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QENDRA E SHËRBIMEVE
DHE PRAKTIKAVE LIGJORE TË INTEGRUARA
CENTRE OF INTEGRATED LEGAL SERVICES AND PRACTICES



Save the Children



KOMITETI SHQIPTAR I HELSINKIT



REPORT

ESTABLISHMENT AND FUNCTIONING OF THE NEW GOVERNING BODIES OF THE JUSTICE SYSTEM

Referring to the findings of the monitoring
conducted during the period April 2018 – March 2019

Tirana, July 2019



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The contents of this material is the sole responsibility of the AHC and do not necessarily present views of the European Union and Save the Children.

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List of Abbreviations

RA	Republic of Albania
AHC	Albanian Helsinki Committee
HCJ	High Council of Justice
HJC	High Judicial Council
HPC	High Prosecutorial Council
JAC	Judicial Appointments Council
SAC	Special Appeals College
IQC	Independent Qualification Commission
NCA	National Chamber of Advocacy
HEI	Higher Education Institutions
HJI	High Justice Inspector
IMO	International Monitoring Operation
NGO	Non-Government organizations
C.C	Constitutional Court
GP	General Prosecutor
HC	High Court
OPDAT	Overseas Prosecutorial Development Assistance and Training
EURALIUS	EU funded project
ICCM	Independent Commission for the Coordination, Monitoring, and Pursuit of the Implementation of Law 115/2016

Introduction

Dear readers,

The new constitutional framework for reforming the justice system envisages, among others, the organization and functioning of new bodies for the justice system government, namely the High Judicial Council (HJC), the High Prosecutorial Council (HPC), the Judicial Appointments Council (JAC), the High Justice Inspector (HJI), and the School of Magistrates.

The fundamental aspects of the organization and functioning of the new governing bodies of the justice system are envisaged in the latest constitutional amendments approved by law no. 76/2016, by the Assembly of the Republic of Albania. Meanwhile, the material law that regulates in a more detailed manner the principles and regulations for their organization and functioning is law no. 115/2016.

Pursuant to its mission, AHC implemented the initiative “Increasing the independence, accountability, transparency, and efficiency of the new governing bodies of the justice system,” as part of the grants scheme of the project “Involving civil society for a functional and equal justice system in Albania,” funded by the European Union and implemented by Save the Children and the Center for Integrated Legal Services and Practices. The project was implemented during the period April 2018 – May 2019.

This publication is part of the mentioned initiative, highlighting and analyzing the most important aspects of the establishment and functioning of the new governing bodies of the justice system. The report was conceived and designed on six main pillars, which have to do with the establishment of the High Judicial Council and the Prosecutorial Council, the exercise of transitory competences by the High Council of Justice and the General Prosecutor, the activity of both Councils to date, the establishment and functioning of the Judicial Appointments Council, and the High justice inspector.

Thanks to the methodology drafted by experts of the field, AHC processed and analyzed in this publication qualitative and quantitative data on the establishment and functioning of the new five governing institutions of justice. The focus of the analysis targets various aspects of the establishment of these bodies, such as transparency to the public, meritocracy and the public profile of candidates running for these

bodies, the responsibility of institutions involved in the selection and appointment procedures, respect for procedures envisaged by law and their efficiency, etc. Also, the focus of the analysis is on the functioning of these bodies with regard to their infrastructure, budget, and personnel, the fulfillment of legal competences assigned by the new justice reform legislation, the consistency of practice in implementing legislation, its clarity and understandability, the dynamics of the activity of these institutions, and the prioritization of issues based on their nature and significance, etc. AHC monitoring experts used a series of information resources for reflecting the data and their analysis in this publication, such as the official websites of relevant institutions, the media, correspondence of AHC with a series of institutions responsible for implementing justice reform, including the new governing bodies of the justice system.

Given that the focus of our initiative was the monitoring of new governing institutions of the justice system, this publication does not contain data on the functioning of the School of Magistrates according to the new justice legislation. However, AHC appreciates the important functions of the School of Magistrates, which ensures the professional training of magistrates. We also appreciate the weight that this institution has carried and the contribution it has made along the journey of reform in the justice system to date.

Before being finalized, we consulted the main findings and conclusions of the report in the draft version at a round table of discussions with a series of actors, representatives of monitored institutions, civil society representatives, jurists of the field, etc. on 25 April 2019. Later on, the full draft of the report was submitted for consultation to all the monitored institutions as well as the vetting institutions and the independent commission for the coordination, monitoring, and following the implementation of law no. 115/2016. A series of institutions responded to our written request for feedback on the report, namely the High Judicial Council, the Justice Appointments Council, and the independent commission for the coordination, monitoring, and following the implementation of law no. 115/2016. During the finalization of the monitoring report, AHC reflected those remarks and suggestions of these institutions, which we deemed reasonable. AHC also reflected other suggestions of a principled nature transparently, while also presenting its own opposite assessment.

In closing, we would like to thank for the contribution in implementing this initiative the executive staff of AHC, legal advisor Mr. Niazi Jaho, project coordinator Valmira Kallushi, international experts Dr. Rainer Deville and Irina Kotenko engaged in preparing the methodology, domestic experts involved in monitoring Emidio Tedeschini, Fjoralba Caka, Migena Kondo, Armand Sokoli, Ardita Kolmarku and Alketa Vushaj. We wish to thank those justice institutions that were open in exchanging correspondence and providing information requested in the context of this initiative.

Special thanks go to the donors who supported this initiative financially, namely Save the Children and the Center for Integrated Legal Services and Practices.

We wish you happy reading of the report!

Erida Skëndaj,

**Executive Director
Albanian Helsinki Committee**

REMARKS BY GENERAL PROSECUTOR, MS. ARTA MARKU

I feel truly honored to be part of this round table and to participate in a discussion that really affects us all. As you know, since the approval and entry into force of the constitutional amendments first, and then the approval and entry into effect of the main laws that are part of the justice reform package, and up to the moment of the creation of the new justice institutions, a relatively long time went by, of about 2 years.

1. During this time, the commissions that would conduct the transitory re-evaluation of judges and prosecutors and, after some months, they began to function.

2. The re-evaluation process began for judges and prosecutors who had applied to be part of the High Judicial Council, the High Prosecutorial Council or, as a result of lottery, had become part of the Judicial Appointments Council.

3. As soon as this process was over and the Independent Qualification Commission submitted the lists of prosecutors and judges who had successfully passed the re-evaluation process, the High Court Chairman and the General Prosecutor convened the General Meetings of judges and prosecutors to elect the judge and prosecutor members of the Councils. Both meetings were conducted successfully and there were no appeals at the Administrative Court of Appeals.

4. Thus, until a few days after the meeting, at the end of December 2018, the Councils were created and began to function, thus marking the establishment and functioning of the first, new justice institutions.

5. From January 1 of this year, the temporary Judicial Appointments Council began to function and procedures are underway for the selection of the members of the Constitutional Court and the High justice inspector.

We are all aware that every reform takes it time to implement, particularly when it is root-deep, as justice reform actually is.

All the new institutions that have been established have taken their time until starting to function, but this phase has already been overcome and the Councils are in the phase of selecting candidates for SPAK and the Anti-Corruption Court.

Soon, we will have a functional Constitutional Court, without which the existence of the rule of law could not be understood.

Of great importance is also the selection of the High justice inspector, without whom one could not understand the functioning of the judicial system and the prosecutorial one. The mechanisms of disciplinary control are guarantees for ensuring responsible activity of the functions of the justice system.

The lack of the High justice inspector and the legal vacuum created by the decision of the Constitutional Court to invalidate all provisions that stipulated what behaviors by magistrates represented disciplinary violations have been a handicap throughout this period of the implementation of justice reform.

All these are statements not by someone who watches from afar the manner in which the new justice institutions and the entire justice system is functioning, but by being part of the system and touching the problems that have been created every day.

Throughout this period, the General Prosecutor has had a special role in the functioning of the prosecutorial system. Besides the ordinary competences, the GP has also had some competences assigned through a transitory provision until the establishment of the HPC and continues to have competences to conduct disciplinary investigations until the creation of the HJI.

Thus, although the HPC had yet to be created, the evaluation of prosecutors for the Vetting Bodies, has been done by the General Prosecutor and his staff. Likewise, the General Prosecutor has conducted temporary appointments of prosecutors and heads of prosecution offices on a need's basis. With the creation of the HPC, such competences are exclusive of this Council.

To end, I think the existing institutions as well as the new ones have their essential role in the functioning of the justice reform mechanism and may not function separately if they seek to achieve successful activity.

Thank you for your attention.

REMARKS BY CHAIRWOMAN OF THE HIGH JUDICIAL COUNCIL, MS. NAUREDA LLAGAMI

First of all, thank you to the organizers for the invitation. Frankly speaking, I read the draft report very carefully and without a doubt, I wish to congratulate you for the work done in such a short time that has been filled with activities both by the new institutions and the activities related to justice reform. I think this report is a good start and I hope that documenting some of the processes, discussions, decisions, and novelties will serve a more profound analysis toward drawing useful lessons for the future.

Given that I am myself a contribution of civil society to these justice institutions, I am very much aware that transparency is easier to say than to do. Furthermore, transparency is not enough but should be accompanied by responsibility, accountability with regard to our decision making, respect for legal frameworks vis-à-vis the spirit of the law, the conditions and real possibilities that we are in. In other words, transparency should be real and not just formal. We have tried to have transparency in quality and not just in quantity.

We (and by we, I speak on behalf of the High Judicial Council) have pursued a logic in providing transparency by balancing public interest for information on the activity of the Council with our physical conditions, infrastructure capacities with human resources, in order to balance the need for transparency with the need to create trust in the public, the need to act faster with the need to act correctly. Besides urgent issues related to the functioning of the courts, the school of magistrates, the start of work for the establishment of the special court against corruption and organized crime, the council has worked hard

for the establishment of a sound basis of decision-making on the basis of regulations and criteria that ensure impartiality and transparency, as was the case of the delegation scheme and the assignment of judges to specific cases.

Since you have raised it as a concern and I do appreciate a lot the list of priorities, the drafting of the priority list by the Council, I would like to inform you that at present, the Council is working on this list of priorities, thinking strategically as to what it should be. In this process of drafting the Council's strategic plan, we have drafted the list of priorities in conjunction with the justice cross-sector strategy, and very soon, this strategic plan will come out with all contributing actors to justice reform.

Lastly, I would like to offer a few suggestions on the draft report that you have shared with me.

First, I would like to have a more profound reflection on the statement and documentation of things. In this report, I see a first step that should be followed by a more qualitative analysis, aside from discussions with institutional actors, domestic and institutional experts.

Secondly, also for the sake of clarity for readers, I would suggest that the decision making of the councils is treated differently when talking about the Prosecutorial Council and the Judicial Council.

Thirdly, in fact, it would be very necessary that such reports could also have an approach of a gender viewpoint. That is, for the first time, we need to admit that in Albanian justice institutions, we have considerable participation of women at the highest levels of the justice system. I think this has been one of the contributions, let's say, a very large work by civil society over many years.

With that, I would like to close it by thanking you very much for the support and for this fruitful cooperation.

REMARKS BY THE CHAIRMAN OF THE JUDICIAL APPOINTMENTS COUNCIL, MR. ARDIAN DVORANI

Honorable participants,

Allow me to thank the organizers and implementers of the project for the participation in this event, which I appreciate with great interest, not only based on the topics, but also in terms of issues that have to do with the creation and functioning of the new institutions of justice that have the responsibility realize the new constitutional legal designs and the expectations of everyone for the results of justice reform. Meanwhile, due to not so few factors as well as developments that have little to do with the content, quality, and completeness of the legislative package, these bodies have faced and are facing quite some complex challenges and problems with regard to their proper functioning and effectiveness in their activity and exercise of competences. Likewise, I notice that participating here are part of known experts of the justice system and of law in general, among the most important contributors to preparing the analysis on the despairing findings over our justice system, the measures that needed to be taken and that have prepared the legislative package of justice reform. In any event, their contribution in our opinion remains indispensable toward developments and the current phase of the implementation of justice reform. Likewise, participants are experts who are representatives of civil society organizations, particularly those who are engaged especially in justice reform matters and monitoring its nature, i.e. including issues of the creation and proper functioning, lawfulness, transparency, and accountability of the

new governing justice bodies. I do not see them participating, but I would like to highlight them for the important role that international bodies have played toward the reforms and now in the process of its implementation.

Honorable participants, naturally, I am here to listen and take note with interest, on the findings and conclusions of the draft report on monitoring the creation and functioning of the justice system governing bodies, as well as the discussions and exchange of opinions, planned in the draft report according to the program.

However, in a very condensed manner, I would appreciate and share with you some moments that have to do with the creation and functioning of the Judicial Appointments Council. It is now a known fact that the JAC has not been able ever to meet and function after the approval of the justice reform, i.e. neither the council elected in 2017 nor the one for 2018. In 2018, there was only one meeting and the only legacy was a draft project with some preliminary internal regulations. Meanwhile, the current Judicial Appointments Council began immediately its activity to implement the constitution and the law, by working intensively to repair as soon as possible the completely unusual situation created in the conditions when the JAC had not approved even normative legal acts, which are essential for internal organization and for procedures for the verification of candidates, and in awful circumstances, vacancies had been created and remain in the entire composition of the constitutional court, which is not functional, alongside the vacancy of the constitutional position of the high justice inspector, after dividing intensive working groups and about 16 long plenary meetings full of profound discussions, with the irreplaceable support of Euralius, on April 2, 2019, the JAC completed its workload of normative by-laws, without which it could not move to the process of reviewing, verifying, and selecting candidates. This is a package of hundreds of provisions that contain procedural material regulations that seek to carry out a very careful, detailed, and profound process of verification of candidates, which will be finalized with allowing or prohibiting candidates as well as a procedure and system of criteria, detailed resources, on the basis of which, the appointments council will highlight and decide on the ranking of candidates, based exclusively on professional and moral merits. I may now inform you, in fact, that we have made public through a statement for the media, that on April 5, 2019, the Council began officially the process

of verification and control of candidates. Candidates for judges in the Constitutional Court and for high justice inspector have appeared for carrying out relevant procedures, and the Council has undertaken the necessary measures to carry out the verification of their assets, integrity, dignity, and other legal criteria. It is worth emphasizing once again at this table that, contrary to what is articulated in some cases recently, the procedure for the verification of the candidates by the JAC is not formal. Besides the further and rigorous examination of documentation that the candidates have submitted, the council has begun and is already in the process of pursuing over 2,000 actions of control and verification on the candidates. We have submitted requests for information so far to over 60 public institutions and private entities regarding data on the asset-related, ethical, and moral integrity of candidates. This entire activity of the High Council of Justice is taking place independently from the controls that will be conducted and are being conducted by other law enforcement institutions, such as the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest, the general prosecution office, and other law enforcement bodies.

Likewise, it is appropriate to note at this table that the current activity of the JAC is entirely unusual and even extraordinary. The Constitution itself and the law define it as a collegial body that has no staffing or organizational structure because, on these aspects, it should have the human and financial resources support of the High Court. These constitutional definitions envisage a situation in which the Council, on a case by case basis, would convene and carry out procedures for a vacancy created and a limited number of candidates.

Meanwhile, for 2019, the Council faces challenges that are beyond these legal forecasts and, currently created, and the council should proceed and is proceeding for all vacancies in the constitutional court and the high justice inspector, which tens of candidates have expressed an interest to apply for.

On the other hand, the High Court, where the JAC should find administrative support, is undergoing a very unusual situation, with 3 of 19 judges being in their posts and it has only 8 of 30 legal aides. With such composition, the high court too needs to tackle not only its own endless issues but at the same time needs to support the activity of the JAC.

This situation has inevitably forced the JAC to use the possible

and limited resources and infrastructure available. Naturally, this situation has led to the objective inability of the council to fulfill some of its obligations, including, for instance, the preparation of meeting minutes of council meetings, which it is working to correct in the future.

Anyway, recognizing the unusual situation of the state of the justice system itself, the council is fully engaged to carry out not only the enhanced verification, evaluation, and ranking based on the merits of the candidates, but also the conduct of this process in as short a time as possible. Such speed is going to depend definitely on the engagement, responsibility, and speed of public institutions tasked with control duties as well as the private subjects, particularly those of the banking system.

Part of these public institutions and private entities have already responded and provided relevant information. Should they respond to the requests of the council on the data and information on candidates with the legally required accuracy and quality and as soon as possible, the Council will be able in the coming weeks, why not within May, to submit to the Assembly and the President a list of candidates from which these institutions are obliged to select new judges of the constitutional court and the high justice inspector.

Lastly, in the last statement to the media issued by the judicial appointments council, not only as a formal legal obligation, we have called also on civil society, the media, and all interested actors to convey to the judicial appointments council information that is important and of value for the evaluation and verification of the integrity of candidates.

REMARKS BY THE PEOPLE'S ADVOCATE, MS. ERINDA BALLANCA

Honorable participants!

First of all, I would like to congratulate the Albanian Helsinki Committee for this laudable work that it presented to us today.

I believe that there is no need for me, too, to repeat the great importance of justice reform for our country and the citizens. I listened attentively to all the excellent praise passed here about this initiative, which I can say with conviction that it was not only necessary, but also absolutely vital. I join without the slightest hesitation every one of those who expressed the belief that its results will start to show, sooner or later. Anyway, I belong to the group that wishes to see these results better sooner rather than later when it is already too late.

Justice reform will be for a long time maybe the most significant intervention that we, as Albanians, have conducted in our state-building system in democracy. As such, I think it should be treated with the seriousness that it deserves, not only during implementation, but from the very start of its conception.

As we are all witnesses of the process of its implementation, I believe that there will be no opposition to me saying that precisely this process, the implementation of the reform, is displaying much more complications not only than it was imagined, but also than had been guaranteed at the time of the articulation of the need for this reform.

If there is an element that I believe we can agree on is the fact that the more the process of implementation of this reform continues, the farthest its end seems. Walking toward the destination we had

thought of reaching with the implementation of this reform is seeming increasingly endless and toilsome.

However, it is my impression that among public opinion that is fed up with the rhetoric of the reform that will do miracles and will change within one day a reality that truly needed root-deep change, this prolongation without concrete results may bring about an effect that is entirely the opposite of what the objective was.

And, just so we do not forget, let's repeat: what was the result that we wanted to achieve with justice reform? Restore lost trust in justice, right?

If the consecutive complications arising during the process continue, the prolongation, delays, lack of concrete results, or even undesirable incidents that demonstrate a lack of efficiency in its implementation, then we will not be able to talk about or even hope for trust in the eyes of the public.

Justice reform cannot function as a line of horizon that is anyway imaginary and may not be achieved, no matter how much you toil, toward it. It also should not be treated as if we were dealing with a political utopia that is of value only when conceived of as an encouraging factor for walking in a certain direction, but not as the boundary itself.

I congratulate the Albanian Helsinki Committee for the useful work it presented here with the findings of their study.

However, as you know, the institution of the People's Advocate is locked into the entire process of justice reform, first in the process of selecting candidates from civil society and then as a monitor of the implementation of the reform.

I would like to make you aware of the findings of our experts during the monitoring of the process, which will be made available to the Assembly and to public opinion through our annual report.

Based on the pace of the process to date, we find that the rhythm with which hearing sessions (IQC) and public hearings (IAC) are taking place is slow vis-à-vis the total number of subjects drawn by lottery so far and those awaiting that process and at the same time will be subjected to the transitory re-evaluation by the IQC and IAC (if appealed).

In concrete terms, by December 2018, 77 subjects were subjected to the transitory evaluation process, of which 42 were confirmed in their posts and 35 were dismissed from their duties. Meanwhile, the re-

evaluation process was interrupted for 7 subjects in reference to letter G of the Annex of the Constitution, and for 8 subjects, it was decided to cease administrative proceedings. The circle of subjects that have been subjected to proceedings includes judges, prosecutors, legal aides, magistrates (former general prosecutor).

The slow-paced conduct of this process, without harming the quality of decision-making of re-evaluation institutions, will help complete vacancies in the most important institutions of justice and unblock the created impasses.

In these circumstances, although the effects of the reform are being felt, the justice system is working under strain until its restoration to the identity that this reform intends.

However, being an incurable optimist, I believe that we still have the possibility to save the reform. In my opinion, the only way to save it is a compulsory detox of the language that builds unrealistic expectations.

The sole cure for doing that is sincerity. We said that the main result that this reform aims at is credibility. There is no credibility founded on fairy tales. People should be talked to openly. Justice reform needs a new realistic narrative that demonstrates its real opportunities and that expectations from it are re-dimensioned.

I believe that it is possible!

Thank you!

EXECUTIVE SUMMARY

Our country is going through an important process, that of the profound and comprehensive reform of the justice system. Basic legislation, constitutional amendments, and material laws that regulate the organization of the judiciary and the fight against corruption, were approved and went into effect in 2016. Preparations for justice reform began earlier, in 2014, with the establishment of the parliamentary ad hoc committee on justice reform. The first document of the ad hoc committee was the analysis of the justice system, which identified the most important problems with regard to the organization and functioning of the justice system. Based on these problems, a group of high-level experts engaged to draft the strategic directions that justice reform would focus on and then the package of constitutional amendments and the first 7 material laws. The process of drafting the justice reform was realized with the involvement of all political forces, legal experts of the field, civil society, academia, and other stakeholders.

Today, observers ask whether the reform would require more time and a more long-term consultation process? However, a kind of tendency of acceleration of the reform was conditioned by a series of disturbing problems, which the citizens of the country are facing every day, including disturbing perception about the level of corruption in the country, the dragging out of and injustices in court processes.

A series of circumstances and factors brought about the delay in the implementation of justice reform for at least 3 years. To date, despite all delays, obstacles, and challenges, the judicial reform as such has not stopped. Justice reform continues to produce results with regard to the establishment and functioning of new justice bodies, including the new governing bodies of the justice system that have been analyzed in this publication.

The new justice legislation envisaged rigid deadlines in order for the transitory period of the functioning of existing institutions until the establishment of the new institutions would be as short as possible. These deadlines were not respected. After the parliamentary elections of 2017, it resulted that the party that won the majority of votes in parliament did not have the qualified majority of 3/5 of Assembly members so as to approve or amend due to unforeseen circumstances that were dictated later, the laws for the organization and functioning of institutions envisaged in the Constitution. (Article 81, item 2, letter “a” of the constitution). Following these elections, there was political polarization in the country, which at certain moments created impasses, blocking temporarily important links related to the implementation of justice reform. The lack of a qualified majority to address the legal vacuum created by the decisions of the Constitutional Court that invalidated some provisions of two material laws of justice reform also had a negative impact on the progress of the reform.

