

Policy Paper

Albanian judiciary under construction

Megi Bakiasi



Contents

Introduction.....	1
The reform per se.....	1
Contextualization.....	1
The pillars of the reform.....	1
Law in the books vs. law in action.....	2
Vacancies.....	3
The right to resignation.....	4
On the three vetting criteria.....	4
The power of the deadline.....	4
The European perspective of the reform.....	5
The International Monitoring Operation (IMO).....	5
The impact of the reform on the negotiation talks.....	5
Conclusion.....	5



Introduction

The EU enlargement process has been reoriented solely towards the Western Balkans as it is becoming increasingly apparent that Turkey's enlargement prospects are non-existent. Two specific chapters in the Copenhagen Criteria¹ set out a variety of aspects of justice, fundamental rights, security, the fight against corruption and organized crime, in order to guide and assist enlargement countries.

The accession of the Western Balkans to the European Union is strongly linked to justice reform. This condition derives from one of core values of the European Union: the rule of law. Even though the justice reform is the common denominator in all the countries of the region, some cases in particular, such as that of Albania, merits attention. Amongst the Western Balkans, Albania was recently in the 2020 progress report deemed one of the few successes amidst a largely stagnating, and in some cases backsliding, region².

Back in 2015 and 2016, official reports from the EU Institutions and other independent sources stated that courts in Albania were susceptible to corruption, inefficiency, intimidation, and political tampering.³ These findings and statements were old news for Albanians, but for the first time, a real political will to remedy these shortcomings emerged. With the assistance of the European Union, a majority of the Parliament voted a reform of the judiciary in 2016.⁴ Since then, the EU has invested 81 million euros⁵ on the Albanian reforms, warranting an analysis on what has been accomplished over the past four years.

The reform per se

Contextualization

The Albanian judicial system is a civil law system that is codified and based on the French law. The actual Constitution⁶ was compiled with the assistance of the EU; the laws of the country have all been modified and adapted so that they are compatible with the European Convention on Human Rights⁷ and the Charter of Fundamental rights of the European Union.⁸ The 2016 reform of the judiciary was not any different as it was compiled under a close surveillance from the EU and it was based on a European standard of how the judiciary branch should function.

The pillars of the reform

The reform process was launched in October 2014 and it went through three main phases: analysis, strategy and drafting. It was finalised by the Constitutional amendments and the eight core laws that were voted by the majority of the Parliament in 2016. It was one of the first times in modern Albanian politics that the government and the opposition worked together and reached a consensus.⁹



1 Chapter 23: Judiciary and fundamental rights , Chapter 24: Justice, Freedom and Security

2 <https://www.europeum.org/data/articles/markostojic-pp-2.pdf>

3 https://www.ecoi.net/en/file/local/1277559/2162_1479371057_easo-coi-albania-country-focus-final-final-201611.pdf

4 <https://euralius.eu/index.php/en/library/albanian-legislation/send/103-justice-reform-collection-of-laws/216-justice-reform-collection-of-laws-en>

5 https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1198

6 <https://euralius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en>

7 https://www.echr.coe.int/documents/convention_eng.pdf

8 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

9 <https://euralius.eu/images/2020/JUSTICE-REFORM-BROCHURE-2020-03-30.pdf>



February
2021

The reform aims to establish accountability, fight corruption, increase access to Justice, ensure the separation of powers and the independence of the judiciary, promote professionalism and increase efficiency. In order to reach these ambitious goals, it emphasises the role of the following key institutions:

- **The Constitutional Court** is the highest court in Albania that has jurisdiction over all cases that involve a point of constitutional law.
- **The High Court** serves as a court of cassation and has appellate jurisdiction in cases that include every area of law, except for constitutional and administrative law.
- **The Prosecutor General** is the legal party that represents the government when introducing a criminal case against individuals that have breached the law.
- **The High Judicial and High Prosecutorial Councils** are two self-governing bodies that are responsible for appointing, transferring and evaluating and dismissing judges and prosecutors.
- **The special anti-corruption structures** consist of three organs that specialize in organized crime and corruption: the special prosecution office, the national bureau of investigation and the anti-corruption and organized crime courts.
- **The Justice Appointments council** is an organ created to depoliticize and reduce discretion of the appointment process. To achieve this goal, it assists the appointing bodies by pre-screening candidates and compiling ranking lists according to the legal conditions for appointment.
- **The School of Magistrates** is responsible for the recruitment, the initial and ongoing training of law graduates that will become magistrates, state advocates, legal assistants, legal advisors and chancellors.

