

Re-Evaluation process of judges and prosecutors in the Republic of Albania

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Abstract

The constitutional reform related to the system of justice realized in 2016 in Albania, was welcomed with a positive enthusiasm by all stakeholders, civil society, business groups, including the political class who voted for this reform unanimously.

One of the goals of the implementation of this reform is not only the restoration of new justice institutions and the strengthening of existing ones but above all the re-evaluation of all judges and prosecutors who are part of the judiciary in three main aspects: - asset valuation, a background, and integrity check to discover the links to organized crime and a qualification assessment.

The total number of all judges and prosecutors in the Republic of Albania is over 800 subjects, starting from the courts of the first instance and the prosecutor's offices near them to the Constitutional Court.

The re-evaluation process is carried out by two new constitutional institutions that are established and function for a transitional period, the Independent Qualification Commission (IQC) as a first instance with a mandate of 5 years, and the Special Appeal Chamber (KPA) as an appeal body with a 9-year term.

More than three years have passed since the beginning of the activity of these two institutions and the results they have given are very significant when almost half of the entire body of veto magistrates has not gone through this process, while a considerable number of judges have resigned.

On the other hand, many constitutional and legal issues have arisen concerning the vacancies created in the Constitutional Court, the High Court, and other judicial and prosecutorial bodies, the quality of the new magistrates who will become part of the judiciary, and meritocracy or not by those magistrates who have stayed in the system to those who have left.

For all these results that have been produced so far, it is necessary to be careful that the cleansing of the judiciary by magistrates who do not deserve to be part of this system does not create undeserved subjective discrimination and at the same time go in the election as soon as possible of new members of the judiciary with persons who do not have the necessary qualifications which would seriously affect the quality of the judiciary in the Republic of Albania.

Keywords: Re-Evaluation process, Prosecutors, Republic of Albania.

Introduction

The re-evaluation system is set up to guarantee the functioning of the rule of law, the independence of the justice system, as well as to restore public trust in the institutions of this system.

All judges, including judges of the Constitutional Court and the Supreme Court, all prosecutors, including the General Prosecutor, the Chief Inspector, and other

inspectors at the High Council of Justice, are subjects to ex officio re-evaluation¹. Former judges, former prosecutors, former legal advisers of the Constitutional Court, and the Supreme Court, who have worked in these positions for at least three years, may also be subjects to the re-evaluation process upon request and if they meet the criteria by law.

The Independent Qualification Commission is the public body that will review the evaluations of all judges and prosecutors in the first instance and the Special Appeal Chamber of the Constitutional Court will review the appeals of the re-evaluation subjects or the Public Commissioner².

The mandate of Independent Qualification Commission's members and the Public Commissioner lasts five years from the date of their commencement, and nine years for the judges of the Appellate Panel. After expiration of the IQC, pending re-evaluation issues will be reviewed by the High Judicial Council for judges and the High Prosecution Council for prosecutors. After expiration of the public commissioners mandate, their powers will be transferred to the Head of the Special Prosecution. Appeals against IQC decisions, which are still pending, will be reviewed by the Constitutional Court³.

The Independent Qualification Commission consists of four permanent judging panels with three members each..

Two public commissioners represent the public interest and may appeal against the Commission decisions.

The Commission and the Special Appeal Chamber exercise their responsibilities based on the principles of accountability, integrity, and transparency for the establishment of an independent and professional judicial system free of corruption.

IQC members and public commissioners have the status of the Supreme Court member throughout the exercise of their activity, and the judges of the Special Appeal Chamber has the same position as a judge of the Constitutional Court⁴.

The Special Appeal Chamber consists of seven judges and is the only judicial body that reviews appeals against decisions of the Commission, according to the provisions set out in the Annex to the Constitution and the special law. The KPA reviews complaints in a five-member panel⁵.

The International Monitoring Operation (IMO) will support the reassessment process by monitoring and overseeing the entire process of initiating, continuing, and issuing a final decision by the IQC and KPA. This Operation includes prominent subjects in the field of law who are engaged in the re-evaluation process in the framework

¹ Article 179 / b, point 1 of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016

² The same article of Constitution of the Republic of Albania, point 4

³ The same article of Constitution of the Republic of Albania, point 8

⁴ Provision C, point 3 of Aneks of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016

⁵ Provision F, point 1 of Aneks of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016

of the process of Albania's integration into the European Union and Euro-Atlantic cooperation and is led by the European Commission⁶.

