

Prosecutor's career Comparative analysis with international standards

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Abstract

The prosecutor's career is one the main components of its function. It plays a determinant role on the quality of the fulfilment of the duty by the state representative in a criminal case. A career developed in accordance with the law, based on the values demonstrated by prosecutors during their activity, is a strong motive that stimulates the increasing of professional performance.

Recruitment, promotion and dismissal, are the components of his career. The transferring in another crucial element, that highly influence on the normality of a prosecutor's function. The late, if not applied in accordance with the legal criteria and proceeding, can heavily threat the integrity of a prosecutor.

This paper on the prosecutor's career covers its legal provisions in Albania and the problematic manifested in the everyday practice. This analysis will be written using a comparison with international standards of the most developed countries and accepted by the most important world organizations. As a result, a clearer framework of the actual legal ground in our country and the needs for further regulation improvements could be established.

Keywords: Career, prosecutor, recruitment, promotion, transfer.

Introduction

Recruitment, career advancement, and the transfer of prosecutors are three points of crucial influence and importance to the exercise of office by this functionary. Fulfilling these phases with fairness and objectivity establishes a solid basis for the prosecutor to carry out the duty with responsibility. The fair evaluation of candidates for prosecutors, the shift to senior positions in the prosecution hierarchy based on objective data, on the results of the prosecutor's work, excluding any external influence from this process, motivate the prosecutor to exercise his/her duty with honesty and dignity and to maintain his/her integrity.

Reliance on objective factors for the appointment and promotion of prosecutors provides protection for the independence of the prosecutors by preventing external influence, such as bribery or internal influence, as a promotion offer to influence a prosecutor's decision (UN, 2014). Promotion should not be done by politicians and should not be open to political influences. The promotion of prosecutors should be based on objective factors, particularly on professional qualifications, ability, integrity and experience, and to be established in the respect of a fair and impartial procedure (UN, 1990).

The United Nations have instructed that selected people as prosecutors should be individuals with integrity and skills, with appropriate training and qualifications (UN, 2014). The Council of Europe has consolidated its standpoint regarding the position to be taken by member states on the selection, promotion and transfer of

prosecutors (Committee of Ministers of CoE, 2000).

These states should take measures to ensure that prosecutors' selection and careers are developed based on fair, impartial procedures and excluding discrimination on account of gender, race, color, language, religion, political or other opinions, national or social origin, participation in a minority, ownership, birth or other statuses (Consultative Council of European Prosecutors to the Committee of Ministers of the CoE, 2014). The same attitude is maintained by the United Nations regarding the development of the prosecutor's career (UN, 2014).

The Consultative Council of European Prosecutors has expressed to the Committee of Ministers of the Council of Europe the opinion that prosecutors' career, professional assessment, promotion and movement should be governed by transparent and objective criteria, such as ability and experience; recruiting body should be selected on the basis of skills and preparation and should exercise its function impartially and based on objective criteria. The movement of prosecutors should also be governed by the service need (Consultative Council of European Prosecutors to the Committee of Ministers of the CoE, 2014). Prosecutors should be protected from arbitrary government actions (UN, 2014).

The implementation of United Nations guidelines and of the standards of the International Association of Prosecutors is highly dependent on the people recruited to perform the function of the prosecutor effectively and fairly. Systems and processes are required as well as criteria that ensure that only qualified people are selected and appointed as prosecutors (UN, 2014).

The appointment procedure and termination of service for prosecutors should be regulated by law at the highest possible level and through clear and understandable processes. The approximate and complementary nature of the prosecutor's mission to that of the judge creates similar requirements and guarantees of their status and service conditions, especially with regard to recruitment, training, career development, discipline and transfer (Consultative Council of European Prosecutors to the Committee of Ministers of the CoE, 2014).

The fulfillment of the above standards in Albania has not been achieved at an acceptable level. The high-level expert group of the Judicial System Reform in Albania, in the analysis of 2015 highlighted that broad public opinion believes, and some close sector observers claim that it is alluded that some prosecutors and judges pay to be appointed or transferred to positions in Tirana or other important cities (Special Parliamentary Commission of Judicial System Reform, 2015).

This article will address the three main components of the prosecutor's career in Albania, namely recruitment, transfer and promotion. The analysis of these three legal processes will be accomplished through a comparison with internationally accepted standards, coupled with the issues and problems presented in practice.