The reform modified the functioning of each key institution in order to ensure their independence and the integrity of their members. One of the most important procedures introduced by the reform was the one on the re-evaluation of judges and prosecutors¹⁰, known as the vetting law. The purpose of this procedure, as stated in the article 4 of the law, is re-evaluating high judiciary officials based on three main criteria: asset assessment, background assessment, and proficiency assessment.

Assessment Components



Another major change worth mentioning is the appointment of high officials. Before the reform, the election of high officials of the judiciary power and that of the general prosecutor was highly politicised. The reform changed that by enabling independent institutions, such as the High judicial and Prosecutorial Councils and the Justice Appointments councils, to take charge of appointments.

Law in the books vs. law in action

The Albanian laws relative to the above stated reforms and the official report¹¹ from the EU-funded project on the consolidation of the justice system in Albania¹² lead the reader into thinking that every dysfunctional aspect of the judiciary has been tackled and adequate solutions have been found. That is, unfortunately, not the case. Hence, it is important to put forward a number of factors that should relativize this postcard image. Albanian judges, lawyers, academics, and even high-ranking politicians claim in their official statements that the reform has been yet another failure¹³ because it paralysed the country's highest courts; while

¹⁰ <https://euralius.eu/index.php/en/library/albanian-legislation/send/98-vetting/1-law-on-transitional-re-evaluation-of-judges-and-prosecutors-en>

¹¹ <https://euralius.eu/images/2020/JUSTICE-REFORM-BROCHURE-2020-03-30.pdf>

¹² EURALIUS is an EU funded technical assistance project that seeks the strengthening of the Albanian Justice System.

¹³ *On a public statement regarding the reform, the President of the Republic Ilir Meta said: "If the reform had been successful, we would now have a functioning Constitutional Court."*



punishing some forms of abuse of power, it opened the door for others to enter the system. On the other hand, the European Commission states in its 2020 Country report on Albania that “good progress was made through continued implementation of the justice reform and that Albania has some level of preparation on the functioning of the judiciary.”¹⁴ A careful navigation through the dispositions of the reform and the consequences it had on the ground, will help bring some nuance to an issue that is oftentimes presented as binary.

Vacancies

The outcome of the vetting procedure created numerous vacancies in almost every level of the judiciary, paralysing the country’s most important courts and tribunals for considerable periods of time. To illustrate the situation, the vacancies created in two of Albania’s supreme courts will be examined.

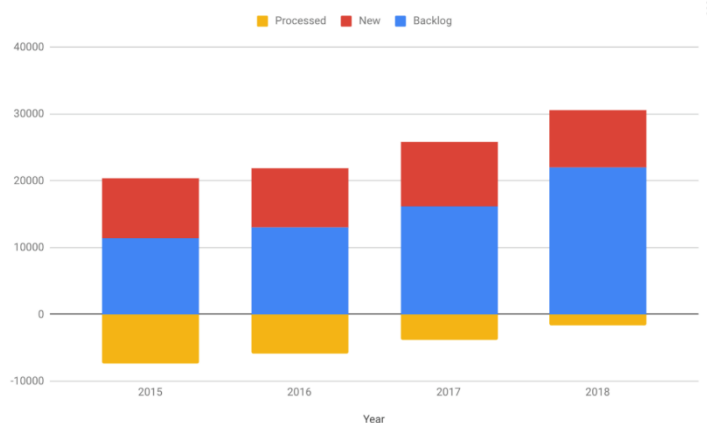
→ Out of nine judges of the Constitutional Court, only one passed the vetting evaluation. That left the country without a fully functioning Constitutional Court for more than 2 years. The importance of the de facto existence of this Court was and continues to be paramount. Albanian citizens could therefore not oppose the constitutionality of acts of the Government, which could potentially violate their constitutionally protected rights, such as the demolition of the National Theatre¹⁵, which faced public controversy.

