

Albanian Criminal Justice towards challenges of the European integration

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Abstract

The effectiveness of criminal justice constitutes one of the core criteria that Albania has to fulfil in order to join the European Union. In this context, the integration process requires Albania a good governance of the judiciary management bodies aiming at the independence, accountability, efficiency and transparency of the judiciary in addition to the fight against organized crime, modern slavery, terrorism, money laundering and confiscating assets of crimes, protection of victims of crimes, as well as crimes committed by high state officials, independent from any outside or inside inappropriate influence intensifying cooperation with region countries with the common goal.¹

The European Commission considers the rule of law to be 'the backbone of modern constitutional democracies'. Beyond Europe's borders, the rule of law has been recognised as a foundational value, and a central tenant of constitutional democracies. The rule of law can, and should, be correctly considered a fundamental and consensual element of Europe's constitutional heritage. European Union states and any European country if it respects the democratic values of the EU and is committed to promoting them.²

Keywords: Albanian Criminal Justice, challenges, European integration.

Introduction

Justice, freedom and security are three main pillars on which the EU was established.³ Organized crime, modern slavery, combating money laundering, terrorism financing, illicit drugs and terrorism are considered as threat of opening up Western to Eastern society after 1990s and therefore the process of integrating countries out of the former communist system particularly Western Balkans countries, above all and primarily these countries should provide order, security and freedom to their citizens of a professional, effective, independent justice system to guarantee the European perspective. Further reforms and efforts are needed from the Western Balkans partners, and on the EU's enhanced support to the region. A significant proportion of these actions were subsequently endorsed by EU Member States and the Western Balkan partners.

The consolidation of democracy and the rule of law are concluded into the EU Recommendations which represent the process of democracy and the transformations of the institutions towards the standards of European Union. Integrity can not be seen as a goal itself, but as a natural process towards which the state and society should go. This process has a relation or link with the Copenhagen Criteria (June 1993) the rule of law is a crucial aspect of democratic transformation and the key benchmark against which the enlargement countries' progress towards membership is assessed by the EU. Progress has varied considerably over the last year. One positive element has been that the Western Balkans' operational cooperation with EU Member States and EU agencies has continued to improve and intensify in the fight against violent

extremism and radicalisation that lead to terrorism, as well as migration and border management. Credible progress in the rule of law area remains a significant challenge, which often correlates with a lack of political will, continuing existence of certain elements of state capture, limited progress on judicial independence, institutional resistance and an increasingly difficult environment for civil society⁴. The second pillar of cooperation relates to the fight against organized crime, terrorism, money laundering and illegal drugs, therefore the assistance of the European Union has been exuberant in these areas.⁵

Article 78 of the Stabilization and Association Agreement⁶ emphasizes the strengthening of the rule of law and institutions, and the cooperation in the fight against terrorism, money laundering, and criminal activities. Particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime.

The Albanian justice system has undergone radical changes and a significant improvement during the past decade, regardless the main priorities of the integration process. Progress in criminal justice consists in improving the legal and institutional infrastructure and capacity building in the investigation and adjudication of criminal cases. In terms of legal infrastructure, Albania is putting its efforts to achieve all international standards in the field of criminal law, and most important to be mentioned:

- Convention of Council of Europe "On Mutual Legal Assistance in the Criminal Field" two additional protocols.
- Convention of Council of Europe "On the Transfer of Convicted Persons"
- European Convention on the Suppression of Terrorism
- European Convention "Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances"
- Criminal Convention against Corruption and its Additional Protocol.
- International Convention on the fight against terrorist financing
- United Nations Convention against Transnational Organized Crime and its two Additional Protocols
- European Convention on the Validity of Criminal Trials.
- Council of Europe Convention on Action against Modern Slavery, etc.

All these adapted international criminal standards brought a direct image into the domestic legislation, adapted to the requirements of the international standards:

- Criminal offenses against trafficking in human beings, women, minors were envisaged.
- The criminal offenses of the War on Terrorism, those of political crime and many other legal provisions were adapted to the Criminal Code according to the International Convention requirements.