1. Prosecutors' recruitment

In the framework of the 2015 judicial system analysis as part of the judicial reform, the high-level expert group presented the finding that the law on prosecutor's office did not specify how prosecutors should be selected by the Prosecutor General among

highly qualified candidates during their testing, whether done according to their ranking in the test results or not, nor the obligation of transparency regarding the method of their selection (Special Parliamentary Commission of Judicial System Reform, 2015). The High-level expert group also stated that: "The law does not foresee any obligation or priority procedure in filling vacancies with candidates who have graduated from the School of Magistrates, as opposed to those coming from other practitioners' ranks. The 25 years of age threshold to be appointed as a prosecutor is very low. There are no specific assessment criteria for measuring the skills, proficiency, competences and integrity of prosecutors. The existing legal framework does not provide for the criteria on which the Prosecutor General is based in his/her decision-making for promoting candidates. The prosecutor's career in Albania is not guaranteed. Cases of transfer to another lower position, at prosecutor's office level, and lateral transfers, without the consent of the prosecutor, for reorganization needs are not fully regulated on clear and objective criteria" (Special Parliamentary Commission of Judicial System Reform, 2015).

The findings of the judicial system analysis of 2015 were reflected in the amendments and legislation adopted in the framework of the judicial reform. Now the recruitment of persons who will exercise the function of the prosecutor is subject to the same rules as those of the judges. This is because Law no. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania" defines the same legal norms as for the selection of both judges and prosecutors.

Candidates for prosecutors are recruited after being admitted to the initial training for magistrates. Admission is conditional upon the prior fulfillment of the condition of Albanian citizenship, having the capacity to act and fulfilling the minimum points the level of which is determined by the School of Magistrates.¹

During the 2015 analysis of the activity of the School of Magistrates, the high-level judicial reform experts group emphasized the young age of judges and prosecutors graduating from the School of Magistrates and the fact that when they started working as judges or prosecutors after becoming magistrates, there were young in their age. Specifically, 188 magistrates had graduated at the age of 24-25 years, 94 magistrates who had graduated were 26-28 years old, and only eight candidates had graduated at the age of 29-30. Their average age was about 26 years old. The young age, according to experts, was the reason for not properly managing the case or situation leading thus to mistakes. Experts stressed that maturity and experience among the judicial practitioners is an important feature in rendering justice, understanding law enforcement towards standards, and assessing the social impact of a court decision (Special Parliamentary Commission of Judicial System Reform, 2015).

Reflecting these findings, Law No.96 / 2016 "On the Status of Judges and Prosecutors in the Republic of Albania" added a number of new criteria that must be met by the candidate applying to become a magistrate. Thus, it is required to comply with a full-time, three-year work experience at the judicial or prosecution system, public administration, free legal professions, teaching at law schools or any other equivalent

¹ Article 28, paragraphs "a", "b" and "c" of Law No. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania".

position with them, in the private sector or international organizations.² Addition of this criterion is a positive novelty as the magistrate candidate benefits from life experience and at the same time work experience in the field of law enforcement.

The applicant for the initial training at the School of Magistrates (SoM) should not have been convicted before, should not have been dismissed for disciplinary reasons and there should be no disciplinary action in force against him/her, should not be affiliated to a political party at the time of candidacy, should not have been a member, associate or favored by State Security (Intelligence Service) before 1990, nor a collaborator, informer, or secret agent.³

The High Prosecutorial Council, after analyzing the needs of the institution, determines the maximum number of magistrate and prosecutor candidates admitted to the initial training for the new academic year.⁴ Applications by interested persons will be made by the end of February each year.⁵ The existence of the above criteria is assessed by the School of Magistrates until March 15 of each year.⁶ In this process, the School cooperates with the HPC, which is entitled to make comments or objections.

After the selection of applicants, the SoM organizes, within April of each year, the examination for admission to the initial formation training. In the end the school compiles the list of candidates' ranking, according to the exam results and publishes the approved list until May 15 of each year.

Verification of Assets and Background (Integrity): After the list of contestants sitting for the admission exam to the School of Magistrates has been released, the candidates with the highest scores are subject to verification of assets and background (integrity). Within a week from publication of the list, the HPC requires reporting from the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest, the prosecutor's office, the tax and customs administration bodies, the National Bureau of Investigation, state intelligence services and any disciplinary body that has supervised the discipline in the candidate's work, in order to verify the fulfillment of the admission conditions.⁷

The candidate is not accepted when the candidate's financial resources do not justify his/her assets, has failed to declare any property or assets or has made a false or incorrect statement of assets.⁸ The candidate is also not accepted if it turns out that he or she is related to organized crime or there are other disqualifying conditions under the law.⁹ Verification of the assets and background (integrity) of candidates for prosecutors represents a novelty brought about by the changes of 2016. In this way, since the early stages of recruitment, the possibility of access to the prosecution system of the persons who do not guarantee the necessary integrity is avoided.

