

Annex EU.7

Student Papers



Course: EU Law into Albanian Legal System

Fall 2021

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Topic: "Rule of Law and Albanian Justice Reform in the frame of the EU Accession Process".

Albania's desire to be a part of the European Union has been an ongoing dream rooted deeply throughout the generations dating back to the fall of the dictatorial regime and up to nowadays, around 30 years later, the European dream still stands strong. Even Albanians in their mid-twenties, which have also been there to live through the toughest times the country has endured in the course of the 90's crisis, believe that if Albania is going to have a bright future someday, it will be in Europe. Membership in the European Union is not just a technical or bureaucratic issue for Albanians, it is more an issue of achieving something we have been denied for so many years, a sense of belonging somewhere and having a purpose, not only in the frame of political or economic growth, but more as a spiritual, human need. Seen in this perspective, it is harsh a reality for a country that has suffered as much as ours. Despite this, Albania has been in the right tracks since receiving its candidate status in 2014 which has opened the way to further improvements in every area of life, such as: stabilization of economy and political life, reform in the judicial and social system, protection of human rights, etc. Accession into the EU is most definitely a guarantee for the future with numerous advantages to follow once Albania becomes a full member. But in what areas should Albania put the most effort into, in order to obtain full membership? Rule of law and reform in justice are currently two of the most crucial components which require the utmost commitment from the respective authorities in order for Albania to raise its chances of becoming a full member in the near future.

What is rule of law? In its basic meaning, it is constructed on the notion of obeying the law, by both individuals and the government. The main components on which it is based are those of: citizens being informed at all times and having an active role in the process of formulating laws which control their everyday lives and defend human rights. It is more of an ideal toward which every member of the society, as well as the government, must work on. To be genuinely democratic

and free, a society must be founded on the essentials provided by the rule of law. There is only one principle of crucial importance to keep in mind if we want to understand the whole ideology behind what we are trying to explain, and that is the concept that no one is above the law. In the past few years, Albania has stepped up its game regarding further developments and reforms in the frame of the rule of law as it is considered to be, as we mentioned before, one of the most crucial requirements in the EU accession process for our country (Rights, 2013). Validation of the presence of a qualitative rule of law can only be done if Albania makes fundamental improvements in reforming its legislative and judicial system regarding the enduring issues brought to light by EU's report on the low level of trust citizens have in the government, which they consider to be corrupted.

Why is Albania in such a great need for a reform in the justice system? Among numerous reasons, we can start with the fact that justice is administered slowly and most of the time judicial reforms are not properly enforced. When it comes to the judges, their professional training is not sufficient and most of the time, to not say all the time, they are not held accountable considering the mass corruption that exists in the court system. The highly politicized process through which the Constitutional and High court judges are appointed, is the main jeopardizer of the judiciary's independence. All of these issues were targeted, and resolved to a certain extent by the 2016 justice reform. This reform was focused on four main pillars: A reorganization of courts, creation of anti-corruption structures (SPAK), a judicial vetting to reevaluate Albanian judges and prosecutors and constructing new justice institutions; High Judicial and Prosecutorial Council, Justice Appointment Council and High Inspector of Justice (Mykaj, EU promotion of rule of law in Albania through justice reform and judicial vetting, 2022). It should be mentioned here that the addition of the special court SPAK against corruption, has been one of the top establishments to

ensuring the judicial independence. If it is going to strive in eliminating, or at least, lowering the level of corruption and organized crime, with its performance, this is yet to be seen because it has only started its operations in 2019 (Gunjic, 2022).

Corruption, corruption, corruption ... This is the keyword of every newspaper, news title, annual report and so on, regarding every area of life in our beloved country, Albania. It is in fact one of the most problematic issues our country deals with, extensively, but this doesn't mean that with some devoted work and effort this cannot be resolved, by also keeping in mind that is one of two most crucial requirements of EU for Albania's full membership to become more 'realistic' as it is considered to be rather 'fictive' at the moment by many. Regarding a 2019 corruption report, Albania scored 35 out of 100 and was ranked 106th globally. In the area of the Western Balkans it was one of the poorest performing countries regarding the ineffective fight against corruption by the government and corrupted public officials (Mykaj, Durasovic, Zhuja, Pavlovic, & Simentic, n.d.). Even with Albania's numerous attempts to ease this situation, the European Commission emphasizes that corruption is still a huge threat reigning above the country. Although a thorough legislative framework is in place to combat corruption, there is still room for improvements in fighting this matter. The Anti-Corruption and Organized Crime Court and Special Prosecution Office were established in 2019 in the light of investigating organized crime and corruption. Not considering every attempt made by the respective authorities in the anti-corruption action plan, still, no significant high impact measures have been made regarding everything mentioned above.