There were also problems about guaranteeing on time the identified, estimated and promised, necessary resources for the essential infrastructure of new justice bodies. In fact, the majority of the new institutions, including the vetting bodies, faced difficulties and shortcomings in this regard in the very first months of their work, in relation to the necessary infrastructure, budget, and employees. The same situation is worth noting about the HJC and HPC.

Another fact that influenced the slow implementation of the entire reform process were the non-dynamic paces of the transitory vetting process of judges and prosecutors, some of which were at the same time candidates for new governing bodies of the justice system. However, the number of the four judicial bodies of the first instance of vetting (Independent Qualification Commission) is evaluated by experts as adequate. During the period covered by this research report, these bodies operated at mainly slow speed, with scarce exceptions during a certain week or month. The reason for the slow pace may be also the way in which other institutions that offer information during administrative investigation interact with vetting bodies, the quality of information made available, the fact that these bodies are responsible for a process where constitutional principles and the rights of every prosecutor and judge (subject) should be respected. Also, the lack of judicial experience of members or support personnel of the vetting bodies may also have an impact.

The incomplete judicial system is a serious problem for Albania. Given that a judiciary consisting of judges and prosecutors with problems with their assets, integrity, and professional skills may not be considered a proper judiciary, legislation envisages that the judiciary should first be cleansed and then it should be re-established. The cleanup of the system began from the highest courts, which resulted in almost all members of the Constitutional Court and the High Court were dismissed and a minority of them resigned, while the General Prosecutor also resigned. In our opinion, this process highlighted how urgent justice reform was. However, the appointment of new judges and prosecutors was obstructed due to the causes analyzed above, creating yet another obstacle to citizens' access to justice for a considerable period of time.

This process is now at a phase in which three of the important governing bodies of the justice system have been established and are exercising their competences. Namely, these institutions include the High Judicial Council, the High Prosecutorial Council, and the Judicial Appointments Council 2019. Meanwhile, it appears that the fourth governing body of the justice system, monitored by AHC, namely the High justice inspector, has not been appointed. Without this body, the disciplinary proceedings on judges and prosecutors may not begin and, as a result, not crowned with a decision of the Councils.

It will take the dynamic-paced and quality work of these three established governing bodies of the justice system that can influence the unblocking of impasses created in the appointments of members of the Constitutional Court, the High Court, the High justice inspector, the General Prosecutor with a full mandate, appointments to the Special Prosecution Office and Court against corruption and organized crime, as well as the completion of all vacancies created at different levels of the judiciary. However, what is most important at the current phase, in a small country like Albania, where family, social, and political ties are too strong, is the creation of a corps of judges and prosecutors with high moral and professional integrity, impartial toward any interference.

Below, we are presenting in a summarized manner some of the most important findings of this report, which have been analyzed in greater detail in the respective chapters.

1. FOR THE ESTABLISHMENT OF THE HIGH JUDICIAL COUNCIL AND PROSECUTORIAL COUNCIL

The impasse created for the establishment of the two Councils, the High Prosecutorial Council (HPC) and the Judicial one (HJC) was unblocked after two and a half years since the approval of constitutional amendments for justice reform, namely with the realization of the meeting of prosecutors and judges exactly on December 11 and 12, 2018.

a) Delays in the start of the implementation of the new vetting law, the slow pace in the transitory re-evaluation of magistrate candidates (prosecutors and judges in both Councils), failure of some of these candidates to pass vetting, and the difficulties encountered in finding candidates who meet the criteria required by law, are some of the reasons that obstructed the timely establishment of both Councils.

b) We find that the HPC has not managed to conclude the re-evaluation of candidates for HPC within the 3-month deadline set by law no. 115/2016. The decision of the HPC on the last magistrate candidate running for one of the Councils appears to have been announced one year and a half after the establishment of the vetting bodies, precisely on November 27, 2018.

c) The process for the establishment and functioning of the special structures tasked with competences in selecting and appointing **non-magistrate members** of the HJC and HPC (ad hoc committees, parliamentary sub-committees, meetings, etc.) as well as the selection of candidates from among these members, extended over a period of time that went beyond the transitory legal deadlines. The process was characterized by delays and, in some cases, by lack of transparency and dragging out of meetings and procedures pursued by these structures.

d) *The establishment of the High Judicial Council and the Prosecutorial Council was delayed also due to difficulties in finding non-magistrate candidates from civil society ranks. The ad hoc committee of civil society, over a period of 9 months, asked 6 times the re-opening of the call for candidates interested in the HPC, after the first 5 calls failed because the candidates*

presented did not fulfill the legal criteria. AHC notes that the majority of candidates qualified by the General Secretary did not have a long and considerable experience with civil society organizations in areas related to the justice system or human rights. Based on verifications conducted by the IMO for the four HPC candidates, only one of them meets the legal criteria while the other candidates do not.

e) Transparency realized by the bodies tasked with responsibilities for the selection of non-magistrate members was respected mostly by the People's Advocate. AHC notes that there have been important moments of procedures for the selection and appointment of non-magistrate candidates that were not made public, for instance, failure to publish responses by the Authority for the Opening of former State Sigurimi Files, failure to publish full reports of the IMO on candidates, failure to publish their platforms, etc. Likewise, we do not have the best assessment for the transparency of bodies proposing non-magistrate members such as the National Advocacy Chamber, the Academy of Sciences, Faculties of Law, etc.

f) Data published by institutions responsible for the profile and experiences of non-magistrate candidates were scarce, while their platforms were not published by the institutions tasked with their selection and appointment and did not receive media attention. Based on information published in the reports and materials of structures or institutions involved in selecting non-magistrate candidates, we find that the majority of them generally did not reflect well-defined and visionary objectives.

g) It is our opinion that law no. 115/2016 itself envisages non-essential mechanisms of repeated professional and moral examination and evaluation of non-magistrate candidates for the two Councils, such as the one done at different phases of the process, but more or less in the same manner, by relevant ad-hoc committees and the General Secretary of the Assembly. We would suggest a revision of provisions of law no. 115/2016 in the future, in order to envisage the establishment by the General Secretary of independent ad hoc mechanisms, of a consultative nature, for the realization of this process. this would ensure expanded responsibility toward institutions that have a role in the appointment of members.

h) Non-magistrate candidates for members to both Councils were disqualified mainly for not meeting the experience criterion. However, the fulfillment of other legal criteria is also controversial, for instance, for candidates from advocacy (lawyers) who were appointed later to the Councils. In spite of provisions of articles 19/3/ç and 117/3/ç of law no. 115/2016, failure to fulfill tax obligations to the Chamber of Advocates by them was not considered a disqualifying condition, but as a deficiency in the criteria.

i) **IMO's opinion for non-magistrate candidates for both Councils was published partially in the evaluation report on the candidates, by the General Secretary of the Assembly.** According to information published in this report, it appears that for some candidates, the IMO had reservations for failure to fulfill the criteria and for their platforms. These also include some of the candidates who ended up winning and were appointed later by the Assembly to the Councils. The reports that include the IMO opinions were not made public.

j) The parliamentary procedure for the selection and appointment of non-magistrate candidates to both Councils was accompanied by debates and controversy of a political nature as well as ethical violations with regard to the interpretation of the professional experience and moral integrity of candidates. Due to the lack of the necessary quorum for decision making in the parliament sub-committee, the selection was random, based on results of a lottery, sidestepping constructive dialogue for the selection of candidates based on their merit. This practice, though legal and of an unblocking nature, violates meritocracy of candidates in this competition process.

k) **The process for the verification of candidates among prosecutors competing for the HPC and candidates among the judiciary competing for the HJC was not transparent** because of the fact that the General Prosecution Office and the High Court did not publish on their official websites the order for the establishment of the Commissions, did not publish the report on the verification of the fulfillment of criteria by each candidate. The publication was only done after the completion of verification, thus not giving the opportunity to other institutions or NGOs to participate in the process as observers.

l) For some weeks, the HPC was faced with a vacancy after the Special Appeals College dismissed from duty one of the magistrate members on the Council who had been confirmed in his post earlier by the IQC. The Council may face other vacancies because for half of the members that the IQC has confirmed in their posts, the Public Commissioner has exercised the right to appeals in the SAC. **In the 9 cases of dismissal of prosecutors who were candidates for the HPC, it appears that their overwhelming majority were penalized due to the criteria of assets.**

m) Unlike the HPC, for the HJC, it appears that all members selected from among judges were confirmed in their posts by final decision, which gives a higher sustainability to this body. During the competition of magistrate members for the HJC, five members were dismissed by the IQC after they were found with problems because of the criterion of assets. However, these candidates were excluded from the race although they exercised the right to appeal to the SAC, given that law no. 115/2016 envisages such a clause.

n) Unlike the process for the selection of non-magistrate members for the two Councils, which envisages a minimal number of candidates for vacant posts, law no. 115/2016 does not envisage minimal quotas for the candidates coming from the judiciary and the prosecution office, which in principle reduces the competitiveness between candidates for these posts. Practically, two candidates from prosecutors in the appeals courts ran for 2 vacant posts in the HPC and one candidate from the High Court ran for one vacant post in the HJC. The match of the number of candidates with the number of vacant posts did not enable a competitive race between candidates. However, it is positive that the new legislation envisages that magistrate members should come from different levels, which reduces the risk of over-representation of the judiciary.

o) The General Meeting of Judges and that of Prosecutors took place in an environment of high transparency for the media and, therefore, the public. The platforms of candidates for these two Councils were presented accordingly in the respective meetings. For the most part of these platforms, we noticed a lack of visionary elements and objectives, as well as the use of a strategy to get the

votes of meeting members by focusing mostly on the problems of the reform in the justice system. There were few members who struck a fair balance between the meritocratic career within the judicial system and the need for increasing accountability and responsibility of the system through the two Councils. This shortcoming may be addressed in the future.

p) In spite of instructions provided for members with the right to vote, we found that 12.7% of votes of the members of the General Meeting of Prosecutors were invalid. There were even higher levels of invalid votes of members of the General Meeting of Judges, namely 16.7%. This is a relatively high figure, if compared to the total of valid votes, which could have led to overturning the result for candidates selected for the two Councils, if judges and prosecutors had would have respected the voting procedure.

q) Five of the 11 members of the HJC are female, which ensures considerable participation of women in this important governing body of the judiciary. On the other hand, women are underrepresented in the HPC, with only 1 of 11 members being a woman.

2. MONITORING OF TRANSITORY COMPETENCES OF THE HCJ

a. The delayed establishment of the High Judicial Council caused the strained functioning of the HCJ for about two and a half years after the approval of the constitutional amendments. Also disputable is the issue of the legitimacy of the functioning of the HCJ, because article 277, item 1 of law no. 115/2016 envisages that HCJ members remain in office until the creation of the High Judicial Council and that the mandate of the members expires on the day when the last member of the HJC is elected, **but in any event, not later than 8 months after the entry into effect of the constitutional amendments.**

b. The competencies exercised by HCJ, during the transitory period of its functioning, reduced by the new legislation, had an impact. This led to problems of good governance of the judiciary, which was faced with the vacancies created in the High Court and the

other courts, as a result of dismissals or resignations of some judges due to vetting.

c. During this prolonged transitory period, the HCJ exercised its activity in a strained manner also due to clashes, unclarity, about implementation of the new justice legislation, and decision making by the Constitutional Court to invalidate some provisions of this legislation. These created tension on issues of particular importance among members of this Council. In some of the meetings, there were different views from HCJ members, whose opinions were divided between HCJ members selected by the Assembly and/or Minister of Justice who were a minority and members representing the judiciary who were the majority.

d. In the meeting of January 20, 2017, the HCJ made 8 decisions for the appointment as Magistrate of candidates of the School of Magistrates (SM) who had graduated in 2016. For all the candidates who had graduated, the HCJ realized the appointment based on the final evaluation by the School of Magistrates as “very good,” but without specifying whether the graduates had met or not the legal criterion of the minimal level of points (at least 70%). Furthermore, the HCJ does not specify whether these candidates passed the asset and integrity examination test, another criterion envisaged by law no. 96/2016. Most HCJ members decided to not wait for the reports of HIDAACI and SHISH (Intelligence Service), arguing that they would be subjected to the vetting filters when they would be appointed to their posts. Also, avoiding these filters, in their opinion, was done also to respect the two-month legal deadline from the entry into effect of law no. 96/2016.

e. Because of limited transitory competences and delays in the establishment of the HJC, an impasse was created for the appointment of magistrate candidates graduating from the School of Magistrates in years 2017 and 2018. The legal initiative proposed by governing majority MPs did not find the support of the qualified majority in parliament and the issue was even accompanied by political debates. This impasse found a solution with the creation of the HJC, which addressed the issue in its first decisions.

f. The vote of HCJ members to assign to posts each candidate for magistrate who had graduated from the School of Magistrates in 2016 was accompanied by debates and controversy regarding the reading and interpretation of the new justice reform legislation. For the three candidates who graduated in 2016, who had displayed as a first choice the assignment to posts in the Administrative Courts, the majority of HCJ members decided in favor of the preference. HCJ members did not refer to the fulfillment or not of legal criteria by each candidate, namely the work experience of at least one year and a half in the public administration or having very good results in administrative law courses in the School of Magistrates.

g. The HCJ took under consideration some cases of disciplinary proceedings on judges, initiated before the new law no. 96/2016 entered into effect, but which were not completed after it did. In some cases, the questions that members addressed to the judges subjected to these proceedings had an assisting nature and did not reflect notes of objectivity and impartiality by these members; this clearly pre-determined their position before the vote.

h. On three instances for which the Minister of Justice had sought disciplinary proceedings on the judges, the HCJ decided in March 2017 against the proposed measures. In two of them, the vote “against” was unanimous. In one instance, the HCJ members referred that the claimed violations were of a procedural nature on a process for which the court had issued rulings that had become final and could not be disputed. In fact, according to new legislation, violations of a procedural nature are envisaged as grounds for disciplinary proceedings.¹⁾

i. For part of the disciplinary proceedings initiated before the new law no. 96/2016 went into effect and that the HCJ took under consideration after it went into effect, there appears that the 6-month deadline for concluding such proceedings was respected, as envisaged in article 172, item 2, of law no. 96/2016. The Minister of Justice also highlighted this issue in some of the HCJ meetings HCJ.

1 Article 140 of the Constitution amended in the context of justice reform stipulates that the judge may be dismissed when committing serious professional or ethical violations that discredit the standing and figure of the judge during the exercise of duty.

j. During discussions of the meeting of January 24, 2018, among HCJ members, there were moments of unclarity, mutual accusations, and tension with regard to applicable legislation on disciplinary measures on the reasons that had led the HCJ to blocking decision making beyond legal deadlines; there were also different interpretations of the way in which such legislation would be implemented in view of decision no. 34/2017 of the Constitutional Court. In spite of the legal debate, the HCJ decided against the disciplinary measures proposed by the Minister of Justice against 10 judges. The decision making reflected clearly the division between members from the judiciary on one hand and the Minister of Justice and the President on the other.

k. With regard to the evaluation from a factual standpoint of the violations that the disciplinary proceedings had been initiated on for the judges, the HCJ members again were divided. **First**, the different views were displayed in cases when for the same judges that disciplinary proceedings were requested for, the prosecution office had decided to drop the cases on them. **Second**, judge members generally referred that the claimed violations belonged to cases for which final decisions had been issued.²⁾ During debates transcribed in the meeting minutes, one clearly notices that in some cases, the questions of members supported the defensive position of colleagues being proceeded and there were even suggestive stands or questions.³⁾

l. *In HCJ meetings, a concern was passed over the implementation of transitory legal obligations of the HCJ Inspectorate to help in the process of evaluating the professional capability of judges in the context of the vetting process. According to the Inspectorate, legislation in this regard is not complete and needs detailed instructions from vetting bodies. In offering this assistance, the Inspectorate faced problems due to the low number of inspectors who had to respond to a considerable number of subjects that were*

2 In one case, the Minister of Justice argued that decision no.11 of 2004 of the Constitutional Court states that the HCJ may undertake disciplinary measures on judges without conditioning it with the fact whether that decision has assumed final form, only for cases when the decision is accompanied by acts and behavior that seriously discredit the standing and figure of the judge and generally violate the prestige and authority of the judiciary.

3 Quote of statements made by one of the members in the meeting, "I ask these questions because I know the law 'On conflict...' quite well, because I have suffered myself this issue of the conflict of interest."

going to undergo the process, precisely 466 subjects. In the meantime, the Ministry of Justice raised the concern that the ordinary ethical and professional evaluation of judges is delayed, particularly referring to the fact that there are still judges who do not have any evaluation from the Inspectorate (62 of them).⁴⁾

m. Transitory transfers to complete judicial panels in certain judicial cases were referred by the HCJ using the term delegation, according to its by-law of 2013. In almost the majority of meetings conducted by the HCJ, there was a considerable number of delegation of judges from one court to another, for a relatively high number of judicial cases that in some cases reaches 100, which highlights a high number of judicial cases that does not correspond to the number of judges.

n. The transitory transfers for courts with very high workload as a result of the reduction of the number of judges in the planned staffing were accompanied by debates and controversy, clearly aligned between judge members and the Minister of Justice. However, there were cases when these arguments were supported by the judge members of the HCJ. One of the HCJ members requests the implementation of the procedure envisaged in article 46 of law no. 96/2016 and that the geographic proximity criterion is not a legal one.⁵⁾ After raising this concern, the HCJ changes its opinion and concludes to follow the rules envisaged in new law no. 96/2016, to notify by announcement the expression of interest by judges who wish to be transferred temporarily for no longer than one year to courts that have staffing vacancies. This is a very positive development.

3. MONITORING OF TRANSITORY COMPETENCES OF THE GENERAL PROSECUTOR

a. Unlike the monitoring of the transitory competences of the HCJ, whereby observers had access to the minutes of every meeting

4 Meanwhile, the GP refers that part of these judges were appointed after 2012 and will be left without an evaluation by the HCJ because it has the competence to evaluate their work until 2012

5 *The way the realization of transfers by the working group has been planned, in the opinion of this member, leaves room for "favors."*

that was the subject of the monitoring, in the case of the transitory competences of the GP, AHC observers only had access to the decisions/orders of this institution. These decisions do not enable a complete analysis because their text includes references to the legal basis and the part of the enacting clause that concretizes the relevant decision making.

b. Some of the decisions, explanatory reports of decisions of the General Prosecutor, the minutes of meetings of the Prosecution Council do not appear published in the official website of the institution, which is why transparency on these documents has been low.

c. AHC addressed the General Prosecution Office on March 11, 2019, with a request for information to be made available on some orders and decisions belonging to 2018 on the transfer of prosecutors and their temporary assignment as prosecution office heads, as well as measures taken toward prosecutors who refused to become part of the lottery for the “Shullazi” case. In its response, the Prosecution Office made available the requested orders and decisions.

d. However, despite the AHC request, the institution did not make available to us the meeting minutes and advisory opinions of the Prosecutorial Council (the consultative body in the older legislation), did not specify whether other decisions/orders had been issues aside from those specifically requested pursuant to transitory competences, and did not make available to us the requested information about the complaints through judicial route by prosecutors toward orders related to transfers and disciplinary proceedings during the transitory phase.

e. In the absence of complete information and documentation, our findings and conclusions about the monitoring of the transitory competences of the General Prosecutor are partial.

f. Based on documentation made available officially, it results that for 2018, the General Prosecutor issued 17 decisions/orders, precisely for the suspension from duty of two prosecutors, interrupting the acting status for three prosecutors, the temporary assignment of 8 prosecutors as heads of Judicial District Prosecution Offices (in several districts), including the Serious Crimes Prosecution Office, the temporary

assignment of three prosecutors from the Serious Crimes Prosecution Office to the judicial district prosecution offices, and the removal of the head of the Serious Crimes Prosecution Office from his post.

g. With the exception of two suspension decisions, the other decisions issued pursuant to transitory competences during 2018 (the sample of our research study) are not motivated or are partially motivated, as to what circumstances they were taken under. For instance, in the case of the temporary assignment of prosecutors as heads of prosecution offices, including changes in the leadership of the Serious Crimes Prosecution Office, the decision making lacks information of whether there was a preliminary evaluation of the performance of previous heads and the heads being temporarily assigned to these posts. The same finding is valid for the temporary transfer of three prosecutors from the First Instance Serious Crimes Prosecution Office to Judicial District Prosecution Offices outside Tirana.

h. Order no. 136, dated 09.05.2018 “On the removal from post” as head of the Serious Crimes Prosecution Office of prosecutor Mr. Hajdarmataj is disputable with regard to lawfulness, because the order refers as a legal basis to article 160/4 of law no. 96/2016, which does not envisage as a transitory competence the removal from post of the head of the serious crimes prosecution office, but only envisages the assignment of magistrates to temporary posts.

i. Based on information we were able to obtain, it results that four prosecutors addressed the Administrative Court (of first and/or second instance) to appeal the decision of the General Prosecutor.

j. Regarding the two suspended prosecutors, the Administrative Court of Appeals invalidated the order of the General Prosecutor, arguing that the cause of the suspension that has to do with the accusation on the prosecutors for committing a crime envisaged in article 257/a-2 of the Penal Code, does not represent a serious crime.

k. For the two prosecutors in the Serious Crimes Prosecution Office transferred to the Judicial District Prosecution Offices of Berat and Pogradec, the Administrative Court of First Instance in Tirana invalidated the order of the General Prosecutor, arguing that the

General Prosecution Office failed to prove the purpose why these orders were issued, not being in accordance with article 59 of law no. 96/2016. On the basis of this judicial decision, the HPC ordered to reinstate the prosecutors to their previous jobs in the Serious Crimes Prosecution Office.

l. The media has extensively published views and opinions regarding the transfers and appointments conducted temporarily by the GP. In some cases, it is worth highlighting that the media did not have adequate information regarding the legal provisions of such decision making and, as a result, these decisions are labeled erroneously.