² Article 28, paragraph "ç" of Law No. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania".

³ Ibid. Article 28, paragraphs "dh", "e" and "ë".

⁴ Ibid. Article 29.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid. Article 32/2.

⁸ Ibid. Article 32/4, paragraph "a".

⁹ Ibid. Article 32/4, paragraphs "b" "c".

Professional Internship of Candidates for Prosecutors:¹⁰ The period of internship change that a candidate for prosecutor has to complete before his/her final appointment has also undergone changes. Up until 2016, in the third year of the School of Magistrates, the candidates were appointed to the prosecutor's offices to exercise the functions of the prosecutor. By Law no.96 of 2016, candidates are assigned to their mentors who are selected by the HPC among experienced prosecutors. They, i.e. candidates for prosecutors, do not exercise the function of the prosecutor but participate in the daily activity of the mentor, in explanations and discussions on incomplete cases, hearing sessions or interrogations, preparation and discussion of draft decisions and aspects of file management and ethical standards.

Appointment of a candidate for prosecutor: The HPC appoints a candidate to the position of a prosecutor when he/she has graduated from the School of Magistrates, the initial training, with at least 70 per cent of the maximum possible score, has received at least the assessment "good" for the third year's performance of the initial training and if he/she has again passed the asset and background (integrity) verification.¹¹ With the provision of asset and background (integrity) verification both at the moment of the candidate's admission and after the completion of the initial training program, legal requirements have been strengthened, creating strong grounds for appointing a prosecutor with high moral values. Upon receipt of the invitation, the candidate submits a request for appointment, in which he/she has the right to list three prosecutor's offices he/she prefers to be appointed to.

Newly graduated persons from the School of Magistrates have appointment precedence in relation to former prosecutors.¹² Such a provision expresses the will of the lawmaker that graduates from the SoM should represent the main source of meeting the needs of the prosecution body. This legal arrangement was foreseen after the 2015 justice system analysis, where it was concluded that the law of time did not provide for any precedence obligation or procedure in filling vacancies with candidates who have graduated from the School of Magistrates, against those coming from the ranks of other practitioners (Special Parliamentary Commission of Judicial System Reform, 2015). The HPC announces vacancies within June of each year and within July must appoint prosecutors to their positions.¹³ Appointments are made based on graduates' ranking and fulfillment of their preferences.

This rule primarily serves as motivation for magistrate candidates to reach the optimal level of professional preparation. At the same time, an objective ground for appointing magistrates is created, adjusting their expectations to the achieved outcomes. Regarding reappointed persons, the decision is based on the results of the assessment of the professional skills, proficiency, experience and preferences stated by the magistrates.

Appointment as an acting prosecutor: When the number of requests to be appointed to a position is greater than the number of vacancies for magistrates, the Councils appoint the appointee to an acting position in an institution.¹⁴ As long as the number

¹⁰ Ibid. Article 33.

¹¹ Ibid. Article 35/1.

¹² Ibid. Article 39/3.

¹³ Ibid. Article 39, paragraphs 1 and 2.

¹⁴ Ibid. Article 40.

of graduates in the School of Magistrates is defined by the High Prosecutorial Council, depending on the needs submitted,¹⁵ the appointment of magistrates as acting prosecutors is applied in the case of former prosecutors who are reappointed. This is done by recalling the precedence of appointing graduates from the SoM in relation to the reappointed.

2. Prosecutor's transfer

Prosecutors should enjoy similar stability to the immobility of the judges in their position. Tenure should be guaranteed up to the retirement age in order to ensure the exercise of their functions independently. Transfer to another region or office should only be done with the prosecutor's consent. Sending a prosecutor to another position without his/her consent (approval) should be possible only based on clear and transparent rules (ENCJ, 2015). These standards were not respected in Albania up until 2015. The high-level expert group appointed by the Special Parliamentary Commission on Judicial System Reform, in the 2015 justice system analysis expressed the findings that in Albania the transfer decisions of prosecutors were not based on well-defined legal criteria about the causes of the transfer, which could be the cause of arbitrary and abusive decisions affecting the prosecutor's activity (Special Parliamentary Commission of Judicial System Reform, 2015).