International observers carry out these tasks and responsibilities⁷

b. It may request that the Commission or the Special Appeal Chamber consider evidence or present evidence taken by state bodies, foreign entities, or private persons, under the law;

c. Gives written recommendations to public commissioners to file a complaint to the Appellate Panel. In case the Public Commissioner does not implement the recommendations, he should prepare a report giving the reasons for the refusal.

1.1 Re- evaluation process according to constitutional provisions

The revaluation process includes the control of property, integrity, and professional skills, according to articles D, DH, and E of this annex of Constitutional of Albania. The Commission and the Special Appeal Chamber publish their decisions as well as any other necessary information received from the public. The information presented by the public should be processed under the principle of proportionality between the protection of private data, the public interest, and the needs of the investigation, as well as the right to a fair trial⁸.

The Commission, the College of Appellate, and international observers have direct access to all government databases, except those classified as "state secret" including the assessor's files, statistical data, files selected for reassessment, self-assessments, opinions of superiors, data on training and complaints against judges or prosecutors, results of verification of complaints, disciplinary measures, data on properties, bank accounts, tax data, data on vehicles, data on border entry-exit, as well as any other useful documents. The Commission or the Appellate College may order individuals and companies to testify or give evidence under the law⁹.

Unlike criminal proceedings, the burden of proof is on the subject of re-evaluation¹⁰. The subject of the revaluation must explain the lawful sources of the assets and incomes. Legal assets are incomes reported over years which are taxed regularly, the real estates registered in the public registers. Other elements of the legal property are defined by law¹¹.

If the subject of the revaluation has assets higher than twice he has declared before, he is presumed guilty of the disciplinary violation committed except when he presents

⁶ Provision B, point 1 of Aneks of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016

⁷ The same provision of of Constitution of the Republic of Albania, point 3

⁸ Provision Ç, point 2 of Aneks of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016. This provision oversee three criteria thata have to meet jughes and prosecutors for passing the vetting proces

⁹ The same provision of of Constitution of the Republic of Albania, point 4

¹⁰ The same provision of of Constitution of the Republic of Albania, point 5

¹¹ Provision D, point 3 of Aneks of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016

evidence that proves the opposite¹².

The subject of the re-evaluation may resign, and in this case, the re-evaluation process is interrupted. The subject of the re-evaluation who resigns without being re-evaluated cannot be appointed as a judge or prosecutor of any level, as a member of the High Judicial Council or the High Prosecution Council, as a High Inspector of Justice or a General Prosecutor, for 15 years¹³.

1.3 The nature of the decisions of the independent qualification commission, since its establishment¹⁴.

Viti	Numri vendimeve
2018	The total number of decisions given by the Independent Qualification Commission for the period January to December 2018 is 92 decisions : -forty-two (42) decisions for confirmation of twenty judges, eighteen prosecutors, four legal assistants/candidates for magistrates. - thirty (32) decisions for dismissal of twenty-two judges and twelve prosecutors and one legal assistant in the Administrative Court of First Instance/candidate for magistrates. seven decisions to terminate the process for four judges and two prosecutors, one mer legal advisor of the Constitutional Court; -eight (8) decisions to terminate the process for three judges, one prosecutor, and four legal assistants of the High Court.
2019	The total number of decisions given by the Independent Qualification Commission for the period January to December 2018 is one hundred and twenty-nine (129) decisions : - fifty-two (52) decisions for confirmation of 19 judges, 28 prosecutors, and 5 legal assistants; - forty-eight (48) decisions for dismissal of 28 judges, 19 prosecutors, and 1 legal advisor; - twelve (12) decisions to terminate the re-evaluation process of 9 judges and 3 prosecutors; - sixteen (16) decisions to complete the re-evaluation process of the Chief Inspector of ILD, 10 judges, and 5 prosecutors; - one (1) decision for suspension from duty of the subject of re-evaluation
2020	The total number of decisions given by the Independent Qualification Commission for the period January 2020 to September 2020 is seventy-one (71) decisions : -Fifty-two (52) decisions related to judges: 18 confirmations, 22 dismissals, 11 interruptions of the process due to resignation, 1 suspension from duty for 1 year to attend the training program at the School of Magistrates, - sixteen (16) decisions related to prosecutors: 7 confirmations, 5 dismissals, 4 interruptions of the process due to resignation, -three (3) decisions related to other entities: 2 ILD inspectors (1 termination due to resignation and 1 termination due to retirement), 1 legal advisor (1 termination due to resignation).

