

<p>Law, Justice Reforms and Access to Justice Institutions</p>		<p style="text-align: center;">Legal Studies</p> <p>Keywords: Constitutional Amendments, Transitory Reassessment Law of Judges (Vetting), Independent Qualification Commission, High Judicial Council.</p>
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Abstract

Introduction: The Assembly of the Republic of Albania, by virtue of Law no.76 / 2016 On some amendments to the Law 8417 dated 21.10.1998 "Constitution of the Republic of Albania" (as amended) approved a series of new articles and a special "annex" for "Vetting", by which it clearly demonstrated its interest and willingness to undertake a wider reform of the justice system. The reasons leading to this initiative of fundamental importance underlie the real confrontation of Albanian citizens with the element of corruption in almost every area of life, but more evidently in capturing of this phenomenon within justice system. The presence of corruption in this system is not only an experience, perception or media news, but it is an evil also accepted by the protagonists of justice, judges, according to whom our system is not "liberated" from external influences. **Issue to be addressed:** The constitutional amendments package, approved by Law no. 76 dated 22.07.2016 brought the introduction in the Constitution of Albania of some new legal norms, which in their application, posed the need to establish ad hoc institutions as a necessity to render justice reform process more appropriate and efficient. New institutions, which will constitute the pillars of change in our justice system, and referred to as such in this Law are the High Judicial Council, the Council of Appointments in Justice, the High Prosecutorial Council, the Committee on Re-evaluation of judges, the High Inspector of Justice, etc. In particular, the scope of this paper will be the Law N.84 / 2016 adopted by the Assembly of the Republic of Albania "for the transitional reevaluation of judges and prosecutors in the Republic of Albania", or the so-called "Vetting Law" which constitutes per se a body of standards regulating every aspect of work to be conducted by the Committee on Re-evaluation of judges and prosecutors. **Anticipated result and methods of research:** For the very first time in Albania, through inclusion of this legal instrument there will be controlled in specific fashion determined by law the work and professional integrity of judges and prosecutors, and the effect from its implementation is the professional enhancement of accountability of all judicial stakeholders and therefore improvement of the quality of the whole justice system. The anticipation of this work will be the reflection of key theoretical and practical elements where this law is based upon and ways how to apply. The opening and tackling of a theoretical debate as long as the concrete law implementation has not begun, both on its efficient way of implementation and the credibility of results it will bring in the fight against corruption in justice. The research methods will be based upon the analytical and comparable method of the paper material in this field. **Conclusion:** The justice system in Albania is not going well for years due to profound corruption affecting the bodies of this system. It has always been a belief that the main problem in Albania is not the lack of laws, on the contrary where we want to apply we encounter their severity and rigorousness, perhaps until the lack of tolerance, while the main problem is the lack of will to observe the laws. The reasons stay at frequent strong interventions of politics, another time at bribes in huge amounts that judges or prosecutors themselves receive in order to sidestep responsibility in a judicial process. The current reform tries to initiate work in order to remove and eliminate these problems once and for all. How much will it achieve? The interest of the entire Albanian society is strong, but will it manage to oppose strongly to the will of political stakeholders in order to accomplish this initiative. What is the opinion of our society with regard to credibility of law implementation on vetting and how much will it serve to assess in reality the professional qualification, the moral integrity and the degree of independence in their work from the influence of organized crime, corruption and political power on judges.

Introduction

The Parliament of Albania, upon the law **Nr.76/2016** on several addenda and amendments to the Law 8417 dated 21.10.1998 "*Constitution of the Republic of Albania*" (as amended) approved a series of new articles and a special "Annex" on "Vetting", by means of which it showed clearly its interest and will to undertake a broad reform in the justice system. The reasons leading to this substantial initiative as to importance can be found in the real confrontation of Albanian citizens with the corruption element almost in all the chains of life, but most conspicuously in the capture this phenomenon has rendered to the justice system.