One of the problems encountered in the framework of the activity of the prosecution body was the transfer of prosecutors violating the respective legal norms. The application of these practices created uncertainty in the exercise of the function of prosecutors enabled improper impacts on professional activity thereby undermining their objectivity and impartiality. Up until 2016, cases of transfer to another lower position, at prosecutor's office level, as well as lateral transfers, without the consent of the prosecutor, for reorganization needs (Special Parliamentary Commission of Judicial System Reform, 2015), were not fully regulated based on clear and objective criteria.

The transfer of the prosecutor is a necessary procedure in the cases provided by law, but to guarantee the rights of the involved prosecutors, this process should be developed on the basis of honesty, objectivity and professionalism. The transfer may be temporary or permanent and involves the movement to a prosecutor's office of the same level, the transfer from the acting prosecutor position to a prosecutor's office at the same level with the previous position or from the acting prosecutor position to the prosecutor's office.¹⁶ The prosecutor who is entitled to be appointed to an appellate position; the prosecutor who is transferred due to environmental incompatibility or due to changes in the administrative structure or the territorial jurisdiction of the prosecutor's offices; the prosecutor who is transferred due to the lateral movement; the prosecutor who is entitled to be promoted¹⁷ is appointed following the order to the vacant position, either a permanent or a temporary position. The prosecutor is not transferred or demoted without his/her consent, unless otherwise provided in

¹⁵ Ibid. Article 29.

¹⁶ Ibid. Article 42/1.

¹⁷ Ibid. Article 42, paragraphs 3 and 4.

the law.¹⁸

Transfer without consent: The Law "On the Status of Judges and Prosecutors in the Republic of Albania" provided for the transfer without consent in the case of disciplinary measure and due to environmental incompatibility.¹⁹ In the trial conducted upon the request of the National Association of Judges of the Republic of Albania and the Union of Judges of Albania with the object of "Abrogation of some articles of Law No.96 / 2016 "On the Status of Judges and Prosecutors in Republic of Albania" as incompatible with the Constitution", the Constitutional Court emphasized the following:

"The legislator, by linking the exercise of a magistrate's function in a particular court (section or jurisdiction), inter alia, also with the assessment of the additional criterion "environmental incompatibility" set forth in Article 8, sets a limitation to the career of the judges who, as a result of prohibiting situations due to kinship and because of the law, are transferred, a measure that may be temporary or permanent, or even against their consent.

The Court deems that the career, as an integral part of the guarantees stemming from Article 138 of the Constitution (salary and other benefits), is in the function of guaranteeing the independence of the judiciary and their observance creates at the same time confidence in the public regarding the independence, integrity and impartiality of judges. Consequently, the limitation of the magistrate's career by the legislator, beyond the ordering of Article 143 of the Constitution, through the stipulation of the deterrent criterion of "environmental incompatibility" is not in accordance with the purpose sought to be achieved (Constitutional Court of Republic of Albania, 2017). For these reasons, the Constitutional Court has abolished Article 44, paragraph 1, letter "c" of the Law "On the Status of Judges and Prosecutors in the Republic of Albania".

Another situation of the transfer without consent is related to the case of the disciplinary measure, in which the prosecutor's transfer takes place on the basis of factual and objective circumstances.²⁰ Discussion arises in the case of the redundancy of the prosecutor's position²¹ or due to the temporary absences of prosecutors.²² Such a process should be carried out after conducting an assessment, based on objective and transparent criteria. The assessment object must first be the circumstances that create the need to make a position redundant as the workload may be. The criteria that influence the selection of a prosecutor appointed from all the prosecutors of a specific office should also be deemed on the same principles. Only in this way, the ungrounded and unilateral selection of a certain prosecutor appointed for a transfer without consent can be avoided.

Lateral transfer: The HPC organizes every 3 months the procedure for lateral movement cases. Such a process is carried out for any vacant position or that is expected to become vacant within 3 months.²³ The Council makes calls for interested

¹⁸ Ibid. Article 42, paragraphs 5 and 6.

¹⁹ Ibid. Article 44/1.

²⁰ Ibid. Article 44/1, paragraphs "a" and "c".

²¹ Ibid. Article 44/1, paragraph "b".

²² Ibid. Article 44/1, paragraph "ç".

²³ Ibid. Article 43/1.

candidates. The latter should exercise the function of at a prosecutor's office of the same level. In the case of a lower-level prosecutor running for the vacant position, the candidate should be assessed with a rating of not lower than "very good" in the last two assessments.²⁴ The vacancy can also be filled by an acting prosecutor who previously worked in the prosecutor's office of the same level. The prosecutor, against whom a disciplinary measure has been imposed and is in force, has no right to run.