1.4 The vetting process in practice

The vetting process started its activity in 2017. In June 2017, IQC and KPA were constituted, and only at the beginning of September 2017, they started their

¹² The same provision of of Constitution of the Republic of Albania, point 4

¹³ Provision G, point 2 of Aneks of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016

¹⁴ These data are provided by official web of KPK where are given all results of vetting process for judges and prosecutors from january 2018 until September 2020.

activity for those charged by the Constitution of Albania and the law.

Being granted the candidate states in 2014, Albania introduced constitutional reforms to open the judicial reform process. The main goal of such changes has been to strengthen the judicial system's independence, to increase the system's effectiveness and the public trust in justice. The goal has been planned to become a reality through a two-steps process:

- a re-evaluation of the existing judges and introducing and establishing the new self-governing judicial and anti-corruption institutions.
- all judges and prosecutors have been vetted in three main aspects: the re-evaluation of assets, background, and integrity check to discover the links to organized crime and a qualification assessment. The process has been led by the newly established Independent Qualification Commission (IQC) and the Appeal Commission¹⁵.

Many difficulties have been encountered in this process, starting from the constitution of the vetting bodies. Beyond the support of international partners, the new judicial vetting bodies were adopted on June of the 2017 parliamentary elections, through a broad political consensus. The approval was made with a long delay, as well as through the last-minute compromise, where the two main political parties gained indirect benefits by avoiding the initial principles on which justice reform was formulated.

The selection of vetting structures was done through a tacit party consensus, where at least half of their staff represent the minimum to average standards of professionalism and prestige in the justice system¹⁶.

The reform of the legal framework of the justice system took place in a relatively polarized political climate, which led to the simultaneous disapproval of the first seven organic laws of the justice system¹⁷.

An appeal to the Constitutional Court against Law no. 84/2016 for constitutional amendments that define the vetting process and a temporary suspension of this law's implementation by the Constitutional Court, can be considered as factors that caused the delay in the establishment of the Vetting Institutions. The Constitutional Court rejected the request for the unconstitutionality of this law with the Decision no. 2, dated 18.01.2017¹⁸.

Since September 2017, the moment IQC started exercising its competencies, it has given two hundred and ninety-two (292) evaluations:

- **one hundred and twelve (112) judges and prosecutors** have successfully passed the vetting (59 judges & 53 prosecutors);
- **one hundred and thirty (130) judges, prosecutors**, members of the Constitutional Court and the Supreme Court have been dismissed by the IQC and KPA ;
- **sixty-two (62) judges, prosecutors**, former legal advisors, members of the

¹⁵ <https://europeanwesternbalkans.com/2019/11/13/vetting-process-in-albania-the-marching-failure/>, page 2

¹⁶ <https://njihreformenedrejtesi.al/sq/lajme/item/173-isp-raport-reforma-ne-drejtesi-2018-bilanci-problematikat-sfidat>, page 6

¹⁷ http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyq-tareve-dhe-prokuroreve_jan17-qer18.pdf, page 17

¹⁸ http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyq-tareve-dhe-prokuroreve_jan17-qer18.pdf, page 15

Constitutional Court, and the Supreme Court, as well as members of the Inspectorate at ILD, have resigned from the review process.

During three years of activities of the re-evaluation bodies, 2/3 of the entire judicial and prosecution bodies have either been dismissed or have resigned without facing the re-evaluation process.

One hundred and ninety-two (192) vacancies for judges and prosecutors created in the judicial system are the result of the implementation of the constitutional and legal reform injustice that was undertaken in 2016.

In some dismissal decisions, it was noted that IQC has decided to complete the revaluation process only on the property criterion, not completing and not considering the investigations on the criterion of evaluation of the integrity and that of professional skills. In these decisions, based on the results of the administrative investigation with the property, the trial panels have assessed that the property criterion is sufficient for the decision-making process regarding the transitional re-evaluation of the respective subjects.¹⁹

Most discharges relate to issues related to unjustified assets. These concrete and credible results have significantly strengthened the justice system by consolidating the independence, impartiality, professionalism, and accountability of the judiciary²⁰. In early 2017, just six months after the adoption of constitutional amendments related to justice reform, the United States Embassy revoked non-immigrant visas for some Albanian judges and prosecutors after concluding that these officials did not qualify for these visas.

