

Achievements and challenges about re-evaluation process of judges and prosecutors in the Republic of Albania

Aferdita Maho

Judge of the Administrative Court of First Instance Tirane, Albania

Besnik Maho

Professor at European University of Tirana & Luarasi University & expert to Magistrate School (Albania)

Abstract

The constitutional reform related to the system of justice conducted 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.

The results provided so far by the Qualification Commission, The Special Appeal Chamber, have increased public confidence in the cleansing of the judiciary by judges and prosecutors who do not deserve to be part of the judiciary, but at the same time there have been delays in litigants, to get a faster and better service due to vacancies created in the system and the loss of real independence that must demonstrate magistrates who have not yet been re-evaluated. The purpose of implementing this reform is not only to meet one of the standards related to the integration of this country in the European Union but also to increase the quality of service in terms of ensuring the fair justice in favor of citizens and business groups. It remains to be seen how this reform guarantees these goals with a positive character, based on the results that have been produced during these four years, as well as on what is intended to be achieved in the future, for its final implementation.

Keywords: Achievements, Process of judges and prosecutors, Republic of Albania.

Introduction

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 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.

It should be underlined that international partners have played and are playing an important role in the outcome of the re-evaluation of judges and prosecutors.

The biggest judicial reform since the fall of communism, a good example for the rest of the Western Balkan states that are in the process of the European integration and fearless fight against the corruption and organized crime – that is how the experts and the European diplomats have been referring to the judicial reform that started in Albania in 2014¹.

The assistance of European Union and USA experts who have assisted in the strengthening of the judiciary bodies in Albania after the fall of communism through OPDAT, USAID, and EURALIUS programs, have seen that beyond the various legal reforms and promises taken by the judiciary itself legislative and executive, the increase in the independence of the judiciary, the professionalism, and honesty of justice officials has left much to be desired, despite flagrant cases or numerous complaints from citizens and business groups.

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 visas².

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

¹ <https://europeanwesternbalkans.com/2019/11/13/vetting-process-in-albania-the-marching-failure/>

² <https://www.droni.al/2017/01/26/ambasada-amerikane-fillon-vettingun-refuzon-vizat-per-disa-prokurore-dhe-gjyqtare-shqiptare/>

long-awaited changes to cleanse the judiciary of corrupt judges and prosecutors. The core of the constitutional and legal reform in the judiciary is precisely the re-evaluation of the functionaries of the judiciary and the prosecution, which includes about 800 of them.

Regarding the justice system, the Ambassador of the European Union said, based on the Progress Report dated 07.10.2020 of the Union, Albania is making progress, especially in the reevaluated process³.

The temporary re-evaluation of all judges and prosecutors (vetting process) has advanced steadily, continuing to produce tangible results, hence meeting the condition for the first IGC. Under the aegis of the European Commission, the International Monitoring Operation has continued to oversee the process. More than 286 dossiers have been processed thus far, resulting in 62% dismissals, mostly for issues related to unjustified assets or resignations⁴.

During the COVID-19 lockdown period, the vetting institutions have continued to perform a number of important investigative activities in remote modality. The vetting institutions have resumed public hearings in June 2020. Albania has some level of preparation in the fight against corruption. Albania has continued its efforts towards the establishment of a solid track record on investigating, prosecuting and trying corruption cases⁵.

On the other hand, the international media "VOA" and "DW" are playing a significant, independent and professional role in their reporting on justice reform than the local media. In their entirety, the media have failed to expand the number and scope of legal expertise on justice and its issues, preferring political discourse than professional and technical discourse.

Overall, the international community continues to play a leading role in justice reform, including the vetting process. The international factor uses standard, supportive, but also static discourse regarding the ongoing technical problems that arise during the implementation of justice reform⁶.

1.2 Challenges about re-evaluation process of judges and prosecutors in the Republic of Albania

Despite the positive outcome reached so far from the process of re-evaluating judges and prosecutors, there exist several questions regarding the implementation of this reform after 4 years:

1. Are constitutional and legal reforms removing justice officials who do not meet the criteria of honesty in economic, integrity, and professional terms in an efficient manner?
2. Is the Annex to the Constitution for the establishment of vetting bodies (IQC, KPA, and IOM) the

³ <https://www.parlament.al/News/Index/10420>,

⁴ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf, COMMISSION STAFF WORKING DOCUMENT Albania 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020 Communication on EU Enlargement Policy, page 5.