The presence of corruption in this system is not merely an experience, perception or media news, but it is an evil accepted by justice protagonists as well, according to whom the mere justice system has not been “relieved” from external influences. Other reasons that lead to the approval of this law are related to the inappropriate level of the work quality of judges and prosecutors, as well as the non-functioning of existing instruments for their control in the events of the violations to the law during the exercise of duty, on the assessment of their work etc. As to the above, the Albanian Parliament approved the Law “On reassessment of judges and prosecutors” as integral part of the package of constitutional amendments aimed at reforming the justice system and restituting the trust of citizens in the rule of law.

The purpose of this law according to stipulations of article 179/b of the constitution⁵² is to determine special rules on transitory reassessment of all subjects of Albanian judiciary in order to guarantee the functioning of the rule of law, independence of the justice system as well as restitution of the public trust in the institutions of this system. This process will serve to assess their professional qualification, moral integrity and to discover the degree of independence in their work from the influence of organized crime, corruption and political power. The law regulates the principles of organization and procedures on reassessment. It aims that the entire reassessment process be carried out effectively without harming the standards of the regular legal process, in order that the outcomes of this reassessment serve to the establishment of an independent judicial system that operates effectively and credibly, as well as that reflects the highest standards of decency, integrity, professionalism and transparency.

What does the Law No.76 dated 22.07.2016 provide?

This law is based on the implementation of constitutional amendments and concretely according to article 179/b of this act, as well as the part of annex “Transitory Reassessment of Judges and Prosecutors”. The law observes the principle of constitutionality and reflects correctly the recommendations and opinions of the Venice Commission on this matter, reflected in the Annex of Constitutional Amendments. The constitutional package upon which this law is being drafted has been forwarded for a specialized opinion to the Venice Commission, which has expressed two opinions, the intermediate opinion CDL-AL (2015)045⁵³ and the final opinion CDL- AD (2016) 009⁵⁴. As to the measures taken on the reassessment process, the Venice Commission has voiced that these measures are not only justified, but they are essential that Albania be protected from corruption, which if left untreated can destroy the judicial system entirely. The whole scheme is evident and renders better guarantees for individuals who can be affected by the assessment. The law runs in full compliance with “The Strategy of Reform in the Justice System” and has been harmonized with Albanian legislation in force and referred compatible in several laws that regulated matters in similar fields.

⁵²As stipulated by article 1 paragraph of the Law no.84/2016 “On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania”

⁵³The European Commission on Democracy through the Law (Venice Commission) Intermediate opinion on constitutional draft amendments related to Albanian judiciary adopted by Venice Commission in Plenary Session 105 (Venice, December 18-19, 2015).

⁵⁴The European Commission on Democracy Through the Law (Venice Commission) The final opinion on constitutional draft amendments related to Albanian judiciary adopted by Venice Commission in Plenary Session 106 (Venice March 11-12, 2016)

What does the Law No.84 dated 30.08.2016 “VETTING” determine?

Until nowadays, the assessment system of judges and prosecutors has resulted to be incapable to identify and remove from the system the corrupted or professionally unqualified elements. That is why the professional assessment of judges and prosecutors becomes an indispensable condition for the accomplishment of all objectives set forth by the constitutional amendment and political documents of justice reform. This law establishes an entirety of institutions that will accomplish this reassessment as well as stipulates special procedures on reassessment. From its nature, it is a special law with transitory powers until the end of the reassessment process of judges, prosecutors as well as other subjected provided with the constitution. From the implementation of this law, the expectancy is that it will be strengthened, professionalism and decency in the justice system will be enhanced and corruption among its ranks will be reduced. For the very first time in Albania, through inclusion of this legal instrument there will be controlled in specific ways determined by law, the work and professional integrity of judges and prosecutors, while the effect from its implementation is the enhancement of professional accountability of all stakeholders of the judiciary and consequently the improvement of the quality of the entire justice system.

“The reassessment institutions”⁵⁵ are the Independent Qualification Commission, The Special College of Appeals and public commissioners. In order to carry out the reassessment process an Independent Qualification Commission is established (below ‘Commission’) that will conduct the assessment of all judges and prosecutors regardless of rank and jurisdiction. It will have a restricted mandated of 5 years. The members of the commission will be lawyers with substantial experience (at least 15 years) as judges, prosecutors, lawyers or professors of the right who enjoy high reputation. The decisions of the commission can be appealed to the reassessment subject or the Public Commissioner. The complaint will be reviewed by a Special Qualification College at the Constitutional Court (below ‘The College of Appeals’). The entire reassessment process will be carried out under the supervision of international observers in order to enhance credibility in the process. The international observers who will have access to the files of judges and prosecutors and who will supervise the entire decision-making process will assist the process in all instances and levels. In order to guarantee the process and prevent corruption within the Commission and College of Appeals, its members will receive a special treatment for themselves and their families. They will be granted special state protection.