4. MEETINGS OF THE HIGH JUDICIAL COUNCIL AND THE PROSECUTORIAL COUNCIL

a. With the selection of members from among magistrates for the HJC and HPC, both Councils began their activity very fast, only a few dates later, precisely on December 19 and 20, 2018.

b. From the first days of their creation, the Councils encountered a large workload and volume of work with regard to important issues of governance of the judiciary and prosecution systems. Despite the fact that legislation does not envisage obligations for setting priorities in the decision making of the Councils, it is our opinion that both Councils should have drafted a plan of measures accompanied by a detailed calendar that would specify their fulfillment in the short term (emergency issues) and mid-term. Based on communication with the HJC, we were informed that this Council, from the moment of its creation, worked on drafting the strategic 2-year plan and the relevant action plan, which, upon consultation, will be approved within June – July 2019. These plans will be of use for the strategic orientation of the HJC.

c. Both Councils had collaboration with the international assistance missions. The meetings were accompanied by pro-active discussions and participation of the members in the plenary meetings complied with law no. 115/2016.

d. From the moment of their creation, both Councils faced difficulties and deficiencies with regard to infrastructure, budget, and necessary personnel. HJC members exercise their functions in the building of the HCJ, while HPC members, in the absence of necessary infrastructure, have been accommodated in the premises of the General Prosecution Office. For the HJC, there is a problem with adequate space for members and for the realization of meetings of commissions, while for the HPC, there is a problem with public perception about the lack of objectiveness and impartiality of members that have to do with the General Prosecution Office.

e. Through Assembly decisions, the number of employees approved for the HJC is 125 persons or 30 fewer than the HJC proposal; for the HPC, the number is 65 or 10 persons fewer than the HPC proposal. The budget of both Councils is yet to be approved by the Council of Ministers and therefore has not been allocated.

f. The deficiencies and difficulties mentioned above may have influenced the creation of objective obstacles in fulfilling the responsibilities of the Councils. This situation may lead to a slowdown of the efficiency of both Councils, at this very important phase of their work, as they face the need to make important decisions on a number of issues, including emergency ones.

g. The transparency of both Councils vis-à-vis the media is not at satisfactory levels. The media has been allowed to only film the start of the meetings for the establishment of the two Councils but was not allowed to film in the ensuing meetings. This approach is disputable with regard to compliance with articles 22 and 23 of the Constitution. This decision of the HPC, made public in its Meeting of February 22, 2019, was based on the prevalence provided to the protection of personal data of persons on which there were discussions. Meanwhile, the HJC, although it did not respond specifically to the AHC request for information on the issue, referred that in spite of the lack of adequate premises for accommodating a large number of participants, the institution has welcomed all participants who have demonstrated an interest to follow its meetings.

h. Different practices were noticed also for the manner of documentation of meetings by both Councils. The HPC official website⁶) features audio recordings of plenary meetings and only one transcribed process-verbal of its first meeting. The HJC has not published any audio recording of its plenary meetings while with summaries of discussions have been published. The HJC stated that it encountered problems for the use of the current official website, inherited from the previous HCJ,⁷) and that it is in the process of creating a temporary online portal.

i. The permanent Commissions have been established and their members and replacements have been appointed in both Councils. The explanatory reports drafted by the permanent Commissions are not published on the official website of the institutions and are not made available to the observers during the monitoring process. Likewise, they are reported during plenary meetings very fast and in a summarized manner by the members. This has made many of the quality findings of the monitoring conducted by AHC to be reflected partially in this report.

j. The standard that the two Councils have pursued with regard to their decision making dictated by decisions of the Independent Qualification Commission for the dismissal of some heads of Courts and Prosecution Offices has not been even. The HJC did not continue to announce vacancies and delegated the exercise of the chair's competences to the deputy chair, given that IQC decisions have not assumed final form, while the HPC continued with the announcement of vacancies.

k. AHC considers that the establishment of SPAK and the Special Court should be a well-coordinated process between the two Councils, and the followed procedures, in spite of peculiarities in each Council, should proceed at the same pace. In this regard, there should be no lack of cooperation with vetting bodies in order to have a more dynamic pace of priority reassessment of candidates who have expressed their interest to be part of these structures.

6 <http://klp.al/>

7 However, on the website, the HJC says some important materials of the HJC are being posted on this website, such as decisions, meeting minutes, legislation and activities (which were posted with little or no omission).

l. AHC has noticed that the atmosphere of discussions in both Councils has reflected a proactive role and continued involvement in discussions by all members, both among magistrates and among non-magistrate members.

m. It is worth underscoring as a positive fact that debates of members during plenary meetings of the Councils were realized in a moderate manner and in respect of ethical rules. Criticism toward deficiencies or different interpretations of the new justice legislation displayed a spirit of constructiveness. This is a very positive development.

n. In general, the decision making of both Councils had the support of the overwhelming majority of all members. In some very sporadic cases, for certain issues, there were divided positions among magistrate and non-magistrate members. One instance of a clear division between magistrate members and non-magistrate members in the HPC is the decision for the return to the Serious Crimes Prosecution Office of prosecutors O. Çela and B. Hajdarmataj.

o. Decisions of the Constitutional Court, which invalidated some of the provisions of Law no. 115/2016 “On the governing bodies of the justice system” and some provisions of law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania” have created difficulties in the interpretation and implementation of this legislation in the decision making of both Councils.

p. In some cases, the Councils found the most favorable and legitimate response by referring to other provisions in force of the relevant law, the Constitution, or other laws of the reform in the justice system, applicable to the case in question.

q. It appears that 179 requests were submitted by heads of respective courts to the HJC for the transfer of 259 judges because of failure to form judicial panels. Due to the influx of requests and the current emergency situation created in the justice system, the members considered that the temporary delegation and transfer scheme are insufficient to respond to the current needs.

r. In some cases, the Councils did not respond to AHC's requests for information, on aspects related to our target of monitoring. Thus, on 12.03.2019, AHC asked to be informed whether on the basis of article 149/b, items 1 and 2, of the Constitution, the HPC made a decision on the claim about the existence or not of the cause for non-electability of one of the prosecutor members of this Council. **On this information, the AHC did not receive an official response from the HPC.**

s. It is a positive fact that some of the decision making of the Councils considered to avoid procedures and practices that resulted "problematic" from the HCJ activity.

5. ESTABLISHMENT AND FUNCTIONING OF THE JUDICIAL APPOINTMENTS COUNCIL (JAC)

a. The JAC, because of the important competences was the first institution that should have been created after the approval by the Assembly of the package of constitutional amendments and material laws of reform in the justice system.

b. The problems displayed in terms of delays for the establishment and full functioning of the JAC reflected, among others, the blocking of decision making in the Constitutional Court, which is facing a very high number of vacancies.

c. Lottery for the JAC was drawn 3 times, thus selecting JAC 2017, JAC 2018, and lastly JAC 2019. In all instances, the President of the Republic, although the Constitution has assigned this competence to his institution, has refused to draw the lottery and it was drawn by the Speaker of the Assembly. Based on the President's reasoning for JAC 2019, the reason for refusal has to do with the lists for the JAC, which should be prepared by the HPC and HJC.⁸⁾

d. With regard to the lists of names of candidates for members of JAC 2019, we found that some of the institutions, namely the

8 Since these institutions were not created at the time that coincides with the drawing of the lottery, there is a legal vacuum because transitory legal provisions should be applied only for the first JAC lottery, in 2017.

Constitutional Court and the General Prosecution Office, published the lists of candidates who met the criteria and the lists of candidates who did not meet those. Meanwhile, the High Court and the High Council of Justice were not transparent and provided no details on the lists that they had proposed. Furthermore, in most cases, no details were published on the procedures pursued for verifying these criteria.

e. The proposing institutions for candidates for the JAC interpreted and implemented very differently the legal criteria that candidates should meet, an aspect that led to inconsistency and uniformity in implementing legislation for the creation of JAC 2019. This aspect was underscored extensively by the People's Advocate, with special focus on the criterion of completion of the School of Magistrates.

f. AHC notices that the Constitution and Law no. 115/2016 have vacuums with regard to the termination of the mandate of a JAC member early, for instance, if non-electability in exercising the duties (for example, failure to meet criteria) or other circumstances, envisaged for the HJC and HPC.

g. The lottery for JAC 2019 was drawn on December 7, 2018, in the Assembly. The process was transparent and enabled full monitoring by observers of non-profit organizations (NPOs).

h. **Results of the lottery** produced the election of 8 members and 3 substitute members of JAC 2019. Due to the lack of candidates, it was not possible to fill the vacancy of one member and three substitute members. As a result, interpretation of relevant legislation led to the conclusion that the JAC may be created and function even with a lower number of members, if they complete the necessary quorum for decision making. Following the creation of JAC 2019, there are now only 7 members. Meanwhile, alternative member **Mr. Medi Bici** was also elected member of the HJC and his mandate as member of the High Court has been suspended. In AHC's opinion, this circumstance, though not envisaged expressly in the new legal framework, represents incompatibility with the functions of the JAC member.

i. With regard to the creation of the JAC, we find that there was a broad debate about the interpretation of transitory provisions of the Constitution and law no. 115/2016; on one hand, some of the institutions reached the conclusion that the effects of their application in time had expired; on the other, some institutions concluded that these transitory provisions should be adhered to until the creation of the HPC and HJC. As a result, JAC 2019 was created temporarily, per the transitory provisions.

j. With regard to JAC 2017 and JAC 2018, we found that the functioning of the JAC with some members, who had not been confirmed by the vetting bodies, would be considered as in contravention with provisions of the Constitution and law no. 115/2016. As a result, JAC 2017 never met. JAC 2018 held only one meeting, in March 2018. On the other hand, with the creation of JAC 2019, we are in front of an opposite assessment of legal provisions because, although part of the members and substitute members did not have a final decision on passing vetting, JAC began work with full legitimacy and even made its first decisions.

k. We also find that if JAC 2017 would have functioned on the basis of the same interpretation as JAC 2019, this would have enabled the filling of some vacancies in the Constitutional Court and the creation of the High Justice Inspector.

l. Although the vetting law envisages the vetting of JAC members with priority, in fact, the procedure pursued to date by vetting bodies did not prioritize these subjects. Meanwhile, JAC 2019 states that the constitutional and legal provisions on conditions to be met for being JAC members, naturally do not talk about the condition of passing vetting successfully. Nevertheless, AHC notes that this issue has a potential influence on the credibility of the decision making of this body (JAC).

m. JAC 2019 met for the first time on January 15, 2019. Access to and monitoring of the meeting by institutions and different observers was only allowed during the first meeting. All other meetings were held behind closed doors, an aspect envisaged expressly by law. Regulations do not envisage the access of observers from civil society

or the media to monitor JAC meetings, but only favors the participation of experts who may make contributions to these meetings due to their expertise. *JAC 2019, on the other hand, states that it has no discretion to decide on allowing third parties to participate in its meetings because it needs to abide by the imperative rule envisaged in article 233 and 242 of law 115/2016.*

n. The representative invited from the opposition to the first founding meeting of JAC 2019 used repeatedly statements with “political” tones, which made the meeting last longer and fall short of achieving concrete results.

o. The published summaries of meetings of JAC 2019 to date are very general while only one process-verbal is published in the JAC website on its first meeting; for the period that this report covers (until the end of March), 14 meetings have been held. JAC 2019 highlights that it encountered numerous objective difficulties and technical obstacles for fulfilling these obligations (publication of meeting minutes), e.g. insufficient support personnel, deficient technology, progressive increase of workload of the JAC and of support personnel due to unusual number of vacancies in process, etc.

p. AHC draws attention for more transparency on the Assembly website on the activity of the Independent Commission for the Coordination, Monitoring, and following implementation of law no. 115/2016 (ICMC), created in the Assembly of the RA. Namely, AHC finds that its website does not have complete or partial posts on important aspects of its work related to monitoring reports that the Commission drafts, correspondence with state institutions, etc.

q. ICMC conclusions in the report on the monitoring of the foundation of JAC 2019 are of a general nature, lack legal reasoning and, in some cases, lack clarity or concreteness. AHC notes that ICMC conclusions and recommendations to justice governing bodies (including JAC) should not lack the independent approach of constructive and professional critique, guided by the principle of objectiveness and impartiality.

6. SELECTION OF THE HIGH JUSTICE INSPECTOR (HJI)

a) The legal framework on justice reform envisages that an important body such as the High Justice Inspector (HJI) should have been created first within 6 months since the entry into force of constitutional amendments (article 179, item 9 of the Constitution), but the deadline was not respected, considering the fact that over 2 years have passed since the passage of justice reform.

b) The new legislation had set a preclusive deadline for the JAC, the institution that conducts evaluation procedures on the fulfillment of criteria and the ranking of candidates for HJI, which was February 1, 2017. This deadline was not respected also because of the fact that JAC 2017 never met while JAC 2018 only met once and suspended its further activity.

c) Delays in the establishment of the HJI have created problematic impasses for the exercise of legal competences that this institution has in terms of verifying violations of a disciplinary nature by judges and prosecutors and the start of disciplinary proceedings at the HJC and HPC. Therefore, AHC considers that establishment of the HJI should have preceded the establishment of the two Councils.

d) During 2017, 4 candidates expressed an interest in running for HJI, two of which were magistrates, but one of them withdrew. Magistrate candidates for HJI in 2017 were not treated with priority by the vetting bodies because the process of vetting at the first instance for the only two candidates began in November 2017 and concluded in March 2019, i.e. 15 months later. Meanwhile, it appears the IQC began and concluded the vetting of hundreds of other subjects until the start of 2019.

e) Responsible institutions did not demonstrate transparency on their official websites, particularly with regard to the expression of interest by candidates who applied in 2017 (namely, General Secretary and the High Court, whose website publishes information on the JAC).

f) AHC considers that from a formal standpoint, JAC 2019 should have taken a decision on the legal status of candidates for

HJI presented in 2017. Although it found itself in front of an extra-legal situation regarding the non-functioning of JACs 2017 and 2018, in our opinion, the status of candidates for HJI in 2017 could not have been equaled to the candidates who would express an interest to run for this post after the call published by JAC 2019. JAC 2019 could have addressed candidates for HJI presented in 2017 an official communication to present additional information if necessary. AHC considers that this list of three candidates of 2017 should have been added to the candidates presented recently after the publication of the call in March 2019.

g) In the beginning of March 2019, JAC 2019 opened a new call for candidates for HJI. In AHC's opinion, JAC 2019 should have been transparent in this call to inform the public on the legal motives and reasons for it. Meanwhile, by official letter, AHC was informed by JAC 2019 that the reason for publishing the call had to do with failure to achieve the necessary constitutional quorum in order to have at least 5 persons as candidates for the vacant post of the HJI.

h) The list of 13 candidates who expressed an interest in running for HJI was published on March 21, 2019, and it results that one of the candidates resigned and 3 of the candidates are from 2017 and expressed an interest to run again to apply.

i) On April 5, 2019, JAC drew the lottery for assigning a rapporteur among its ranks for the candidates who applied for HJI,⁹ not respecting the 5-day deadline set by the JAC for drawing this lottery since the expiry of the call for submitting candidacies. In this regard, JAC 2019 states that procedures for the verification and evaluation of candidates could not start and take place without first approving the package of relevant by-laws, as dictated by article 229 of law 115/2016. Despite the requirement imposed by this process, considering that the JAC began its activity on January 15, 2019, and given the urgency of filling the vacancies for HJI and member of the Constitutional Court, AHC is of the opinion that this period was reasonable for completing this package.

⁹ http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_02_04_2019_5743_1.php

j) Regarding the verification that the JAC should conduct for the 13 candidates for HJI, AHC is unable to share findings and data on this phase as the period covered by this report only extends until the end of March 2019, which reaches only 10 days of the 1-month deadline available to JAC 2019 for carrying out this verification.

CHAPTER I

MONITORING THE ESTABLISHMENT OF THE HIGH JUDICIAL COUNCIL AND THE HIGH PROSECUTORIAL COUNCIL

1. SELECTION AND APPOINTMENT OF NON-MAGISTRATE MEMBERS TO THE TWO COUNCILS

1.1 Non-magistrate members from advocates ranks

1.1.1 Lawfulness of procedures to select and appoint candidates from among advocates

a) Preparatory phase for the selection of members from among advocates

The first phase for the selection of these members is the publication of the call that alerts interested persons, who meet the criteria, regarding required documents and deadlines for expressing an interest to compete. Namely, articles 20 and 276, item 8, of law no. 115/2016, envisages the obligation of the General Secretary of the Assembly to announce vacancies and call for the expression of interest within 30 days from the entry into force of this law. **This legal provision was respected as the law went into effect on 16.12.2016 and the publication of the call for vacancies was done on 13.01.2017 (within 30 days).**

Item 1, article 20 and article 119 of law no. 115/2016 envisages that the announcement of vacancies and the call for the expression of interest by advocates who meet the required criteria is done on the official website of the Assembly, the National Chamber of Advocates, the People's Advocate, and at least one newspaper with the highest circulation. **This procedure was not respected fully because the call was only published on the official website of the Assembly¹⁰ and the official website of People's Advocate but not on the National Chamber of Advocates.¹¹** Regarding the publication in a newspaper with the highest circulation, the announcement in question was published in the newspaper "Koha Jonë."¹²

At the end of the 15-day period envisaged in item 1, article 21 of law no. 115/2016, the People's Advocate respected the law by

10 <http://www.parlament.al/News/Index/5704>

11 <http://www.avokatipopullit.gov.al/sq/content/13012017-njoftim-p%C3%ABr-shpalljen-e-vendeve-vakante-p%C3%ABr-an%C3%ABtar%C3%AB-t%C3%AB-klgj-s%C3%AB-dhe-klp-s%C3%AB>

12 <http://www.kohajone.com/2017/01/13/kuvendi-shpall-vakancen-per-10-anetare-te-klgj-dhe-klp/>

publishing the list of candidates who meet the formal conditions for members of the HJC and HPC from the ranks of advocates.

b) *Creation and functioning of the Ad Hoc Commission for the verification and preliminary evaluation of candidates*

The National Chamber of Advocates, according to what is envisaged in articles 25 and 125 of law no. 115/2016, conveyed¹³⁾ to the People's Advocate the list of candidates who meet the criteria for members of the Ad Hoc commissions. The People's Advocate, from among candidates suggested by the NCA, selected as a member of the Ad Hoc commission the lawyer Maksim Haxhia and advocate Eris Hysi and Advocate Arjan Salati as a substitute member. **The letter published by the People's Advocate, with names of candidates for members of the Ad Hoc commission from the NCA, reflects only the names of members selected by this structure, without providing information on whether item 2 of article 123 of law no. 115/2016 was respected, for the selection of the youngest member in age and the oldest member in age among candidates to serve as members of the Independent Ad Hoc Commission.** The article also stipulates that the People's Advocate should pick two substitute members, **although only one, namely Advocate Arjan Salati, was assigned.**¹⁴⁾

A letter of the Academy of Sciences to the People's Advocate was published on the website of the People's Advocate,¹⁵⁾ to communicate the members selected by the Assembly of the Academy of Sciences for the Ad Hoc Commission. The members elected as representatives

13 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/20.02.2017%20PRO-CESVERBAL%20n%C3%AB%20mbledhjen%20e%20par%C3%AB%20t%C3%AB%20Komisionit%20t%C3%AB%20pavarur%20Ad%20Hoc%20p%C3%ABr%20vler%C3%ABsimin%20paraprak%20nga%20rradh%C3%ABt%20e%20Avokatis%C3%AB%20p%C3%ABr%20an%C3%ABtar%C3%AB%20t%C3%AB%20KLGJ%20dhe%20KLP.pdf>

14 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/20.02.2017%20PRO-CESVERBAL%20n%C3%AB%20mbledhjen%20e%20par%C3%AB%20t%C3%AB%20Komisionit%20t%C3%AB%20pavarur%20Ad%20Hoc%20p%C3%ABr%20vler%C3%ABsimin%20paraprak%20nga%20rradh%C3%ABt%20e%20Avokatis%C3%AB%20p%C3%ABr%20an%C3%ABtar%C3%AB%20t%C3%AB%20KLGJ%20dhe%20KLP.pdf>

15 <http://www.avokatipopullit.gov.al/sites/default/files/KomInstitucioneTjera/20.02.2017%20Mbi%20trajtimin%20financiar%20t%C3%AB%20an%C3%ABtar%C3%ABve%20t%C3%AB%20komisionit%20Ad%20Hoc%20q%C3%AB%20do%20t%C3%AB%20verifikoj%C3%AB%20dhe%20vler%C3%ABsoji%20paraprakisht%20kandidat%C3%ABt%20nga%20rradh%C3%ABt%20e%20avokat%C3%ABve%20C%20p%C3%ABr%20an%C3%ABtar%C3%AB%20t%C3%AB%20KLGJ%20dhe%20KLP.pdf>

of the Academy of Sciences included Muzafer Korkuti as a regular member and Vasil Tole as an alternative member, **pursuant to articles 23 and 121 of Law 115/2016 “On the Governing Bodies of the Justice System.”**¹⁶⁾

Through letter no. Prot. 31, dated 07.02.2017, on “On the composition of the *Ad Hoc* Commission that will verify and conduct preliminary evaluation of candidates from among lawyers for the HJC and HPC,” the People’s Advocate addresses the Chair of the Committee on Legal Affairs, Public Administration, and Human Rights in the Assembly of Albania, regarding the absence of the deputy chair of this *Ad Hoc* Commission. Based on articles 23 and 121 of law no. 115/2016, the Chair of the Judicial Appointments Council should be at the same time a deputy chair of the *Ad Hoc* Commission for the preliminary verification of lawyer candidates. **When the elected chair of the Judicial Appointments Council has resigned from his post, the *Ad Hoc* Commission was faced with absences in membership, required expressly in law no. 115/2016, thus conditioning the normal conduct of meetings of the Independent *Ad Hoc* Commission.** Regarding this issue, the People’s Advocate, through this letter, asked the Assembly to draw the lottery for the election of the new JAC Chairperson, so that the Independent *Ad Hoc* Commission could also continue its work.¹⁷⁾ By letter no. Prot. 29, dated 16.02.2017, on “On the composition of the *Ad Hoc* Commission that will verify and conduct preliminary evaluation of candidates from among lawyers for the HJC and HPC,” the General Secretary of the Assembly was made aware of this vacancy and was asked for guidance on resolving this situation in order to not obstruct the work of the independent *ad hoc* commission.

Through letter no. Prot. 634/1, dated 17.02.2018, the General Secretary of the Assembly attaches to his official response an opinion of EURALIUS, which says that according to item 7, article 221, of law no. 115/2016, **the resigned chairwoman of the JAC may be replaced by the JAC deputy chairperson, elected by lottery by the same**

16 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/20.02.2017%20Caktohet%20an%C3%ABtari%20dhe%20an%C3%ABtari%20z%C3%ABvend%C3%ABsues%20i%20Akademis%C3%AB%20s%C3%AB%20Shkencave%20n%C3%AB%20Komisionin%20Ad%20Hoc%20p%C3%ABr%20vler%C3%ABsimin%20paraprak%20kandidat%C3%AB%20t%C3%AB%20an%C3%ABtar%C3%ABt%20t%C3%AB%20KLGJ%20dhe%20KLP.pdf>

17 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/16.02.2017%20Mbi%20P%C3%ABrb%C3%ABrjen%20e%20komisionit%20%20Ad%20Hoc%20%20nga%20radh%C3%ABt%20e%20avokat%C3%ABve%20p%C3%ABr%20KLGJ%20dhe%20KLP.pdf>

institution, thus leading to a completion of membership of the ad hoc commission.¹⁸⁾ The Chairman of the Committee on Legal Affairs, the Public Administration, and Human Rights maintained the same position, conveyed through letter no. Prot. 662/1, dated 24.02.2018.

c) *Lawfulness of the meetings of the Independent Ad Hoc Commission*

On 20.02.2017, in accordance with deadlines established in articles 26 and 124 of law 115/2016, the Independent Ad Hoc Commission realized its first meeting,¹⁹⁾ which was attended by the People's Advocate, the Chairman of the Academy of Sciences, the replacement Lawyer from among lawyers on this Commission, and the other member also from among lawyers. The JAC representative, also Deputy Chair of the Independent Ad Hoc Commission, was not present, which was highlighted by the chairperson and the other members. During the meeting, the People's Advocate explained that the presence of the JAC Chairperson is mandatory on the basis of the law and therefore, work could not continue at a time when the chairperson in office, Ms. Mirela Fana, has resigned. In spite of that, the People's Advocate chose that for the attending members, a general presentation be done on the work of the commission, procedures, and deadlines. The meeting was interrupted by the members in order to continue work on completing the commission according to the composition established in articles 23 and 121 of law no. 115/2016.