⁵ Id, page 5.

⁶ <http://isp.com.al/wp-content/uploads/2018/11/ISP-monitorimi-i-ligjerimit-politik-2018.pdf>.

appropriate legal way?

3. Is the principle of sovereignty violated by the role and space that IOM has in the Constitution of Albania?

4. Is the example of justice reform an example that has been applied before in other countries or is it the only original example which with the positive and negative effects it has produced, has increased the skepticism to be applied in other countries in the region?

5. Is the vetting process providing a discriminatory standard for the independence of the judiciary comparing with the legislature and the executive in Albania?

6. The judges and prosecutors who have not passed the vetting process comparing with other justice officials who have gone positively through this process.

1.2.1 Are constitutional and legal reforms removing justice officials who do not meet the criteria of honesty in economic, integrity, and professional terms in an efficient manner?

The re-evaluation of judges and prosecutors, known as vetting process, is a key precondition that Albania needs to fulfill⁷.

High levels of corruption, lack of integrity and accountability within the judiciary have all been Albania's biggest challenges to overcome⁸.

For these reasons the Parliament of Albania has unanimously adopted these constitutional amendments in regard to the judicial reform, including the implementation of the Vetting Law. The two cornerstones of the judicial reform package include the amendment of 46 articles of the Albanian Constitution and the approval of a bundle of laws (including the vetting law) set to create new judicial institutions. This law has vital importance for the political future of Albania, determining how quickly and expedite will be its accession path to the EU and how much credibility will be gained vis-à-vis the Albanian people over the judiciary system⁹.

Albanian judges, including judges of the Constitutional Court and of the High Court, Albanian prosecutors, including the General Prosecutor the Chief Inspector and all inspectors of the High Council of Judges, legal advisers of the Constitutional Court and of the High Court, legal advisers of the administrative courts and of the Prosecution General Office and former judges will all undergo vetting procedures if requested¹⁰. The Independent Qualification Commission and the Appeal Chamber, as provided by Art.179/b, paragraph 5 of the Constitution, are the institutions which will decide on the final evaluation. The decision shall be based on one or several

⁷ European Commission (2016), "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions", available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf.

⁸ <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>.

⁹ <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>.

¹⁰ Council of Europe (2016), "Law on the transitional Re-Evaluation of Judges and Prosecutors, Albania", available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)062-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)062-e)

components or based on an overall evaluation of all of three key components¹¹. 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 significance¹².

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 European Commission in cooperation with the United States of America¹³.

A strong and independent judiciary is critical to bringing results to the Albanian people in the fight against organized crime and corruption. The United States remains fully committed to supporting Albania in building an independent and quality judicial system that brings justice to all Albanian citizens¹⁴.

Over three years that the vetting institutions have been exercising their powers, the results are significant, about 190 judges and prosecutors or over 60% of the all vetted judges so far, have not passed this competition with themselves.

In other words, the persons who had more power at the top of the judicial bodies of the Supreme Court, the Constitutional Court, and the presidents of the courts of the judicial and appellate districts did not go through the vetting process, which indicates the serious degradation in which judiciary system was represented.

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*).

Although the vetting of the members of the judiciary is an administrative process, it is relevant to assess the concrete results by Albania to fight corruption. These have included the dismissal from office of a number of high-ranking magistrates, including at Constitutional Court and High Court level. In 2019, there were two final convictions for passive corruption of judges, prosecutors and other officials of the judiciary. In 2019, there were 262 first-instance convictions involving lower or middle-ranking officials in addition to 294 first-instance convictions in 2018. In 2019,

¹¹ Id.

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

¹³ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/update-on-the-republic-of-albania.pdf>,

¹⁴ <https://njihreformennedrejttesi.al/sq/lajme/item/173-isp-raport-reforma-ne-drejttesi-2018-bilanci-problematikat-sfidat>, page 7, one of the official positions of the US Embassy in TIRANA, on justice reform.

there were 246 final convictions at appeal level involving lower or middle-ranking officials in addition to 289 final convictions in 2018¹⁵.

1.2.2 Should be written in the Constitution of Albania an Annex for the establishment of vetting bodies (IQC, KPA, and ONM), which altogether will have a transitional effect?

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.