The reassessment process will include the entire control of judges and prosecutors in 3 important axes: *assets of judges*, prosecutors and other subjects, discovery and identification of their connections with organized crime, *assessment of the work done*, as well as *their professional capacities*. If the final result of one of the components or the entire assessment of the three components appears to be insufficient, the Commission or the College of Appeals will impose the obligation of the subjects that undergoes reassessment to follow the special program on rehabilitation at the School of Magistrates for one year.

⁵⁵.Pursuant to article 2, paragraph IV, Law No.84/2016 “On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania”

In the event that the subject receives negative assessment, these bodies decide until discharge from duty. Therefore, this law will conduct for the very first time an entire assessment of judges and prosecutors and expectancies are to enhance professional and ethical accountability of all subjects that will be re-assessed and consequently to improve quality of the entire justice system.

Concrete Aspects of the Law

The first stage determines general provisions which comprise the object, purpose and definitions of terms used in the law, as well as basic principles of reassessment process. Just here there are presented also 3 (three) components or axes upon which there will be conducted the reassessment process: assessment of asset, control of personality and assessment of professional capacities. The later has as a body to assess professional capacities the Inspectorate of the High Council of Justice, that functions according to the law no. 8811, dated 17.5.2001, “On organization and functioning of the High Council of Justice”, as amended, the responsible structure of General Prosecution’s Office or institutions in charge of professional assessment according to the law⁵⁶. The assessment process of subjects undergoing reassessment is rendered by the Commission, College of Appeals, public commissioners, in cooperation with international observers.

The College of Appeals reviews complaints against decisions of the commission and has a 9 year mandate. This body, during its mandate in compliance with the constitution, the law “On organization and functioning of the Constitutional Court” and legislation that regulates governing matters of the justice system has jurisdiction to review:

Disciplinary violations of the members of Constitutional Court, of the High Judicial Council, of the High Prosecution’s Office Council, of the Prosecutor General and High Inspector of Justice;

Complaints filed against decisions of the high Judicial Council, of the High Prosecution’s Office Council and High Justice Inspectorate on the issuing of disciplinary measures against judges, prosecutors and other inspectors.

This law stipulates also the bases that regulate the way of establishment of responsible bodies in the reassessment process. With regard to provisions in the annex of the constitution, the selection of candidates as members of the bodies is conducted by means of an open and transparent procedure, which is administered by the Ombudsman. The latter controls accomplishment of formal legal requirements of applicants and creates a nominative list.

Apart from the Ombudsman, this list can be verified by the International Monitoring Operation (below ‘IMO’) entitled to update the nominative list. The Ombudsman submits the final list to the Parliament. This procedure guarantees not only impartiality and credibility in the selection of members, but also a high level of professionalism.

⁵⁶ Pursuant to article 2, paragraph X, Law No.84/2016 “On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania”.

Organization and functioning of Re-Assessment Institutions

As far as organization and functioning of bodies is concerned, the law pursuant to constitutional regulations has stipulated that the Commission and College of Appeals will review in judicial panels composed of 3 (three) members. The judicial panel will be led by the chairman, who is elected from the rows of its members for a 1 year term without the right to be re-elected. The chairman of the judicial panel conducts the run of the meeting, the assignment of the lot and coordination of work as a whole. For every case that is reviewed, a relator is elected, who is part of the judicial panel. He prepares the file on the reassessment subject according to each component, investigates the case collecting necessary evidence and at the end prepares a report by proposing concrete disciplinary measures against the reassessment subject. The law has stipulated that the judicial panel will be assisted by the Legal Service Unit, which consists in legal and economic counselors. The structure of personnel is regulated by law that determines explicitly the duties and hiring procedures. Part of the personnel is also an employee, as an authorized person to communicate with the public and media, as an aspect that accomplishes the principle of “public access” that accompanies the entire process of the reform. Likewise, an important role in the administration of the personnel of institutions will be played by Secretary General who is elected by the rows of lawyers with high professional level and integrity, by means of an open and transparent procedure based on professional capacities.