Considering the opinion of Euralius and the responses provided by the General Secretary of the Assembly and the parliament's Committee of Laws, the People's Advocate, by letter no. Prot. 33, dated 27.02.2017,²⁰⁾ invited Mr. Artan Zeneli, (JAC replacement

18 <http://www.avokatipopullit.gov.al/sites/default/files/KomInstitucioneTjera/Kthim%20p%C3%ABrgjigje%20p%C3%ABr%20shkresat%20nr.Prot%2031%2C%20dat%C3%AB%2017.02.2017%20dhe%20nr.Prot.36%2C%20dat%C3%AB%2020.02.2017.pdf>

19 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/20.02.2017%20PRO-CESVERBAL%20n%C3%AB%20mbledhjen%20e%20par%C3%AB%20t%C3%AB%20Komisionit%20t%C3%AB%20pavarur%20Ad%20Hoc%20p%C3%ABr%20vler%C3%ABsimin%20paraprak%20nga%20rradh%C3%ABt%20e%20Avokatis%C3%AB%20p%C3%ABr%20an%C3%ABtar%C3%AB%20t%C3%AB%20KLGP%20dhe%20KLP.pdf>

20 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/27.02.2017%20Njof-tim%20p%C3%ABr%20mbledhjen%20e%20Komisionit%20t%C3%AB%20Pavarur%20Ad%20Hoc%20p%C3%ABr%20KLGP%20dhe%20KLP%20drejtuar%20Gjykat%C3%ABs%20s%C3%AB%20Lart%C3%AB.pdf>

member from the High Court) to assume the post of the deputy chair of the independent ad hoc commission, and thus participate in the next meeting scheduled for March 02, 2017.

In accordance with articles 27 and 125 of law no. 115/2016, the People's Advocate announced on its official website the call for participation in the meeting of the commission on March 02, 2017. Likewise, it appears that the members of the Commission were notified by official letters.

By letter no. Prot. 814/1, dated 28.02.2017²¹), Mr. Artan Zeneli responded by saying that there were legal obstacles, also due to the conflict of interest and the physical inability to participate in the meeting of March 02, 2017, and to be a member of the independent ad hoc commission.

1. The legal obstacle cited by Mr. Artan Zeneli has to do with the fact that the absence or resignation by the JAC chairperson does not legitimate the replacement member to immediately assume the attributes of the JAC chairperson. In his opinion, it is precisely the JAC deputy chair who assumes the post of the JAC chairperson and not the replacement member. On the basis of articles 226-242 of the Law on "Governing bodies of the justice system," the replacement member replaces the chairperson when, temporarily, the chairperson may not exercise his/her functions, but not including the replacement in exercising leadership functions. With regard to article 30 of law no. 115/2016, Zeneli says that the law expressly notes that the JAC chairperson is replaced by the JAC deputy chair.

2. Regarding the cause of the conflict of interest, Mr. Zeneli informed through his letter that he had expressed an interest to be a candidate for the HJC and, in such circumstances, based on article 222 of law no. 115/2016, he may not be part of the independent Ad Hoc Commission, **because that would be in contravention with articles 27 and 126 of law no. 115/2016.**

3. With regard to his physical inability, Zeneli argued that he is outside Albania due to health reasons.

21 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/28.02.2017%20Kthim%20p%C3%ABrgjigje%20nr%2C44%20prot%20dat%C3%AB%2027.02.2017%2C%20me%20l%C3%ABnd%C3%AB%20Njoftim%20p%C3%ABr%20mbledhjen%20e%20Komisonit%20t%C3%AB%20Pavarur%20Ad%20Hoc%20p%C3%ABr%20KLGJ%20dhe%20KLP%20drejtuar%20Gjykat%C3%ABs%20s%C3%AB%20Lart%C3%AB.pdf>

On 01.03.2018, the People's Advocate²²⁾ addressed again the chairperson of the Committee on Legal Affairs, Public Administration, and Human Rights, and also the Speaker of the Assembly, through letter no. Prot. 53, in which the Advocate asks for the name of the JAC member who will hold the post of the deputy chair of the Ad Hoc Commission. By means of letter no. Prot. 662/3, dated 09.03.2017, the Speaker of the Assembly responded to the letter and said that it is the Ad Hoc Commission, as a collegial decision making body, which decides on the interpretation and implementation of the law with regard to deciding the name of the deputy chairperson of the Independent Ad Hoc Commission.

Also pursuant to articles 27 and 125 of law no. 115/2016, on 09.03.2017, the People's Advocate addressed an official letter again to representatives of the National Chamber of Advocates,²³⁾²⁴⁾ the representative of the Academy of Sciences,²⁵⁾ and the substitute member of the JAC chairperson,²⁶⁾ informing them about the following meeting to be held on March 13, 2017.

Only two of five members, namely the People's Advocate and the chair of the Academy of Sciences, attended the meeting of March 13, 2017. Despite official notices sent to the other members of the Independent Ad-Hoc Commission, they did not show up in the meeting. Under such circumstances, the meeting was postponed for 24.03.2017. On 21.03.2017, the call was repeated for the participation

22 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/01.03.2017%20Mbi%20p%C3%ABr%C3%ABrjen%20e%20komisionit%20t%C3%AB%20pavarur%20Ad%20Hoc%2C%20q%C3%AB%20do%20t%C3%AB%20verifikoj%C3%AB%20dhe%20vler%C3%ABsoj%C3%AB%20paraprakisht%20kandidat%C3%ABt%20nga%20radh%C3%ABt%20e%20avokat%C3%ABve%2Cp%C3%ABr%20an%C3%ABtar%C3%AB%20t%C3%AB%20KLGJ-s%C3%AB%20dhe%20KLP-s%C3%AB.pdf>

23 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/09.03.2017%20Njofitim%20Dhom%C3%ABs%20Komb%C3%ABtare%20t%C3%AB%20Avokatis%C3%AB%20Eris%20Hysi.pdf>

24 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/09.03.2017%20Njofitim%20Dhom%C3%ABs%20Komb%C3%ABtare%20t%C3%AB%20Avokatis%C3%AB%20Maksim%20Haxhia.pdf>

25 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/09.03.2017%20Njofitim%20Akademis%C3%AB%20s%C3%AB%20Shkencave.pdf>

26 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/09.03.2017%20Njofitim%20Gjykat%C3%ABs%20s%C3%AB%20Lart%C3%AB.pdf>

of members in the meeting of the Ad Hoc Commission,^{27), 28), 29), 30)}. In the meeting of the Independent Ad-Hoc Commission of 24.03.2017, we found that despite the notification, Mr. Artan Zeneli did not announce his participation and was not present. The members who were present, after announcing the presence of more than half of the membership of the Commission, and considering the legal basis in force about the validity of the work of this collegial body (articles 23 and 121 of law no. 115/2016), decided that the Independent Ad-Hoc Commission was constituted to carry on with its work, in the presence of four out of 5 members.

On March 28, 2017, the People's Advocate notified again the members of the Independent Ad-Hoc Commission about the next meeting, that of 31.03.2018, notifying its members through relevant official letters.^{31), 32), 33), 34), 35)} Unlike past notifications, this time, Mr. Vladimir Kristo, in his capacity as JAC deputy chair, was also notified.

The Independent Ad-Hoc Commission continued its work and notified and called members to participate. Often, these meetings, in accordance with articles 23 and 121 of law no. 115/2016 were postponed due to the absence of members and failure to complete the necessary quorum. **The cause for the continued postponement of meetings was the absence of the JAC representative, due to the legal impasse created as a result of the different legal representation on who would replace the resigned JAC chairperson.** In the absence of

27 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/21.03.2017%20Dhom%C3%ABs%20Komb%C3%ABtare%20t%C3%AB%20Avokatis.pdf>

28 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/21.03.2017%20Dhom%C3%ABs%20Komb%C3%ABtare%20t%C3%AB%20Avokatis%C3%AB.pdf>

29 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/21.03.2017%20Akademis%C3%AB%20s%C3%AB%20Shkencave.pdf>

30 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/21.03.2017%20Gjykat%C3%ABs%20s%C3%AB%20Lart%C3%AB.pdf>

31 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/28.03.2017%20Dhom%C3%ABs%20Komb%C3%ABtare%20t%C3%AB%20Avokatis.pdf>

32 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/27.03.2017%20Dhom%C3%ABs%20Komb%C3%ABtare%20t%C3%AB%20Avokatis%C3%AB.pdf>

33 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/28.03.2017%20Akademis%C3%AB%20s%C3%AB%20Shkencave.pdf>

34 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/28.03.2017%20Gjykat%C3%ABs%20s%C3%AB%20Lart%C3%AB.pdf>

35 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/28.03.2017%20Gjykat%C3%ABs%20Kushtetuese.pdf>

the People's Advocate, in accordance with the law (articles 30 and 128 of law no. 115/2016), Mr. Arben Shkëmbi, a commissioner at the People's Advocate took the place of the chair, so as not to obstruct work. The same practice was pursued also with the replacement of other members of the commission, for instance in the case of the representative of the National School of Advocates, and Mr. Arjan Salati, replaced him as an substitute member, representative of the National Chamber of Advocates.

Despite the mentioned impasse, the Independent Ad-Hoc Commission continued work and was constituted in the absence of this member, in those cases when the number of present members was sufficient to make up a majority required by law in order to continue work (articles 23 and 121 of law no. 115/2016).

The Independent Ad-Hoc Commission engaged with the review of files and the verification of the legal criteria of candidates from among advocates who expressed an interest to be non-magistrate members on both Councils. Verification was conducted on the basis of article 3, law no. 115/2016, relying on the evaluation of their legal, professional, and moral criteria, according to a form with points.³⁶⁾

On the basis of articles 31 and 129 of law no. 115/2016, the Independent Ad-Hoc Commission submitted the self-declaration forms to the General Prosecution Office for verification of integrity. The commission was informed by the General Prosecution Office that the applicant candidates were not affected by the provisions of the decrimipublic functions"). The Commission also exchanged correspondence with the Authority for the Opening of Former Secret Service Files, regarding candidates Ms. Fatmira Luli and Ms. Nurihan Seiti whether they were members, collaborators, or favored by the former secret service. The institution responded with some findings on these subjects, **but that information was not published on the official website of the People's Advocate**. Based on the findings of this institution, the People's Advocate opened the discussion and then the vote to decide on whether these candidates would be considered as meeting the legal criteria. Even during discussions, referring to the published meeting minutes, the contents of the letter of the Authority for the Files is not clear. At the end of the vote, it was decided by three votes in favor and one against that the two candidates meet

36 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/MIRATIMI%20I%20RREGULLAVE%20DHE%20PROCEDURAVE%20-KLGJ-KLP.pdf>

the conditions. On these candidates, the members agreed that there should be a differentiated points system at the moment of evaluation of legal ethical-professional criteria, with regard to the criterion for the moral qualities and integrity.

The members of the Commission, after becoming familiar with the files of the candidates who meet the legal criteria, according to preliminary verification conducted by the administration of the People's Advocate, in accordance with articles 19, 24, 35, 133 decided that:

The following candidates meet the legal criteria for members of the High Judicial Council:³⁷⁾ Alban Toro, Arben Prifti, Arben Vani, Fatos Lazimi, Genti Sinani, Gëzim Allaraj, Saimir Vishaj, Sinan Tafaj, Sokol Lamaj and Fatmira Luli.

The following candidates meet the legal criteria for members of the High Prosecutorial Council:³⁸⁾ Floreta Gjini, Gëzim Allaraj, Kozma Jano, Nurihan Seiti and Veronika Vangjeli.

After the evaluation of files by the members of the Independent Ad-Hoc Commission, it was found that the number of candidates from advocate ranks for members of the High Prosecutorial Council who meet the formal legal criteria is lower than the possible minimum envisaged in article 133, item 1, of law no. 115/2016 "On the governing bodies of the justice system." In these circumstances, it was decided to send an official letter to the General Secretary of the Assembly of Albania to reannounce the call for the submission of expression of interest by lawyers who meet the criteria envisaged in article 117 of law no. 115/2016. The Independent Ad-Hoc Commission deemed that the candidates who meet the legal criteria for HPC members would be considered valid, adding them to the new candidates to be selected after the re-announcement by the Assembly of call for the submission of expression of interest. The Commission, in accordance with articles 31 and 129 of law no. 115/2016, to announce the names of candidates who meet the legal criteria to be members of the HJC and HPC, according to legal provisions, and communicate to candidates individually the result of verification of declared data.

37 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/10.04.2017%20Kandidat%C3%ABt%20nga%20Avokatia%20p%C3%ABr%20KLGJ.pdf>

38 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/10.04.2017%20Kandidat%C3%ABt%20nga%20Avokatia%20p%C3%ABr%20KLP.pdf>

After this phase, the work of the commission pursuant to articles 34 and 132 of law no. 115/2016, was followed by the evaluation of candidates on the basis of professional and moral criteria, according to a points form.

d) **Complaints against decisions for the exclusion of candidates**

Among candidates who expressed an interest for the HJC and HPC, there were also those who opposed the decision of the Independent Ad-Hoc Commission about including them in the list of candidates who did not meet the legal criteria for candidates for the two Councils. Thus, Ms. Betula Toto, who expressed an interest for candidate for the HJC **submitted a request-lawsuit to the Administrative Court of Appeals in accordance with articles 32 and 130 of law no. 115/2016, on "Invalidation of the decision for exclusion from the list for the HJC and HPC."** Regarding this, the Independent Ad-Hoc Commission decided to assign two of the assistant-commissioners in the People's Advocate institution as authorized representatives in the judicial process started by Ms. Toto.

According to article 32, item 2, of law no. 115/2016, the Administrative Court of Appeals should decide within 7 days from the submission of the complaint. The decision of this Court is final. Based on verifications on the official website of the Administrative Court of Appeals, it appears that no decision has been issued on the complaint of the refused candidate. If that is the case, then this legal recourse tool is not effective for the candidate disqualified from the list.³⁹⁾ Another complaint submitted to the Independent Ad-Hoc Commission is that of Ms. Valentina Teodoresku, expressing her request to be informed about the reasons for ranking her on the list of candidates who did not meet the formal criteria.

e) **Conveying the list of candidates who meet the criteria to the General Secretary of the Assembly**

Pursuant to article 35 and 133 of law no. 115/2016, the Independent Ad Hoc Commission conveyed to the General Secretary of the Assembly the list of candidates who received the highest number of points. Attached was also the evaluation report and documentation for each candidate. The General Secretary of the Assembly, in accordance

39 http://www.gjykataadministrativeapelit.al/?dtregjnga=&dtregjderi=&page_id=396&nrakti=&padites=Betula+Toto&ipaditur=&paletetreta=&objekti=&submit=K%C3%ABrko

with articles 147 and 149 of the constitution, verified the file of each candidate and, when there were deficiencies in documentation, the Secretary notified candidates to complete documentation within the deadline set in article 35, item 3, of law no. 115/2016. Also, the General Secretary conducted the necessary verifications of facts that were self-declared before law enforcement institutions that collect, administer, and process such data, and then continued with the professional and moral evaluation of those candidates who met the legal conditions.

The General Secretary of the Assembly, in presenting the final report, also reflected the evaluation provided by the IMO on the list of candidates, for the qualified and disqualified candidates in accordance with articles 286 and 287 of the law. The constitution, in articles 147 and 149 and law 115/2016, article 35, give the General Secretary of the Assembly, as a constitutional body, the discretion of conducting an evaluation, not conditioned by the evaluations of the IMO or the Ad Hoc commissions. In accordance with article 35, item 7, of law no. 115/2016, the General Secretary, in his evaluation, also relied on the process conducted and report approved by the Independent Ad-Hoc Commission.

Further on, based on item 9 of article 35, the General Secretary of the Assembly sends to the Standing Committee on legal affairs of the parliament the lists and the evaluation report.

f) *Parliamentary procedures for the selection and appointment of members from among advocates*

The list of qualified candidates from among advocates for both Councils was submitted to the responsible commission for legal affairs by the General Secretary of the Assembly. The list included 10 candidates running for members of the HJC and 7 candidates running for members of the HPC.⁴⁰⁾ This number corresponds to the minimal and maximal numbers envisaged in article 35, item 1, of law no. 115/2016, which should not be more than 10 candidates and in any event no less than triple the number of vacancies (i.e. 6 candidates if we refer to three times the number of both vacancies from among advocates).

Pursuant to item 11, article 35, law no. 115/2016, the parliament's committee of laws creates a sub-committee of 5 members, of which 3 are assigned by the majority and 2 by the parliamentary opposition.

40 <https://www.parlament.al/News/Index/5255>

The meeting of the Committee of Laws was conducted on January 17, 2018, and was open to the public. AHC observers monitored the meeting.⁴¹⁾ The agenda included the review and approval of the draft decision "On the creation of the sub-committee for the selection of candidates for members of the High Judicial Council and the High Prosecutorial Council." Discussions in the meeting of this Committee were accompanied by a series of debates regarding the participation of representatives of opposition parties, arguing that all obstacles that were created aimed at the continued control of the HJC and HPC by the parliamentary majority. **Also, there were debates and lack of consensus on the number of candidates, which according to the opposition party, did not meet the quorum required by the constitution. According to representatives of the parliamentary majority in the commission, the constitutional provisions envisage that the number of non-magistrate candidates in the HJC and HPC may not be less than 6 members, while 10 candidates were presented.** After the conclusion of the discussion, the vote was opened for the creation of the *ad hoc* Sub-committee. Based on the monitoring of the procedure, it appears all members voted in favor unanimously.

On January 22, 2018, the parliamentary sub-committee for the selection of non-magistrate members in both Councils, continued according to the agenda with the review of the list of non-magistrate members arrived from the General Secretary of the Assembly. The sub-committee nominally reviewed the list of qualified candidates. After the review and the lottery by the sub-committee for each candidate, none of the candidates was able to secure the four votes necessary from the sub-committee members. Referring to article 35, item 14, of law no. 115/2016, the selection of candidates was done through the procedure of manual lottery. The candidates selected from among lawyers by manual lottery for the HJC were Mr. Arben Vani and Mr. Sokol Lamaj. The candidates selected from among lawyers by lottery for the HPC were Mr. Kozma Jano and Ms. Floreta Gjini.

In the plenary session of 26.01.2017, the Assembly was not able to approve by a 2/3 qualified majority the list en bloc of the selected candidates for the HJC and HPC.

According to article 35, item 16, of law no. 115/2016, if the required majority is not reached in the plenary session, the sub-committee

41 AHC monitoring report on the establishment of the *ad hoc* sub-committee for the preliminary verification and evaluation of candidates for HJC and HPC.

approves a new list within 2 days from the vote in the plenary session. If the Assembly does not reach a two-third majority even in the second vote, the sub-committee approves a new list, within 2 days from the latest vote in the plenary session. The new list is submitted to the Speaker of the Assembly and is put up for a vote no later than 7 days from the submission of the list. The assembly approves the list by two thirds of all its members. If the Assembly cannot reach the two-third majority even in the third vote, the candidates of this list are considered elected.

After the failure of the first plenary session to approve en bloc the list of candidates submitted by the parliamentary sub-committee, the latter met again according to provisions of law no. 115/2016. After the review and lottery of the sub-committee on each candidate from among advocates (not excluding those selected in the first phase), none of the candidates managed to get the four required votes from members of the sub-commission. With the resignation of one candidate for member of HJC from among advocates, the list of qualified candidates was reduced from 10 to 9 candidates,⁴²⁾ while the list was the same for the HPC, with 7 members. Again, in the second meeting of the parliamentary sub-committee, in the absence of necessary dialogue to reach the required majority, the selection of candidates was done through the procedure of manual lottery. After the manual lottery, the selected names are Mr. Fatos Lazimi and Ms. Fatmira Luli for the HJC and Mr. Gëzim Allaraj and Ms. Floreta Gjini for the HPC. This list was rejected en bloc for a second time because it failed to reach the quorum required in the plenary session of the Assembly (decisions no. 11/2018 and 12/2018, dated 01.02.2018).

In the third phase of parliamentary procedures, the parliamentary sub-committee met again on 05.02.2018, and in the absence of the required majority to vote for candidates from both lists, a manual lottery was conducted. The names selected after the manual lottery are Ms. Fatmira Luli and Mr. Alban Toro for the HPC and Ms. Nurihan Seiti Meta and Mr. Tartar Bazaj for the HPC. The Assembly of Albania, by decision 18/2018 and 19/2018, of 08.02.2018 decided to declare as elected the candidates of the third list, en bloc, for members of the High Judicial Council, after it was not possible to reach the required quorum of two thirds of all members of the Assembly. Pursuant

42 <http://www.javanews.al/doreheqja-nga-kandidimi-zbardhet-letra-e-vishajt-sdoja-te-zgjidhesha-gogla/>

to item 17, article 35, of law no. 115/2016, decision 18/2018⁴³⁾ and decision 19/2018⁴⁴⁾ of the Assembly for the publication of the list of candidates for the HJC and HPC were published in the next issue of the Official Gazette.

1.1.2 Criteria and profile of candidates from among advocates running for both Councils

Articles 19, 34 and 132 of law 115/2016 establish the criteria that candidates from among advocates should meet in order to be part of the two Councils.⁴⁵⁾ Regarding the fulfillment of these criteria, there is very little information on the website of the People's Advocate or other related official websites on the experience and platforms of these candidates, thus affecting transparency to the public. Also, the evaluation of the International Monitoring Operation on these candidates has not been made public.

With regard to candidates who were not qualified, for failing to meet the legal conditions in articles 19 and 117 of law no. 116/2016, it appears that their overwhelming majority did not meet the criterion of job seniority. A minority of non-qualified candidates appear to have resigned, were members, collaborators, or favored by the former Secret Service, or had deficiencies in documentation necessary for proving the fulfillment of relevant legal criteria.