Of course, similar reforms aimed at purging the judiciary of corrupt or incompetent officials have been pursued in Serbia, Northern Macedonia, Croatia, Romania, Ukraine, etc, but they have a very substantial difference from that one applied in Albania.

In the above-mentioned states, the control of the integrity and professionalism of justice officials has been done by the governing bodies of the judiciary of these states, including the fact that such a control process is ensured only through organic laws, but never in the constitutions of these states.

There are three essential changes in the justice reform provided in the Constitution of the Republic of Albania comparing the above-mentioned states.

- The constitution of these bodies (IQC, KPA, and IOM), is provided directly in the basic act (Constitution of the Republic of Albania) although these bodies have a temporary character;
- They are bodies that in some way replace the normal activity that should play the former Inspectorate at the HCJ for judges and the High Prosecution Council for prosecutors.
- A kind of duplication of competencies is created about disciplinary violations related to professional criteria where the right to dismiss judges and prosecutors currently have ILD playing the role of the investigative body, HJC for judges, and HJC for prosecutors playing the role of decision-making bodies.

For real independence of the judiciary bodies, away from political influence and corruption scandals, it was necessary to undertake a deeper reform, unlike what was realized in the countries of the region by directly intervening in the Constitution and entrusting the process to a re-evaluation of justice officials no longer the internal self-regulatory bodies of the judiciary, but three new constitutional bodies *sui-generis* with a temporary term.

In the ten years of activity of the HCJ 2005-2017, no judge was dismissed, although the complaints and violations have been and still are endless.

In contrary to the legitimate expectations of all citizens, the HCJ in most cases accepted to impose light disciplinary measures and didn't accept to the removal of corrupt and professionally incompetent judges or those associated with suspicious elements of the criminal world, as has resulted in quite a few cases including members of the Supreme Court.

¹⁵ Id, page 6.

This subjective selection process shows how dysfunctional and clientelistic the HCJ has been, which today resembles more a bar/guild association that protects the interests of a certain oligarchy than a body that was supposed to govern the judiciary where one of the decisions that do not neverreceive was exclusion from the system of the incompetent and corrupt professionals.

The HCJ will be remembered in most cases not to mention in all cases, for the famous transfers mainly during the years 2008-2012 of candidates from outside and inside the system in the absence of transparency, conditions and professional skills of candidates, lobbying for making votes for its predetermined members, etc., which does not currently exist, at least until this time we are talking about the HJC.

The same can be said for the General Prosecutor's Office regarding the degree of punishment of corrupt prosecutors and the nepotistic appointments that were made during the years 2005-2017.

Another objective reason for defining such a sui generis reform in the Constitution of Albania was the example of the justice reform undertaken in Serbia that resulted to be unsuccessful.

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 system¹⁶.

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.

The tool justifies the purpose, so the implementation through a special Annex to the Constitution of Albania for the establishment and functioning of the IQC, KPA and IOM has been more than necessary.

1.2.3 Is the principle of sovereignty violated by the role and space that IOM has in the Constitution of Albania?

A very important issue in the discussions that were undertaken for the constitutional changes in 2016 was the status and power of international observers in the vetting process.

For this purpose, the draft constitutional amendments were forwarded to the Venice Commission for an in-depth opinion on whether or not it violates the sovereignty of the Albanian state and especially of the vetting bodies, the role and position given to the IOM international observers in the Constitution.

The Venice Commission in June 2016 issued its final decision stating that International Observers are appointed by the Prime Minister "in accordance with the international legal framework or diplomatic relationships" (Article B p. 3). A certain vagueness of this formula can be explained by the fact the exact shape of this future "legal

¹⁶ <http://avokatia.al/revista/19-avokatia-33/71-kushtetutshmeri-33>, page 4. For furthermore you can see Erida SKËNDAJ, Revista Avokatia 33, vlerat, kompleksiteti dhe sfidat e procesit të vettingut në Shqipëri.

framework" is unclear. As a matter of principle, interim appeals or measures should be available only as an exceptional measure. They should be applied only where procedural errors allegedly committed by the IQC could not be remedied at a later stage without the referral of the case for re-consideration on the merits from the SQC back to the IQC¹⁷. The International Observers are experienced foreign lawyers qualified to be judges in their own country. In relation to some countries, where there is a rigid separation between judges and prosecutors or where judges are appointed only from the ranks of senior practitioners, this provision could have the effect of excluding the possibility of prosecutors, barristers or academic lawyers being Observers. If this is unintentional, it would not be difficult to amend the draft to resolve the problem, in order to open up the system to other adequately qualified candidates¹⁸.

