herzegovina or Kosovo*⁴¹ as well as for those that have already opened the accession negotiations e.g. Serbia and Montenegro. All these countries have different approaches to the legal reforms of their justice system by perceiving the painful example of Albania.⁴² Despite the continuous support of the Justice Reform by the international actors, Albanian scholars, lawyers, academics, and media stakeholders claim that the reform has been a ‘failure’ since it paralyzed the functionality of the country’s institutions mainly of the courts and prosecution offices for more than 12 years.⁴³

Since 2017, Albania went through a fundamental revision of its justice system in ‘an attempt’ to offer an unbiased, accountable, independent, and professional system in compliance with EU standards.⁴⁴ With the support of the EU and the USA,⁴⁵ the reform was consolidated on paper by making it the best possible solution for the EU agenda.⁴⁶ The EU Progress Report of 2021, has stated that the country has made ‘steady progress in implementing a comprehensive justice reform, underpinned by the strengthened legislative framework and the unprecedented vetting process, which have continued to deliver tangible results.’⁴⁷ The fact that the Constitutional Court and High Court were able to function with the new appointments of the new justices into these courts was interpreted as positive remarks by the EU in the said progress report. Despite the actions taken, there is a need for serious attempts and measures in establishing a functioning judiciary in all instances.

Commission, Directorate-General for Communication, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans: six new flagship initiatives to support the transformation of the Western Balkans*, Publications Office. 2018. Available at: <https://data.europa.eu/doi/10.2775/902991> (29. 9. 2022).

⁴⁰ Nela, I. 2021. *Lessons learned from the justice reform in Albania*. Vienna: ÖGfE Policy Brief, p. 24.

⁴¹ This designation is without prejudice to positions on status, and is in line with the UNSCR 1244(1999) and the International Court of Justice (ICJ) Opinion on the Kosovo declaration of independence.

⁴² Exit Staff 2022. *Former EU Integration Minister Levies Strong Criticism at Albanian Justice Reform*. *Exit.al*. Available at: <https://exit.al/en/2020/10/12/former-eu-integration-minister-levies-strong-criticism-at-albanian-justice-reform/> (29. 9. 2022).

⁴³ On a public statement regarding the reform, President of the Republic Ilir Meta said: “If the reform had been successful, we would now have a functioning Constitutional Court”.

⁴⁴ Assembly of Albania. 2020. *Justice Reform Albania*. Available at: <https://euralius.eu/images/2020/JUSTICE-REFORM-BROCHURE-2020-03-30.pdf> (29. 9. 2022).

⁴⁵ Joint press release announcing the constitution of the International Monitoring Operation Management Board 2017. Available at: https://www.eeas.europa.eu/node/20139_en (29. 9. 2022).

⁴⁶ Bakiasi, M. 2021. *Policy Paper: Albanian judiciary under construction*. Institute for European Policy, p. 2.

⁴⁷ European Commission. 2021. *Albania 2021 Report*. pp. 18-20.

When it comes to recommendations for Albania on the Justice Reform it should be mentioned that there is a need for further and quick advancement in the re-evaluation process of the judges and prosecutors. Another recommendation is to consolidate the capacity of the judicial system and governance of the institutions by finalizing and implementing the new judicial map.⁴⁸ These two recommendations have been formally fulfilled by the Albanian institutions. The first recommendation was approved within some months almost unanimously with 118 votes in extending the mandate of the key-justice vetting bodies until 31st of December 2024.⁴⁹ This action was taken in compliance with the Venice Commission Opinion that the extension was in line with European standards.⁵⁰ In the opinion issued by the Venice Commission, it was noted that there is a need for the country to increase the resources of the vetting bodies and to rationalize vetting procedures. It is the obligation of the Albanian legislature to ensure and prove that the vetting procedures are not artificially prolonged to avoid endangering of the proper functioning of the judiciary system.⁵¹

The second recommendation that the Albanian government fulfilled was the approval of the new judicial map by decreasing the number of the courts. More specifically, reorganization of five appeal courts into one appeal court in Tirana as of 1st of February 2023 and merging of four Administrative Court into two administrative courts (one in Tirana and one in Lushnjë respectively) took place.⁵² Despite the controversial consultation processes, the High Judicial Council and the Ministry of Justice did not take into consideration the lawyers' opposition and the statements of the important civil society organizations which criticized the new judicial map.⁵³ Their critique emphasized the inaccessibility of the courts due to infrastructural criteria, financial insufficiencies, and the backlog of cases that the Administrative Court of Appeals has for the time being amounting to 12,810 carryover cases. The approval of the new judicial map led to the boycott of the advocates in their representation in civil, criminal, and administrative judicial cases until 21st of July 2022 for around two months.⁵⁴ The Council of Ministers' Decision on the new judicial map will be appealed at the Constitutional Court by the National Chamber of Advocacy as stated by the Chair of this Chamber Prof. Dr. Maksim Haxhia.⁵⁵

⁴⁸ *Ibid*, p. 18.