The constitutionality of the governmental decision that ordered the demolition of the National Theatre has been contested, but since the Court could not render a decision due to the vacancies, the government went forward with its decision unopposed. On the other hand, the manifestations that followed the demolition were oppressed by the police. Several activists were arrested and detained and some of them claimed to have been victims of disproportionate violence by the forces of order. Victims of these reprisals claimed that their freedom of speech had been severely violated, but they had

no effective recourse since the Constitutional Court was not functional at the time. This is a clear example of how the non-existence of the Constitutional Court enabled arbitrary governance due to absence of functional checks and balances.

The situation slightly changed in the first half of 2020, when three new members were appointed to the Constitutional Court, giving it the necessary quorum to decide on the admissibility of the cases. The appointments are ongoing since the Court still does not meet the necessary quorum to examine questions in plenary sessions.

- Out of 17 judges, only four remained in office in the High Court as a result of the vetting procedures and a number of resignations. Since it did not meet the quorum to adjudicate on cases, the High Court did not work from June 2018 up until March 2020. Consequently, it had, back in 2018, a backlog of 23 900 cases¹⁶ that are waiting to be examined. Nevertheless, on 11 March 2020, three members were appointed for a 9-year non-renewable term at the High Court, giving it the necessary quorum to adjudicate on cases.¹⁷



The vacancies created in the Constitutional Court and the High Court are due to a number of factors: the delays in the re-evaluation proceedings, the lack of qualified candidates to occupy high-ranking

14 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

15 <https://www.reuters.com/article/us-health-coronavirus-albania-theatre-idUSKBN22T0FV>

16 <https://ahc.org.al/wp-content/uploads/2018/06/Draft-Raport-Monitorimi-i-procesit-te-vettingut.pdf>

17 <https://exit.al/en/2019/01/09/high-court-3-judges-and-288863-open-cases/>



positions, the focus of the political agenda on the pre and post electoral crisis and the inter-connectedness of the appointing bodies.¹⁸

The right to resignation

Article 54 of the vetting law recognizes the right of the assessee to resign no later than three months after the entry into force of this law. It adds that the Commission shall issue a decision on the termination of the re-evaluation process. This article of the vetting law has already been contested before the Constitutional Court by a fifth of the deputies of the Parliament, who deemed it was contrary to the Constitution, which does not introduce any limit in time with regards to the right to resignation. The Court rejected the recourse on procedural basis.¹⁹ Therefore, the conflict between the two norms on this point having not yet been resolved, the vetting bodies will be able to choose between allowing a time -frame of 3 months or no time-limitation at all.²⁰ It seems that the vetting bodies have opted for the second option. Moreover, the official that wishes to resign is under no obligation to provide the administration, or the public, with a reasonable justification for the resignation.

Taking into account that the goal of the reform was not strictly cleansing the system from corrupt officials, but also establishing accountability and raising the public's trust in the judiciary, these dispositions do not serve that goal. Due to resignations from the assessed the Independent Qualification Commission has issued a decision on the termination of the re-evaluation process on 13 cases.²¹ The judge or prosecutor that resigns cannot be nominated in any public duty for the following 15 years²², but neither the public, nor the administration will know the reasons behind the resignation. Moreover, if they possess unjustified assets, like the majority of the officials that underwent the vetting procedures did, they will be able to keep those assets.

On the three vetting criteria

Most of the judges and prosecutors that underwent the vetting evaluation were dismissed based on the criteria of unjustified assets.²³ The Constitution of the Republic of Albania and the vetting law clearly state that the three criteria need to be examined for a final decision to be rendered. The vetting bodies have considered in a number of cases that when the assessed cannot justify their assets; that alone would suffice for dismissal and therefore they did not examine the two remaining criteria of proficiency and background.