Duties of the Chairman of Commission and College of Appeals⁵⁷

The activity of the commission is led by its chairman and in his absence, by the oldest member assigned by him, except when the law provides otherwise. The chairman of the commission is elected through secret ballot, with the overwhelming votes of all members for a 3 year term without the right to be re-elected. On the other hand, the *Competences of the Chairman of Commission and College of Appeals are*.⁵⁸

- 1) To prepare, summon and run the meeting of the members;
- 2) To represent Commission or College of Appeals in relation to third parties;
- 3) To coordinate work in the institution;
- 4) To sign other acts of the Commission or College of Appeals, with the exception of the decision;
- 5) To run the lot in cases stipulated in articles 14, 15, 18, item 4, of this law.

As to the organizational pattern of the commission, it is organized in 4 judicial panels composed of 3 members who are assigned by lot.

⁵⁷Pursuant to article 12, paragraph X, Law No.84/2016 “On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania”: Session on election of the chairman is run by the oldest member. In the event there is more than one candidate and during voting neither of them reaches the anticipated majority of votes, a new voting takes place and after that we proceed with the voting among candidates who have reached the highest number of votes. In the event no candidate reaches majority of votes or votes are divided equally, the chairman is assigned by lot. The lot is organized by International Monitoring Operation. The stipulations made in items 1, 2 and 3, of this article apply also for the chairman of the College of Appeals

⁵⁸Pursuant to article 13, paragraph X, Law No.84/2016 “On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania”.

The distribution of cases in judicial panels is rendered by lot, where the relator member is determined. The judicial panel of the commission is run by the head of the adjudicating body, who is elected from the rows of its members. In his absence, the panel is run by the oldest member⁵⁹.

Competences of the College of Appeals

The College of Appeals adjudicates in judicial panels composed of 5 judges, who are assigned by lot for every case. The head of the judicial panel and the case relator exercise duties in compliance with items 4 and 5, of the article 14, of this law.⁶⁰ Likewise, this law stipulates also the disciplinary responsibility of members of institutions as an important element in their accountability. The dismissal cases of the members are stipulated in the constitution and in the law that regulates the status of judges and prosecutors. Unlike the general rule on the start of disciplinary procedure for members of institutions, the disciplinary investigation can start from every commissioner, for members of the commission, from every judge for judges and from every observer both for commissioners and judges. The body that will review the disciplinary violations is the Disciplinary Commission composed of 5 judges of the College of Appeals. Pursuant to constitutional provisions, the College of Appeals will serve for a 9 year term and will carry out also the duty of the disciplinary body for members of the Constitutional Court, members of the High Judicial Council, of the High Prosecution's Office Council, Prosecutor General and High Justice Inspectorate.

Likewise, this college will review complaints against decisions of the High Judicial Council, High Prosecution's Office Council and High Justice Inspector on the issuing of disciplinary measures respectively against judges, prosecutors and other inspectors. The law stipulates cases of substitution of a member, whose mandate has expired or who has been discharged, as well as sanctions the rendering of this procedure according to same rules as the appointing procedure. The members of institutions during the exercise of duty are led by the principle of impartiality and confidentiality. They must avoid every conflict of interest during the reassessment process. Likewise, members of institutions and personnel are subject of declaration of assets according to the law. "Telecommunications and their financial data will be subject of monitoring by responsible authorities according to special procedures provided with the law. Members of institutions, their families, personnel and international observers are granted by law special protection according to legislation in force. The reassessment institutions have the necessary personnel and equipments to accomplish duties assigned by this law.

⁵⁹Main duties of the judicial panel are:

- a) to summon and run meetings and hearing sessions;
- b) to coordinate work and take measures in order to guarantee the uncover of decisions within a reasonable time limit.