⁴⁹ Albanian Parliament Extends Mandate of Justice-Vetting Bodies 2022. Available at: <https://balkaninsight.com/2022/02/10/albania-parliament-extends-mandate-of-justice-vetting-bodies/> (29. 9. 2022).

⁵⁰ CDL-AD 2021)053-e. Albania - Opinion on the Extension of the Term of Office of the Transitional Bodies in charge of the re-evaluation of Judges and Prosecutors, adopted by the Venice Commission at its 129th Plenary Session, pp. 8. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)053-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)053-e) (29. 9. 2022).

⁵¹ *Ibid*, pp. 5.

⁵² HCJ. 2022. *Vendim 'Përmiratimin e raportit vlerësues përfundimtar mbirioorganizimin e rrethvegjyqësor dhe kompetencave të gjykatave'*. Available at: <http://klgj.al/wp-content/uploads/2022/06/vendim-i-grupit-te-punes-1.06.2022.pdf> (29. 9. 2022).

⁵³ See: Public Statement - Critique of Proposals for the New Judicial Map for Albania 2022. Available at: <https://ahc.org.al/wp-content/uploads/2022/02/Judicial-Map-Legal-Critique.pdf> (29. 9. 2022). The government ignores the criticism and approves the new judicial map 2022. Available at: <https://www.reporter.al/2022/07/21/qeveria-injoron-kritikat-dhe-miraton-harten-e-re-gjyqesore/> (29. 9. 2022).

⁵⁴ See: Lawyers announce 'indefinite boycott' over new judicial map 2022. Available at: <https://www.dhka.org.al/index.php/hyrje/njoftime/247-njoftim-18> (29. 9. 2022).

⁵⁵ *Ibid*.

The outcome of this reform created almost an ‘empty judiciary’ by making the country’s court paralyzed for a considerable time. For instance, during the vetting process, only one constitutional justice passed the vetting Mgi. VitoreTusha and consequently there was Constitutional Court for almost two consecutive years in Albania. In other words, it was not possible for citizens and other actors to have access to the court nor to challenge the constitutionality of the acts issued by the Government such as the case of the demolition of the National Theatre where we can say that the circumstances of not rendering a decision by the Constitutional Court led into the demolishing of the theatre.⁵⁶ In a similar vein, the decision of the National Assembly on the dismissal of President of the Republic H.Mr. Iliq Meta which was repealed by the Constitutional Court may serve as an illustrative example.⁵⁷ These examples are only the ‘Aisberg’ on the dysfunctionality of the justice system during the late years after the implementation of the reform.

During the evaluation process, the criteria pertaining to asset assessment were considered unjustified by most of the prosecutors and judges.⁵⁸ It should be emphasized that in a considerable number of cases some judges or prosecutors were dismissed if they could not justify their assets. In other words, the failure to fulfill one of three set criteria was sufficient to dismiss them by not taking into consideration the two remaining criteria (proficiency and background related criteria).⁵⁹ That can be explained by the fact that the fulfillment of assets criteria is fundamental to fight corruption within the system. However, it should be kept in mind that these decisions might jeopardize the trust of the public in the judicial institutions regarding their proficiency and efficiency since the evaluation was not made based on all three constitutionally defined criteria. Meeting the European standards does not mean just cleansing the system from the corrupted, unprofessional, and ‘malicious’ judges and prosecutors but there is a need to punish the magistrates who are or have had any kind of relationship with the criminal activities.

In this regard, the vetting process to meet European standards and to achieve designated goals is set at the very beginning by the Albanian Government with the support of the EU and the USA. It should be accompanied by a scrutinized process of punishing the crime-related magistrates.⁶⁰ In this regard, the IMO was established to monitor the vetting process. Despite the fact that the IMO does not have decision-making power, it plays a crucial role during the vetting process and has an active role in the filing of findings and different opinions. Such was a case with Mgi. Elisabeta Imeraj who was a Head of the Tirana

⁵⁶ Demolition of Albanian national theatre sparks angry protests 2020. Available at: <https://www.reuters.com/article/us-health-coronavirus-albania-theatre-idUSKBN22T0FV> (29. 9. 2022). Albania’s Constitutional Court Suspends National Theatre Proceedings 2021. Available at: <https://balkaninsight.com/2021/07/02/albanias-constitutional-court-suspends-national-theatre-proceedings/> (29. 9. 2022).

⁵⁷ See: Constitutional Court Decision of February 16, 2022, no. 1/22. Constitutional Court to Review First Ever Dismissal of an Albanian President by Parliament 2021. Available at: <https://exit.al/en/2021/11/17/constitutional-court-to-review-first-ever-dismissal-of-an-albanian-president-by-parliament/> (29. 9. 2022).

⁵⁸ Skëndaj, E. et. al. 2020. *Vettinguigjyqtarëve dhe prokurorëve (Përvendim marrjendhedinamikën e veprimtarisë së institucioneve të rivlerësimit kalimtar)*. Albanian Helsinki Committee.