This choice can be justified by the wish to move forward more rapidly since there have already been numerous delays regarding the reform, but it does have an impact on the overall transparency, clarity and thoroughness of the proceedings. It would help raise the public's trust in the judiciary if the vetting bodies were to issue a complete evaluation of each subject, based on the three criteria set out by the law. Again, the goal is not just cleansing the system, but doing so according to the European standards of transparency and rigour.

The power of the deadline

The deadlines set by the Constitutional amendments for the creation of the new key institutions for the justice reform were not strictly respected. According to the Constitution, the deadline for the creation of the High judicial and Prosecutorial councils was the 11th of January 2017. They were in fact created on the 12th of December 2018, therefore exceeding the deadline by 22 months. As with the High Council of Justice, it should have been functional by March 2017 and it effectively did so 21 months later.²⁴ Similar delays were noticed in the legal proceedings relating to the revaluation of judges and prosecutors.

The parliament and the government played an important role in these delays. When asked for a budget raise and more staff by the bodies that were

18 This is not an exhaustive list.

19 Decision number 2, 18.01.2017

20 Article G of the annex to the Constitution.

21 https://ahc.org.al/wp-content/uploads/2020/09/KShH_Raport-studimor--Vettingu-dhe-dinamikat-e-tij--Nentor-2019-Korrik-2020.pdf

22 <https://ahc.org.al/erida-skendaj-cfare-ndodh-me-gjyqtaret-dhe-te-prokuroret-qe-dorehiqen-gjate-procesit-te-vettingut/>

23 https://ahc.org.al/wp-content/uploads/2020/09/KShH_Raport-studimor--Vettingu-dhe-dinamikat-e-tij--Nentor-2019-Korrik-2020.pdf

24 <http://isp.com.al/wp-content/uploads/2019/01/REFORMA-NE-DREJTESI-ISP-RAPORT-2018.pdf>



responsible for the creation of the new institutions, the parliament refused the demand, considering that it was premature. 10 months later, the parliament rectified its decision and raised the budget and the personnel. On the other hand, the government has failed to provide proper working places for the newly created vetting structures and other institutions of the reform, creating technical and administrative difficulties on the ground. As an example, the newly created institution, the High Council of Archives stayed for 9 months in a temporary placement that was not adjusted to the workings of the institution. These logistical shortcomings did not only delay the reform, but they seriously affected the transparency of the audiences, decisions and the proceedings of the above-mentioned institutions.²⁵ As an illustration of the impact the logistical shortcomings had on the transparency of the audiences, the institutions who are supposed to provide free access for the public, could not fulfil that obligation due to the small audience room they were attributed.

The European perspective of the reform

As previously mentioned, the European Union has played a key role in drafting, financing and implementing the judiciary reform.

The International Monitoring Operation (IMO)

To better understand the role that the European Union played in the judiciary reform, it would be interesting to closely examine the International Monitoring Operation (IMO), a project led by the European Commission, which was created to monitor and oversee the vetting process. This operation has no executive power, but it can nonetheless play an important role by filing findings and opinions on numerous issues relating to the re-evaluation process. Moreover, the IMO contributes to the background assessment and has the power to recommend the Public Commissioners to lead appeals against the first-instance vetting body (IQC)

decisions. To illustrate the real power this operation exercises, the IMO has issued 12 recommendations for appeal and all 12 were followed by the vetting institutions.

The impact of the reform on the negotiation talks

Back in 2014, the European Council granted Albania the status of candidate country for EU Membership. At the time, many were those who thought that a successful judiciary reform was the final stone to lay in order to finalize the accession process. How do the recent findings on the outcome of the reform affect Albania's accession to the European Union?