The Independent Observers have important procedural rights. They have access to the documents and information in the possession of the Commissioners and the IQC, they are able to seek disclosure of certain evidence by State agencies and public officials (directly or through the Commissioners and the IQC), to file recommendations to the IQC on procedural actions to take and on the merits of the cases, to file appeals before the SQC (including the appeals on procedural matters), participate in the deliberations, to file separate opinions etc. These powers will confirm the position of the Independent observers as watch-dogs ensuring in particular transparency of the process, while leaving the decision-making power in the hands of the domestic body. Instead of a power to transmit the case to an alternative panel/chamber, the international observer might have a right to lodge an appeal "in the public interest", and the right to select one or another panel/chamber¹⁹.

The powers of the international observers should be clarified; they should have procedural rights but no decision-making powers. The mechanism of transferring the jurisdiction over the case from one panel/chamber to another should be revised²⁰. Thus, based on the recommendations of the Venice Commission, international observers were given the role of observers and recommenders to the verification bodies IQC, KPA, and public commissioners. The lack of decision-making power of the IOM in the Constitution of Albania, respects the principle of sovereignty.

However, it is very important to say that international observers through the recommendations and positions they held in the hearings contributed to increasing the quality of the processes conducted, decision-making, and appeals against IQC decisions when they disagreed²¹.

¹⁷<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282016%29009-e/>, point 69 of Report.

¹⁸<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282016%29009-e/>, point 70 of Report, CDL-AD(2016)009-e Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).

¹⁹<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282016%29009-e/>, point 73 of Report.

²⁰<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282016%29009-e/>, point 88 of Report.

²¹ <https://isp.com.al/index.php/2019/08/30/reforma-ne-drejttesi-vetingu-bilanci-2019/>, Page 27

With the progress of the verification process, it has been unofficially acknowledged that the role of IOM is much greater and more substantial than monitoring. Their conduct at the hearings and especially the questions or assessments they make at these re-evaluation hearings are crucial and have a major impact on the final decision taken by the body of Independent Qualification Commissioners.

Their interventions are always news to the media and their comments often define the curve followed by the vetting process in justice reform.

Referring to the official data (for decisions published until August 26, 2019), it turns out that international commissioners have been present in all cases of decisions for dismissal or confirmation by the IQC²².

In the monitoring reports of the vetting process, the Albanian Helsinki Committee (AHC) has positively assessed the commitment of international observers, who have contributed to strengthening the accountability and impartiality of vetting institutions with their recommendations and conclusions during the transitional vetting review process, but also in strengthening public confidence in this process²³.

Regarding the role of international observers, a debate has arisen as to whether they can give a different opinion on the decisions taken by the vetting bodies only on the decisions of the IQC or even those of the KPA.

Such a discussion arose from the position held by the representative of the IOM against the decision no. 6/2019, dated 28.02.2019 of the Special Appeal Chamber that changed the decision of the IQC by dismissing Mrs. A.S.

The IOM representative did not agree with the Special Appeal Chamber decision and therefore presented a parallel opinion.

By letter dated 06.08.2019, the Special Appeal Chamber informed the Albanian Helsinki Committee (AHC) that the parallel / different opinion of the IOM representatives on the decision no. 6/2019, dated 28.02.2019 of the Panel belonging to subject A.S is the first precedent of international observers to operate with this controversial instrument from the constitutional point of view but also legally.

Base to Article 55, point 5 of Law no. 84/2016, the international observer participates in the decision-making process by the IQC behind closed doors, where at the end of the decision, the international observer has the right to write an opinion otherwise / parallel that joins the decision.

Giving this attribute to IOM international observers for IQC decisions is set by the legislator in the Constitution of Albania and in the law, to submit written recommendations to the Public Commissioners, for filing an appeal against the IQC decision²⁴.

While in chapter VIII of law no. 84/2016 which talks about the special rules about the appeal and review of the case in the Special Appellate Panel, such an attribute for a parallel opinion or otherwise opinion is not allowed for the international observer to the decisions of College (KPA)²⁵.