The US Embassy took this action ahead of the expected vetting process, which will assess the links of certain officials to corruption, as well as in response to a case involving flagrant abuse of an official visa by a high-level prosecutor and his wife. which led to the revocation of their visas²¹.

This stance of the United States Embassy was an alarm bell that showed that constitutional and legal changes would not just stay on paper, but would bring the long-awaited changes to cleanse the judiciary of corrupt judges and prosecutors.

The transitional re-evaluation of judges and prosecutors, otherwise known as vetting, is a very important but also complex process as it is an extraordinary and transitional in the reform of the justice system that will be carried out only once, so it has a historical significance²².

The vetting institutions are Independent Qualification Commission (IQC), the Public Commissioners (PC) and the Appeal Chamber (AC) - are working under the oversight of the International Monitoring Operation (IMO), deployed by the

¹⁹ https://www.osfa.al/sites/default/files/raport-studimor-per-vendimmarjen-e-institucioneve-te-rivleresimit-kalimtar-te-gjyqtareve-dhe-prokuroreve-vetting_-_copy.pdf PAGE 5_

²⁰ <https://www.parlament.al/Files/Kerkese/20190708131532Mbi%20gjetjet%20dhe%20rekoman-dimet%20e%20Raportit%20te%20Komisionit%20Evropian%20per%20Shqiperine%202019.pdf>, Mbigjetjetdherekomandimet e RaportitteKomisionitEvropian per Shqiperine 2019, page 9

²¹ <https://www.drone.al/2017/01/26/ambasada-amerikane-fillon-vettingun-refuzon-vizat-per-disa-prokurore-dhe-gjyqtare-shqiptare/>

²² http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyqtareve-dhe-prokuroreve_jan17-qer18.pdf, page 12

European Commission in cooperation with the United States of America²³.

Getting out of the system of corrupt and professionally incompetent judges is one of the greatest achievements of the Justice Reform. Many who desperately thought that their complaints against corrupt prosecutors and judges would never be heeded and that they would remain in undeserved public office until the end of their term, with justice reform and the vetting process, this skepticism gets the answer it deserves.

We can say that the effects that this process is producing on 70% of the dismissed persons have been positively received by the public opinion, including experts and legal professionals, which can be said that the re-evaluated process is on the right track regardless of the number of judges, and prosecutors who have been verified in a year (*the process could have been faster, but it is still producing results that give credibility to vetting bodies*).

The constitutional amendments made to the Constitution of the Republic of Albania in 2016, for the establishment of bodies for the re-certification of judges and prosecutors with transitional effect, in terms of international constitutional law are original and there is no second example that has been applied in the same way in other countries, including those of the Balkans or Eastern Europe.

The failure of justice reform undertaken in Serbia during the period 2006-2010, where about 900 judges and prosecutors who left the justice system due to vetting were returned by the Constitutional Court decision was an example of applying differently a reform to the justice system²⁴.

Thus, the establishment of temporary vetting institutions was considered necessary to be provided directly in the Constitution to avoid political pressures and any other pressures that conflict with interest with this reform that is being implemented.

If the same reform had been envisaged in the organic laws, the risk of undermining this reform to fail would be many times greater.

To contribute for increasing public confidence during the process, it is estimated that better transparency of the vetting bodies will help in this regard. Also, for transparency to the public, during the hearing, the rapporteur or the trial panel must respect the principle of confidentiality.

The principle of "tools" equality is an element of "fair trial" extensively elaborated in the jurisprudence of the Strasbourg Court. This principle includes the right to give a reasonable opportunity to the party to present its version of the case, realized through the three main minimum requirements:

- the right to present evidence;
- the right to challenge the evidence against the subject of vetting;
- the right to present arguments about the case.

The second claim is closely related to the principle of adversarial proceedings, which means the right of the party:

- to get acquainted with the evidence and the process;

²³ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/update-on-the-republic-of-albania.pdf>

²⁴ <http://avokatia.al/revista/19-avokatia-33/71-kushtetutshmeri-33>, page 4. For furthermore you can see Erida SKËNDAJ, Revista Avokatia 33, vlerat, kompleksitetidheshfidat e procesitëvettingutnëshqipëri.

- to comment on the other party's evidence²⁵.