The case relator is in charge of:

- a) preparing the file to be discussed by the judicial panel;
- b) taking all procedures in order to guarantee necessary evidence on the decision-making process of the judicial panel;
- c) taking all measures to draft necessary documentation until the termination of the case;
- ç) requesting additional information in compliance with the provisions of this law;
- d) proposing the taking of a decision putting forward the motivation.

⁶⁰Pursuant to article 15, Law No.84/2016 "On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania".

The personnel of reassessment institutions is composed of legal service unit and administrative employees. For hiring of employees at public commissioners, the *ad hoc committee* is composed of 2 public commissioners and the oldest judge of the College of Appeals.”⁶¹

Reassessment of Assets

One of the most conspicuous elements of this law is the stipulation of rules upon which the asset reassessment will be conducted. The object of asset reassessment includes declaration and control of assets, legitimacy of the source of their creation, accomplishment of financial liabilities, including private interests for the subject of reassessment and persons related to it. Reassessment of this asset component will start promptly with the entry into force of this law. Therefore, all reassessment subjects must submit within 30 days to ILDKP the assets declaration form according to stipulations in the annex of this law. All reassessment subjects are compelled to submit apart from assets declaration form all documents that prove legitimacy of their assets. This liability applies also for persons related to reassessment subjects if they confirm the relation with them. The responsible authority for the processing of data of the assets declaration form will be ILDKPI that will start without delay the control and verification of declared data by the subject, in compliance with the special law and Code of Administrative Procedures. At the end of this process, ILDKPI must compile a report that ascertains the accuracy or inaccuracy of the declaration and if there is a conflict of interest.

Control of Personality

Another conspicuous element of this law is the one that sanctions rules upon which the control of personality is rendered. This control will consist in the declarations submitted by reassessment subjects in order to identify appropriate contacts if they exist, between the subject and persons involved in the organized crime during the period stipulated in article DH of the Annex of the Constitution⁶². The responsible authority for the processing of the personality control form data will be the Albanian National Security Authority (DSIK), which will act in cooperation with the Commission and the College of Appeals.

⁶¹ According to stipulations of article 18, Law No.84/2016 “On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania”.

⁶² Article DH Law No. 76/2016 “On several addenda and amendments to the Law No.8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended.

Control of personality

1. The reassessment subjects submit a declaration and undergo a personality control, in order to identify those who have inappropriate contacts with persons involved in organized crime. The personality control related to persons involved in organized crime is based on the personality declaration and other evidence, including decisions of Albanian or foreign courts.
2. The reassessment subjects complete and submit to the commission a detailed declaration on their personality that covers the period from January 1, 2012 until the declaration day according to the law. The declaration can be used as evidence in this process and under no circumstances during a criminal proceeding.
3. In the event the reassessment subject has inappropriate contacts with persons involved in organized crime, the assumption in favor of the disciplinary measure of discharge applies and the subject has the obligation to prove the contrary.
4. In the event the reassessment subject fails to submit personality declaration in due time according to the law, he will be discharged. If the reassessment subject tries to file inaccurate declarations, or hide contacts with persons involved in organized crime, the assumption in favor of the disciplinary measure of discharge applies and the subject has the right to prove the contrary.

As to the declaration and control of assets, financial liabilities of the elected and several public employees, the law sanctions in detail the standards upon which the control of personality will be rendered.

At the end of this process DSIK must compile a report /public document, which ascertains veracity, or not of the data, as well as if the subject has had or not inappropriate contacts that lead to persons involved in organized crime.