The most radical measure to assess the issue of corruption and organized crime, is the judicial vetting process. Regarding the high level of corruption in Albania, the Venice Commission recommended the implementation of the vetting process which would guarantee due process of law, judicial independence and restoration of the public's trust towards the institutions and

government. In few words, the vetting process is an extraordinary reevaluation of judges and prosecutors based on the pillars of: background, assets and proficiency. The first pillar consists of a thorough background check regarding every particular detail of a judge's or prosecutor's history, qualifications and especially possible links to organized crime. So the main object of this assessment remains with uncovering inappropriate contacts of judges with individuals with criminal records. Declaration of assessments is conducted with the purpose of pointing out the origin of assets and whether the source from where they come from is legitimate or not. This ensures that no judge enjoys assets from illegitimate sources. Lastly, the proficiency self-evaluation contains the employment history and a statistical figure & duties description. When the process is concluded, a judge/prosecutor may remain in office or be suspended and dismissed due to errors found in their practices. As of the moment we are speaking, 62% decisions have been issued in the process (Mykaj, Judicial vetting: a key policy tool to fight corruption in Albania, n.d.).

In conclusion, although Albania has a long way ahead regarding the European dream of becoming a member of the European Union, it is not impossible as long as every citizen, every public and private instance, every official along with the government, have an inseparable ambition to make this dream come true by getting work done, not with hypnotizing words, but with concrete and clear actions. Although the judicial reform conducted mostly through the vetting process and the implementation of the rule of law, have been two of the most effective approaches so far to the way towards EU accession, this doesn't mean that all or country's problems are suddenly solved and the judicial system is wiped clean of all "sins". We live in a country where it is not as simple as just providing a certain solution and everything will be perfect in a couple of years. No, this is not the case, the case with Albania stands in the frame of a two maybe three times greater work to

comprehend and structure the possibilities brought to us and transform them into the best practice possible. A good theory just won't make the cut for Albania. This is the reality, it may be harsh, but it is better to know what we are dealing with and implement every measure necessary if we truly desire a full membership, rather than to stitch and patch here and there and make promises with silly pretty words. It is time for real changes!

References

- Gunjic, I. (2022). Albania's Special Courts Against Corruption and Organised Crime. *Anti-Corruption Resource Center*, 10-11.
- Mykaj, E. (2022, January 27). *EU promotion of rule of law in Albania through justice reform and judicial vetting*. Retrieved from file:///C:/Users/User/Downloads/Albania-Judicial-Reform-and-Judicial-Vetting-PDF.pdf
- Mykaj, E. (n.d.). *Judicial vetting: a key policy tool to fight corruption in Albania*. Retrieved from file:///C:/Users/User/Downloads/Judicial-vetting_-a-key-policy-tool-to-fight-corruption-in-Albania-Endri-Mykaj.pdf
- Mykaj, E., Durasovic, P., Zhuja, R. H., Pavlovic, D., & Simentic, J. (n.d.). *Policy and Legal Assessment of the State of Rule of Law*. Retrieved from file:///C:/Users/User/Downloads/POLICY_1.PDF
- Rights, C. f. (2013, September 26). *Albania needs to improve rule of law*. Retrieved from Council of Europe: <https://www.coe.int/en/web/commissioner/-/albania-needs-to-improve-rule-of-law>

Final Essay

by Enxhi Ymeri

Submission date: 12-Feb-2022 07:41PM (UTC+0100)

Submission ID: 1760804446

File name: Final_essay-_Enxhi_Ymeri.docx (33.04K)

Word count: 1503

Character count: 8429



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Course: EU Law into Albanian Legal System

Instructor: Andrea Mazelliu

Semester: Fall 2021

Topic: "Rule of Law and Albanian Justice Reform in the Frame of the EU
Accession Process."