The HPC ranks the candidates based on the previous two assessments, including those as an acting magistrate. Experience in acting positions and as a magistrate in the delegation scheme will be considered an added value.²⁵ Experience in the position of prosecutor is another criterion that is taken into considered by the HPC, in the case of more than one magistrate with the highest points. In the absence of candidacies by prosecutors who meet these conditions, the competition also opens for prosecutors who have not yet been assessed twice.

Delegation Scheme: The High Prosecutorial Council of Prosecution establishes a delegation scheme to meet the needs presented by the institution's activity. Every prosecutor who has completed one year of work is entitled to run for inclusion in the scheme, with the right to exercise the function for a period not exceeding five years.²⁶ The Council assesses the fulfillment of the criteria by the candidate, depending on the level of prosecutor's office where the prosecutor needs to be appointed. The Head of the Prosecutor's Office also is entitled to request that a prosecutor from the delegation scheme be appointed to the prosecutor's office he/she heads, a request to be examined by the HPC within 3 days.

Temporary Transfer: Such a procedure applies to cases when the prosecutor's position has remained vacant for at least 3 months; because he/she is temporarily unable to exercise his/her function in that position.²⁷ When there are no available prosecutors in the delegation scheme, the HPC may request a prosecutor from the prosecutor's office with the lowest workload to give his/her consent for a temporary transfer.²⁸ The Council acts in the same way even when no magistrates consent to temporary transfer. The request is addressed to a prosecutor with less work experience meeting the criteria required for the temporarily vacant position.

Given the needs presented, the Head of the Special Prosecutor's Office may request from the head of the first instance prosecutor's office to give his/her consent for the transfer of the prosecutors with the necessary qualification.²⁹ The non-binding opinion of HPC is also taken in advance. The prosecutor requested to be transferred must also give his/her consent. When these conditions and criteria of security and confidentiality in the Special Prosecutor's Office are met, it is the Head of the Special Prosecutor's Office who transfers the prosecutor. In this case the HPC's role of transfer is not that of decision-making but merely suggestive. The law has concentrated the power to transfer to a single person, thus limiting the powers and the rights of the

²⁴ Ibid. Article 43/2.

²⁵ Ibid. Article 43/7.

²⁶ Ibid. Article 45, paragraphs 1 and 2.

²⁷ Ibid. Article 42/2.

²⁸ Ibid. Article 46/1.

²⁹ Ibid. Article 46/3.

Council.

Appointment as an acting prosecutor: The prosecutor may only be appointed as an acting prosecutor for a maximum of five years, at his/her own discretion,³⁰ in a non-magistrate position within an institution within the judicial system, which is consistent with his/her independence and keeping the status of a magistrate.³¹ For newly appointed prosecutors, they can also be appointed as acting prosecutors even in the absence of their consent.³² Prosecutors can be appointed as an acting magistrate assistant in the Supreme Court, Constitutional Court or General Prosecutor's Office, inspector in the High Judicial Inspector's Office or other positions. The maximum term for which the prosecutor can be appointed as an acting prosecutor is ten years. The appointment period as an acting prosecutor is considered as seniority at the level of the same prosecutor's office instance from where the prosecutor was appointed as an acting prosecutor. The professional and ethical evaluation of the prosecutor appointed as an acting prosecutor and his/her disciplinary responsibility are dealt with on the same grounds used for the evaluation of the other members of the institution from where he/she was appointed as an acting prosecutor.³³

When the disciplinary measure of dismissal is proposed against the acting prosecutor, he/she is entitled to seek the addressing of the case by the HPC. The Council carries out the procedures based on the Law No. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania". The institution in which the acting prosecutor is appointed participates in disciplinary procedure with the rights and obligations of the High Judicial Inspector.³⁴

The procedure of appointment as an acting prosecutor begins with submission to the Council of requests by the institutions involved in the district of the bodies where this process is allowed. HPC, after assessing the needs, announces the call for candidacies. The same body examines the fulfillment by the applicants of the required criteria for the position where the appointment as an acting prosecutor is required. The Council also analyzes and prepares opinions on whether the appointment as an acting prosecutor encroaches or not on the highest interests of the prosecutor's office where the candidates exercise the duty of the prosecutor and in case of interfering with these interests; the applicant is excluded from the procedure. Within two weeks from the nomination term, the Council forwards the list with the names of persons who meet the criteria of appointment as an acting prosecutor to the institution. The requesting institution evaluates the applications and requires the appointment as an acting prosecutor of the selected magistrate, and the HPC decides on the appointment as an acting prosecutor and its terms and conditions.