During discussions in the parliamentary sub-committee on candidates, representatives of the opposition declared that the IMO's evaluation on the professional level of candidates had not been taken into consideration.

It also appears that the parliamentary minority in the ad hoc sub-committee on the evaluation and selection of candidates published an alternative report, on 18.01.2018 about the violations encountered in the process for the selection of non-magistrate members for the High Judicial Council and the High Prosecutorial Council. Among the violations reported by the parliamentary minority on some of the

43 <http://qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%2019/VEN-DIM%20KUVENDI%20nr.%2018-2018,%20date%208.2.2018.pdf> (Decision 18/2018 of the Assembly on the approval of the list of candidates for HJC)

44 <http://qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%2019/VEN-DIM%20KUVENDI%20nr.%2018-2018,%20date%208.2.2018.pdf> (Decision 19/2018 of the Assembly on the approval of the list of candidates for HPC)

45 http://www.gjykataelarte.gov.al/web/ligj_nr_115_2016_per_organet_e_qeverisjes_se_sistemit_te_drejtises_1726.pdf

candidates running from among advocates, who did not meet one or more of the legal criteria and therefore should have been disqualified from the race for both Councils, were the following:

a) Failure to regularly pay tax dues by some of the candidates, according to law, represents grounds for disqualification, but in fact, such failure was not considered a disqualifying condition but a shortcoming in the criteria (i.e., an evaluation criterion). Candidates were qualified and for this shortcoming, their points were reduced in the evaluation!

b) Candidate Mr. Kozma Jano does not meet the condition envisaged in articles 19/3/f and 117/3/f of law no. 115/2016, because the review of documentation reveals that in the 2011 local elections, he was at the top of the list of candidates for municipal councilors of the political subject Communist Party of Albania (CPA). Also, the candidate appears to have had criminal charges brought against him.

c) Candidate Mr. Petrit Gaci was an investigator in the period 1988-1991 and was removed by disciplinary measure “dismissal from the investigator’s job” (1991), and the interpretation that “the law envisages the removal by disciplinary measure as disqualifying only for judges, prosecutors, and judicial police officers” rather than former investigators, is completely wrong! The former investigator, according to procedural legislation has the same or similar role and responsibility as today’s judicial police officer.

d) Candidates Ms. Nurihan Meta Seiti and Ms. Fatmira Luli, were participants, before the ‘90s, in political trials, respectively as a prosecutor and a judge. The law requires that those favored by the former secret service before 1990 are disqualified.

e) Based on the review of documentation, it appears that Mr. Alban Toro lacks the Work Record Book, in order to prove that he has exercised the lawyer’s profession in the past 10 years without interruption. Meanwhile, Mr. Genti Sinani does not possess documentation to prove the time he was licensed as a lawyer. Also, Mr. Arben Prifti does not appear to have exercised the lawyer’s advocate for at least the 10 past years without interruption.

Furthermore, referring to published data, the General Secretary of the Assembly evaluated the professional and moral criteria only for candidates who meet the conditions envisaged by the Constitution

and this law in order to be members of the High Judicial Council and the High Prosecutorial Council. Referring to article 35, item 6 of law no. 115/2016, the evaluation of the moral and professional criteria of candidates by the General Secretary of the Assembly is done according to the same rules and specifics envisaged in article 34 of this law (i.e., the same as the evaluation conducted by the Independent Ad Hoc Commission). The evaluation of the General Secretary followed the same line as that of the Independent Ad Hoc Commission. Only when candidates did not pay their tax dues for the exercise of the lawyer's profession, they were deducted 3 points given by the Independent Ad Hoc Commission. The overwhelming majority of disqualified candidates were penalized because they did not meet the seniority criterion or could not prove the fulfillment of this criterion through documents.

AHC deems that law no. 115/2016 envisages mechanisms of control and evaluation that are not essential and repetitive, such as the one at different phases of the process, but more or less in the same manner by the Independent Ad Hoc Commission and the General Secretary of the Assembly.

1.1.3 Transparency and visibility of the process of selection and election of members of the Councils from among ranks of advocates

Overall, there was transparency in the process for the creation and constitution of the Independent Ad Hoc Commission and the selection of advocate candidates for the HJC and HPC.

The institution of the People's Advocate, by updating its official website, continuously informed the public regarding the progress of this process. However, there were also cases when the official website of this institution did not feature the published meeting minutes.⁴⁶⁾ With regard to the conduct of meetings of the Independent Ad Hoc Commission, the public was not allowed to be present in the meetings. Article 27, item 2, of law no. 115/2016 envisages that the meetings of this Commission are closed. However, it is our opinion that for the sake of guaranteeing transparency of the process, it would be positive if the website of the People's Advocate would include the published minutes of the meetings of this commission.

⁴⁶ Concretely, minutes no. 64, dated 13.03.2017, minutes no. 78, dated 24.03.2017, minutes no. 78/1, dated 31.03.2017, minutes no. 109/13, dated 18.04.2017, minutes no. 109/14, dated 18.04.2017, minutes no.114/17, dated 27.04.2017

Meanwhile, with regard to transparency on the official website of the Assembly on the process, AHC does not share the same positive opinion. The same finding is valid also about the lack of transparency in the official website of the National Chamber of Advocates and the Academy of Sciences, whose official websites only include the list of members of their institutions in the Independent Ad Hoc Commission.

Based on the verification of published documentation, we have encountered obstacles in terms of lack of transparency for the publication of the following documents:

- a. Official response by the Authority for Information on Files of the former Secret Service (letter no. 153, dated 24.03.2017).
- b. Official letter to the Authority for Information on Files of the former Secret Service, with regard to clarifications for the participation of candidates in political trials, and the definition of the phrase "secret service fund," whether it would represent a legal cause for their listing as candidates from advocates who do not meet the legal criteria (letter no. 63/2, dated 4.04.2017)
- c. Two letters of the General Prosecution Office, namely letter no. 786/20 dated 04.04.2017 and letter no. 786/22 dated 07.04.2017.

As highlighted above, there are shortcomings in guaranteeing transparency in terms of scarce information regarding the profiles of candidates for the HJC and HPC from among lawyers, failure to publish IMO opinions on these candidates, failure to publish the platforms of these candidates, which did not enable the public to become familiar and be informed objectively on these bits of official information.

1.2 Non-magistrate members from among the lecturers of the law school and the School of Magistrates

1.2.1 Lawfulness of procedure for the selection and appointment of candidates from among the lecturers of the law school and the School of Magistrates

Pursuant to Law no. 115/2016, the Assembly of the Republic of Albania announced vacant posts for 2 members of the HJC and 2 members of the HPC from among university lecturers. The public call respected requirements of law no. 115/2016, being published on

the official website of the schools of law, the School of Magistrates and Higher Education Institutions (HEI).⁴⁷⁾ Given that the call was announced in accordance with articles 37 and 135 of this law, it was not necessary to implement article 38 and 136 of this law, which recognizes the legal obligation of the Minister of Justice to announce the call.

a) Procedure pursued by the School of Magistrates and law schools

In accordance with articles 36, item 3 and 4, as well as 134, items 3 and 4 of law no. 115/2016, each of the HEI that consists accredited schools of law, selects no more than 3 candidates from among full-time academic personnel. Meanwhile, the School of Magistrates selects no more than one candidate from among full-time lecturers and part-time lecturers, on the condition that they are not working magistrates, lawyers, or full-time employees of NGOs.

➤ Procedure pursued by the School of Magistrates

On 16.01.2017, in accordance with articles 37 and 135 of law no. 115/2016, the Director of the School of Magistrates announced the call for expression of interest by lecturers of this school for members of the HJC⁴⁸⁾ and HPC.⁴⁹⁾ Due to the lack of a minimal number of candidates, namely 6 candidates for lecturers, the General Secretary of the Assembly reannounced the call three times, respectively for each of the councils. In accordance with article 40 of the Law, in respect of the 7-day deadline for closing the submission of expression of interest,⁵⁰⁾ the Pedagogical Council at the School of Magistrates held a meeting for the verification of documentation submitted by lecturers of the School of Magistrates who expressed an interest to run for the posts.⁵¹⁾ Based on coverage of this process in the media, it appears that

47 List of public, non-public, and public independent HEIs at:

https://www.ascal.al/sq/?option=com_k2&view=item&layout=item&id=6&Itemid=677

48 <http://www.magjistratura.edu.al/976-thirrje-per-paraqitjen-e-interesit-per-anetarete-klgj-16-janar-2017.html>

49 <http://www.magjistratura.edu.al/975-thirrje-per-paraqitjen-e-interesit-per-anetarete-klp-16-janar-2017.html>

50 Deadline for expression of interest expired on 31.01.2017.

51 <http://www.magjistratura.edu.al/1011-thirrje-per-mbledhjen-e-keshillit-pedagogjik-ne-date-20-shkurt-2017-16-shkurt-2017.html>

there were no complaints against decisions for exclusion, due to any serious procedural violations.

Pursuant to articles 42 and 140 of law no. 115/2016, on 20.02.2017 the Pedagogical Council at the School of Magistrates met to realize the process of voting for candidates for HJC and HPC, with 14 members of the Council with a right to vote participating.⁵²⁾ Based on the announcement published in the official website of the School of Magistrates, it appears that voting procedures were conducted based on article 44 of law no. 115/2016. While the creation of the voting commission elected by lottery from among members of the Council was published,⁵³⁾ the composition of the commission was not. **The results of the voting announced by the voting commission produced the following winners:**⁵⁴⁾

- Ilir Panda for the High Judicial Council
- Alma Faskaj (Vokopola) for the High Prosecutorial Council

Candidate for HPC Ms. Alma Faskaj (Vokopola) was elected part of the vetting bodies, as a commissioner in the Independent Qualification Commission. Therefore, the call was reopened for a third time by the School of Magistrates.⁵⁵⁾ On 27.07.2017, it appears that the Pedagogical Council of the School of Magistrates met to vote on the selection of candidate Mr. Gent Ibrahimimi for member of the HPC. The official website of the School of Magistrates features the published decision of the Voting Commission "On the selection of Mr. Gent Ibrahimimi as candidate for member of the High Prosecutorial Council."⁵⁶⁾

Article 45, item 7 of law no. 115/2016, envisages only the public notification of the decisions at the conclusion of the Meeting of the Pedagogical Council of the School of Magistrates, while a literal reading of this provision does not stipulate the obligation to publish the minutes of the meeting. However, it is our opinion that the minutes drafted by members of the voting commission is a very important act that serves the transparency of this procedure; only

52 <http://www.magjistratura.edu.al/index.php?id=1014>

53 <http://www.magjistratura.edu.al/1011-thirrje-per-mbledhjen-e-keshillit-pedagogjik-ne-date-20-shkurt-2017-16-shkurt-2017.html>

54 <http://www.magjistratura.edu.al/index.php?id=1015>

55 New notification for opening the third call by teh General Secretary of the Assembly:
<https://www.parlament.al/News/Index/5532>

56 <http://www.magjistratura.edu.al/index.php?id=1103>

through the minutes, may we determine the number of participants, principled and procedural discussions, number of votes cast and invalid votes, as well as the number of votes for each candidate.

Also, it is not possible to determine whether, in accordance with article 46 of law no. 115/2016, there were appeals against the decisions of the Assembly of the Academic Personnel or Pedagogical Council. No such fact appears to have been reported in the media either.

➤ **Procedure pursued by higher education institutions (schools of law)**

Referring to data from the Agency for the Assurance of Quality in Higher Education, there are 37 accredited higher education institutions in the country.

The lack of candidates or their insufficient number for members of the HJC and HPC from higher education institutions also led to delays in the process of filling relevant vacancies in both Councils. Thus, on 13.03.2017, it was decided to suspend procedures for convening the Special Meeting of heads of higher education institutions for the final selection of candidates.⁵⁷⁾ As a result, a request was conveyed for reannouncing for a third time the call for members of academic personnel to submit expression of interest.⁵⁸⁾ The list of candidates selected by the HEIs may not be accessed on the relevant sections of their official websites. Candidates for HCJ at the “Aleksandër Moisiu” University in Durrës may not be accessed in the online version.⁵⁹⁾ Also, it is not possible to access data for 2017 in the section of events and notifications on the website of this university. The same problem appears with accessing data from other universities, including public ones, such as the “Luigj Gurakuqi” University in Shkodra.⁶⁰⁾

The lack of interest from public universities has been also reported in the media. The General Secretary of the Assembly has asked for contributions from 5 private universities.⁶¹⁾ Universities display lack of transparency to reflect the voting process, meeting minutes,

57 Based on letter no. 1760 Prot., dated 27.06.2017, addressed by the General Secretary of the Assembly to 7 (seven) Higher Education Institutions (HEIs).

58 <http://www.droni.al/wp-content/uploads/2017/07/Rishpallje-per-here-te-trete.pdf>

59 <https://www.uamd.edu.al/new/?p=8018>

60 <http://www.unishk.edu.al/multimedia/fotogaleri/>

61 <https://sot.com.al/politike/bojkoti-i-klgj-dhe-klp-nga-akademik%C3%ABt-kuveni-di-k%C3%ABrkon-p%C3%ABrfaq%C3%ABSues-nga-universitetet-private>

while selected candidates appear only on the report published by the Assembly of the RA. **Based on this data, it is not possible for the public to conclude whether the process carried out by the HEIs was conducted on the basis of merit, in respect of principles of fair competition.** The parliamentary opposition contested this process. A parallel report of the parliamentary opposition published in the media notes that the voting process conducted by the higher education bodies eliminated competition for good, leading to the pre-determination of HJC and HPC members.⁶²⁾ It presented as contestable the qualification procedure pursued by the Rector and Dean's office of the School of Law at the University of New York Tirana and the European University of Tirana.⁶³⁾

The hesitation among lecturers from higher education institutions to run for the posts has been pointed out also by the dean of the "Luigj Gurakuqi" school in Shkodra. In his opinion, the legal criterion of having at least 15 years of experience has created a lot of controversy, given that schools of law in the country are new ones.⁶⁴⁾

The special meeting realized by the Dean's office of the School of Law of the University of Tirana, on February 9, 2017, was covered extensively in the media. it appears that 64 lecturers of the Assembly of the academic personnel of the School of Law voted on their colleagues to support them.⁶⁵⁾ The three candidates that were made official for the posts of the HJC member are: Mr. Erjon Muharremaj (with 17 votes), Ms. Mirela Bogdani (ranking first with 28 votes), and Mr. Maksim Qoku (with 13 votes).⁶⁶⁾ The three candidates made official for the posts of the HPC member are Ms. Mirela Bogdani (23 votes, ranking first), Ms. Orion Muçollari (22 votes – ranking second) and Ms. Eneida Sema (16 votes – ranking third). *The official website of the School of Law does not have posts on the voting process, number of invalid votes or relevant meeting minutes. Based on media reports, it appears that the candidates met the criteria required by law, such as: more than 5 years of experience in the profession as pedagogue, according to law; did not have any disciplinary measures on them; submitted self-declarations and a report*

62 <http://www.rd.al/2018/01/baterdia-e-rames-per-kapjen-e-drejtjesise/>

63 *Ibid.*

64 <http://tv1-channel.tv/2017/07/04/hezitimi-per-aplikimet-ne-klgj-dhe-klp/>

65 <https://www.youtube.com/watch?v=VXhYBb3PGgk>

66 <http://www.oranews.tv/article/fakulteti-i-drejtjesise-zyrtarizon-kandidaturat-per-klgj-e-klp>

on each was filled out on each on whether he/she met the legal criteria.⁶⁷⁾ The evaluation report, an obligation envisaged in item 6, article 40, law no. 115/2016 is not accessible electronically and therefore it was not possible to conclude whether the conditions were met by each candidate.

➤ **The procedure conducted by the Special Meeting of higher education institutions and the School of Magistrates**

On 20.09.2017, it appears that the Assembly of the Republic of Albania held the Special Meeting of the higher education institutions and the School of Magistrates, referring to article 48 of law no. 115/2016.⁶⁸⁾ The meeting was held after the publication of the call on 05.09.2017.⁶⁹⁾ In decision no. 9 of the General Secretary of the Assembly, the election of candidates for HJC and HPC members is the only point on the meeting agenda.⁷⁰⁾ The media reported the full list of lecturer candidates for the HJC and HPC.⁷¹⁾

1. Mr. Sandër Beci (University Luigj Gurakuqi, candidate for HPC)
2. Ms. Oriona Mucollari (University of Tirana, candidate for HPC)
3. Mr. Ilir Panda (School of Magistrates, candidate for HJC)
4. Mr. Maks Qoku (University of Tirana, candidate for HJC)
5. Ms. Mirela Bogdani (University of Tirana, candidate for HJC and HPC)
6. Ms. Eneida Sema (University of Tirana, candidate for HPC)
7. Ms. Eriona Canaj (Tirana European University, candidate for HJC and HPC)
8. Mr. Dariel Sina (New York University Tirana, candidate for HJC and HPC)
9. Mr. Gent Ibrahimimi (School of Magistrates, candidate for HPC)
10. Mr. Erion Muharremaj (University of Tirana, candidate for HJC)
11. Ms. Brunela Kullolli (University Aleksandër Moisiu, candidate for HJC)

Participating in the meeting were the heads of higher education public and non-public institutions and the School of Magistrates,

67 <https://www.youtube.com/watch?v=VXhYBb3PGgk>

68 <https://www.parlament.al/News/Index/5490>

69 <https://www.parlament.al/News/Index/5514>

70 <https://www.parlament.al/News/Index/5514>

71 <http://www.scan-tv.com/zgjidhen-sot-ancetaret-e-klgj-dhe-klp-lista-e-plote-e-kandidateve/>

representatives of the Ministry of Justice, MPs of the Parliament's Committee of Laws and representatives of international organizations, in their capacity as observers. The meeting was run by the Director of the School of Magistrates and was monitored by AHC representatives. **The monitoring showed that the number of candidates proposed by the HEIs who presented their platforms to the Special Meeting was much lower than the number envisaged by articles 36 and 134 of this law.**⁷²⁾ It is worth mentioning that the platforms of the candidates were not reflected in the media, which did not make it possible for the public to evaluate the candidates. The accuracy and lawfulness of the meeting minutes, drafted by the voting commission, in accordance with article 51, item 4 of law no. 115/2016, was not possible to state as long as the minutes (process-verbal) is not published on the official websites of the relevant institutions.

The Special Meeting carried out a joint procedure for both categories of candidates for member of the HJC and HPC, in accordance with article 48, item 6 of law no. 115/2016. We think that the conduct of such a procedure is legal, as long as vacancies in both Councils were created at the same time. From a methodology standpoint, members of the Commission proactively directed questions to the candidates. The nature of the questions had mainly to do with the evaluation of the moral integrity of the candidates. The questions were based mainly on the candidates' memory and logic and in some cases circumvented their juridical nature. The questions addressed in the anglo-saxon format, through memory version by means of individual names of persons, in our opinion, was not the right version for pointing to the moral and professional integrity of candidates. **During this phase, there were also specific questions that were very logical, which highlighted the lack of knowledge of domestic procedural legislation among candidates.**⁷³⁾ **The questions also were not differentiated by the field and nature of the Council for which the candidates were running.**

By decision no. 1, on 20.09.2017, the Special Meeting approved the regulations for the evaluation of professional and ethical criteria. The sample form approved as a methodological tool for objective evaluation was focused on four basic criteria, such as: *criterion of professional merits*

72 <http://www.ahc.org.al/pjesemarrje-e-ulet-ne-garen-per-organet-e-qeverisjes-se-sistemit-te-drejtise/>

73 <https://www.youtube.com/watch?v=HxS21-msPaE>

(30 points); criterion of moral merits (20 points); criterion of organizational, leadership, managerial merits (30 points), and the criterion of other merits (20 points).

At the end of the process, the 24 members of the Special Meeting, in accordance with article 53 of law no. 115/2016, evaluated, voted on, and then published the following:

a) list of candidates selected for the HJC, as follows:⁷⁴⁾

1. Ilir Panda (School of Magistrates)	84.95 points
2. Mirela Bogdani (University of Tirana)	82.7 points
3. Erjon Muharremaj (University of Tirana)	79 points
4. Erjona Canaj (European University of Tirana)	75.3 points
5. Maksim Qoku (University of Tirana)	73.34 points
6. Brunela Kullolli (University “Aleksandër Moisiu”)	66.87 points
7. Dariel Sina (New York University Tirana)	65 points

b) list of candidates selected for the HPC, as follows:⁷⁵⁾

1. Gent Ibrahim (School of Magistrates)	90.47 points
2. Mirela Bogdani (University of Tirana)	86.95 points
3. Sandër Beci (“Luigj Gurakuqi” University)	82 points
4. Dariel Sina (University of New York, Tirana)	71.7 points
5. Erjona Canaj (European University of Tirana)	68.2 points
6. Eneida Sema (University of Tirana)	66.95 points
7. Oriona Mucollari (University of Tirana)	6.2 points

The evaluation report of the Special Meeting, regarding the degree of the fulfillment of ethical and professional criteria by the above candidates is not accessible on any official website. Very summarized data of this report has been published in the evaluation report drafted by the General Secretary of the Assembly.

In order to ensure the inclusion of candidates from public and non-public HEIs, the lawmaker envisages in article 51, item 5, of law no. 115/2016, the selection procedure that says among others: *“The 7 candidates from public HEIs or the School of Magistrates and the 3 candidates from non-public HEIs, who received the highest number of votes,*

⁷⁴ <https://www.parlament.al/News/Index/5490>

⁷⁵ <https://www.parlament.al/News/Index/5490>

shall be considered selected. ...If there are not sufficient candidates from non-public HEIs to fill the quotas envisaged in this point, the vacancies shall be completed by public HEI candidates." According to this provision, 10 candidates are required from the HEIs and the School of Magistrates for one vacant spot. In the case of candidates selected as HJC members and HPC members, it appears that in accordance with article 36, item 3, of law no. 115/2016, each of the higher education institutions selects no more than 3 candidates from among full-time academic personnel. **Based on the conducted selection, AHC finds that the candidates from non-public HEIs were not 3 and the quotas were filled with public HEI candidates.**

The minimal number of candidates envisaged in article 51, item 5, does not match that envisaged in article **53, item 1 of law no. 115/2016, which envisages that "...are conveyed to the General Secretary of the Assembly in a list with the names of candidates who have received the highest points, but not more than 10 candidates and in any case no less than triple the number of vacant positions..."**. According to this provision, for two vacant posts in each of the Councils there should be at least 6 candidates (i.e., 3 for each vacancy). As a result, in our opinion, article 51, item 5 and article 53, item 1 of the law no. 115/2016 need to be harmonized in order to avoid lack of clarity, subjectivity, and uneven application of the law.