- Law on collaborators of justice and protected witnesses was adopted in addition to all the required legal basis.
- The law on prevention of money laundering and terrorist financing was adopted.
- The law on Prevention and Suppression of Organized Crimes was adopted.
- The Law of Criminal Procedure was adapted according to special institutes of the Fight against Organized Crime.
- The law on measures against domestic violences was adopted.
- Alternative sentences reformulated and a National Probation Service for the supervision of alternative sentences was established.

A legal summary of substantive and procedural criminal law in line with that of the EU, absolute inclusion of the international standard is an advantage that in the near future of Albania's EU membership, Albanian judges will adapt the complex legal structure of law of the EU, thus in the case of European criminal law it is more assimilable than that of other areas. That saying, as Albania as a member of the Council of Europe, mentioned above, ratified most of the EC Conventions that are also the basis of European criminal law.

At a fundamental level, the rule of law requires a clear and consistent legal framework, where public officials and institutions are held accountable, disputes are settled peacefully and effectively, and citizens have confidence in the operations of their justice system. Albania is improving the environment of the justice sector, all of which focused on strengthening democratic institutions and establishing a rule-of-law culture.

On the organizational and structural point of view, the establishment of investigative structures of serious crimes at the police stations, Serious Crimes Prosecution, Serious Crimes Court, brought extraordinary impact in the fight against organized crime, trafficking and other serious offenses. Armed gangs, criminal organizations, structured criminal groups, not being previously investigated and tried, came out to justice. For the first time, instruments on protection of witnesses and collaborators of justice were applied, as well as international judicial cooperation in criminal matters. This significantly increased the trust of public opinion, domestic and international institutional factors in criminal justice, considering the period from 2004 and onwards a story of success.

Law no. 10 192 dated 03.12.2009, currently named "*On the Prevention and Suppression of Organized Crime and Trafficking through Preventive Measures Against Property*" specified and made more efficient investigations and property trials *in rem*, providing effectiveness in the possibility of sequestration and confiscation of proceeds of crime. The new Law no. 70/2017 dated 27.04.2017 "*On some amendments and changes to law no. 10 192 dated 3.12.2009, "On the prevention and combating of organized crime, trafficking and corruption through preventive measures against property"* amended already entered into force and is under implementation. This law with the relevant amendments aims at harmonization with other laws and in line with the entire legal package within the Justice System Reform in the Republic of Albania. With respect to changes of this law, the legislator relied on the regulations of the Italian Code of Anti-Mafia Laws and Preventive Measures dated 6 September 2011 and on the recommendations provided by PAMECA⁷ mission and EURALIUS.

The purpose of review was the necessity to clarify its application in criminal and civil proceedings, to clarify the nature of the cases to be tackled, the position of the

prosecutor of these cases and the power of the final court decision regarding the eventual conclusions of court proceeding of criminal cases related to this law. By the proposed amendments and changes it is considered:

- Representation in the content of the draft law of the requirements provided in Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 *“On the freezing and confiscation of instrumentalities and proceeds of crime in the European Union;*
- Harmonization of the current law with the legal changes adopted within the Justice System Reform Package.

By the Normative Act no. 1, dated, 31.01.2020 ⁸*“On preventive measures in the context of strengthening the fight against terror, organized crime, serious crimes, and the consolidation of public order and safety”* there were various temporary measures approved in the framework of strengthening the fight against organizations, structured criminal groups, terrorist organizations, armed gangs and individuals involved in serious crimes. It aims at an emergency and temporary intervention in terms of the need to strengthen and intensify the fight against organized crime, organized criminal organizations and groups, or individuals involved in serious crimes aiming to consolidate security in the country by imposing some preventive measures of property and economic character.

This Normative Act was approved by the Council of Ministers based on Article 101 of the Constitution. According to Article 101 of the Constitution, the Council of Ministers, in case of emergency, under its responsibility, may issue normative acts that are into force of law, on taking temporary measures⁹. According to this Normative Act persons who are convicted or under investigation for criminal offenses are subject to it as provided by Article 5, including criminal offenses committed within a structured criminal group, in line with paragraph 2 letter a of article 5.