In some decisions of IQC has been noticed that refusal to take the evidence required by the subject of re-evaluation, such as the appointment of an independent expert, the summoning of witnesses, etc.

Specifically, this was observed for the decisions of the IQC for the subjects B.T; R.G; D.R.; E.M; where it turns out that only the legal basis of the refusal is cited, but it is not argued why we are in front of the causes and circumstances provided in this provision²⁶.

The Public Commissioner has an essential role in the integral implementation of the re-evaluation process and in guaranteeing the highest possible standard of investigation, trial, and decision-making, as well as in the protection of the public interest.

By the end of 2018, the Public Commissioner was not to a real test, mainly due to the small number of entities vetted and the permanent assistance of the IOM.

Thus in 16 complaints made by public commissioners, in 38% of cases, it was the initiative that came in the form of a recommendation from the IOM that led to the official complaint by them.

In 62% of other cases, the initiative to make a complaint to IQC was because of public commissioners themselves. Among the most sensational initiative of public commissioners are the appeals against the leaders of the Supreme and Constitutional Court²⁷.

These concerns and not only are some of the perceptions of public opinion and the political class that the decisions of IQC and KPA do not treat in all cases with the same standard different cases and prosecutors who have committed property violations, where some go through the process of vetting and some not.

KPC has a five years term which expires at the end of August 2022. This is a real concern because three years and two months have passed since the beginning of his activity. While the number of cases he has reviewed is only 35% of the total number of judges and prosecutors to be re-evaluated²⁸.

A major problem of the vetting process is the filling of vacancies that are currently created in the Supreme Court, appellate courts, and courts of the first instance where the number of judges and prosecutors who have not passed the vetting is many times greater concerning the number of judges and prosecutors appointed by the School of Magistrates (the number of those leaving is many times greater than the number of magistrates entering the system).

In 2020 the number of vacancies in the courts of appeal has increased by 50% and

²⁵ https://www.osfa.al/sites/default/files/raport-studimor-per-vendimmarjen-e-institucioneve-te-rivleresimit-kalimarte-gjyqtareve-dhe-prokuroreve-vetting_-_copy.pdf PAGE 11,

²⁶ Id

²⁷ <http://isp.com.al/index.php/2019/01/02/reforma-ne-drejtesi-2018-bilanci-problematikat-sfidat/>, <https://www.njihreformennedrejtesi.al/sq/lajme/item/173-isp/raport-reforma-ne-drejtesi-2018-bilanci-problematikat-sfidat> PAGE 33

²⁸ In the part of the Annex of the Constitution, Article C, it is foreseen "The mandate of the members of the Independent Qualification Commission and the Public Commissioner is five years from the date of their functioning, while the mandate of the judges of the Appellate Panel is nine years. "After the dissolution of the commission, the unfinished cases of there-evaluation are reviewed by the High Judicial Council, according to the law."

also there are currently 16 vacancies in the Supreme Court and five vacancies in the Constitutional Court.

On the other hand, filling 15 vacant High Court seats, requires that candidates coming from the appellate court or courts of the first instance, must afford successfully the vetting process and to have at least 13 years of experience as a judge²⁹.

Vacancies for appellate courts can be filled by candidates coming to the first instance courts who must afford successfully the vetting process and to have at least seven years of experience as a first instance judge.

The vacancies created in the Constitutional Court are extremely worrying and have completely paralyzed the activity of this institution with important constitutional functions for resolving constitutional disputes and the final interpretation of the constitution, and especially the claims regarding incompatibility of laws with the Constitution and individuals appeals regarding the right to due process³⁰.

These delays may have consequences or may impair the efficiency of the trial and the justice system sought by citizens from the first instance courts, in the courts of appeal, to the Supreme Court. There is an overload of files carried over from previous years. An insufficient number of newly appointed judges (currently three judges out of nineteen), who handle more than 35,900 files created over the years awaiting trial, the lack of function of the High Judicial Council regarding the appointments of the High Court members, there are several reasons of inefficiency of the Supreme Court³¹. However, despite the fact that almost the half of the judges have been dismissed in the process and the data provided by investigative journalists, due to the lack of the consequences in terms of filing criminal charges for those who have been proved as ineligible to keep their posts, the concern remains whether the process will bring the real change remain very high. Accompanied by the long-lasting procedures and a lot of delays, vetting process has betrayed high expectations from the very beginning³².