The aspiration of being part of the European Union has been in every Albanian's mind for a long time now. Albania has been on the European Union's plan for future enlargement since 2014. What can Europe bring to Albania? Stability and reconstruction, as well as sustainable development and economic and social solidarity with the EU, would all be components that integrating with the European Union would bring. Even just the potential of joining the EU has already prepared the way for reforms in our legal and social systems. Integrating into the EU is not only a political goal shared by the Albanian major political parties; it is also a social goal shared by almost all Albanian population. It is deeply engraved in their mind that the future of Albania is in Europe. EU membership would be a guarantor of essential rights. The rule of law and justice reform are two of the most crucial factors associated with the rising chances of Albania to one day become a full member.

Effective governance is critical for achieving balanced and long-term development outcomes, as vision and governance at the political level are most effective when they are established in full consultation with the people. An effective rule of law system that ensures that the law applies equitably to every citizen is essential for growth. Providing ordinary people with a voice and a role in their system of governance helps to guarantee efficient resource allocation and responsive service delivery. Ensuring a strong and approachable judicial system, as well as active citizen participation in choices that touch their lives, plays a vital role in development. Albania began to transform its legislation in 2017 as part of the country's aspiration to join the EU. Reforming the justice system was of significant importance with the primary aim to preserve people's faith. In order to build a better rule of law, significant adjustments to the justice system started to be considered. (Democratic Governance and Rule of Law, n.d.)

Albania has proceeded to embrace and adopt improvements in the rule of law, with the EU serving as a prime motivating factor behind the country's reform, along with the judiciary.

The justice reform of 2016, except restructured courts, new justice institutions, and anti-corruption structures also brought judicial vetting. Albania's court system is divided into three levels, including courts of ordinary and specialized jurisdiction. The High Judicial Council and the High Prosecutorial Council are autonomous entities tasked with ensuring the judiciary's and prosecution's independence. The new High Judicial Council appears to be less inclined to corporatism and more autonomous from political influence. Albania currently is in the process of implementing a major justice reform that began with constitutional amendments and as a necessity in the framework of the EU accession process. Considering the high levels of corruption among prosecutors and judges, the lack of clear systems of judicial control, and concerns linked to magistrate competence, reform was necessary. It gives the new justice institutions a greater guarantee of judicial independence. These institutions are totally functional and have been properly established. The revised legal provisions limit political involvement in the appointment process, ensuring a merit-based career structure. Other than disciplinary penalties, important structural adjustments, and temporary necessities, prosecutors and judges cannot be relocated to another area without their approval. Prosecutors have more authority under the new judicial reform. The School of Magistrates is in charge of hiring judges and prosecutors, and the process is deemed very open and meritocratic. (Mr. Endri Mykaj)

Judicial vetting in Albania is an uncommon and temporary procedure related to the re-evaluation of prosecutors and judges which is based on three main factors: wealth, integrity, and competence. This process is being conducted with the help and direction of a European Commission-led entity, the International Monitoring Operation (IMO). Given the high rate of dismissals in the judiciary, judicial vetting has had a considerable influence as about two-thirds of Albania's judges and prosecutors have been discharged from their posts. One of the cases that were viewed as a priority was the vetting of the High Court members and the Constitutional Court. Its results showed that out of 26 magistrates, only 3 of them were confirmed to remain

in service. By the time the European Commission issued a report in 2020, Independent Qualification Commission had discharged 117 magistrates. What seemed to be the main problems were asset evaluation which brought in sight false or incorrect asset reporting, an absence of valid sources of finance to justify them, and covering up of health. IQC stopped the vetting process for 62 magistrates once they resigned. Only 105 magistrates or around 37 percent of magistrates that were being vetted were affirmed in office. Albania's constitution expects the vetting process to have finished in five years from the beginning of its operation and according to the Constitution, the magistrates that are left unvetted will have to go through the vetting process by the judicial and prosecutorial councils. (Mr. Endri Mykaj)