One of the rights that the lawmaker has recognized for candidates from the academic world to become part of the Councils is the right to complain against decisions of the Special Meeting. In the media or official websites of institutions, we did not see any complaint submitted by the candidates for violations of the procedure, referring to article 52 of law no. 115/2016.

b) Procedure pursued in the Assembly of the Republic of Albania

The two reports published by the General Secretary, for vacancies in each Council, indicate that the verification and evaluation process for candidates from among lecturers for the vacancies on the Councils was conducted.⁷⁶⁾ The General Secretary of the Assembly, upon submission of the list of candidates, in respect of article 53, item 2, of law no. 115/2016, began work immediately for the verification of whether candidates met the legal conditions. On 03.10.2017, through

76 <http://www.droni.al/wp-content/uploads/2017/11/Raport-kandidatet-pedagoge-KLP.pdf>
<http://www.droni.al/wp-content/uploads/2017/11/Raport-kandidatet-pedagoge-KLGJ.pdf>

letter no. 2014/24, dated 03.10.2017, the General Secretary of the Assembly conveyed to the IMO copies of documentation administered for each candidate.

During the process of verification of whether candidates meet the conditions, the General Secretary concluded that some candidates had deficiencies in documentation for proving that they fulfilled the criteria envisaged in article 36 of the law. The General Secretary sought the verification of candidates for both Councils by institutions such as the General Prosecution Office, the Authority for Information on Documents of the Former Secret Service, the General Directory of Prisons, etc.

Based on the verification procedure conducted by the General Secretary of the Assembly on the 7 candidates competing for 2 positions in the HJC, only 4 of them met the legal conditions envisaged in article 32, item 2, of law no. 115/2016.⁷⁷⁾ Meanwhile, the three other candidates who did not meet the legal conditions are as follows:

- Candidate Ms. *Brunela Kullolli* does not appear to meet the legal criterion envisaged in article 36, item 2, letter ç) of the mentioned law because she is not academic personnel in the “lecturer” category. The candidate, included in the race only as HEI personnel, at the time of evaluation, was in the process of obtaining the scientific degree “Doctor,” a degree that is necessarily linked with the “lecturer” category.

- Candidate Mr. *Darjel Sina*, was found not to fulfill the legal criterion envisaged in letter b) of the mentioned provision because she could not prove the work experience of 15 years in the lawyer’s profession, given that she graduated on 03.02.2004 at the University of Athens.

- Candidate Ms. *Erjona Canaj*, graduated in 2005 at the University of La Sapienza, Rome, and as a result does not meet the legal criterion of minimum of experience as a lawyer of 15 years, envisaged in letter b) of the mentioned provision.

After the verification of candidates running for the HPC, the General Secretary of the Assembly drafted the list of 5 candidates who meet the

⁷⁷ These candidates are Mirela Bogdani, Maksim Qoku, Erjon Muharremaj, and Ilir Panda.

legal criteria, namely: *Ms. Mirela Bogdani, Ms. Oriona Muçollari, Ms. Eneida Sema, Mr. Sandër Beci and Mr. Gent Ibrahimi*. As mentioned earlier, candidates iç është përmendur më herët, kandidatët *Mr. Darjel Sina and Ms. Erjona Canaj*, who appear to have applied for both Councils do not meet the legal criteria, also for the HPC and were disqualified.

For realizing the process of awarding points for candidates for the HJC and HPC, in respect of article 35, item 7, letter c, of the law no. 115/2016, the General Secretary relid on the process and practice of the Special Meeting. The awarding of points for two sub-components: *quality of the platform and vision presented by the candidate and public representation skills* is different from the process of awarding points in the Special Meeting. The report drafted by the General Secretary refers as an issue to the **lack of information from the special meeting on the manner of awarding points for each sub-component of professional merits, moral merits, organizational, leadership, and managerial merits, as well as other merits**. The Special Meeting appears to have made available only the minutes of the meeting while this document and the decision-making of the meeting is not published on any official website.

At the end of the evaluation by the General Secretary, it appears that the awarding of points for candidates was different from the evaluating award of points realized by the Special meeting. The reasons for the differences between the two processes affected mainly three categories, except for moral merits, as this is a category evaluated only for candidate Mr. Gent Ibrahimi due to his contribution to justice reform. Also, the quality of the platform, public representation skills, absence from hearing session, etc., were some of the reasons why candidates were awarded fewer points in terms of organizational, leadership, and managerial merits. Meanwhile, with regard to professional merits, an influencing element in reducing points was lack of professional activity and experience related to the field of the Councils.

No.	Candidates for the High Prosecutorial Council	Total points by General Secretary's evaluation	Total points by Special Meeting's evaluation
1	Gent Ibrahim	94.17 points	90.47 points
2	Mirela Bogdani	85.95 points	86.95 points
3	Sandër Beci	77 points	82 points
4	Eneida Sema	65.95 points	66.95 points
5	Oriona Muçollari	57.2 points	56.2 points
6	Erjona Canaj	Does not qualify	68.2 points
7	Dariel Sina	Does not qualify	71.7 points

No.	Candidates for the High Judicial Council	Total points by General Secretary's evaluation	Total points by Special Meeting's evaluation
1	Ilir Panda	88.27 points	84.95 points
2	Mirela Bogdani	80.7 points	82.7 points
3	Erjon Muharremaj	79 points	79 points
4	Erjona Canaj	Does not qualify	75.3 points
5	Maksim Qoku	74.34 points	73.34 points
6	Brunela Kullolli	Does not qualify	66.87 points
7	Dariel Sina	Does not qualify	65 points

In accordance with article 35, item 7 of law no. 115/2016, the General Secretary drafted the list of candidates who meet the conditions envisaged by the Constitution and the law to be members of the HJC and HPC; the list of names of candidates who do not meet the conditions as well as the report that evaluates how much each qualified candidate meets the professional and moral criteria.

The IMO realized verifications for candidates, based on article 286 of law no. 115/2016. The verification reports for candidates by the IMO have not been public. However, partial information from the IMO evaluations was reflected in the evaluation report drafted by the General Secretary of the Assembly.

According to the IMO's evaluations, the platforms of most candidates for the HJC reflect general principles and lack any specific vision. Regarding the evaluation of the **professional**

criterion, for most candidates for the HJC, the IMO said that their academic/scientific contribution either has been average or provided documentation did not offer any valuable information. Referring to **evaluation of the moral criterion (integrity) of candidates for the HJC**, the IMO's evaluation of candidate Mr. Ilir Panda was reflected in the evaluation report of the General Secretary, that *"He has been engaged politically at a very high level in the past."*

Regarding the evaluation of the professional criterion for candidates for the HPC, the **IMO highlighted that the platforms by most candidates consisted mostly in a motivating letter and did not present any specific vision with objectives to be fulfilled**. With regard to the element of the curriculum vitae, the IMO noted on 2 of the candidates that their academic profile appeared to be above average. Based on the IMO evaluation, it results that candidate Gent Ibrahimi does not appear to meet the criterion envisaged in article 36, paragraph 2, letter c) of law no. 115/2016, according to which, part time pedagogical activity should have occurred each year during 5 years before running for the post. The presented curriculum vitae does not appear to indicate such activity in the period of time between 1998 and 2016. Failing to meet the same criterion, candidate for HJC Ms. Kullolli was excluded from the competition, a situation that according to this Report, generated a discrimination procedure. This claim received a response from the Pedagogical Council of the School of Magistrates and the verification of the file by the General Secretary. According to the arguments of these institutions, law no. 115/2016 drew a clear distinction between 'members of academic personnel' of HEIs who according to the "Law on higher education" should enjoy the status of lecturer or professor and 'non-magistrate lecturers of the School of Magistrates.'⁷⁸ **Regarding the moral criterion (integrity) of candidates for the HPC, the report of the General Secretary does not highlight any IMO evaluation.**

Procedure pursued by the special parliamentary sub-committee

On 17.01.2018, the two Evaluation Reports of the General Secretary for candidates running for the HPC and candidates running for the HJC was submitted to the Committee of Laws in the Assembly, which within the 3-day deadline from the submission of the list created the ad hoc sub-committee for further evaluation and selection of candidates.

78 Page 12 of the Report: <http://www.droni.al/wp-content/uploads/2017/11/Raport-kandidatet-pedagoge-KLP.pdf>

Given that the created ad hoc sub-committee evaluated and selected in the same meeting all non-magistrate members for members of the HJC and HPC (from among lawyers, lecturers, and civil society), monitoring of this process in a detailed manner is covered in the section of “**civil society candidates**” in this report (see item 1.3 of this report below). The activity of this sub-committee was realized in accordance with legal provisions, but we noticed a marked lack of cooperation between majority and opposition representatives in the committee. The way in which personal data of candidates is used, with political affiliations in debates between commission members repeatedly created premises for the violation of the professional integrity of candidates remains disturbing. **The lack of the necessary quorum between members of this sub-committee avoided and damaged the meritocracy of this process, which ended up with selection through manual lottery.**

In the plenary session, due to the lack of the quorum of 2/3 of the Assembly members, it was decided to reject twice en bloc the list submitted by the ad hoc parliamentary sub-committee. In accordance with article 35, item 16 of law no. 115/2016, candidates of the third list, which was not voted with the necessary quorum in the Assembly, were considered elected automatically.⁷⁹⁾

1.3 Non-magistrate members from Civil Society

1.3.1 Lawfulness of procedures for the selection and appointment of candidates from civil society

a) Announcement of vacancies in both Councils for civil society representatives

Law no. 115/2016 went into effect on 16.12.2016.⁸⁰⁾ January 14, 2017, appears to be the last deadline by which the General Secretary of the

79 Candidates of the third list for HJC are: 1. Fatmira Luli (from advocates) 2. Alban Toro (from advocates) 3. **Erjon Muharremaj (from lecturers)** 4. **Maksim Qoku (from lecturers)** 5. Naureda Llagami (from civil society).

<http://www.parlament.al/Files/Akte/vendim-nr.-18-dt.-8.2.2018.pdf>

Candidates of the third list for HPC are: 1. Nurihan Meta (Seiti) (from advocates) 2. Tar-tar Bazaj (from advocates) 3. **Gent Ibrahimimi (from lecturers)** 4. **Sandër Beci (from lecturers)** 5. Alfred Balla (from civil society).

<http://www.parlament.al/Files/Akte/vendim-nr.-19-dt.-8.2.2018.pdf>

80 Published in Official Gazette no. 231, dated 01.12.2016.

Assembly announces the vacancies and the call for the submission of interest by civil society representatives who meet the legal criteria. Pursuant to article 276, item 8 of the law, the institution respected the 30-day deadline from the entry into force of the law.⁸¹⁾ The announcement of the General Secretary sets January 28, 2018, as the deadline by which civil society representatives may express interest in writing to the People's Advocate to run for the vacant posts on both Councils.⁸²⁾

b) Preliminary procedures for the constitution of the Ad Hoc Commission on civil society

Pursuant to the 30-day deadline envisaged in article 56, item 10, of law no. 115/2016, the People's Advocate announced the call for expression of interest to become members of the civil society commission⁸³⁾ that will conduct the preliminary evaluation of candidates from civil society for both Councils.⁸⁴⁾ The call envisages the legal obligation of civil society organizations to express interest together with documentation, within 7 days from the day of the publication of the call. **However, the People's Advocate did not respect the 10-day deadline for verifying whether organizations that expressed an interest to become part of the Commission. Verification concluded 10 days late. The concern about the passing of this legal deadline was reflected by the People's Advocate in a letter to the General Secretary of the Assembly, on 31.01.2017, which highlights the indispensability of repeating the procedure for the expression of interest given that the initial procedure for the creation of the Civil Society Commission concluded without any results due to the very**

81 General Secretary of the Assembly announced vacancies and published the call on 13.01.2017.

82 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/2.SHPALLJE%20E%20VENDIT%20VAKANT%20%20DHE%20THIRRJE%20P%C3%8BR%20PARAQ-ITJEN%20E%20SHPREHJES%20S%C3%8B%20INTERESIT%20P%C3%8BR%20AN%C3%8BTAR%20T%C3%8B%20K%C3%8BSHILLIT%20T%C3%8B%20LART%C3%8B%20GJYQ%C3%8BSOR.pdf>

83 Call was published on 16.01.2017.

Online:<http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/Thirrje%20p%C3%ABr%20shprehje%20interesi%20p%C3%ABr%20an%C3%ABtar%20komisioni%20t%C3%AB%20shoq%C3%ABris%C3%AB%20civile%20n%C3%AB%20KLGJ.pdf>

84 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/Thirrje%20p%C3%ABr%20shprehje%20interesi%20p%C3%ABr%20an%C3%ABtar%20komisioni%20t%C3%AB%20shoq%C3%ABris%C3%AB%20civile%20n%C3%AB%20KLGJ.pdf>

low number of applications that did not meet the minimal number of 5 organizations.

On 17.02.2017, in accordance with articles 56, item 11 and 154, item 11 of law no. 115/2016, the People's Advocate concluded verification of whether the organizations that expressed an interest to be represented in the ad hoc Commission met the criteria and published the names of 5 organizations that met the criteria and 2 organizations that did not meet the criteria.⁸⁵⁾ Representatives of these 5 winning organizations, under the status of the member of the ad hoc Commission, are: Mr. Andi Dobrush (Chair of the Commission), Ms. Rajmonda Bozo, Ms. Ina Xhepa, Ms. Elsa Ballauri and Mr. Atmir Mani. On 27.02.2017, the first meeting of the Civil Society Commission was held for the preliminary verification of candidates for the civil society representative in both Councils.

c) Procedures for the verification of legal conditions and criteria by the Civil Society Commission at the People's Advocate

c.1) For candidates for the High Prosecutorial Council

Referring to data reflected in the evaluation report drafted by the ad hoc Civil Society Commission, applicants who expressed an interest for the position of the representative member on the HPC are: Mr. Bledar Ilia (also expressed interest in the HJC), Mr. Mevlut Derti, Ms. Drita Avdyli, Mr. Alban Tutulani and Mr. Plarent Ndreca. A preliminary review of documentation by the Commission in accordance with articles 152 onward of Law no. 115/2016 indicated that:

▪ ***Mr. Bledar Ilia*** was disqualified because supporting documentation showed that he did not meet the legal criterion of ***15 years of professional experience as a jurist***. Also, ***the applicant did not meet the legal obligation envisaged in article 152, item 4*** of law no. 115/2016 on the submission of support expressed by 3 civil society organizations working in the fields of justice or human rights.

85 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/17.02.2017Lista%20me%20emrat%20e%20organizatave%20q%C3%AB%20p%C3%ABrmbushin%20kriteret%2020e%20Komisionit%20t%C3%AB%20Shoq%C3%ABris%C3%AB%20Civile%20q%C3%AB%20do%20t%C3%AB%20kryej%C3%AB%20verifikimin%20paraprak%20t%C3%AB%20kandidatur%C3%ABs%20p%C3%ABr%20an%C3%ABtarin%20q%C3%AB%20p%C3%ABrfaq%C3%ABson%20shoq%C3%ABrin%C3%AB%20civile%20n%C3%AB%20KLGJ%20dhe%20n%C3%AB%20KLP.pdf>

▪ *Failure to meet the criterion of 15 years of professional experience as a jurist* is also the criterion that led to the disqualification of candidate *Mr. Mevlut Derti*.

▪ With regard to candidate *Ms. Drita Avdyli*, the Commission decided to disqualify her because she failed to meet the legal criterion that envisages the *completion of the second cycle of university studies in justice, or an equivalent diploma*. Also, in violation of article 152, item 4, of law no. 115/2016, the applicant only submitted *one letter of reference from civil society organizations*.

▪ Candidate *Mr. Plarent Ndreca* was asked for additional clarifications regarding the projects and activity in the organization he engaged in during the last 5 years, as well as a description of his role in each project/activity he was engaged in. After making available these clarifications, *the Commission decided to not summon the applicant to a hearing session because the contracts submitted by him consisted in permanent, general consultancies and similar to one another; the applicant did not explain the second request of the Commission*.

▪ Applicant *Mr. Arban Tutulani*, was asked for additional information for the same reasons as candidate Mr. Ndreca. *After providing such information, the Commission asked the President's Office and the General Prosecution Office for the motives for his dismissal from duty*. The commission decided to expel this candidate because he did not meet the legal criterion of a marked social profile, high moral integrity, and high professional training in the field of justice and human rights.

The complaint of applicant Mr. Arban Tutulani for a review of the decision of the Commission⁸⁶⁾ led to an extraordinary meeting of the ad hoc Commission, which decided to not revisit its decision.⁸⁷⁾ The decision was appealed to the Administrative Court of Appeals in Tirana, but the Court decided to uphold the decision of the ad hoc Commission, arguing that the burden of proof for presenting necessary evidence regarding integrity lay with the candidate.⁸⁸⁾

86 The complaining candidate argued that the disciplinary measure of his dismissal from duty was also subject of a trial at the Appeals Court, which had partially admitted his appeal about remuneration, but had rejected his request to invalidate the President's Decree and put him back to work.

87 The meeting took place on 29.05.2017.

88 Decision of the Administrative Court of Appeals no. 56, dated 24.07.2017.

Due to the disqualification of the above five candidates, the Civil Society Commission unanimously decided to address the Assembly of the Republic of Albania to **reopen the call for candidates from civil society for both Councils** (meeting of 10.03.2017). In its meeting of April 4, 2017, the Commission decided unanimously to not review files of candidates who had been disqualified in the first phase, should they apply again.

Based on the second call for applications for members of the HPC from civil society, 2 candidates expressed an interest, namely *Ms. Mimoza Qinami and Mr. Tartar Bazaj (both also running for the HJC)*. The latter was disqualified by the Commission based on the letter of the General Prosecution Office that highlighted the disciplinary measure of dismissal from duty. For candidate *Ms. Mimoza Qinami*, the Commission did not decide her immediate disqualification although the candidate had not submitted a proving document on meeting the criterion envisaged by article 152, item 2, letter dh) of the law.

Since the minimal number of candidates for the HPC was not achieved, the commission asked the Assembly on 29.05.2017 to open a Third Call. In the context of this call, 3 candidates expressed an interest, but their preliminary verification led to only two being qualified:

- First, it was deemed that candidate **Mr. Kostandin Kazanxhi** does not meet the legal criterion of not holding political functions during the last 10 years before the application. After review of the file, it was noted that he had submitted documentation and information was sought about his involvement with civil society during the last 5 years. *After the submission of documents, the Commission decided that the candidate meets the legal criteria and therefore should go through a hearing session.*

- Candidate *Ms. Lindita Xhillari* was found to meet the criteria envisaged in article 152 of law no. 115/2016, but was asked for clarifying information about her engagement with civil society during the last 5 years. *After the submission of documents, the Commission decided that the candidate meets the legal criteria and therefore should go through a hearing session.*

▪ For third candidate *Mr. Vasil Shandro* too, additional information was sought about his engagement with civil society during the last 5 years. In its meeting of 02.08.2017, *the Commission decided to disqualify him because he had not submitted any concrete contribution about his engagement with civil society.*

In its extraordinary meeting of 07.09.2017, the ad hoc Commission, upon review of the negative opinion provided by the IMO on candidates Lindita Xhillari and Kostandin Kazanxhi, decided to disqualify them for failing to meet the **legal criterion of having a marked social profile, high moral integrity, and high professional training in the field of justice and human rights.** Both candidates appealed to the Administrative Court of Appeals in Tirana, which upheld the decisions of the Commission, arguing that the preliminary verification procedure also extends over moral criteria. Candidate Mr. Kostandin Kazanxhi addressed the Constitutional Court, claiming that the fact that law no. 115/2016 did not envisage a right to appeal was a violation of his right to appeal. The claim was declared openly unfounded by the Constitutional Court and, therefore, it decided to not pass the case to a review in plenary session. The CC (College) argued that the legal provision is sufficient to realize the right to judicial appeal to administrative acts and the state does not have the obligation to envisage more than one instance of appeals.

By a letter on October 27, 2017, the Civil Society Commission established at the People's Advocate addressed the General Secretary of the Assembly of the Republic of Albania.⁸⁹⁾ In the letter, the Commission argued the inability of the Commission to fulfill its legal obligation to submit to the Assembly, according to article 156, item 1 of law no. 115/2016, the list of candidates *"in any case no less than three times the number of vacancies."* At the end of the fifth call, only 1 candidate appeared for the HPC, *Mr. Vladimir Vladaj.* The applicant was disqualified by the Commission for failing to meet the criterion of having at least 15 years of professional experience as a jurist and not actively exercising the lawyer's profession for at least 2 years.