⁵⁹ Skëndaj, E. et. al. 2020. *Vettinguigjyqtarëve dhe prokurorëve (Përvendim marrjendhedinamikën e veprimtarisë së institucioneve të rivlerësimit kalimtar)*. Albanian Helsinki Committee, p. 7.

⁶⁰ The Netherlands wants Constitutional Court and media law prior to EU-Albania Talks 2020. Available at: <https://europeanwesternbalkans.com/2020/11/03/the-netherlands-wants-constitutional-court-and-media-law-prior-to-eu-albania-talks/> (29. 9. 2022).

District Prosecution Office where the Public Commissioner with the active support of IMO appealed the decision of the FIC which confirmed Mgj. Imeraj in office.⁶¹ The AC by the Constitutional Court dismissed Mgj. Imeraj by the Decision no. 11, date 27.04.2022.⁶² During the vetting process of Mgj. Imeraj, different NGOs submitted a claim to the Commissioner for the Right to Access to Information and Personal Data Protection in order to start an investigation on breaching of the private data and intimidation of two journalists by the families of the vetted magistrate.⁶³ This is a case where it can be shown that the high-profile vetted magistrates are usually pressuring and intimidating the journalists and free media by attempting to jeopardize the transparency and freedom of media in Albania.⁶⁴

Although the Justice Reform is to be considered a lesson learned for Albania and the EU, it is noteworthy that the EU highly supports the Albanian authorities to increase their capacities and fill the gaps left by the reform to implement a more professional and trustworthy justice system. Aiming to achieve comprehensive reform in line with the EU Strategy for the Western Balkans,⁶⁵ the European Commission has approved the annual Action Plan for Albania for 2021 which will be implemented within three years with the amount of 15 million Euros. The said Action Plan is envisaged to support the capacity building of the Albanian justice system and particularly to introduce a modern case management system on the road to legal approximation and harmonization of the Albanian framework with EU standards.⁶⁶

5. CONCLUSION

The accession process of Albania will be a hard and ‘painful’ process not only because the legal framework will be aligned with the EU *acquis*, but also because such a framework must be properly implemented by competent and trustworthy institutions. In this regard, the EU judicial authorities will be able to rely on Albanian judicial authorities that the later will implement the decision properly. There is a continuous work on the alignment of Albanian legislation with the Roadmap Directives. However, the existence of the legal acts shall be guaranteed in practice to demonstrate the readiness of the country to join the EU.⁶⁷

⁶¹ The Institution of Public Commissioners 2021. Press Release. Available at: <http://ikp.al/en/2021/07/05/press-release-209/> (29. 9. 2022).

⁶² Constitutional Court – Special Appeal College. Decision no. 42/2021 of July 27, 2021. Available at: https://kpa.al/wp-content/uploads/2022/06/Vendim_Elizabeta_Imeraj_anonimizuar.pdf (29. 9. 2022).

⁶³ Albania: RSF asks for effective investigations following the intimidation of journalists reporting on prosecutor’s vetting 2022. Available at: <https://rsf.org/en/albania-rsf-asks-effective-investigations-following-intimidation-journalists-reporting-prosecutor-s> (29. 9. 2022).

⁶⁴ *Ibid.*

⁶⁵ European Commission, Directorate-General for Communication. 2018. *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans: six new flagship initiatives to support the transformation of the Western Balkans*. Publications Office. Available at: <https://data.europa.eu/doi/10.2775/902991> (29. 9. 2022).

⁶⁶ ANNEX I to Commission Implementing Decision on the financing of the annual action plan in favour of Albania for 2021 - Action Document for “EU for Justice” 2021. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-01/C_2021_9730_F1_ANNEX_EN_V1_P1_1674609.PDF (29. 9. 2022).

⁶⁷ See: Roadmap to the EU: Membership through criminal justice reform in Albania 2020. Available at: <https://crd.org/wp-content/uploads/2021/03/Roadmap-to-the-EU-ENG.pdf> (29. 9. 2022).

The EU held the first intergovernmental conference with Albania on 19th of July 2022 and now the one-way road begins where the politics is in charge not only of implementing tectonic reforms for the country on paper but also to show tangible results with concrete agenda. If we carefully observe the EU reports on Albanian progress regarding the Justice Reform, we shall highlight that the reform started before the negotiation process and at this point, Albania is ahead of its Western Balkan siblings on the path toward the EU. What remains to be done is the well-functioning of the newly created institutions despite the difficult political times that the EU and Western Balkans are facing. The Justice Reform is considered by many as a skeptic movement by the government because it was executed in a difficult moment with a lack of institutional capacities and almost no political will. Nevertheless, it should be said that the Justice Reform is considered a lesson learned for Albania and the EU which hopefully will bring the country and regions towards successful endeavors in establishing a functional democracy and ensuring good governance throughout the country.

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