Another aspect of the justice reform is the fight against corruption, which in 2019 led to the establishment of the Anti-Corruption and Organized Crime Courts as well as the Special Prosecution Office having a special obligation to assess and prosecute organized crime and corruption. The formation of the entities described above is intended to significantly improve the country's overall efficiency to properly investigate corruption. The European Commission believes that, despite the large numbers of investigations related to corruption, the final judgments of high-ranking officials are limited, supporting a culture of corruption at the highest levels of government. Albania has implemented a holistic multi-sectoral anti-corruption strategy and action plan, yet focused anti-corruption measures with a significant impact are absent. The U4 Anti-Corruption Resource Center claims that instead of putting in a broad anti-corruption approach, Albania should emphasize and implement high-impact measures by focusing on specific areas where corruption is particularly harmful, determining areas that support corruption and the practices used to carry out corruption, and developing real and concrete measures to tackle it down. (Mr. Endri Mykaj)

Special Courts Against Corruption or SPAK (Albanian acronym) were created as a result of the justice reform that we have discussed in the previous paragraphs. These courts

were built as part of a system for monitoring, prosecuting, and assessing matters of corruption and organized crime. They began to operate in 2019. A specialized group of Albanian and foreign professionals was assembled under the authority of Parliament to construct the architectural framework of the reform. This expert group provided the impetus for the formation of a specific anti-corruption framework, which was identified as one of the justice reform's strategic goals. The new framework aims to increase the independence and impartiality of the authorities in charge of investigating and prosecuting corruption cases. It was noted by the expert committee that the structure should be unrelated to external control from criminal and political parties, and that lead prosecutors should not be able to affect the outcome of cases being handled by lower-ranking prosecutors. Most significantly, the panel advocated taking steps to thoroughly vet the ethics and assets of the structure's officials to eliminate the possibility of corrupt individuals being employed. Furthermore, ongoing monitoring should be applied to the officials. The SPAK Courts have taken over the Serious Crime Courts' offices and most of their employees when they began operating on December 19, 2019. The SPAK Courts, like their forerunners, have a first and appeal instance and the High Court functioning as the cassation instance. The majority of cases are decided by a team of 3 judges in the SPAK Courts. (Gunjic)

In conclusion, for Albania, EU membership is not just a technical or administrative problem, it's an ambition, a desire for something Albanians have been denied for generations. It is the need to regain a sense of connection to a reality that is more important to us than economics, politics, or the law. In the frame of the EU accession process, Albanian competent institutions are implementing changes that impact the judiciary intending to clear it from corruption and create solid institutions that have their autonomy. Even with the ongoing justice reform situation in Albania, there is much room left for improvement. The rule of law and justice reform are two of the most crucial factors associated with the rising chances of Albania

to one day become a full member. Despite there being a lot of challenges that need to be overcome until Albania joins the European Union, the future appears to be bright.

References

- Democratic Governance and Rule of Law*. (n.d.). Retrieved from UNDP Albania: <https://www.al.undp.org/content/albania/en/home/democratic-governance-and-peacebuilding.html>
- Gunjic, I. (n.d.). *Albania's Special Courts against Corruption and Organized Crime*.
- Mr. Endri Mykaj, L. M. (n.d.). *Policy and legal assesment, the state rule of law*. Retrieved from Civil Rights Defendors.
- Rukaj, M. (2010, November 04). *Albania and the EU. A European dream?* Retrieved from balcanicaucaso: <https://www.balcanicaucaso.org/eng/Areas/Albania/Albania-and-the-EU.-A-European-dream-82105>

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EU Legislation Essay

by Klesia Vranici

Submission date: 11-Feb-2022 10:55PM (UTC+0100)

Submission ID: 1760348447

File name: EU_LAW_INTO_ALBANIAN_LEGAL_SYSTEM_Final_Exam_Fall_2021.docx (65.55K)

Word count: 1619

Character count: 9273



COURSE :
EU LAW INTO ALBANIAN LEGAL SYSTEM

Topic:

*Rule of law and Albanian Justice Reform
in the frame of the EU accession process*

Fall 2021

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The rule of law holds an immense importance on the sustainability and equity of democratic governance, especially considering the European Union's accession process of the Republic of Albania. As a result, the Vetting Process, a rigorously specified and acted upon procedure of thoroughly investigating and evaluating the judicial authority of the country, is considered the main and only component to fulfil prior to accession talks with the European Union, as stated by the competent institutions.¹ Used as an anticorruption tool, trying to gain the trust of the citizens, bringing autonomy and efficiency the judiciary must contain as a proper candidate in accessing the union, this process is inevitable and vital for Albania's democracy and rule of law. ²The reform carries major objectives and benefits whose outcomes hope to quell several issues the candidate country is facing, aspiring to reach the equitable level of changes and proper harmonization on European Union's standards.