Assessment of professional capacities

The last conspicuous element entailed in this law is the one that sanctions rules upon which the assessment of professional capacities will be rendered. Hereto will be conducted the assessment of ethical and professional ethics of reassessment subjects in compliance with standards specified in this law and the law on status of judges and prosecutors. The law has provided specifically the assessment sources of professional capacities according to certain categories of reassessment subjects, with reference to the law on status of judges and prosecutors. The reassessment process of professional capacities will entail as assessment period, the 3 last years of the exercise of duty. The inspectors review legal documents drafted by the reassessment subject during the period that is object of reassessment and based on findings, they prepare a thorough and reasoned report. At the end of the reassessment process of professional capacities, the professional capacity bodies draft a report addressed to the commission. In reliance to this report and other sources, the case relator at the commission finds whether the reassessment subject is: capable, deficient, or inappropriate. The reassessment process in itself is a very special disciplinary procedure (*sui generis*) that intertwines patterns of administrative process with the judicial one. The members of the commission, judges of the College of Appeals and international observers investigate and assess all necessary facts and circumstances on the reassessment procedure. During the administrative investigation, the Commission, the College of Appeals and the international observers can require information from every subject of the public right, according to articles 49 and 50 of this law⁶³. They administer documents that certify it. Concretely in reference to article E and F of the Annex of the Constitution, stipulated in this chapter, the reassessment process undergoes two adjudication instances. The first instance of review is the Independent Commission and the second one is the Special College of Appeals. [This process regulates exercise of activity of international observers, as a structure that assists these institutions in the undertaking of a fair and impartial decision-making against the reassessment subject. In this regard, members of the commission, of the College of Appeals and international observers have equal rights during administrative investigation stage to collect and administer evidence that certify actions, facts or a necessary subjective situation for the realization of the investigation.

For this purpose, they are given the right to have full access in all private and public institutions, native or foreign, in order to confirm veracity and accuracy of the declarations filed by reassessment subjects.

⁶³According to stipulations of article 45, Law No.84/2016 “On Transitory Reassessment of Judges and Prosecutors in the Republic of Albania”.

In the event when state/private institution within 15 days from the reception of request on providing information refuses to cooperate⁶⁴, delays the reply or keeps inappropriate attitude to provide the requested information, the institutions have the right to report it to the Prosecution's Office as criminal offense, according to article 248 of the Criminal Code⁶⁵.

During the process of proving, attention is paid to the regulation of denunciation of facts from the public that can constitute evidence for one of the reassessment components.

Every person has the right to signalize institutions on facts or concrete evidence on the condition that anonymity will be preserved. In the event the Commission or College of Appeals ascertains that the reported action or practice contains causes, they can start the investigation (*ex officio*) thereto. In the entirety of evidence, the finding by the international observers constitutes substantial evidence, the refusal of which compels the bodies to issue a written decision on the causes of refusal.

The law specifies also ways and means of research of evidence, with a particular character occupied by the competence space of international monitoring observers, which as specified in article 49⁶⁶ of the law in question, the evidence produced by them appears to be almost indisputable.

The law specifies also time limits on the development of the reassessment process in accordance with the social conditions to the interest of reassessment subjects. The respective structures on the collection and processing of data by official documents must proceed without delay in order to file to the Commission, which is the first chain of their review.

The law, in accordance with constitutional provisions has determined it as *burden of proof*, implying the obligation to prove legitimacy of declaration by the reassessment subject.

The reassessment subject is given the right to be heard as to conclusions ascertained by the case relator. For that, the hearing session in the presence of the public is held.

⁶⁴ Notification and every communication during the reassessment process will be rendered in the electronic address of the reassessment subject, given in the declaration of asset specified in article 31, item 1, of this law.

In the event the reassessment subject is on ordinary leave or maternity leave, the notification will be made in the private electronic address given in the declaration of asset, stipulated in article 31, item 1, of this law.

The reassessment subject has the right and is obliged to Access and use the official electronic address during the reassessment process.

In the event the notification is not realized according to aforementioned specifications, other forms of communication can be used according to stipulations of the Code of Administrative Procedures.

⁶⁵ Article 248 Criminal Code. "Abuse of power: The committance or non-committance of actions or inactions contrary to the law..ommissis... is punishable up to seven years imprisonment and a penalty amounting from three hundred thousand ALL up to one million ALL "

⁶⁶ In order to determine the situation of facts and circumstances related to the case, the Commission or the College of Appeals is entitled: a) To receive legal documents pursuant to article 3, item 2, of this law; b) To collect declarations from the reassessment subject, witnesses, experts and the public. The finding presented in the form of a declaration, document or report submitted by international observers constitute evidence that show a fact, circumstance or legal standard, which exists or has taken place. The finding sets forth circumstances on the given ascertainment. The Commission or the College of Appeals assesses the finding as equivalent to the opinion expressed by an expert. The refusal of the finding can be made upon reasoned decision of the Commission or the College of Appeals. A written opinion submitted by international observers is considered a given conclusion on a concrete circumstance during the reassessment process or that results from facts in special cases, The opinion can influence the decision-making of the Commission or the College of Appeals, but it has not the value of the evidence. The refusal of the request of international observers to collect evidence is made upon reasoned decision of the Commission or COLlege of Appeals, arguing the causes of the rejection.