Four years after the adoption of the reform on the judiciary, the European Union opened accession negotiations with Albania in March 2020. In an official statement, the President of the European Commission considered that "North Macedonia and Albania did what was asked for them and they have continued making progress in the reform needed."²⁶ While recognizing the importance of this step in Albania's European Path, it would be hazardous to conclude, based on a general political statement only, that the judiciary reform has been successful.

Conclusion

The 2016 judicial reform is certainly a historical paradigm shift for Albania. The reform brought about significant change, by cleansing the system from a number of its corrupt officials. Nevertheless, like all transitions, it encountered a number of difficulties with respect to its implementation. The lack of precision in the reform laws, as well as the failure to provide a safety net resulted in numerous vacancies that paralysed key judicial institutions. Furthermore, the laxity shown by the executive and legislative branches delayed the advancement of the reform and resulted in multiple shortcomings with regard to transparency. Lastly, the provisions relative to the right to resign and the lack of proper examination of the three vetting criteria have a negative impact on the establishment of the principle

²⁵ <http://isp.com.al/wp-content/uploads/2019/01/REFORMA-NE-DREJTESI-ISP-RAPORT-2018.pdf>

²⁶ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_519



of accountability. Recommendations for addressing these shortcomings would be the following:

- The deadlines set for the reform in 2016 were not religiously respected, to say the least. That has created important vacancies in Albania's Supreme Courts, thus violating citizens' rights to a fair trial and allowing for arbitrary governance. The reform presented ambitious goals, but it failed to provide a safety net or an impetus for swiftness. Moving from corrupted courts to no courts at all is not an adequate solution. When creating new institutions that are necessary for the advancement of the judiciary reform, the competent authorities should anticipate every possible scenario and envision a safety net in case of a vacancy.
- The right to resign for judges and prosecutors that are waiting a vetting procedure should be restrained by the law, be it before or during these procedures. The right to resignation has been misused since many judges resigned right after the passing of the vetting law and keep doing so to this day. The reform did not only aim at cleansing the system, but also establishing accountability and giving judges and prosecutors the possibility to resign does not serve that goal.
- The logistical aspect of the new institutions that includes budget, working spaces and staff, should explicitly be regulated by law and it should reflect the independence that the reform wished to attribute to these institutions. This independence should not be infringeable by external political actors. The quality of the proceedings and their transparency would be improved if measures were to be taken in this area.
- The newly established institutions should proceed with their obligations vis-à-vis the reform by keeping in mind the obligations that arise from the European Convention of Human Rights. The right to a fair and public hearing within a reasonable time is explicitly recognized by article 6 of the ECHR. On the other hand, this right has been violated on numerous occasions, since the cases waiting at the High Court have been piling up for years and it will most likely take a long time to examine them all. Taking in consideration the importance of the affairs

waiting to be examined, the competent authorities should do everything they can to avoid laxity from the judges and to ensure that every case will be examined rigorously. If not, Albania could be condemned by the ECHR for violating the right of the citizens to a fair hearing within a reasonable time. As the reform moves forward, Albania has to make sure that it takes careful steps in order not to violate the above-mentioned international norms.



February
2021

About EUROPEUM

EUROPEUM Institute for European Policy is a non-profit, non-partisan, and independent think-tank focusing on European integration and cohesion. EUROPEUM contributes to democracy, security, stability, freedom, and solidarity across Europe as well as to active engagement of the Czech Republic in the European Union. EUROPEUM undertakes original research, organizes public events and educational activities, and formulates new ideas and recommendations to improve European and Czech policy making.

[More about us](#)

Contact

Web: europeum.org

Prague Office address: Staroměstské náměstí 4/1, 110 00, Praha 1

Tel.: +420 212 246 552

E-mail: europeum@europeum.org

Brussels Office address: 77, Avenue de la Toison d'Or. B-1060 Brusel, Belgie

Tel: +32 484 14 06 97

E-mail: brussels@europeum.org

More publications can be found on [our website](#).

The European Commission support for the production of this publication does not constitute an endorsement of the contents which reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



Co-funded by the
Europe for Citizens Programme
of the European Union