Primarily, as stated from the European Union's institutions, the complete political reform on Albania's judiciary system, known as the justice reform, in the only circumstance left in order to be satisfied by the government for its accession talks. ³The EU established a series of prerequisites for Albania to meet in order to commence membership talks in June 2014, when Albania was granted the EU candidate status. The Albanian government has been capable of achieving moderate effectiveness on key issues emphasized by EU institutions during the last three years, with judicial reform remaining the country's main stumbling obstacle. ⁴The Albanian Parliament with the approval of the total seventeen constitutional amendments, as needed by the reform of the judiciary, aims to substitute its imagine, turning it into a more independent and well structured, which firstly took place on 22 July 2016. ⁵

¹ European Council (2016): "*Albania Amicus Brief Statement For The Judicial Branch On The Law On The Periodic Re-Evaluation Of Prosecutors And Judges (The Judicial Reform)*," Affirmed by the Venice Commission.

² Endri Mykaj :"*Judicial vetting: a vital policy tool to fight corruption in Albania*" (EU Funded Project) LLM, MSc, International Monitoring Operation.

³ Ibid

⁴ Ibid

⁵ Endri Mykaj :"*Judicial vetting: a vital policy tool to fight corruption in Albania*" (EU Funded Project) LLM, MSc, International Monitoring Operation.

These changes are regarded as the genesis of the Vetting Law application in the Republic of Albania, also referred as the non-permanent reassessment of its judges and prosecutors. The establishment of two distinctive institutions has been needed and obligated in order for these subjects, the judges and the prosecutors, to be the main concern of evaluation, which include a First Instance Commission and an Appeal Chamber. ⁶ Consequently, this method excludes the involvement of the ordinary court system in the vetting process. Although disposing certain level of independence, the institutions will be observed by an International Monitoring Operation constructed from prosecutors and judges picked out by the member states of European Union, that only hold a supporting role in the general process.⁷

Furthermore, when mentioning the main objectives concerning this viable institutional procedure, first and foremost we take into account the concentration of transitioning the democratic system in order to bring appropriateness for public employment by evaluating judges and prosecutors. This reformative measure nourishes coherence, unification and integrity in public sectors and reinstating trust in the government and institutions by the whole population. The areas included in the process taps principally in the ones of public sector due to being more endangered to infringement of rights such as the army, police and last but not least the judicial area. The vetting law controls the evaluation and investigation skills of the subjects by certain criteria.⁸ Personnel which have caused doubt on being implicated in certain suspicious occupations, sustain punishment such as preventing them of proceeding to hold the right of the same work positions, transfer or removal from the office or pressuring resignation in an elective form from the previous position. The vetting process might contain only one total institution

⁶ Ibid

⁷ Ibid

⁸ OECD (2017), "Vetting judges, police, and prosecutors in Albania." DCAF ISSAT

or some, where the occurrence of limitation and violation of human rights has taken place.⁹ Screening process and practices are introduced by the vetting procedures, that will handle the preventive apparatus for later people's engagement with these breaches of law. These facilities are important and inevitable measures to finally send the Albanian judicial power enlightened to the European standards.¹⁰

The three main elements taken in consideration as provided by article one hundred seventy-nine, paragraph five of the Constitution, in the assessment and evaluation of the vetting procedure are the assets, proficiency and background of the judicial subjects. ¹¹The two foreseen institutions, The Independent Qualification Commission and The Appeal Chamber, base their decision on these three components, completing an overall evaluation. The assets include an all-inclusive audit of properties, further following a declaration to verify the legitimacy of origin of their formation. The background consists on the verification of other data focusing to identify association with other individuals who are involved in organized crime. Lastly the proficiency consists on making sure that every subject will go through a process of evaluating their professional skills such as judging and ability to conduct investigations. ¹²This assessment includes also estimation of organizational, ethics skills and individual qualities situated on standards anticipated by law.