At the end, the Commission issues the decision on the reassessment subject⁶⁷.

The reassessment subject has the right to resign prior to the issuing of the final decision in the hearing session. In this case, the reassessment procedure against the subject will be ceased and in compliance with this draft law and article G of the annex of the constitution, the subject will be allocated a special pension. The subjects who resign are not entitled to be appointed for a 15 year term in any of the justice system bodies as specified in this law. These subjects encounter no obstacles to be employed in the public administration as long as special laws have no restrictions. In any case, the Commission is compelled to reason its decision with regard to causes of issuing/non-issuing of the disciplinary measure. In the event the reassessment subject has filed a complaint against the decision of the Commission on the discharge from duty, he will be suspended from duty, implying that he has no right to adjudicate cases, but can have access in his office including official electronic address in order to be notified on the progress of reassessment process.

Appeal of Commission's Decisions

The law stipulates also rules on the review of complaint against the commission's decision. The law stipulates that means and complaint deadlines of these decisions will be equal to those stipulated in the law no. 49/2012 "On organization and functioning of administrative courts and adjudication of administrative disputes", except, unless the law states otherwise. The right to file a complaint against the commission's decision belongs to the reassessment subject and the public commissioner. The times limit that within which parties have the right to file a complaint is 15 days from receiving notice on the decision. As to rules on development of judicial session, the law refers to respective provisions of the law "On organization and functioning of administrative courts and adjudication of administrative disputes" as long as they are compatible with this law. At the end of the case review, the College of Appeals decides to uphold the decision of the Commission, the change of the Commission's decision or abrogation of the Commission's decision. The decision on discharge from duty issued by the College of Appeals is final. The reassessment subject according to article "F" of the annex of the constitution is entitled to address

⁶⁷. The decision of the Commission

1. The case relator reasons in a written form the decision of the Commission.
2. The decision contains introduction, descriptive-reasoning and imperative part.
3. The introduction of the decision contains:
 - a) The official denomination of the Commission;
 - b) The judicial panel that has reviewed the case and administrative employee;
 - c) The time and place of the given decision;
 - ç) The name and identity of the reassessment subject and his representatives;
 - d) The opinion of the reassessment subject and/or his representatives.
4. The descriptive-reasoning part contains:
 - a) case circumstances as assessed during the process and conclusions drawn by the judicial panel;
 - b) The evidence and reasons upon which the decision are based;
 - c) the report and recommendation of the relator;
 - ç) The legal provisions in which the decision is based.
5. The imperative part, among other things contains:
 - a) The alternative decided by the judicial panels;
 - b) Whether the judicial panel has decided to issue a disciplinary measure;
 - c) The right of complaint and time limit for its filing.

to ECtHR⁶⁸. As to the fact on the start of functioning of reassessment bodies, the funds for the functioning of these institutions will be covered by the state budget and each of the institutions will submit an annual request to Ministry of Finance. The financial audit will be conducted by the High State Audit.

Institutions and bodies in charge of law implementation

For the implementation of this law there will be established new institutions as follows: The Independent Qualification Commission, the Public Commissioner, the Special College of Appeals. Likewise, for the implementation of this law the following institutions will be in charge: The High Inspectorate of Declaration and Control of Assets and Conflict of Interest, Albanian National Security Authority, Ombudsman, Inspectorate at High Council of Justice and General Prosecution Office.