Appointment as an acting prosecutor in the High Judicial Inspector's Office: In order to be appointed as an acting prosecutor in this office, the candidate must meet the criteria required to be appointed as a prosecutor in the General Prosecutor's Office.³⁵ In addition to the fulfillment of the criteria, the candidate is subject to the verification

³⁰ Ibid. Article 53/3.

³¹ Ibid. Article 53/1.

³² Ibid. Article 53/3.

³³ Ibid. Article 53, paragraphs 10 and 12.

³⁴ Ibid. Article 53/12.

³⁵ Ibid. Article 55/1.

of assets and background (integrity) in the same manner as in the case of the first appointment of prosecutors graduating from the School of Magistrates.³⁶

The appointment as an acting prosecutor may be terminated before the term set by the Council when the acting prosecutor submits a request and after receiving the opinion from the relevant institution. In this case, the lateral movement or promotion is not treated as a priority by the HPC. It is deemed as such only when the prosecutor has completed the entire period of appointment as an acting prosecutor in the institution where he/she is appointed.³⁷

3. Promotion

Up until the constitutional and legal changes of 2016-2017, the appointment of the Head of the Prosecutor's Office was accompanied by numerous problems. The high-level expert group appointed by the Special Parliamentary Commission for the Judicial System Reform in the analysis of the year 2015 concluded that the appointment of the heads of prosecutor's office could be made by the Prosecutor General, based on general criteria and as well as their dismissal based on non-fulfillment of functional duties, irrespective of their importance, and the possibility of lodging an appeal against the relevant dismissal decision is not foreseen. Lack of objective and transparent criteria and procedures in decision-making regarding the appointment, career, promotion and disciplining of prosecutors negatively affected the integrity, motivation and accountability of the prosecution body (Special Parliamentary Commission of Judicial System Reform, 2015). These shortcomings were taken into account in the legal stipulations adopted in the framework of judicial reform in 2016. Following these normative changes, the transition from one prosecutor's office level to a higher level, transfer to the Special Prosecutor's Office, in the position of the Head of the Prosecutor's Office, or transfer from an acting prosecutor position to a higher level than the position kept prior to the appointment as an acting prosecutor is considered a promotion.³⁸ For the prosecutor position in the Special Prosecutor's Office, the magistrate should have been in office for not less than ten years as a prosecutor, including experience as an acting prosecutor.³⁹ To be appointed to the Appellate Prosecutor's Office, the prosecutor should have completed seven years in the first instance prosecutor's office⁴⁰ whereas in order to be transferred to the General Prosecutor's Office, the prosecutor should have thirteen years of experience in lower prosecutor's offices.⁴¹

The experience required to be appointed to the role of the Head of the Prosecutor's Office is seven years, of which four must be as the Head of the same level Prosecutor's Office. At the same time, the prosecutor should also meet the criteria regarding organizational and managerial skills. At this point, the experience as a Deputy Head of the Prosecutor's Office, chair of a section, member of the Council, experience in

³⁶ Ibid. Article 32, paragraphs 2 up to 7.

³⁷ Ibid. Article 57.

³⁸ Ibid. Article 47/1.

³⁹ Ibid. Article 47/2, paragraph "c".

⁴⁰ Ibid. Article 47/4.

⁴¹ Ibid. Article 47/5.

senior executive positions in public administration or judicial administration or as a magistrate for press issues, or knowledge of organizational structures and different management models, as a magistrate in the delegation scheme or an inspector in the High Judicial Inspector's Office⁴² is taken into account.

A positive example that can be taken into account during the evaluation process of the prosecutor's promotion is the case of the appointment of the Prosecutor in the Prosecutor's Office of the International Criminal Court. Prosecutors of the International Criminal Court should have the highest level of ability and experience in conducting investigations and prosecuting criminal cases and have extensive practical experience in prosecuting and adjudicating criminal cases. Prosecutors should be trained and qualified regarding the law to continue the work of prosecutors and should be updated with the evolution of the law and the ways of professional action, as well as the best practices (Mégret, 2008). Such criteria for candidates to be promoted help in achieving a more grounded conclusion.