The Independent Qualification Commission will conclude the vetting process in five years (by the year 2022) in the first instance, and the Appeal Chamber will fulfill it in nine years in the second instance, according to Albania's Constitution (AC). ¹³ The Independent Qualification Commission

⁹ OECD (2017), "Vetting judges, police, and prosecutors in Albania." DCAF ISSAT

¹⁰ Ibid

¹¹ B.Maxhuni and U.Cucci OECD (2017): "An examination of Albania's vetting process" .

¹² Ibid

¹³ European Council (2016)"*Albania Amicus Brief Statement For The Judicial Branch On The Law On The Periodic Re-Evaluation Of Prosecutors And Judges (The Judicial Reform)*," Affirmed by the Venice Commission.

undertakes an unbiased investigation of each magistrate and makes a conclusion based on the evaluation requirements. The magistrate or a Public Commissionaire, who advocates the general public's concerns in the vetting process, may pursue the matter of decision to the Appeal Chamber. The Constitutional Court's Appeal Chamber may affirm, modify, or invalidate the IQC ruling after finally hearing the evidence in the second instance.¹⁴ Albania's institutional organization arranged of the judiciary and prosecution services was revised by the reform legislation enshrined in the constitution.

A unique structure for the examination, prosecution, and arbitration of corruption and organized crime cases is included in the new structure. The SPAK Courts, or Special Courts Against Corruption and Organized Crime, are an important part of the new framework. The expert committee stressed that the arrangement should be free of external interference from criminal and political parties, and that senior prosecutors should not be able to affect the outcome of cases being handled by lower-ranking prosecutors.¹⁵ Most significantly, the panel advocated taking steps to thoroughly screen the authenticity and assets of the structure's officials in order to eliminate the possibility of corrupt individuals being recruited. The EU Commission for Democracy through Law, a Council of Europe constitutional expert group, offered various suggestions on the structure's composition, which resulted to changes.

The sustained promotion of the broader reform process by the EU and the US, who have offered assistance through multiple initiatives, has been positive to its success.¹⁶ The majority of cases are decided by a panel of three judges in the SPAK Courts. The Special Anti-Corruption and Organized Crime Structure is linked to the SPAK Courts, which comprises of the Special Prosecutors Office, a judicial authority, and the National Bureau of Investigating, a subsidiary research agency. SPAK is

¹⁴ OECD (2017), "Vetting judges, police, and prosecutors in Albania." DCAF ISSAT

¹⁵ Ibid

¹⁶ Ibid

solely responsible for the investigation and trial of cases that fall under the SPAK Courts' jurisdiction. The SPAK Courts have jurisdiction over corruption, organized crime, and charges against a large group of high-ranking officials, according to Article 135(2) of the Constitution. The SPAK Courts' capabilities are further defined in Article 75/a of the Criminal Procedure Code, which defines "organized crime" to encompass terrorist-related offenses. As a result, the SPAK Courts now have the majority of the corruption-related powers that were formerly shared among three pillars of the court. In 2020, the Special Prosecution Office will file 70 cases involving 260 defendants to the SPAK Courts, with 53 cases involving about 100 defendants being tied to corruption.

The number of vetting bodies' layoffs and dismissals to date demonstrate that the assumption of a high level of judiciary impropriety was true. The first instance IQC has discharged one hundred seventeen magistrates by the time of the European Commission's 2020 Report on Albania, primarily due to issues with asset evaluation, such as fraudulent or incorrect asset disclosure, a lack of valid funding sources to justify assets, and wealth concealment. The IQC had also confirmed 105 magistrates in office at the time of the European Commission's 2020 Report, which was just 36.7 percent of the examined magistrates.¹⁷ Several Independent Qualification Commission confirmation decisions were rejected by the Appeal Chamber, resulting in a growth in the number of expelled magistrates. Just over a third of vetted magistrates have been confirmed in service by the Independent Qualification Commission; the remaining have indeed been dismissed, suspended, or resigned. The recruitment and retention of magistrates have now become a new concern as a result of the rising number of dismissals and layoffs. This means that the local institutions must work very closely with the Albanian School of Magistrates to enhance their recruitment planning.