The IQC was successful and made headlines in the media and public life with the sensational dismissals of several members of the Constitutional Court and the Supreme Court. IQC with its decisions broke the myth of inviolability and created the necessary environment for a re-evaluation process at all levels of the judiciary and the prosecution.

The success of this process was so great that the model of vetting injustice was considered as a solution for both vetting in the police and politics³³.

However, problems arising from the crisis in the Constitutional Court, the Supreme Court, the High Inspector, and later with the High Judicial Council and the High Prosecution Council, the IQC changed the list of priorities of the re-evaluation process several times.

The crisis created dilemmas as to whether it would have been more effective to start vetting proportionately at all levels or to start as it started, by the Constitutional Court and the Supreme Court. The other problem the KPA faced was following

²⁹ Article 47/5 of Law 96/2016 "On the status of judges and prosecutors in the Republic of Albania"

³⁰ http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyq-tareve-dhe-prokuroreve_jan17-qer18.pdf

³¹ <https://top-channel.tv/2018/04/25/kaos-dhe-pushime-ne-gjykatene-e-larte/>

³² <https://european-eastern-balkans.com/2019/11/13/vetting-process-in-albania-the-marching-failure/>

³³ <https://isp.com.al/index.php/2019/08/30/reforma-ne-drejtessi-vetingu-bilanci-2019/>, po atyfaqe 27

the verification standards. The Constitution provides for three standards, three evaluation criteria, but in more than 30% of cases, the IQC made decisions based on the evaluation of only one standard, mainly property³⁴.

Referring to the IQC data for the period from the drawing of lots and until its final decision, on the topics of re-evaluation, it turns out that there are large differences for different entities. For example, to decide on the subject K. S, the head of the Administrative Court of Appeal, the IQC decided after about 20 months, with much more than for any other subject of re-evaluation. There are other names in the list of subjects that have been re-evaluated from 16 to 18 months, which according to the law should not have lasted more than 60 days to 90 days, or two to three months³⁵.

The assumed situation, after 2020³⁶

Thirty-five candidates for judges and prosecutors begin to practice the profession for which they graduated from the School of Magistrates in 2020.

Twenty-five candidates for judges and prosecutors begin practicing the profession for which they graduated from the School of Magistrates in 2020.

- Twenty-four candidates for judges and prosecutors take full responsibility and begin practicing the profession for which they are attending the School of Magistrates in 2021.

- Forty candidates for judges and prosecutors take full responsibility and begin to practice the profession for which they are attending the School of Magistrates in 2022.

- Seventy candidates for judges and prosecutors take full responsibility and begin to practice the profession for which they are attending the School of Magistrates in 2023.

In total, by 2023, about 190 candidates for judges and prosecutors are expected to be nominated and enter the justice system, which is the same number as judges and prosecutors absent from the justice system today.

On the other hand, the IQC and KPA will continue to exercise their functions, and given the number of judges and prosecutors currently dismissed in these two years, plus some of them who will resign during 2021 and 2022 we may have out of 150 other judges and fewer prosecutors in the system.

Currently 130 judges and prosecutors are missing in the justice system. The total number of vacancies / absences that will be created by 2022 goes to about 180 judges and prosecutors.

On the other hand, we should not forget that the number of new magistrates admitted to the School of Magistrates in 2020 academic year is ninety (90); forty judges, thirty prosecutors, and twenty legal assistants and advisers.

This number is the same as the justice officials who come out today due to the vetting process.

If the School of Magistrates will continue at this pace until the end of 2025, all vacancies that may be created by judges and prosecutors who are not going through the vetting

³⁴ Id, page 27

³⁵ Id, Page 28

³⁶ These data are obtained from the School of Magistrates of the Republic of Albania and the High Judicial Council

<https://www.magjistratura.edu.al/>

process or are resigning will be filled.

Accepting such a large number of candidates for judges and prosecutors, including legal advisers, increases the risk of reducing the quality of individuals who will become part of the new judiciary.

From the statistical data for the competition in the School of Magistrates, in recent years there are on average two candidates for a position of judge and prosecutor.

Throughout the history of the School of Magistrates from 1997 to 2017 have competed over 200 candidates for 10 seats for judges and as many candidates for prosecutors.

One of the reasons that fewer candidates compete in the School of Magistrates has to do with the re-evaluation process that will be applied to the successful candidates as well as the fact that candidates must already have at least three years of experience after graduating from law school to compete in this school.