The experience in previous senior executive positions, required for the candidate for Head of Prosecutor's Office, limits the possibility of simple prosecutors to run for this position. Given the fact that the function of the Deputy Head of the Prosecutor's Office or the chair of a section is determined by the Head of the Prosecutor's Office, it should be noted that such a stipulation increases the ability of the Head of the Prosecutor's Office to influence the choice of the person who will succeed him/her in this position. The Deputy Head of the Prosecutor's Office or the chair of a section, as persons who have had the trust of the Head of the Prosecutor's Office are part of the management of the institution, in accordance with the management policies of its Head. The need for reforming a certain prosecutor's office would also require the possibility for its management to be undertaken by people who did not participate earlier in the process. But due to the lack of cooperation with the previous senior executives, and consequently the lack of experience as Deputy Head of the Prosecutor's Office or chair of a section, their right to compete for the function of the chair is denied.

For the transfer of prosecutors to the General Prosecutor's Office from lower level prosecutor's offices, the promotion procedures are applied.⁴³ Vacancies in Appellate Prosecutor's Offices are filled by means of lateral transfers, save for cases when not all vacancies are filled by means of this procedure.⁴⁴

HPC announces on the official website the call for candidacies of prosecutors who meet the criteria for promotion or prominent lawyers.⁴⁵ Prominent lawyers are people who have a Ph.D. in jurisprudence, with not less than 15 years of experience as attorneys, professors or lecturers of jurisprudence, jurists of senior level in the public administration or other areas of law.⁴⁶ Inclusion of "prominent lawyers" category in the group of persons entitled to compete for vacancies in the General Prosecutor's Office or Appellate Prosecutor's Offices creates discussions regarding the respect of the prosecutors' career. The law does not provide whether candidates from ranks of prominent lawyers will be appointed only to a percentage of vacancies,

⁴² Ibid. Article 47/6, paragraph "b".

⁴³ Ibid. Article 48/1.

⁴⁴ Ibid.

⁴⁵ Ibid Article 49/1.

⁴⁶ Ibid.

or they might fill even all vacancies. In the case of the number of members of the Supreme Court, it is provided that a fifth of them might be selected among prominent jurists.⁴⁷ Such a provision was not made regarding the filling of seats in the General Prosecutor's Office and the Appellate Prosecutor's Office, thus creating the potential for all vacancies to be filled by candidates coming from outside the prosecution body. Moreover, this option is deemed real when almost half of the Council is filled by people coming from outside the prosecution body, through election by the Albanian Parliament. Career advancement and promotion represent an important motive for incumbent prosecutors and influences their continued professional growth. The situation of filling vacancies by persons outside the prosecution institution carries with it the possibility of influencing the lowering of motivation of prosecutors within the system.

After passing verification of assets and background (integrity), candidates are subject to evaluation by the Council. The latter ranks the candidates by taking into consideration their last two assessments, experience in acting positions, or delegation scheme, and in the case of more than one candidate with higher scores, seniority is taken into account.⁴⁸

The Head of Prosecutor's Office, with the exception of the Prosecutor General, is elected for a three-year term with the right of re-election only once while the Head of the Special Prosecutor's Office is elected for the same term but without the right to re-election.⁴⁹ The Head of the Prosecutor's Office who is an eligible re-elected, 6 months before the end of the mandate, may run for a second term. He/she is subject to verification of assets and background (integrity) up to three months prior to the termination of the mandate, pursuant to Article 32 of the Law "On the Status of Judges and Prosecutors in the Republic of Albania".⁵⁰

If the Head of the Prosecutor's Office who is entitled to re-election is rated "very good" and passes the verification successfully, he/she is reappointed for another term.⁵¹ When the Head of the Prosecutor's Office does not run for a second term within the set deadline, it is considered that he/she has resigned as Head of the Prosecutor's Office at the end of his/her mandate. In this case or when he/she does not accept the request to be re-elected, the Council shall, no later than three months after the termination of the mandate, publish a vacancy announcement for candidates who meet the promotion criteria within the same prosecutor's office.⁵² When a position within the Prosecutor's Office whose Head is to be elected becomes permanently vacant from two months before the termination of the Head's mandate up to three months after its termination, the call for candidacy is addressed to any prosecutor who meets the criteria.⁵³ In the case of the Special Prosecutor's Office, the call is addressed only to prosecutors of this structure.

The Council ranks the candidates based on their last two assessments and when there

⁴⁷ Ibid.

⁴⁸ Ibid. Article 48/9.

⁴⁹ Ibid. Article 52/1.

⁵⁰ Ibid. Article 32.

⁵¹ Ibid. Article 52/3.

⁵² Ibid. Article 52/6.