89 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/30.10.2017%20Komisioni%20i%20Shoq%C3%ABris%C3%AB%20Civile%20pran%C3%AB%20Avoktit%20t%C3%AB%20Popullit%20p%C3%ABrcjellje%20shkres%C3%ABs%20Sekretarit%20t%C3%AB%20P%C3%ABrgjithsh%C3%ABm%20t%C3%AB%20Kuvendit.pdf>

The ad hoc Commission at the People's Advocate reacted on the inability to submit 3 candidates for the HPC, stating: *"From February, when the Civil Society Commission was founded until October, upon proposal of this Commission to the Assembly of Albania, there were 5 public calls for candidates to express their interest for HPC members as civil society representatives. Based on these calls, 10 of the 11 submitted candidates were disqualified for failing to meet the formal, legal criteria."*⁹⁰⁾

After opening the sixth call for civil society candidates wishing to apply for the vacant HPC post, 5 candidates expressed an interest, three of which met all criteria, namely **Mr. Alfred Balla, Mr. Andi Muratej and Ms. Entela Baci (Hoxhaj)**. Meanwhile, candidates **Mr. Bledar Bejri⁹¹⁾ and Mr. Vladimir Vlada⁹²⁾** were disqualified for failing to meet the legal criteria envisaged respectively in article 152, item 2, letters c), ç), d), dh), e) and f) of law no. 115/2016.

c.2) For candidates for the High Judicial Council

In accordance with article 56 of law no. 115/2016, on 31.01.2017, the names of candidates who expressed an interest to run for the HJC from civil society were published and these were: Mr. Bledar Ilia, Ms. Naureda Llagami and Ms. Ermira Deçka.⁹³⁾ **The official website of the People's Advocate has not published the minutes of meetings held by the ad hoc Commission, unlike the practice that the Commission pursued for candidates for the HPC. In the context of transparency before the public and the observation of this process by AHC, we could not present findings regarding the preliminary evaluation phase, the criteria met, or reasons for excluding these candidates.**

On 17.03.2017, by decision no. 3, the General Secretary of the Assembly re-opened the call for the submission of interest by civil

90 <http://www.osfa.al/njoftime/reagim-i-komisionit-ad-hoc-te-shoqerise-civile>

91 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/18.12.2017%20Bledar%20Bejri%20CP%C3%ABrcjellje%20Vendimi%20i%20Komisionit%20t%C3%AB%20Shoq%C3%ABris%C3%AB%20Civile.pdf>

92 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/18.12.2017%20Kthim%20p%C3%ABrgjigje%20z.Vladimir%20Vlada%20C%20p%C3%ABrcjellja%20e%20vendimit%20dhe%20pro%C3%A7esverbalit.pdf>

93 http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/31.01.2017%20Njof-tim%20p%C3%ABr%20emrat%20kandidat%C3%AB%20%20aplikant%C3%AB%20p%C3%ABr%20KLGJ%20dhe%20KLP%20nga%20Avokatia%20dhe%20SH.Civile_0.pdf

society candidates for the HJC.⁹⁴⁾ Pursuant to article 57, item 2, of law no. 115/2016, the Civil Society Commission, upon completion of the preliminary verification procedure, announced the list of candidates who met the formal legal criteria to be members of the HJC. The candidates are Ms. Naureda Llagami, Mr. Altin Hazizaj and Ms. Mimoza Qinami.⁹⁵⁾ On 22.06.2017, these candidates underwent public hearing sessions. **Minutes of these hearings are accessible on the official website of the People's Advocate, but the Evaluation Report, drafted by the ad hoc Commission at the People's Advocate has not been published.**

d) Exercise of the right to appeal by disqualified candidates

Over a period of eight months, namely February – October 2017, four disqualified candidates address the court, which upheld the decisions of the Civil Society Commission.

e) Evaluation of legal criteria and conditions and the profile of qualified candidates

Four are the criteria based on which the ad hoc Civil Society Commission conducted the evaluation of candidates based on three main pillars: evaluation of professional merits, evaluation of moral merits, and evaluation of organizational, leadership, and managerial merits. These criteria and the margins of their evaluation are verified in accordance with article 34 and 155 of law no. 115/2016.

e.1) For candidates for the High Judicial Council

On 22.06.2017, the Civil Society Commission conducted the hearing session with candidates who meet the formal criteria to be HJC members. After the completion of the preliminary verification, the Commission announced the names of candidates who meet the legal criteria to be HJC members: Ms. Naureda Llagami, Mr. Altin

94 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/17.03.2017%20Rishpallje%20e%20Thirrjes%20p%C3%ABr%20paraqitjen%20e%20shprehjes%20s%C3%AB%20Interesit%20p%C3%ABr%20KLGJ..pdf>

95 <http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/19.06.2017%20Mbi%20p%C3%ABrcjelljen%20e%20list%C3%ABs%20me%20kandidat%C3%ABt%20q%C3%AB%20p%C3%ABrmbushin%20kriteret%20ligjore%20formale%20p%C3%ABr%20KLGJ%20nga%20rradh%C3%ABt%20e%20Shoq%C3%ABris%C3%AB%20Civile.pdf>

Hazizaj and Ms. Mimoza Qinami.⁹⁶⁾

Article 152, item 2 of law no. 115/2016 envisages only the immediate publication of the names of candidates who meet the legal conditions, while the results when not meeting the legal criteria and the causes for exclusion are communicated individually to the candidates. The evaluation report published by the Commission highlights the names of 6 candidates who do not meet the legal conditions. **It is our opinion that this provision should have clearly reflected the obligation to publish the list of candidates who do not meet the legal conditions to be members of the Councils. Transparency in the preliminary verification phase, on meeting the legal conditions, is an indispensable element that should accompany this process.**

The platforms reflected in the minutes of the meeting on 22.06.2017 for qualified candidates for the HJC by the Civil Society Commission reflect clear objectives of some of the candidates. However, these platforms devote added attention to “corruption,” affected by the current situation in the justice system. **The platforms of candidates are not accessible documents on the official website of the People’s Advocate. Although this is not a legal obligation, seen from the standpoint of transparency before the public, it might harm the judgment of the public on the meritocracy of the very process of evaluation of these platforms by the Commission.**

Voting was realized on the approved form, based on moral and professional evaluation criteria. The ranking of candidates after this evaluation is as follows:

- *Ms. Naureda Llagami (ranking first with 83 points);*
- *Ms. Mimoza Qinami (ranking second with 79 points) and,*
- *Mr. Altin Hazizaj (ranking third with 74.2 points).⁹⁷⁾*

⁹⁶ This list was submitted on 19.06.2017.

Shih:<http://www.avokatipopullit.gov.al/sites/default/files/KLGJ/19.06.2017%20Mbi%20p%C3%ABrcjelljen%20e%20list%C3%ABs%20me%20kandidat%C3%ABt%20q%C3%AB%20p%C3%ABrmbushin%20kriteret%20ligjore%20formale%20p%C3%ABr%20KLGJ%20nga%20rradh%C3%ABt%20e%20Shoq%C3%ABris%C3%AB%20Civile.pdf>

⁹⁷ <http://www.avokatipopullit.gov.al/sites/default/files/KLP/22.06.2017%20Pro%C3%A7es-Verbal%20i%20mbledhjes%20s%C3%AB%20Komisionit%20t%C3%AB%20Shoq%C3%ABris%C3%AB%20Civile%20p%C3%ABr%20Verifikimin%20Paraprak%20t%C3%AB%20Kandidat%C3%ABve%20p%C3%ABr%20KLGJ%20dhe%20KLP.pdf>

e.2) For candidates for the High Prosecutorial Council

Because 2 of the candidates for the HPC were disqualified in the extraordinary meeting of the ad hoc Civil Society Commission, after reopening several times the call for the expression of interest, on 19.12.2017, the Commission submitted to the Assembly of the Republic of Albania the names of three candidates who passed the preliminary verification phase, namely candidates Mr. Alfred Balla, Mr. Andi Muratej, and Ms. Entela Hoxha.

Candidates underwent the public hearing session on 20.12.2017 in the premises of the People's Advocate. The minutes of the Commission meeting,⁹⁸⁾ it appears that the platforms presented by the 3 candidates who met the legal conditions reflect average quality while the Commission's questions are not given concrete and clarifying responses by all candidates. Also, the platforms for the most part are based on general principles as a form of avoiding and reacting by candidates at the moment they are faced with corrupt cases, while we also notice the lack of objective logic.

IMO observers have contested the platform of candidate Mr. Alfred Balla, which in their opinion, appears to be identical to that of disqualified candidate Mr. Plarent Ndreca. **The minutes of the public meeting lack the platforms of candidates, but elements of these platforms are presented in a summarized form, when candidates respond to questions addressed by the members of the Civil Society Commission.**

The Commission's evaluation report indicates that at the end of the process, evaluation of the candidates including candidate Mimoza Qinami selected from previous calls, is as follows:

- Ms. Entela Baci (ranking first with 81 points),
- Mr. Andi Muratej (ranking second with 79.5 points),
- Ms. Mimoza Qinami (ranking third with 79 points) and
- Mr. Alfred Balla (ranking fourth with 63 points).

Only after the sixth call, the Chair of the Civil Society Commission submitted to the General Secretary of the Assembly the list of 4 names

98 <http://www.avokatipopullit.gov.al/sites/default/files/KLP/31.08.2017%20Pro%C3%A7es-Verbal%20Komisionit%20t%C3%AB%20Shoq%C3%ABris%C3%AB%20Civile%20p%C3%ABr%20Verifikimin%20Paraprak%20t%C3%AB%20Kandidat%C3%ABve%20p%C3%ABr%20KLP.pdf>

of candidates, respecting the minimal legal standard of “no less than 10 candidates and in any case no less than three times the number of vacant positions.”

f) Verification process realized by the General Secretary and the IMO

Another important phase of the verification of candidates for non-magistrate members from civil society ranks running for both Councils is the verification conducted by the General Secretary of the Assembly and the International Monitoring Operation, in accordance with law no. 115/2016.

f.1) For candidates for the High Prosecutorial Council

The Assembly has compiled the report on the verification process by the General Secretary on candidates for HPC from civil society meeting the legal conditions and professional criteria. The General Secretary of the Assembly, on 03.01.2018, conveyed to the IMO a copy of documentation submitted by the Civil Society Commission. On 12.01.2018, the IMO submitted its evaluation report.

In the evaluation report, the General Secretary of the Assembly found some unclarities in the legal documentation submitted by candidates, noting, “*The Civil Society Commission did not undertake all steps to exchange correspondence with various public institutions about on checking legal conditions.*”

An analysis of evaluations of the General Secretary and the IMO, although these evaluations are independent from one another, it results that for the 2 candidates, respectively Mr. Andi Muratej and Mr. Alfred Balla, the evaluation by the Secretary is different from that of the IMO. **The General Secretary of the Assembly of the Republic of Albania, at the end of his evaluation, concluded that only 3 candidates out of the 4 evaluated by the Civil Society Commission meet the conditions, while the number of disqualified candidates reaches 12.**

Based on article 287 of law no. 115/2016, the IMO realized the verification process and found that only one of the candidates, namely Ms. Mimoza Qinami should qualify because she meets the legal conditions, while the other candidates do not. The report of the General Secretary does not appear to have published the IMO evaluation on all candidates.

The General Secretary of the Assembly compiled required documents that consist of the list of names of candidates who meet the criteria and the candidates who do not meet the criteria, as well as the reasons for disqualifying every one of them. Below is a resume of the professional experience of candidates qualified by the General Secretary:

Candidate Alfred Balla has been engaged in the Association of Criminal Lawyers of Albania. The candidate has 26 years of experience as a prosecutor, lawyer, and legal advisor at the High Court.⁹⁹⁾ However, IMO’s evaluation of the candidate is disturbing as it argues, “Aside from the fact that this candidate does not meet the legal criteria mentioned in article 152/2, letter d) of the law, international observers have found that the platform presented (by him) is almost plagiarism of a platform presented by another candidate (Plarent Ndreca)... this candidate does not have high moral integrity hoped for in a member of the High Prosecutorial Council.”¹⁰⁰⁾

Candidate Andi Muratej, based on arguments in the evaluation of the General Secretary, has had 3 years of experience in civil society, namely the Albanian Helsinki Committee (AHC); in addition, the criterion envisaged in articles 151/1 and 152/2 letter “d” of law no. 115/2016 is also met through his engagement as an activist since 2006 of the “George C. Marshall” Advanced European Center and as board member of the branch of this organization in Albania since 2015.

Candidate Mimoza Qinami has been engaged as an expert at some civil society organizations, whose field of activity includes the protection of women’s rights.

No.	Qualified candidate	Total Points in General Secretary’s evaluation	Total Points in Special Meeting’s evaluation
1.	Andi Muratej	79 points	79.5 points
2.	Alfred Balla	80 points	63 points
3.	Mimoza Qinami	78 points	79 points

99 <https://www.faxweb.al/kush-eshte-kandidati-i-shoqerise-civile-per-klp-ne-qe-per-plas-onm-me-kuvendin/>

100 Page 14 of Report: <http://www.droni.al/wp-content/uploads/2018/01/Raporti-SP-per-KLP.pdf>

f.2) For candidates for the High Judicial Council

It is not possible to access on the websites of the People's Advocate or the Assembly the report drafted by the General Secretary of the Assembly, after the procedure of the preliminary evaluation of non-judge and non-prosecutor candidates for the HJC.¹⁰¹⁾

The General Secretary had a positive evaluation of candidate **Mr. Altin Hazizaj**, for the level of high results in academic studies, participation in training programs, and the well-structured and complete platform.¹⁰²⁾ **However, the candidate was contested by the opposition representative in the ad hoc parliamentary sub-committee.** According to the parallel report published in the media by the opposition, which is dated 18.01.2018, the proving documents presented by this candidate feature an important element that calls into question the fulfillment of the condition for the exercise of the lawyer's profession for at least the last 5 years and a total of 15 years of experience. **According to opposition representatives, the Civil Society Commission has used two standards in the verification and evaluation of some of the candidates.** Referring to candidates disqualified in the phase of the first call, the parallel report notes that candidates Mr. Bledar Ilia and Ms. Ermira Deçka were disqualified because they lack 15 years of experience as a jurist, but candidate Ms. Naureda Llagami is qualified although it has been found that she does not meet the condition of 15 years of effective experience (by two months) and her 5-year engagement in civil society is also questionable.

With regard to candidate **Ms. Mimoza Qinami**, the media indicates that she is the only candidate who has been qualified per the IMO's evaluation, while the evaluation of the General Secretary of the Assembly has her listed as last in the group of passing candidates.¹⁰³⁾ Below is a resume of the professional experience of qualified candidates by the General Secretary:

Candidate Naureda Llagami began her career as a lawyer in an association that offered free legal services, where she worked for about 10 years, until 2010. In 2012, she assumed another duty as a legal expert

101 <https://www.parlament.al/News/Index/5525>

102 <https://www.gazetaexpress.com/lajme-nga-shqiperia/del-dokumenti-si-i-refuzuan-nderkombetaret-emrat-e-zgjedhur-ne-klgj-e-klp-491413/?archive=1>

103 <http://shqiptarja.com/lajm/klp-gjoncaj-rifut-ne-gare-dy-br-emra-nga-lista-e-zeze-e-onm-se-br-br>

at a non-governmental organization. In 2012, she also returned to the Ministry of Justice where she worked for one year as a legal expert on issues of violence toward women and on improving legislation in this regard. During 2012-2016, Llagami worked as a legal aide in the High Court.¹⁰⁴⁾

Candidate Altin Hazizaj appears to be an active part of civil society since 18 years of age. He encouraged the creation of the first student organization of law students in the history of Albania (Law Students' League) to continue with the creation of the first children's rights organization CRCA Albania. He is also a co-founder of some of the most important networks in the region and Albania for children's rights, human rights, youth rights, etc.¹⁰⁵⁾

Candidate Mimoza Qinami was engaged as an expert at several civil society organizations, whose field of activity focused on the protection of women's rights.

No.	Qualified candidate	Total Points in General Secretary's evaluation	Total Points in Special Meeting's evaluation
1	Naureda Llagami	Info lacking on official website	83 points
2	Altin Hazizaj	Info lacking on official website	74.2 points
3	Mimoza Qinami	Info lacking on official website	79 points

d) Parliamentary procedures followed in the Committee of Laws/ responsible sub-commissions and plenary session

Based on the 3-week work calendar of the Committee of Laws, on 17.01.2018 it announced the completion of the evaluation process by the General Secretary of the Assembly and the IMO of non-magistrate candidates for both Councils. The evaluation report, list of candidates who meet legal conditions and those who do not, as well as the evaluation report by the IMO have been submitted to this Committee on 15.01.2018.

The Committee of Laws, pursuant to article 35/19 of law no. 115/2016 reviewed the draft regulations "On the organization and

104 <http://www.panorama.com.al/ngrihet-klgj-kush-eshte-kryetarja-e-zgjedhur-numerimi-mbrapsht-per-ringritjen-e-gjykates-se-larte/>

105 <http://www.amshc.gov.al/web/KKSHC/C/ALTIN%20HAZIZAJ.pdf>

functioning of the sub-committee for the selection of candidates for members of the High Judicial Council and the High Prosecutorial Council” and decided the approval of these draft regulations by decision no. 1, dated 17.01.2018. Pursuant to the law, the chair of the committee informed all committee members about the request to all parliamentary groups for the appointment of their representatives to the sub-committee for the selection of candidates. Unanimously, by decision no. 2, dated 18.01.2018, the Committee approved the sub-committee for the selection of candidates which was composed of: Mr. Ulsi Manja, Chair (representative of the Socialist Party Parliamentary Group); Mr. Oerd Bylykbashi, Deputy Chair (representative of the Democratic Party Parliamentary Group); Ms. Vasilika Hysi, member (representative of the Socialist Party Parliamentary Group); Ms. Klotilda Bushka, member (representative of the Socialist Party Parliamentary Group); and Mr. Nasip Naço, member (representative of the Socialist Movement for Integration Parliamentary Group).

The sub-commission for the selection of candidates for members of the HJC and HPC was constituted on 18.01.2018. Based on article 35/15 of law no. 115/2016, the chair of the ad hoc sub-commission submits to the Assembly Chair the list of candidates and the evaluation report no later than 3 days from the creation of the sub-commission. Meanwhile, the report “on the selection of candidates for member of the High Judicial Council and the High Prosecutorial Council from among non-judges and non-prosecutors” is dated January 22, 2018, and as a result was drafted beyond this legal deadline.¹⁰⁶⁾

Based on the monitoring of meetings of the ad hoc sub-commission, AHC observers noticed the lack of constructive dialogue between members and the use of high tones or disrespect for ethics rules. The personal data of candidates was misused during these discussions, while opposition representatives raised the concern about the lack of a minimal number of candidates required by the constitution. According to majority representatives in the sub-commission, the legal framework envisaged that the number of non-magistrate members for the HJC and HPC could not be less than three times the number of vacancies, which is why the minimal limit envisaged in the law was respected.

106 <http://www.parlament.al/Files/Projekte/Raporti-i-Nenkomisionit-per-per-zgjedhjen-e-kandidateve-per-anetare-te-KLGJ-dhe-KLP.pdf>

Furthermore, during sub-commission meetings, we noticed a series of debates regarding claims by opposition representatives who declared that the list prepared by the General Secretary was openly illegal because the IMO, for a considerable number of candidates, had listed a series of reasons to disqualify them. They also launched accusations about an inconsistent procedure, of different standards, for the selection of these candidates, as the use of one criterion for one candidate was insignificant for the other candidate. For the elections conducted on the 2 candidates from academia, it was stated that there was no real competition procedure, but only 1 compiled list. Majority representatives in the sub-commission rejected the claims and referred to article 149 of the constitution.

In the meeting of the sub-commission on 22.01.2018, referring to article 35/7 of law no. 115/2016, the General Secretary presented two lists. Also, based on article 35/13 of this law, the list of candidates who meet the formal criteria and the list of candidates disqualified by the General Secretary are unified into one single list. During the meeting, there was a lot of discussion about the competence of the sub-committee to exclude any candidate from the lists with the votes of only four members, while the mentioned provision in the law envisages only the legal right to include candidates disqualified by the General Secretary. However, the opposite was true when the list of candidates for members of the HJC was rejected en bloc by the Assembly and the parliamentary procedure restarted again in the ad hoc sub-commission. According to media reports, the ad hoc sub-commission excluded from the race the candidate for HJC A.H. with only three votes from the majority members. The exclusion of the civil society candidate from the lottery was done after opposition accusations that he was affected by the decriminalization law.¹⁰⁷ The official website of the Assembly does not have the decision or minutes of the meeting of this sub-commission. AHC deems that article 35/13 of law no. 115/2016 should be reviewed by the Assembly in the context of the created situation because the sub-commission acted in the circumstances of legal vacuum, not having the express attributes in the law to exclude from the race candidates that the General Secretary had considered qualified.

107 <https://balkanweb.com/eshte-denuar-dy-here-perjashtohet-nga-gara-per-klgj-altin-hazizaj/>

During the meeting of the parliamentary sub-commission, one topic of discussion was the inclusion of the same candidate in both the HJC and the HPC lists. However, it was decided unanimously that initially there would be an evaluation of the HJC list. If the candidate was elected in that list, the person would be automatically disqualified from running for the HPC.¹⁰⁸⁾ A vote took place initially on candidates for non-magistrate members for the High Judicial Council, namely 2 candidates from among lawyers, 2 from among lecturers, and 1 from civil society. Afterwards, candidates for non-magistrate members for the HPC were submitted to a vote.

Candidates from Civil Society for the HJC:

Name, Surname	PRO	AGAINST	ABSTENTION	NOT PART
Altin Hazizaj	1	-	-	4
Mimoza Qinami	1	-	-	4
Naureda Llagami	2	-	-	3

Candidates from among lecturers for the HJC:

Name, Surname	PRO	AGAINST	ABSTENTION	NOT PART
Erjon Muharremaj	1	-	1	3
Ilir Panda	3	-	-	2
Maksim Qoku	3	-	-	2
Mirela Bogdani	1	-	-	4

Candidates from Civil Society for the HPC:

Name, Surname	PRO	AGAINST	ABSTENTION	NOT PART
Alfred Balla	2	-	-	3
Andi Muratej	1	-	-	4
Mimoza Qinami	1	-	-	4

¹⁰⁸⁾ This is an intermediary decision of the meeting, which was approved by the vote of the majority of members.

Candidates from among lecturers for the HPC:

Name, Surname	PRO	AGAINST	ABSTENTION	NOT PART
Eneida Sema	2	-	-	3
Gent Ibrahim	3	-	-	2
Mirela Bogdani	1	-	-	4
Oriona Mucollari	2	-	-	3
Sandër Beci	1	-	-	4

The list of candidates from among lecturers who meet the criteria includes 5 persons, while the opposition representatives in the sub-commission noted that there should have been 6 candidates, while Ms. Mirela Bogdani appeared to be part of both lists. Given that none of the candidates of the HJC and HPC was approved by at least 4 votes of the sub-commission – the quorum required by article 35/14 of law no. 115/2016, it was decided that the General Secretary should elect members by manual lottery. Referring to the monitoring of the voting process of these candidates through manual lottery, based on article 147, paragraphs 3 and 4, and article 149, paragraphs 3 and 4 of the Constitution, the respective candidates for the HJC and HPC were selected. The list of candidates who were part of the lottery is that compiled by the General Secretary of the Assembly. The manual lottery selected the following candidates:

HIGH JUDICIAL COUNCIL		
LAWYERS	Arben Vani	Sokol Lamaj
LECTURERS	Erion Muharremaj	Ilir Panda
CIVIL SOCIETY	Altin Hazizaj	

HIGH PROSECUTORIAL COUNCIL		
LAWYERS	Kozma Jano	Floreta Gjini
LECTURERS	Eneida Sema	Mirela Bogdani
CIVIL SOCIETY	Alfred Balla	

Based on the list of candidates who turned out winners from the lottery in the parliamentary ad hoc sub-commission for both Councils,

pursuant to article 147/8 of the Constitution, article 35/16 of law no. 115/2016, the Assembly rejected en bloc twice the selected candidates for the HJC^{109/110} and HPC.¹¹¹ **In the third round of voting in the plenary session, by decisions no. 18/2018¹¹² and 19/2018¹¹³, due to failure to reach the majority of 2/3 of the votes of all Assembly members, it was decided to consider elected the candidates of the third list en bloc for members of the HJC and HPC, in accordance with article 35/16 of law no. 115/2016.**

Winning candidates for the High judicial Council		
LAWYERS	Fatmira Luli	Alban Toro
LECTURERS	Erion Muharremaj	Maksim Qoku
CIVIL SOCIETY	Naureda Llagami	
Winning candidates for the High Prosecutorial Council		
LAWYERS	Nurihan Meta (Seiti)	Tartar Bazaj
LECTURERS	Gent Ibrahimimi	Sandër Beci
CIVIL SOCIETY	Alfred Balla	

109 <http://www.parlament.al/Files/Projekte/Projektvendim-KLGJ-1.pdf> (Submission date: 30.01.2018).