In recent years the effectiveness of criminal justice is questioned on the investigation of anti-corruption trials, or bringing to justice senior public officials or politicians, European and Euro-Atlantic structures considering it as a touchstone of the integrity of the justice system. Political conflicts with the prosecution, allegations of corruption by judges, the critical activity of the High Council of Justice and the inconsistent practice of the High Court in adjudicating criminal cases, including the impact of the work of this Court, called into question its effectiveness, recently in particular, the criminal justice system.

Expectations on criminal justice and the perspective of integration

The integration process requires more effective criminal justice, as there is expectation of national and international public opinion, in addition to the requirements within European integration. Accession to the European Union is defined as objective, strategic and without an efficient justice system, an independent and capable judiciary, it cannot be achieved.

The European Commission provides clear priorities of integration: The Albanian state must equally guarantee the implementation of law by respecting legal principles of

⁸ Normative Act no.1 dated 31.01.2020 *“On preventive measures in the framework of strengthening the fight against terrorism, organized crime, serious crimes and consolidation of public order and security.*

⁹ This normative act was approved on 31.01.2020, published in the Official Gazette and immediately entered into force.

a democratic state, as a guarantee for good governance, fairness and embody the values of European humanism. Albania, in order to enjoy the status of a country integrated in European and Euro-Atlantic structures as a state of law, democratic state and guarantor of fundamental human rights by bringing the justice system open to all, inspiring justice to all and giving justice to every individual and it requires that our state should implement clear strategies, aiming at:

- Consolidation of the independence of the judiciary and efficiency of all bodies such as prosecution, advocacy in terms of structure, function and financial aspect.
- Establishment of an impartial, fair justice system, consistent in guaranteeing the protection of the rights of the individual, as well as a guarantor of the public order and security clause.
- Consolidate the efficiency of the judicial system, the efficiency as well as the strengthening of international judicial cooperation.
- A transparent criminal justice system in order to gain the trust of the public.
- Among recommendations addressed to Albania as a term obtaining EU¹⁰ candidate status, four of them are directly related to criminal justice. Thus, the four main recommendations are:
 - The appointment of judges of the High Court through a competitive process is directly related to the composition of the High Court as the last chain of the judicial system, with an extraordinary impact on criminal proceedings.
 - Strengthen the rule of law by adopting and implementing a strategy of judicial reform, to guarantee the independence, efficiency and accountability of judicial institutions.
 - Effectively implement the government's Anti-Corruption Strategy and action plan, as well as remove obstacles to investigations, especially for investigations by judges, ministers and MPs; create a solid track record of pro-active investigations, prosecuting corruption cases at all levels.
 - Strengthen the fight against organized crime, based on threat assessment and proactive investigations, increased cooperation with regional and EU partners, and coordination of law enforcement agencies.

Tasks and expectations are very clear. The High Court as the Court that had initial jurisdiction to adjudicate MPs, ministers and senior public officials as well as the court that passes into final review jurisdiction almost all important criminal cases now it became a court of law and officials are subject to trials at three levels of judgment. But the High Court is not yet reformatted and replaced with new judges in addition to those who were removed by vetting process. Some judges have already been appointed. The process is ongoing.

The composition of this Court is crucial for the integrity and independence of the judiciary in Albania, therefore the recommendations of the EC Opinion on Albania emphasize this argument by requesting a transparent process based on merit of the quality of the candidates, a process that so far does not fulfill the expected outcome in selection.

Vocational training, professional experience in adjudicating criminal cases and sensitivity to criminal and international criminal law should be a requirement, otherwise the system fails to deal with important criminal cases based on the previous experience. The immunity of judges and senior public officials often has been used

¹⁰ Albania Progress Report 2020, Brussels, 6.10.2020 SWD(2020) 354.

by the prosecution and also by senior political representatives as an *alibi* failure to combat corruption. The international factor and the integration process in particular requires efficiency and the elimination of any form of corruption among persons with immunities, both political and public officials or within the judiciary, but also European standards require protection of judges from influences, i.e. immunity from prosecution for acts performed during their functions¹¹. The abolition of immunity as a concept of criminal procedure with the changes in the justice reform package will help criminal proceedings against officials. The process of justice reform has been an in-depth and comprehensive legislative process. The legislative process in the framework of the approximation of the Albanian legislation with the European one should be a constant need for improvement, perfection with the tendency for a possible harmonization with the European law.