In conclusion, although quite challenging at times, the justice reform must be viewed as an establishment monument which serves to build a fair, unprejudiced, self-sufficient judiciary

¹⁷ Endri Mykaj :*"Judicial vetting: a vital policy tool to fight corruption in Albania"* (EU Funded Project)

equivalating the main purpose and the Rule of Law that the Albanian Republic holds, ensuring the continuation of the possibility of accession in the European Union process. By the outcomes resulted due date, noticeable differences and progresses have been concluded, giving further faith and reliance in the successfulness the vetting procedure will bring in the near future by the right implementation and continuation.

References

Endri Mykaj :"*Judicial vetting: a vital policy tool to fight corruption in Albania*" (EU Funded Project)

LLM, MSc, International Monitoring Operation.

B.Maxhuni and U.Cucci OECD (2017): "*An examination of Albania's vetting process*".

European Council (2016): "*Albania Amicus Brief Statement For The Judicial Branch On The Law On The Periodic Re-Evaluation Of Prosecutors And Judges (The Judicial Reform)*," Affirmed by the Venice Commission.

OECD (2017), "*Vetting judges, police, and prosecutors in Albania.*"

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RULE OF LAW AND ALBANIAN JUSTICE REFORM IN THE FRAME OF EU ACCESION PROCESS

Prepared by Joni Musta

Albania's judicial reform has been a crucial step in the country's efforts to fight corruption at all levels, strengthen the public administration, to increase public faith in the legal system and speed up the *European Union's integration process. This paper intends to examine the key actions taken by Albanian administrations in initiating and adapting justice reform, the role of the EU in this process, current progress made up to the start of EU accession negotiations, and future recommendations on the path to EU membership.

One of the most essential human rights is justice, which is associated with other fundamental rights such as health, security, and freedom. The European Commission has often stated that Albania's judicial system has been severely harmed by partisanship, corruption, and a lack of inter-institutional collaboration throughout the years. Although the independence and impartiality of the judicial system were sanctioned and materialized in Albanian legislation, they were jeopardized in practice by highly politicized ways of appointing judges to the High Court and the Constitutional Court, as well as the wide discretion possessed by the High Council Justice and Attorney General in managing the careers of judges and prosecutors. In this context, judicial reform has been carried out with the goal of correcting the highlighted shortcomings, and good governance of the judiciary management bodies aims at the independence, accountability, efficiency, and transparency of the judiciary.

The acceptance by the Assembly of constitutional revisions on July 21, 2016, was at the heart of the Judicial Reform, with the Reform amending 21 of the 26 articles of the Albanian

Constitution dealing to the justice system and adding at least 23 new points to the Constitution. Following the approval of the constitutional changes, a package of Organic Laws was passed, with the most notable being the legislation on the temporary re-evaluation of judges and prosecutors in the Republic of Albania. This is also known as the vetting process, which is regarded as the heart of the legal reform. The implementation of justice reform has proceeded steadily and resulted in solid development overall, according to the European Commission's status report for 2019. In addition, the vetting process, as one of the most significant methods used in transitional democracies to assess the eligibility of judges and prosecutors, has yielded real outcomes as part of judicial reform. As a consequence of the vetting process, progress is being made in reconstituting the Constitutional Court by appointing new members. The Special Anti-Corruption and Organized Crime Structure (SPAK) was completed in 2019, and the Special Prosecution Office (SPO), is now fully operational. Furthermore, according to the Commission Staff Working Document for Albania, the action of these institutions has resulted in the removal or resignation of 60% of the vetted magistrates. However, there are others who are critical of the legal reform's implementation process. These critics are concerned with the need for a faster speed and higher quality in institution formatting. Regardless of the fact that the departure of a substantial percentage of judges and prosecutors from service is proof of the vetting process' efficacy, the result has been a deadlock in the court system, with delays in people' access to justice and trial efficiency. Given the difficulties, the European Commission launched accession discussions with Albania on March 25, 2020, citing the acceleration of changes in the judicial system, among other reforms. Furthermore, clear and real results in the execution of judicial reform are key variables in furthering Albania's and its individuals'

European aspirations. We can observe from international perspectives on Albanian judicial reform development that the Albanian state is likewise optimistic about how far the reform has progressed and how it will continue in the future. The Albanian government has made a public commitment to enhancing the quality of services provided by the Ministry of Justice and its dependent organs to Albanian people. According to the Ministry of Judicial, Albania's financial assistance for justice reform has grown by 11%, or \$6 million, in the 2020 budget, compared to the previous year, because this is the most important reform Albania has undertaken in the last 30 years.