Thus, the provisions of special law no. 84/2016 "On the transitional re-evaluation

²² <https://isp.com.al/index.php/2019/08/30/reforma-ne-drejttesi-vetingu-bilanci-2019/>, Page 44

²³ <https://ahc.org.al/nje-precident-i-gabuar-mendimi-ndryshe-parallel-i-vezhguesit-nderkombetar-per-ceshtjen-ndaj-subjektit-a-sevdarit/>

²⁴ Id.

²⁵ Id.

of judges and prosecutors in the Republic of Albania", and the Constitution of the Republic of Albania separates the powers of the international observer to give an opinion or a parallel opinion only against the decision of the IQC and not against the decision of KPA..

As a result of all the arguments presented above, the parallel or different opinion presented by the IOM observer on the KPA decision on A.S's case exceeds the attributes set out in Article "B" of the Annex to the Constitution.

Moreover, in the present case or another similar precedent, the parallel or different opinion presented by the IOM observer against the KPA decision would create premises to favor the subjects in their proceedings before the European Court of Justice in Strasbourg²⁶.

1.2.4 Is the example of justice reform an example that has been applied before in other countries or is it the only original example which with the positive and negative effects it has produced, has increased the skepticism to be applied in other countries in the region?

The successful institutional framework set up with international supervision and guidance for the vetting process in Albania, could be viewed as a role model for other neighboring countries in the Western Balkans. A similar vetting process regarding re-evaluation of judges was carried out in other former communist countries around Europe such as the Czech Republic, Hungary, Bosnia and Herzegovina, Kosovo, Serbia and Croatia²⁷.

Nevertheless, in many instances the implemented judicial reforms had little to none effect in raising transparency, accountability and efficiency within the judicial system. Vetting measures had a mild effect in Bosnia and Herzegovina, where the process took place under the full supervision of the international community, increasing the transparency and accountability of the judicial system and partly restoring public confidence in the judiciary. However, the whole process underwent phases of difficulties, especially in setting clear criteria²⁸.

The failure of the Bosnian vetting law finds its grounds on the lack of clarity over the evaluation criteria. Moral integrity, technical skills, qualifications, property & financial status and war crimes record, were all key criteria difficult to assess due to lack of transparency and accountability from the weak Bosnian institutional architecture. Inefficiency and lack of transparency proved, once again, to be an effective combo for a modest result²⁹.

In Kosovo, a re-evaluation of judges and prosecutors has been carried out under the supervision of the EU Commission Liaison Office, with the purpose of establishing

²⁶ Id.

²⁷ <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>, page 9.

²⁸ Id, page 9.

²⁹ Aucoin, Louis/Babbitt, Eileen (2006): "Transitional Justice: Assessment Survey of conditions in the Former Yugoslavia", UNDP Belgrade report, available at: http://www.undp.org/content/dam/serbia/Publications%20and%20reports/English/UNDP_SRB_TRANSITIONAL_JUSTICE_-_Assessment_Survey_of_Conditions_in_the_Former_Yugoslavia.pdf

an independent and professional judiciary and prosecution system and increasing public confidence in the judiciary bodies. Under the vetting process, 898 judges and prosecutors became part of a re-evaluation process, with only 50% of judges and prosecutors in office passing the ethics and professional test, thus re-appointing themselves as judges or prosecutors³⁰.

At the same time, the Republic of Serbia does not present itself as a regional role model in respect to vetting procedures. Vučić's government has failed to design a comprehensive vetting process and institutional restructuring, although the basic legislative conditions and founding stones for vetting have been created.

A well-defined lack of political will has been one of the major reasons that has caused a failure in implementing properly vetting procedures³¹.

Serbia went through an unsuccessful experience with the vetting process, both in terms of shortcomings in drafting solid and comprehensive legislation, but also in terms of violations of the rights of judges and prosecutors who underwent this process. The Serbian model of vetting presents substantial changes from the Albanian one in terms of the way of this process and the responsible institutions that would carry it out.

High Council of Justice and the State Council of the Prosecution are the institutions responsible in Serbia for realizing the vetting process, while the right to appeal was exercised by the subjects in the Constitutional Court.

So, unlike the Albanian model, this process was not entrusted to independent specialized institutions created specifically for this purpose in the Constitution and the Law. The institution of the Public Commissioner, present in the Albanian model is not set in the Serbian legislation. Also, the presence and role of international monitoring observers was not foreseen³².