These obstacles have reduced the number of competing candidates for the highest educational institution in the field of justice, even though the number of law students completing their studies each year in Albania goes over 1000.

The same big opening about changing the functioning of the judiciary was made in the Republic of Albania in 1992 by the Political Party that won the elections that year. On the basis of the justice reform that was undertaken after 1992, dozens of individuals with a six-month course had the opportunity to become judges and prosecutors, even though most of them had no a law degree.

The candidates who became judges and prosecutors that period after a six-month course had previously worked as agronomists, teachers, veterinarians, engineers etc. It was 1992 when the President of the country at that time decided to open a 6-month Accelerated Course to produce the so-called "PlepaJudges"³⁷.

This reform would be strongly opposed by the Former Chief Prosecutor Maksim Haxhia, who in the parliamentary interpellation on Monday, September 7, 1992, at 17.00 in the Albanian Parliament said "*... I would like to inform you before this Parliament, the President, and the public our firm stance against regressive thinking for the creation of so-called multi-month training courses for judges. Accepting this means raping justice and deliberately leading society to anarchy*"³⁸

Even the Former Minister of Justice Kudret Cela opposed the opening of such a course, who in the proposals he presented concerning this reform held this position "*... A variant that greatly alleviates this great hunger would be possible to take students of senior courses from the Faculty of Law and why not also from senior correspondence law courses (full 4 years studies). These are much better in terms of vocational training compared to those students who are in high school and undergo an accelerated 3-4 month course*"³⁹.

This reform replaced judges and prosecutors who served during the Monist Regime with unqualified persons. It had its consequences over these last thirty years that drove the political class through the concerns of society and business groups and always with the support of international partners to undertake the justice reform in the constitutional changes that were made in 2016.

³⁷ <http://dodonanews.net/sistemi-la-piovra-drejtjesise-besim-dervishi/>

³⁸ Notebook of Parliamentary Speeches, Book 4, page 1387, edition of 2009, <https://www.parlament.al/ep-content/uploads/2015/11/4-1992.pdf>

³⁹ Notebook of Parliamentary Speeches, Book 5, page 1693, edition of 2009, <https://www.parlament.al/ep-content/uploads/2015/11/4-1992.pdf>

Meanwhile, Albania's deep judicial flagship reform continues, with a comprehensive vetting process being undertaken for all judges and prosecutors and the establishment of new judicial structures. New appointment procedures and national investigative offices will guarantee a much greater protection from political influence and greater independence. More than 50 percent of the judges and prosecutors so far reviewed by the Independent Qualification Commission have been removed following vetting, largely due to their inability to justify their wealth. The process has resulted in a serious shortage of judges, critically in the Constitutional Court, and created serious backlogs across the judicial system⁴⁰.

The concern for the justice reform that took place in 1992 and the comparison with the constitutional and legal reform undertaken after 2016, it allows many candidates to enter the system for judges and prosecutors during an academic year (there have been 90 magistrate candidates for 2020). The normal number of students that have studied at the School of Magistrates from 1997 to 2016, has been too low (from 10-25 in maximum for one academic year). This fact risks the quality and professionalism of those who will continue to serve as judges and prosecutors and who will replace those who currently have precisely the lack of professionalism and problems with their wealth.

The main focus of the last three years of justice reform has been vetting, exclusion from the system of individuals who do not meet one of the three constitutional criteria, leaving out of focus other important aspects of reform, such as new entries in the system, career system, improving quality of work in the administration of justice, transparency and increased independence and professionalism. We should not forget that the reevaluation process is not the whole Justice Reform, but only one of its constituent stages⁴¹.

As we mentioned above should be given essential importance not only to the exited from the justice system of judges and prosecutors that does not meet the criteria of professionalism, economics, and integrity but also the way of opening the School of Magistrates in Albania.

The lack of vacancies in the judiciary today should not lead us to rush to recruit young magistrates who do not have the necessary professional, ethical, and moral integrity to make a difference to those who they are replacing.

⁴⁰ https://www.un.org.al/sites/default/files/Government%20of%20Albania%20-20%20United%20Nations%20Progress%20Report%202019_0.pdf, page 23

⁴¹ <https://njihreformennedrejttesi.al/sq/lajme/item/173-isp-raport-reforma-ne-drejttesi-2018-bilanci-problematikat-sfidat>, page 4