The necessity of new changes in the criminal and criminal procedural legislation is related to the most efficient way of opportunities to investigate serious criminal offenses and those against corruption. This is about the changes in the Criminal Code, an ongoing legislative process aiming to draft a new Code to respond to the challenges of European integration and approximation of legislation, the adoption of a new law, the adoption of the law on collaborators of justice and for whistleblowers of corruption or the treatment of victims of violent criminal offenses with the possibility of effective protection or compensation¹².

European integration requires strong anti-corruption action, the removal of obstacles to investigations, a solid track record with preliminary investigations, the prosecution and prosecution of corruption cases at all levels and this requires increased capacity to prosecute bodies dealing with investigation and strengthening of the professional skills of the judges dealing with these cases. It is imperative for the investigation of anti-corruption offenses to extend to middle and senior levels of public administration by increasing the number of proactive investigations and the effective use of special investigative techniques to provide evidence.

Combatting the organized crime is another challenge of criminal justice, represented in this case by the Special Prosecution and the Special Court. In addition to the results thus far, the integration process necessarily requires the creation of a solid history in this regard, affirming the activity of these bodies and also increasing the cooperation and coordination of law enforcement agencies. The success is related to the cooperation in investigating such cases between the police and the Prosecution. To further deepen the positive outcome thus far in the fight against this phenomenon, it is necessary:

- Strengthen inter-institutional coordination for the fight against organized crime, as well as with regional and EU partners;
- Further increasing of measures in the fight against organized crime and serious crime;
- Further increasing of measures in the fight against drugs and trafficking,
- Further increasing of measures in the fight against money laundering and improving the institutional framework in the fight against terrorism;
- Maximizing the legal possibilities for sequestration of assets product of organized

¹¹ Report on the Independence of the Judicial System “, Part I: Independence of Judges, approved by the Venice Commission in the plenary session of the 82nd (Venice, 12-13 March 2010) paragraph 61.

¹² Recommendations CP (2012), On the implementation of the Council of Europe Convention on Action against Trafficking in Persons by Albania, Parties Committee of the Council of Europe Convention on Action against Trafficking in Persons.

crime;

- Creating a solid track record with statistics on the fight against organized crime¹³.

Money laundering and the fight against terrorism are important requirements of the membership period. Thus, it is legally necessary:

- Completion of the review and approval of the draft law "On some additions and amendments to Law no. 9917, dated 19.05.2008, 'On the prevention of money laundering and terrorist financing' addressing and reflecting the recommendations of the MONEYVAL Committee of the Council of Europe for Albania.
- Approval of the necessary amendments to the Criminal Code in relation to the criminal offenses of "Laundering the proceeds from crime" and "Financing of terrorism".

It is necessary to improve the legal framework in the fight against terrorism. In this regard, the approval of the national strategy against terrorism remains a priority, as well as the regrouping of the criminal offenses of the fight against terrorism in a separate chapter in the CC and the redefinition of the subject matter jurisdiction of the Special Court for Corruption and Organized Crimes (*former Serious Crimes Court*) the court competent to adjudicate them¹⁴.

The European Commission in the Progress Report 2020¹⁵ clearly addressed the achievements and recommendations related to justice system, fight against corruption, vetting process and fight against organized crime.

Fulfillment of these requirements, commitments, priorities or recommendations in addition to an independent, effective judiciary, more efficient, capable and resourceful prosecutors would bring the Albanian criminal justice closer to the integration, eventually putting the Albanian society on the right path of history.

Key Achievements in Criminal Justice Reform

Constitutional amendments, approved by law no. 76/2016 "On some additions and changes to law no. 8417, dated 21.10.1998, the Constitution of the Republic of Albania", (amended), among others, Article 135, foresee the establishment of the Special Court Against Corruption and Organized Crime.