Serbia adopted the new Constitution in 2006, which aimed to establish an independent judiciary and an autonomous public prosecution service. The reappointment of all judges and public prosecutors was provided for by two bodies with a transitional composition: the High Judicial Council and the State Prosecution Council.

Under the new legislation, the total number of judges and prosecutors was reduced by 30%, and more than 800 out of 3,000 judges were not reappointed. Many of the judges and prosecutors who were not reappointed appealed to the Constitutional Court (1,500 complaints and requests were filed in this Court)³³.

The legal amendments adopted in December 2010 led to the transfer of cases from the Constitutional Court to the Councils, for further processing (review of procedures). As a result, the Councils undertook a second round of proceedings for the subjects

³⁰ OCSCE (2012), "Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions", p 14- 17, available at: <http://www.osce.org/kosovo/87138?download=true>

³¹ Maja Kovac (2007), "Vetting as an element of institutional reform and transitional justice", Institute of Criminological and Sociological Research, Belgrade, available at: http://www.academia.edu/2565556/Vetting_as_an_Element_of_Institutional_Reform_and_Transitional_Justice

³² Id.

³³ <http://avokatia.al/revista/19-avokatia-33/71-kushtetutshmeri-33/>, page 3. For furthermore you can see Erida Skëndaj, Revista Avokatia 33, Vlerat, kompleksiteti dhe sfidat e procesit të vettingut në Shqipëri.

who had appealed to the Constitutional Court, and in the end, 109 judges and 29 prosecutors were reappointed. Judges and prosecutors who were not reappointed after this second round appealed again to the Constitutional Court.

The Constitutional Court of the Republic of Serbia ruled in 2012 that the High Council of Justice and the State Prosecution Council had not applied objective criteria for reappointment, that judges and prosecutors had not been effectively heard during the proceedings, and that the Councils had not provided explanations sufficient for reappointment decisions.

The Serbian Constitutional Court decided to reinstate all judges and prosecutors who had appealed against their non-reappointment. This decision of the Constitutional Court of 2012 led to the reinstatement³⁴ of about 800 judges and 120 prosecutors³⁴.

Lastly, in the neighboring country of Croatia, vetting measures have also failed to date, with only two legislative proposals, related to abuses committed during the Communist era, with neither of them passing³⁵.

The vetting process against judges and prosecutors has also taken place in Ukraine. The Ukrainian model differs from the Albanian model because in Albania the vetting process comes from the provisions of the constitutional annex and is regulated in detail by a special law.

While the assessment of the qualification of judges in Ukraine is provided by a special transitional provision incorporated in the Ukrainian law on the judicial system and the status of judges.

The Ukrainian and Albanian models have similarities because this reform is proposed to be transitional/temporary.

Also, another similar aspect between Ukrainian and Albanian is the reason why this measure is necessary to be applied. It is because of the need to increase the trust of citizens in the justice system, to increase the professionalism of judges, and to fight corruption³⁶.

Failures in Serbia and Croatia with the vetting process have meant that EU officials do not suggest the vetting process as a priority in other countries in the region. EU Ambassador to Skopje Samual Zbogor, speaking on the problems of justice in Northern Macedonia, stated that Vetting is the last option. "Our position is clear; we support the court to use the elements to improve the court system from within"³⁷.

1.2.5 Is the vetting process providing a discriminatory standard for the independence of the judiciary comparing with the legislature and the executive in Albania?

The basic principles of the Constitution of the Republic of Albania stipulate that "*The system of government in the Republic of Albania is based on the division and balance between the legislative, executive and judicial powers*"³⁸.

³⁴ Id.

³⁵ Id.

³⁶ <http://avokatia.al/revista/19-avokatia-33/71-kushtetutshmeri-33/>, page 2. For furthermore you can see Erida Skëndaj, Revista Avokatia 33, Vlerat, kompleksiteti dhe sfidat e procesit të vettingut në Shqipëri.

³⁷ <https://kohajone.com/deshtimi-me-reformen-ne-shqipëri-diplomati-i-be-ne-shkup-vettingun-eshte-i-panevojshe/>

³⁸ Article 7 of Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417,

The transparency enabled by the vetting process should not infringe on the human dignity of vetting entities. Every person, regardless of official position or public status, must respect the final authority of re-evaluation institutions and their final decision-making towards judges and prosecutors who are subject to vetting.