Conclusions

The justice system in Albania is not going well for years due to profound corruption affecting the bodies of this system. It has always been a belief that the main problem in Albania is not the lack of laws, on the contrary where we want to apply we encounter their severity and rigorousness, perhaps until the lack of tolerance, while the main problem is the lack of will to observe the laws. The reasons stay at frequent strong interventions of politics, another time at bribes in huge amounts that judges or prosecutors themselves receive in order to sidestep responsibility in a judicial process. This paper has managed to tackle the opening and treatment of a theoretical debate as long as concrete law implementation has not started yet, both for the efficient pattern of its application and the reliability of results it will effectively bring about in the fight against corruption in justice. The current reform tries to initiate work in order to remove and eliminate these problems once and for all. How much will it achieve?

³⁶Article F Law No. 76/2016 “On several addenda and amendments to Law No.8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended.

College of Appeals

1. The College of Appeals is composed of seven judges and it is the only judicial body that reviews complaints against the decisions of the Commission, according to this annex and the law. The College decides in judicial panels composed of five members each.
2. A complaint can be filed against decisions of the Commission to this College by the reassessment subject and Public Commissioner according to the law, with the exception of decisions issued according to article 5, paragraph 2, of the Annex.
3. The College can request collection of facts or evidence and correct any procedural error made by the Commission, keeping into consideration the fundamental rights of the reassessed subject. The College decides as to the case and cannot restate it to the Commission for review. The constitutional jurisdiction disallows to be put into question principles of constitutionality upon which the reassessment process is based and as such it relies on criteria set by this law.
4. The international observers at the College of Appeals enjoy the same rights as international observers at the Commission.
5. During the complaint review period, the reassessment subject is paid to the rate of 75 per cent of salary. If the College accepts the complaint and abrogates the Commission’s decision, the 25 percent part of the salary is paid to the subject for the entire period of interruption. The final decision that orders the discharge from duty enters into force immediately.
6. When filing a complaint against disciplinary measure of discharge, the reassessment subject will be suspended from duty until the decision of the College.
7. The College upholds, changes or rejects the Commission’s decision by issuing a reasoned written decision. In the events of complaints by Public Commissioner, the College cannot decide to issue a more severe disciplinary measure without giving the reassessment subject sufficient time to prepare and to be heard in session.
8. The reassessment subjects can file a complaint to the European Court of Human Rights.

The interest of the entire Albanian society is strong, but will it manage to oppose strongly to the will of political stakeholders in order to accomplish this initiative. What is the opinion of our society with regard to credibility of law implementation on vetting and how much will it serve to assess in reality the professional qualification, the moral integrity and the degree of independence in their work from the influence of organized crime, corruption and political power on judges. According to the viewpoint of the author of this report, this reform presents the will of the political stakeholders of this country, but observing in detail the technical elements that will update the law, there are several aspects leading to a skepticism related to effective “solution“ and “punishment“ of corruption in justice. *Firstly* ILDKPI, that will be the first filter institution to forward to the Commission (KPK) the report with me “anomalies” from financial life or incomes of the magistrate himself. For the sake of truth, we must mention that this body is existing and has not been inserted in the package of laws in view of the reform and it is important to say that no case is mentioned in the history of the life of this body, where any judge has undergone criminal proceeding at least from “the disputed ones” on unjustified economic situations with revenues generated from employment; *Secondly*, it is deeply impressive the fact of “impunity” and non-inclusion of criminal charges for those offenses that are stipulated in our criminal code that is to say “corruption” or „abuse of power” for those reassessment subjects who quit on their own will and do not become part of the process. Not only that, but these judges or prosecutors are allocated a special pension and the right (at least legally is not denied) to be employed in public administration, denying them only the employment right for 15 years in the justice bodies. These are two of the most conspicuous elements, that render almost distrustful under the normal observation of every reader of this law, its correctness and implementation; *Thirdly*, what renders more difficult the belief that this reform will function is that the law on vetting does not start and end by itself, but it must be understood and applied intertwined with a legal package composed of almost 27 special laws. This resembles a “network” of complex legal norms added to the insertion, based on justice reform of almost 11 new institutions. The question naturally arises why are there so many laws and institutions and where will the demarcation of subject matter be placed between an institution and another, when they have a superimposed field with one another and will it become the cause to “favoritize” among one another in view of the reform? Questions and ambiguities are numerous, but what is known is that the reform is underway and cannot be turned back, but all question marks will be crystallized during its development.

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