The Special Court adjudicates criminal offenses of corruption and organized crime, also criminal charges against the President of the Republic, the Speaker of the Assembly, the Prime Minister, a member of the Council of Ministers, a judge of the Constitutional Court and the High Court, the Prosecutor General, the Inspector the High Court of Justice, the Mayor, the MP, the Deputy Minister, the member of the High Judicial Council and the High Prosecution Council, or even the accusations against the above former officials.

Judges of special courts are appointed by the High Judicial Council and before appointment, subject to verification of assets and integrity, also give consent for periodic control of their bank accounts and personal telecommunications according

¹³ Action Plan for fulfilling the recommendations of the opinion of the European Commission for Albania, Council of Ministers, 10.06.2018.

¹⁴ This is due to the fragmentary changes in the CC for the criminal offenses of the fight against terrorism were not followed by changes in Article 75/a of the CPC including them in the competence of the CCC.

¹⁵ Albania Progress Report 2020, Brussels, 6.10.2020 SWD(2020) 354.

to law¹⁶.

The transitional provisions of the Constitution¹⁷ provide for the process of transforming and naming the Court of First Instance of Serious Crimes into the Special Court for Anti-Corruption and Organized Crime, in accordance with Article 135¹⁸ thereof. By law according to this provision, the Court of First Instance for Serious Crimes and the Court of Appeal for Serious Crimes are appointed, function and exercise the competencies of the Court of First Instance and the Court of Appeals, within two months from the establishment of the of High Judiciary Council.

In this case, the Constitution refers to law no. 98/2016 "On the Organization of the Judiciary in the Republic of Albania¹⁹" and Law no. 95/2016 "On the Organization and Functioning of Institutions to Fight Corruption and Organized Crime²⁰". The constitution stipulates that incumbent judges, ie the Serious Crimes Courts, must give their consent to the periodic review of their financial and personal telecommunications accounts, in order to move to the new Anti-Corruption and Organized Crime Court. Law no. 95/2016 "On the Organization and Functioning of Institutions to Fight Corruption and Organized Crime²¹ " provides that the subject matter jurisdiction of the Courts Against Corruption and Organized Crime, provided by Article 75/a of the Code of Criminal Procedure and can not exceed the defined competence by article 135/2 of the Constitution²². This law defines the criminal jurisdiction of the Court against Corruption and Organized Crime, located in Tirana and exercises its criminal jurisdiction throughout the territory of the Republic of Albania. The territorial jurisdiction of the Special Court, for the trial of criminal offenses of corruption and organized crime, is defined in Law 98/2016 "On the organization of the Judiciary in the Republic of Albania²³", determines again that this court is based in Tirana.

As for judges to be admitted to the Special Court for Anti-Corruption and Organized Crime, they must sign a statement prior to their appointment, where they and their family members, relatives accept the conditions to be supervised over financial accounts, telephone communications etc. Security terms for trust and confidentiality are strict terms and provide severe restrictions on the personal/personal freedom of judges and their families.

In conclusion, the criminal justice system in Albania is evolving, it went through a huge and profound changes that may be a solid basis to assist the rule of law, order and democracy in the process of integration of the country.

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¹⁶ Paragraph 4, Article 135 of the Constitution, Part Nine, the Courts.

¹⁷ Paragraph 8 Article 179, Part 18 of the Constitution, latest transitory provision.

¹⁸ Paragraph 2, Article 135, Courts, Part nine.

¹⁹ Referred to law no. 95/2016 "On organizing and functioning of institutions to fight corruption and organized crime. In this case the Constitution refers to law no. 98/2016 "On the Organization of the Judiciary in the Republic of Albania".

²⁰ Law no. 95/2016 "On organizing and functioning of institutions to fight corruption and organized crime".

²¹ Law no. 95/2016 "On organizing and functioning of institutions to fight corruption and organized crime".

²² Article 8, Key Court competence.

²³ Article 11, of law no. 98/2016 "On the Organization of the Judiciary in the Republic of Albania".

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