AHC considers that the forms of reaction that can be perceived as interference in the activity of the re-evaluation institutions or in the activity of judges and prosecutors that are subject to vetting, should be avoided. The independence of the judiciary remains in the foundations of its organization and functioning. Respect for this independence becomes even more important as the new foundations of the justice system are being laid³⁹.

Any kind of prejudice against the subject of the reevaluated vetting, nominally or in groups, is harmful and in many cases has violated the dignity of the person subject to this process.

Vetting subjects in some cases have seen that publicly expressed prejudices have created unnecessary concerns in the exercise of their profession and family life, even in the ranks of judges or prosecutors who are perceived as clean or professionally competent by their community⁴⁰.

In the general public and the media, the beginning of the vetting process only for the officials of one of the three main powers, the judiciary bodies, violates to some extent Articles 7 and 18 of the Constitution of Albania. The implementation of vetting has increased the fear and violation of the real independence that justice officials should have.

Their property and professional declaration data, such as their family members (spouse, children, parents, relatives, etc), have been made public in print and online media, infringing on thus the legal framework for the protection of personal data as well as the EU Community law relating to this aspect of private life.

The tendency of various opposition figures to make constitutional and legal changes to extend the vetting process to politicians as part of the legislative and executive powers was not supported by the ruling force Socialist Party.

In the plenary session of September 13, 2018, Mr. Taulant Balla Chairman of the parliamentary group of the Socialist Party held the position that politicians can not vet politicians. According to him, it is the Special Prosecution under Article 148 /DH of the Constitution of Albania that investigates and punishes corrupt senior officials⁴¹. The unilateral will of the political class to reconsider the purity of the image, professionalism, and economy of only the officials of the judiciary and not of senior officials of the executive and legislative branches, can be said to be in a discriminatory treatment between the three main branches of state power.

The only similar process of re-verification of professional and economic criteria in public administration is the process of verification of senior state police officers.

So, the political class has tried to channel the vetting process only for this group of DAT 21. 21.10.1998," Constitution of the Republic of Albania, Official Gazette no. 138, Date of publication 27/07/2016.

³⁹http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyq-tareve-dhe-prokuroreve_jan17-qer18.pdf PAGE38.

⁴⁰ Id.

⁴¹ <https://www.youtube.com/watch?v=lvHs3-j-Sjo>,

public administration officials and only for senior leaders in the police structures and not for the entire police force, creating a kind of unnecessary discrimination within this group of employees.

In 30 years of democracy, if there have been problems with organized crime and corruption, this phenomenon is not found only by injustice officials or senior State Police officials, but in all officials, who have abused their administrative or legislative power.

In this way, undertaking the verification process for these functions is more than necessary.

It is already clear that the standard that politics followed with the judiciary and the prosecution, the removal from the system of more than 50% of judges and prosecutors who can not justify their financial resources, does not make sense if it does not apply to politicians and high leader's state. Good laws are needed, but a candidate country can never be on the real standards of EU membership if there is no functioning democracy, transparency, accountability, and high standards of the political elite⁴². Corrupt elites are always happy and feel safe, arrogant, consensual, eternal, and omnipotent when citizens submit and have no mechanism for change or control⁴³.

1.2. 6. The judges and prosecutors who have not passed the vetting process comparing with other justice officials who have gone positively through this process

Another aspect monitored by AHC observers is the transparency of the trial panels during the hearing with the vetting subjects⁴⁴.

The hearing, when it is public, should create the opportunity for all present (the public) to get acquainted with the facts and circumstances that are relevant to the three vetting criteria. In some cases, AHC observers found that during the hearings, the rapporteurs focused on the facts and circumstances that resulted during the administrative investigation for only one of the vetting components, when the latter resulted in problems such as the property issues.

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:

⁴²<https://www.njihreformennedrejtisi.al/sq/lajme/item/132-ora-news-afirim-krasniqi-spak-dhe-vetingu-ne-politike-rruga-drejt-zgjidhjes>

⁴³ Id.

⁴⁴http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyq-tareve-dhe-prokuroreve_jan17-qer18.pdf PAGE 34.

- to get acquainted with the evidence and the process;
- to comment on the other party's evidence⁴⁵.

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 provision⁴⁶.

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 Court⁴⁷.

KPA decisions and IOM recommendations have been fully welcomed by the Albanian interest groups and the public.