Albania is experiencing a significant judicial reform, as previously stated. Albania's parliament has taken the lead in reforming the whole legal system and to do this, a special assembly established a special committee to focus on key issues. These expert groups have been working on the reform's seven pillars for more than two years. The major goal was to restrict the vast authority of magistrates, who were increasingly "suspected" of corruption, linkages to the criminal underworld, and, above all, a "personal" management of public affairs, as well as to stop the immense influence of political power over the court. In this backdrop, the Albanian Parliament passed Constitutional Amendments in 2016, paving the way for a thorough and complete reform of the justice system to combat corruption at all levels. The modifications have an impact on various elements of the Constitution, particularly the judicial system and the prosecution.

Collaboration and communication between central and municipal administrations has been an issue in Albania for years, and has been influenced by political affiliation and power. However, in order for the justice reform to be properly implemented, this collaboration is required and

this makes one of the Council of Europe's Congress of Local and Regional Authorities' suggestions for Albania. To promote positive discussion and institutional collaboration between central agencies and local units, this connection must be improved. It is necessary to make legal adjustments in order to codify the procedure through which central authorities consult with local authorities. This is also critical in order to guarantee that consultation on subjects directly affecting local government operations occurs in a timely and suitable manner.

By striving to overhaul the management of the judicial system in Albania, significant changes have been made. Weak judicial effectiveness is a factor that prohibits legal certainty and the country's economic progress, while courts are considered as the primary contributor to strengthening the rule of law and fighting corruption and organized crime. Judicial reform should aim to improve the quality of justice for citizens by implementing good principles such as: Achieve an efficient structure which does not risk the standard of justice or access to justice; boost public trust in the judicial system; and promote access to justice, particularly for disadvantaged groups. The Albanian Parliament passed Law No. 84/2016, titled "On the Provisional Reassessment of Judges and Prosecutors in the Republic of Albania," or "The Vetting Process," as it is known in the public. Vetting is a procedure for excluding public employees who lack integrity in carrying out their duties and restoring public trust in the operation of state institutions. Before being offered a job, the vetting procedure usually consists of verifying someone's weight. Since an independent and impartial court system influences the country's rule of law, the vetting process has been viewed as critical in executing justice reform in Albania. More precisely, vetting is the temporary re-evaluation of all Albanian judges and prosecutors in order to ensure the rule of law and the integrity of the justice system.

The EU has made a technical and financial contribution to Albania's judiciary reform as they established a finance agreement for the Instrument for Pre-Accession Assistance in this area. Financial support under IPA II has a budgetary allocation of €649.4 million for the period 2014-2020. The contribution of IPA II to judicial reform is connected to the performance monitoring of decision-making processes based on the quality of statistical data gathered and evaluated in compliance with EUROSTAT criteria. The expected outcomes of EU aid and contributions to judicial reform are to improve government governance in conformity with the legislative framework and to ensure that consensus is built to support EU changes.

All of Albania's reforms, have a particular goal of strengthening the public administration's integrity, sustainability, and support for important institutions' independence and functional autonomy. The constitutional changes of July 21, 2016, were the first phase in Albania's legal reform, with 21 of the 26 articles of the Albanian Constitution dealing to the judicial system being altered and at least 23 new points being added. The ratification of constitutional revisions was followed by the passage of a package of Organic Laws, which included the legislation on the temporary re-evaluation of judges and prosecutors in the Republic of Albania, popularly known as "the vetting process." Throughout the EU integration process, the European Union has consistently encouraged and supported Albania to begin and strengthen reform measures. The Albanian legal system has some level of readiness based on the execution of the justice reform, as it is resolved to speed the process of EU membership with EU help in conducting changes. It has enhanced the vetting process, completed the establishment of impartial juridical structures based on constitutional reform, established the Special Anti-Corruption and Organized Crime Structure (SPAK) and the National Bureau of Investigation

(NBI) and Court, and reinforced the record of assertive investigations, prosecutions, and final convictions in combating the corruption, including at the highest levels.