⁵³ Ibid. Article 52/6.

are more than two competitors with the same level of assessment, their ranking is determined by the score scheme determined by the Council. When there is more than one candidate with the highest score, the specific professional experience required for the vacant positions is assessed and taken into account. If there is still more than one candidate with the highest points, the ranking is done based on seniority as a magistrate.⁵⁴

The mandate of the Head of the Prosecutor's Office terminates when he or she completes the three-year term or when his/her magistrate's status terminates. Even when the Head of the Prosecutor's Office runs for the position of a HPC member his/her mandate terminates.⁵⁵

Temporary Appointment:⁵⁶ When a tenured prosecutor is unable to exercise his/her office for a period of not more than three months due to appointment as an acting prosecutor, transfer, promotion of a limited mandate, parental leave or unpaid leave, or when a position is temporarily vacant, his/her position may be temporarily filled by another prosecutor.⁵⁷ The councils adopt detailed rules for announcing and filling temporary vacancies.⁵⁸ Such a procedure is not provided by Law no. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania". For this reason, in order to ensure a fair and equal process, it is up to the Council to set clear and objective rules. This is also due to the fact that a temporarily appointed prosecutor is considered permanent in cases when the status of prosecutor who has had a permanent position has terminated, or the prosecutor has been appointed, transferred or promoted to another permanent position.⁵⁹

Right to be reinstated:⁶⁰ The prosecutor who has not been able to exercise his/her function for a period of up to three months, is entitled to return to his/her position. When the prosecutor cannot return to his/her position, the prosecutor is appointed temporarily in a position of the same level.⁶¹ If the prosecutor does not accept the proposed position, he/she is offered another position and if he/she does not agree again, the appointment is made without his/her consent.⁶²

Duration of the Prosecutor's Office: The function of the prosecutor terminates: when he/she resigns; when the conditions of non-eligibility and incompatibility in the exercise of his function are proven, when the prosecutor reaches the age of retirement; when the prosecutor is dismissed due to disciplinary responsibility, or when the fact of impossibility to perform his/her duty is proven.

In the case of reaching the retirement age, the Prosecutor General and the Prosecutor of the Special Prosecutor's office shall terminate their mandate, regardless of the

⁵⁴ Ibid. Article 52/8.

⁵⁵ Ibid. Article 64/3.

⁵⁶ The transfer cases under Article 46 of Law No. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania" are not included in this procedure.

⁵⁷ See Article 59/1 of Law No. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania".

⁵⁸ Ibid. Article 59/9.

⁵⁹ Ibid. Article 59/5.

⁶⁰ Ibid. Article 60.

⁶¹ Ibid. Article 60/3.

⁶² Ibid. Article 60/4.

years of exercising their function in this position.⁶³ The decision of termination of the prosecutor's status lies at HPC's discretion.

Conclusions

Appointments are made based on graduates' ranking and fulfillment of their preferences. This rule primarily serves as a motivation for magistrate candidates to reach the optimal level of professional preparation. At the same time, an objective ground for appointing magistrates is created, adapting their expectations to the achieved outcomes. Regarding the reappointed people, the decision is based on the results of the assessment and evaluation of the professional skills, proficiency, experience and preferences stated by the magistrates.

The transfer without such consent should be carried out after conducting an assessment or evaluation, based on objective and transparent criteria. The assessment object must first be the circumstances that create the need to make a position redundant as the workload may be. The criteria that influence the selection of a certain prosecutor from among all prosecutors in a specific prosecutor's office should also be deemed based on the same principles. Only in this way the ungrounded and unilateral selection of a certain prosecutor for a transfer without consent can be avoided.

The experience in previous senior executive roles, required for the candidate for Head of Prosecutor's Office, limits the ability of simple prosecutors to run for this position. Given the fact that the function of the Deputy Head of the Prosecutor's Office or the chair of a section is determined by the Head of the Prosecutor's Office, it should be noted that such a provision increases the ability of the Head of the Prosecutor's Office, to influence the selection of the person who will succeed him/her in this position.

The inclusion of "prominent lawyers" category in the group of people entitled to apply for vacancies at the General Prosecutor's Office or Appellate Prosecutor's Offices creates discussions regarding the respect of the prosecutors' career. In this way, the potential opportunity is created for all vacancies to be filled out by candidates coming from outside the prosecution. Career advancement represents an important motive for sitting prosecutors and influences their continued professional growth. The situation of filling vacancies by people outside the prosecution institution carries with it the possibility of influencing the reduction of motivation of prosecutors within the system.

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⁶³ Ibid. Article 64, paragraphs 4 and 5.

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