However, there are several data that cast doubt on the standard used for grievance cases and other cases where KPA particularly has decided not to appeal. Some of the successful entities in the IQC were widely contested by various political and media actors due to problems in justifying their financial resources as well as in exercising their function in the justice system. Their criticisms were generally ignored.

The critical level of transparency on non-appeal cases coming from institutions, citizens, and other interested groups for a higher standard of evaluation of judges and prosecutors remains problematic.

Public commissioners have a greater role and responsibility than foreign IOM observers, so they need to establish mechanisms that create a higher public confidence ratio and the integrity of justice reform.

In the dismissal of over 70 judges and prosecutors from office the main criterion has been that of property. The first prosecutor to undergo the vetting process, B.N, was fired by the IQC, and she filed an appeal to the ECHR.

According to the dismissed prosecutor B.N, the lack of an ownership certificate for the house she owns in the city of Lezha does not make that illegal property that she

⁴⁵ https://www.osfa.al/sites/default/files/,raport-studimor-per-vendimmarjen-e-institucioneve-terivleresimit-kalimtar-te-gjyqtareve-dhe-prokuroreve-vetting_-_copy.pdf PAGE 11.

⁴⁶ Id.

⁴⁷ <http://isp.com.al/index.php/2019/01/02/reforma-ne-drejttesi-2018-bilanci-problematikat-sfidat/>, <https://www.njihreformennedrejttesi.al/sq/lajme/item/173-isp/,raport-reforma-ne-drejttesi-2018-bilanci-problematikat-sfidat> PAGE 33.

has and that moreover, she has officially declared since 2003, with the address and data correct. Currently, 60% of properties in Albania are informal⁴⁸.

According to Artan Hoxha, Dean of the Faculty of Law at University of Tirana, Albanian society has been and continues to be an informal society. Until a few years ago, we also received our salary by payroll. So you have and not through the bank. To ask prosecutors and judges today to answer in detail for certain transactions, to justify wealth as if society has functioned perfectly with formality, means that from the beginning they have put them in a difficult position" - claims Artan Hoxha, Dean of the Faculty of Law at FJUT⁴⁹.

According to Erida Skëndaj, Executive Director of the Albanian Helsinki Committee, it is stated that there is dissatisfaction with the Vetting bodies which in some cases have violated the principle of proportionality. Based on this principle, dozens of officials of the justice system have been confirmed in office, and in some other cases this principle has burned these prosecutors and judges and dismissed them⁵⁰.

According to the dismissed prosecutor B.N, there are tenfold and not double standards in the activity of vetting bodies. The problem is that the vetting body is not responsible⁵¹. Despite the fact that such an attitude of B.N should be taken with reservations as long as this subject is a justice official who has not passed the vetting process.

According to Clirim Gjata, Secretary for Legal Affairs in the opposition Democratic Party, there are some fundamental problems related to the vetting process, such as these⁵²:

- The Vetting Commission (IQC) is using a double standard to keep D.Pin the justice system, which has unjustified assets;
- The Prosecutor of Serious Crimes is suspected not only of money laundering and conflict of interest in the purchase of some apartments;
- IQC should dismiss and not protect, as so far, D.P. The role of the victim with the July lawsuit by her husband against the firm where he worked illegally, is a fraud. The lawsuit has no legal value;
- We do not ask for anything more than the vetting institution to maintain the same standard for similar cases.

A complaint was filed against Donika Prela, former head of the Prosecution at the Serious Crimes, to the KPA, which dismissed her from duty with the decision of 25.09.2020, by abrogating the decision of the IQC that left her in office⁵³.

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 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.

A problem related to the verification process is the way the process is transparent, the

⁴⁸ <https://www.zeriamerikes.com/a/albania-vetting/5034314.html/>

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² <https://www.youtube.com/watch?v=DvSzeH1Rch4/>,

⁵³ <https://a2news.com/2020/09/25/shkarkohet-donika-prela-ish-drejtuesja-e-prokurorise-se-krimeve-te-renda-fshehu-pasurine/>

decisions are given, the transparency, the deadline, the right to be protected by the verified entities, and the problems encountered in this regard.

The main Albanian media in their reports have covered the political discourse of the day, so they have served more as an adjunct to political discourse than as an external institution, evaluating and monitoring politics and justice. Every political statement on justice is reflected in the media regardless of its content, the language used, the facts or speculations, the context and influences on the public, or the progress of the process.