Candidates are: **1. Fatos Lazimi (lawyers) 2. Fatmira Luli (lawyers) 3. Maksim Qoku (lecturers) 4. Mirela Bogdani (lecturers) 5. Naureda Llagami (civil society)** This second list was rejected en bloc by Decision no. 11/2018 on 01.02.2018.

<http://www.parlament.al/Files/Akte/vendim-nr.-11-dt.-1.2.2018.pdf>

110 Candidates are: **1. Arben Vani (lawyers) 2. Sokol Lamaj (lawyers) 3. Erjon Muharremaj (lecturers) 4. Ilir Panda (lecturers) 5. Altin Hazizaj (civil society).**

<http://www.parlament.al/Files/Akte/vendim-nr.-3-dt.-25.1.2018-1.pdf>

111 The first list was rejected en bloc by decision no. 4/2018, dated 25.01.2018.

<http://www.parlament.al/Files/Akte/vendim-nr.-4-dt.-25.1.2018.pdf>

Candidates according to this list are: **1. Floreta Gjini (lawyers) 2. Kozma Jano (lawyers) 3. Eneida Sema (lecturers) 4. Mirela Bogdani (lecturers) 5. Alfred Balla (civil society).**

The second list en bloc of candidates for the HPC was rejected by decision no. 12/2018.

<http://www.parlament.al/Files/Projekte/vendim-nr.-12-dt.-1.2.2018-1.pdf>

Candidates are: **1. Gëzim Allaraj (lawyers) 2. Floreta Gjini (lawyers) 3. Eneida Sema (lecturers) 4. Gent Ibrahimimi (lecturers) 5. Andi Muratej (civil society).**

The second list of candidates for HPC was rejected en bloc by decision no. 12/2018.

<http://www.parlament.al/Files/Projekte/vendim-nr.-12-dt.-1.2.2018-1.pdf>

112 Candidates of the third list for the HJC are: **1. Fatmira Luli (lawyers) 2. Alban Toro (lawyers) 3. Erjon Muharremaj (lecturers) 4. Maksim Qoku (lecturers) 5. Naureda Llagami (civil society).** <http://www.parlament.al/Files/Akte/vendim-nr.-18-dt.-8.2.2018.pdf>

113 Candidates of the third list for the HPC are: **1. Nurihan Meta (Seiti) (lawyers) 2. Tartar Bazaj (lawyers) 3. Gent Ibrahimimi (lecturers) 4. Sandër Beci (lecturers) 5. Alfred Balla (civil society).** <http://www.parlament.al/Files/Akte/vendim-nr.-19-dt.-8.2.2018.pdf>

2. SELECTION AND APPOINTMENT OF MAGISTRATE MEMBERS TO BOTH COUNCILS

2.1 Procedures followed for prosecutor members to the High Prosecutorial Council

2.1.1 Legal basis for the selection of members of the High Prosecutorial Council from among prosecutors

The legal basis for the election of **prosecutor members** to the HPC is summarized in section 2 (*Election of members of the High Prosecutorial Council*), sub-section I (*Procedure for the election of prosecutor members of the High Prosecutorial Council*) of law no. 115/2016, which includes articles 105 -116 as well as article 279 of this law.

In particular, according to article 105/1 of law no. 115/2016, the general meeting of prosecutors from all levels elects 6 members of the High Prosecutorial Council, of which:

- a) three are prosecutors of the first instance. At least 1 of them is a prosecutor at a prosecution office at a judicial district court outside Tirana;
- b) two of the elected are prosecutors from prosecution offices at appeals courts, including the special prosecution office against corruption and organized crime. At least 1 of them is a prosecutor in an appeals prosecution office outside Tirana;
- c) one of the elected is a prosecutor at the General Prosecution Office.

2.1.2 Expression of interest for the position of the prosecutor member in the High Prosecutorial Council

Based on article 279 /1 of law no. 115/2016, no later than 1 month after the entry into effect of this law, prosecutors interested in the position of the member of the HPC should submit a request for the expression of interest to run and documentation required for vetting according to the relevant law to the Independent Qualification Commission. If the IQC had not been created, the law envisaged that the request should be submitted to the General Secretary of the Assembly. Due to the delay in the establishment of the IQC, by its **announcement of January 9, 2017**,¹¹⁴⁾ the Assembly published the call

114 <https://www.parlament.al/News/Index/5706>

by means of which interested prosecutors were informed that they had to submit, **by January 16, 2017**, to the General Secretary of the Assembly a **request to express their interest in running for the HPC**, and a copy of relevant documentation for re-evaluation.

Meanwhile, according to article 108 and 279/2 of law no. 115/2016, **by the same deadline**, prosecutors interested in the position of the HPC member should present to the **General Prosecutor** relevant documentation, based on forms made available by this institution.

According to media reports, by the mentioned deadline, 19 prosecutors expressed their interest to run, while there was no announcement on the official website of the Assembly or the General Prosecutor regarding these candidates.

Further on, according to articles 109 and 279/3 of law no. 115/2016, within 7 days from the submission of documentation, the General Prosecutor should verify the fulfillment of legal criteria and notify the IQC and the candidate in case the criteria were not met. On **24.01.2017**, the official website of the General Prosecution Office published the list of official candidates for the High Prosecutorial Council,¹¹⁵⁾ which contained the following names:

- **From the General Prosecution Office, 3 candidates**, namely Ms. Anila Leka, Mr. Kostaq Beluri and Mr. Ramadan Troci.
- **From Appeals Prosecution Offices, 4 candidates**, namely Mr. Luan Kaloci, Mr. Bujar Hoti, Mr. Arben Dollapaj and Ms. Besa Nikëhasani.
- **From First Instance Prosecution Offices, 12 candidates**, namely 5 prosecutors from the prosecution office at the Tirana Judicial District Court (Mr. Adriatik Cama, Ms. Antoneta Sevdari, Mr. Arben Nela, Mr. Dritan Rreshka, Mr. Shpëtim Kurti), 2 prosecutors from the Serious Crimes Prosecution Office (Mr. Besnik Muçi and Mr. Gentian Osmani), 2 prosecutors from the Prosecution Office at the Shkodra Judicial District Court (Ms. Arta Marku and Mr. Vatë Staka), 1 prosecutor from the Prosecution Office at the Elbasan Judicial District Court (Mr. Besnik Cani), 1 prosecutor from the Prosecution Office at the Korça Judicial District Court (Mr. Elsion Sadiku), and 1 p prosecutor from the Prosecution Office at the Kukës Judicial District Court (Mr. Dritan Prençi).

115 http://www.pp.gov.al/web/Shpallen_kandidatet_zyrtare_per_Keshillin_e_Larte_te_Prokurorise_1040_1.php#.XCCi9y2h1QI

The same announcement of the General Prosecution Office notes that pursuant to article 109/1 of law no. 115/2016, the General Prosecutor, by order no. 18, 17.01.2017, established the administrative commission for the verification of the fulfillment of legal conditions by prosecutor candidates for the HPC. The commission, composed of five members, after conducting the necessary verifications and review of documentation of candidates, found that the above prosecutors met the legal conditions to be elected members of the HPC. AHC notes that **the process for the verification of candidates was not transparent** because the General Prosecution Office did not publish data on the documentation submitted by candidates, did not publish on its website the order on the establishment of the Commission, did not publish information about its composition, and did not publish the report on the verification of the fulfillment of criteria by each candidate.

Given that some of the candidates on the list of 24.01.2017 from the appeals prosecution offices (as analyzed hereonafter) did not manage to pass vetting, the General Prosecutor published again on **September 25, 2018**, the call for the expression of interest by prosecutors from Appeals Prosecution Offices for the position of the HPC member.,¹¹⁶⁾¹¹⁷⁾ making 15 days available from the announcement of the notification. In the same announcement, the General Prosecution Office noted that based on information from the IQC pro.no. 6250, on September 20, 2018, on the progress of the vetting process of prosecutors on the priority list, candidates for the HPC, only one prosecutor from the Appeals Prosecution Offices had been confirmed in his post.

After the expiry of the official deadline of the second call, no candidate submitted an expression of interest. Therefore, on October 12, 2018, the General Prosecution Office published the re-announcement of the *"Call for the submission of interest for candidates in the HPC."*¹¹⁸⁾ After that, on **November 1, 2018**, it published a report on the verification of the fulfillment of conditions for candidates for the HPC,¹¹⁹⁾ which contains the main data on verifications conducted by the General Prosecution Office Commission, according to which the sole candidate, prosecutor

116 http://www.pp.gov.al/web/thirrja_per_paraqitjen_e_shprehjes_se_interesit_per_kandidate_ne_keshillin_e_larte_te_prokurorise_1397.pdf

117 Letter of 24.09.2018, no.prot 2542

118 http://www.pp.gov.al/web/thirrje_kandidatet_e_klp_12_10_2018_1411.pdf

119 http://www.pp.gov.al/web/relacioni_per_kandidatin_e_keshillit_e_larte_te_prokurorise_1412.pdf

Bujar Sheshi, met the legal conditions. In this case, the process for the verification of candidates was transparent because of the fact that the General Prosecution Office published in its announcement the names of candidates who had expressed an interest thanks to the second call, provided a brief profile of the candidate, and published the report of the verification commission. However, the work of the commission was only published after the conclusion of verification, thus not giving institutions or NGOs the possibility to observe the process.

AHC notes that article 279 of law no. 115/2016, which contains the transitory provisions on the election of the first HPC members, does not state what happens if there are no more candidates from one of the prosecution offices instances as prescribed by law. However, this is envisaged in provisions of the third part that regulate the full procedure for the selection of these candidates, Chapter I of the law, namely article 109/5, which envisages *"If even after the second call, no candidates present themselves from the unrepresented prosecution office instances, their election shall be done by lottery from among prosecutors who applied for the vacant position. Each candidate who meets the criteria to be elected member of the HPC and the criteria for promotion in office or to be transferred to unrepresented instances of the prosecution office, shall have the right to compete for the relevant vacant post."*

2.1.3 Transitory re-evaluation process (vetting) of official candidates for member of the HPC

Based on article 279/4 of law no. 115/2016, within 3 months from the date of the submission of the expression of interest and documentation, the IQC should have conducted the re-evaluation of prosecutors running for HPC members. This deadline was not respected because the IQC was constituted by a considerable delay. Further one, the same article envisages that the prosecutor who, by decision of the IQC, does not pass the re-evaluation process shall be excluded from the competition procedure, even when he/she has filed a complaint against the IQC decision. As a result, the election of candidates continues without the participation of this candidate.

Below is an analysis of the results of the vetting process on each of the candidates communicated in the lists announced by the General Prosecution Office.

A) Transitory re-evaluation (vetting) of candidates of the list of January 24, 2017

All candidates of this list were subjected to the priority re-evaluation process and the name of each was included in the first lottery drawn by the IQC on November 30, 2017.¹²⁰⁾ Transitory re-evaluation procedures for the candidates announced on this list led to the confirmation in their posts for almost more than half of them, 10 candidates, and the dismissal of 9 of the prosecutors. Of the 10 prosecutors confirmed in their posts by the IQC, it appears that 3 of them are prosecutors at the General Prosecution Office, 2 at the Appeals Prosecution Office (one in the Serious Crimes Appeals Prosecution Office), 3 in Prosecution Offices at Judicial districts, and 3 prosecutors in Prosecution Offices at the Serious Crimes Court..

For half of the members confirmed in their posts by the IQC, the Public Commissioner applied his right to appeal to the Special Appeals College, and, as a result, the decision of the confirmation in office was not final after the appeal deadline expired. Until the period covered by this report, the College decided to dismiss one of the subjects of the appeal, which led to the HPC having a vacancy in its ranks of prosecutor members.

Meanwhile, for 7 of the 9 dismissal decisions, there were appeals to the SAC; until the period covered by this report, this body decided to uphold the IQC decision. The SAC did not decide to reverse the decision in any of the appealed cases. In the 9 cases of dismissals from office of prosecutor candidates for the HPC, their overwhelming majority were penalized due to the asset disclosure criterion and only sporadically was the decision linked with other criteria, such as integrity or professional capability.

For IQC decisions for candidates for members in the HPC, the average time for the adjudication of cases in the SAC varies 5-6 months. More specifically, the vetting of candidates for members from among prosecutors in the HPC included in the list of January 24, 2017, led to the following results:

120 <http://kpk.al/2017/12/12/njoftim/>

Candidates confirmed in their offices by the Independent Qualification Commission are as follows:

- (i). **Ms. Anila Leka (Prosecutor in the General Prosecution Office)**, confirmed in office by decision of 06/06/2018 of the IQC. The Public Commissioner decided on 20/07/2018 to not appeal the IQC decision and with the expiry of the appeal deadline, the IQC decision is final.
- (ii). **Mr. Kostaq Beluri (Prosecutor in the General Prosecution Office)**, confirmed in office by decision of 12/07/2018 of the IQC. On 29/08/2018, the Public Commissioner decided to not appeal the decision and with the expiry of the appeal deadline, the IQC decision is final.
- (iii). **Mr. Arben Dollapaj (Prosecutor in the Shkodra Appeals Prosecution Office)** confirmed in office by decision of 06/08/2018, of the IQC. On 20/08/2018, the Public Commissioner decided to exercise his right to appeal this decision. In the Appeals College, the lottery was drawn to assign a panel of judges, the head of the panel, and the case rapporteur.
- (iv). **Ms. Antoneta Sevdari (Prosecutor in the Tirana Prosecution Office)** confirmed in office by decision of 18/07/2018 of the IQC. On 29/08/2018, the Public Commissioner decided to exercise the right to appeal this decision. On February 28, 2019, the SAC decided to reverse the IQC decision no. 42 of 18.07.2018 and to dismiss the subject of re-evaluation from duty.
- (v). **Mr. Besnik Muçi (Prosecutor in the Serious Crimes Prosecution Office, Tirana)** confirmed in office by decision of 01/08/2018 of the IQC. On 31/10/2018, the Public Commissioner decided to appeal the IQC decision. On 15/11/2018, a lottery was drawn in the IQC to determine the panel of judges, head of the panel, and case rapporteur.
- (vi). **Mr. Gentian Osmani (Prosecutor in the Serious Crimes Prosecution Office, Tirana)** confirmed in office by decision of 02/08/2018 of the IQC. On 15/11/2018, the Public Commissioner decided to appeal the IQC decision. To date, the SAC has not passed a decision on the subject.
- (vii). **Mr. Besnik Cani (Prosecutor in the Elbasan Prosecution Office)** confirmed in office by decision of the IQC on

27/11/2018. On February 8, 2018, the Public Commissioner decided to exercise the right to appeal the IQC decision. Referring to data published on the SAC website, there is no information on the composition of the panel of judges that will hear the case.

- (viii). **Mr. Dritan Prençi (temporary Prosecutor in the Serious Crimes Prosecution Office, Tirana)** confirmed in office by decision of the IQC on 07/06/2018. On 10/07/2018, the Public Commissioner decided not to appeal the IQC decision. The decision became final on 17/07/2018.
- (ix). **Ms. Arta Marku (General Prosecutor in the General Prosecution Office)** confirmed in office by decision of the IQC on 04/07/2018. On 15/08/2018, the Public Commissioner made public its decision to not appeal the decision the IQC decision assumed final form.
- (x). **Mr. Vatë Staka (Prosecutor in the Shkodra Prosecution Office)**, confirmed in office by decision of the IQC on 03/07/2018. On 03/09/2018, the Public Commissioner decided not to appeal the decision of the IQC. The IQC decision became final on 05/09/2018.

Candidates dismissed from duty by the Independent Qualification Commission are as follows:

- (i). **Mr. Ramadan Troci (prosecutor at the General Prosecution Office)** was dismissed from office by decision of the IQC on 15/11/2018. The subject appealed the decision and the SAC has not yet issued a verdict, as of the timing covered by this report.
- (ii). **Mr. Luan Kaloçi (prosecutor at the Tirana Appeals Prosecution Office)** was dismissed from office by decision of the IQC on 05/07/2018, after finding that the subject did not convincingly explain the legitimate source of assets, made insufficient declarations on the asset control criterion, the declaration is not accurate according to law, lacks legitimate financial resources to justify wealth. On 03/09/2018, the subject of re-evaluation appealed the IQC decision. On 23/10/2018, the SAC decided to uphold the IQC decision and dismiss the prosecutor from office.

- (iii). **Mr. Bujar Hoti (prosecutor at the Durrës Appeals Prosecution Office)** was dismissed from office by decision of the IQC on 10/09/2018, arguing that the subject failed to reach a credible level in evaluating wealth. On 06/11/2018, the subject of the re-evaluation appealed the decision. On 09/11/2018, a lottery was drawn to determine the composition of the panel of judges.
- (iv). **Ms. Besa Nikëhasani (prosecutor Shkodra Appeals Prosecution Office)** was dismissed from office by decision of the IQC on 20/04/2018, because she had made inadequate declaration of assets. On 21/12/2018, she appealed the IQC decision. On 12/09/2018, the SAC upheld the IQC decision to dismiss the prosecution from office.
- (v). **Mr. Adriatik Cama (prosecutor at the Tirana Judicial District Prosecution Office)** was dismissed from office by decision of the IQC on 12/07/2018, which finds that the subject filed inadequate declaration on the integrity and assets criteria. On 01/10/2018, the re-evaluation subject appealed the IQC decision for his dismissal from office. On February 18, 2019, the SAC decided to uphold the IQC decision 35 of the IQC.
- (vi). **Mr. Arben Nela (prosecutor at the Tirana Judicial District Prosecution Office)** was dismissed from office by decision of the IQC on 23/07/2018, arguing that the subject filed inadequate declarations on the asset control. The subject appealed the decision to the SAC, which drew a lottery to determine the panel of judges on 09/11/2018.
- (vii). **Mr. Dritan Rreshka (prosecutor at the Tirana Judicial District Prosecution Office)** was dismissed from office by decision of the IQC on 31/07/2018, for failing to explain convincingly the legitimate source of income, thus providing inadequate disclosure on the wealth criterion. On 14/11/2018, the Public Commissioner decided not to appeal the IQC decision. The subject appealed the decision and the SAC drew a lottery to determine the panel of judges on 07.12.2018.
- (viii). **Mr. Shpëtim Kurti (prosecutor at the Tirana Judicial District Prosecution Office)** was dismissed from office by decision of the IQC on 23/11/2018. The subject appealed the decision and on 30/01/2019, the Special Appeals College drew a lottery to determine the panel of judges for the case.

- (ix). **Mr. Elision Sadiku (prosecutor at the Korça Judicial District Prosecution Office)** was dismissed from office by decision of the IQC on 27/07/2018. On 25/10/2018, the subject appealed the IQC decision. The SAC will hear his appeal in chamber on 19.03.2019.

B) Re-evaluation of candidates running after the reopening of the calls for expression of interest by the prosecution office

The General Prosecution Office announced on 1.11.2018 that after the announcement of the calls, only candidate Bujar Sheshi had expressed an interest to run for member of the HPC. By decision no. 71, of 24.10.2018, the Independent Qualification Commission decided to confirm him in his office. Meanwhile, the Public Commissioner announced on its website that there would be no appeal against the decision.¹²¹⁾

2.1.4 General meeting of prosecutors

A sufficient number of candidates had passed the transitory re-evaluation procedure and work continued with procedures envisaged in law no.115/2016 for the selection of the HPC members.

A) Call of the meeting and preliminary procedures

After the conclusion of the re-evaluation procedure for all candidates of the list of the General Prosecutor, the IQC, pursuant to article 279/5 of law no. 115/2016, on 27.11.2018 through letter 7995/1 Prot., conveyed to the General Prosecution Office the list of prosecutor candidates who passed vetting successfully. The official list of prosecutor candidates who passed the vetting process successfully is not published on the official website of the IQC or the General Prosecution office, but was only made public by the media.

Prosecutor candidates included in this list, as would appear from the information obtained during the general meeting of the prosecutors, included 2 prosecutors from the General Prosecution Office, 2 prosecutors from the Appeals Prosecution Offices, and 6 prosecutors from the Prosecutor Offices in the Judicial District Courts of First

121 <http://ikp.al/wp-content/uploads/2018/12/Njoftim-për-mosankimin-e-ven-dimit-nr.-71-datë-24.10.2018-të-KPK-së-për-subjektin-e-rivlerësimit-z.-Bujar-Sheshi.pdf>

Instance (3 of which from the Serious Crimes Court).¹²²⁾

Referring to article 279/6 of law no. 115/2016, within 3 days envisaged by law, upon receipt of the list from the IQC, the General Prosecutor through announcement of 27.11.2018, summoned the general meeting of prosecutors¹²³⁾ on 11.12.2018, at 09.00. A few days before the meeting, on December 8, 2018, the draft regulations of the meeting for the election of the HPC members was published on the official website of the General Prosecution Office.¹²⁴⁾

On 10.11.2018, AHC observers monitored in the premises of the General Prosecution Office the process of lottery for the selection of 3 members of the voting commission. According to the lottery, the members of the commission were going to be Mr. Arqilea Koça (chair), Mr. Alfred Progonati (member) and Mr. Adnand Kosova (members). The commission was created according to article 114/4 of law no. 115/2016 and article 7 of the draft regulations "On the process of voting for the election of prosecutor members of the HPC and the election of the members of the voting commission." Unanimously, prosecutors of the General Prosecution Office approved the request submitted by prosecutor Mr. Sokol Stojani, who due to health reasons could not be a candidate to be part of the lottery to create the commission.

B) Conduct of the meeting and announcement of results

The general meeting of the prosecutors was held on 11.12.2018. The call and the conduct of this meeting was characterized by a high level of transparency toward domestic and international organizations that monitored the process as well as the media that was in the meeting hall.

The General Prosecutor, in the capacity of the chair of the meeting, verified the existence of the quorum envisaged in article 112/2 of law no. 115/2016. The verification showed that the general number of prosecutors was 305, while the participation was high, exactly 295

122 Candidate for the HPC from the General Prosecution Office was also Ms. Arta Marku, but now she is an automatically elected member (without undergoing the lottery procedure) of the temporary Judicial Appointments Council, on December 7, 2018.

123 http://www.pp.gov.al/web/Njoftim_per_thirrjen_e_mbledhjes_se_pergjithshme_te_prokuroreve_per_zgjedhjen_e_anetareve_prokurore_te_Keshillit_te_Larte_te_Prokuroris_1248_1.php

124 http://www.pp.gov.al/web/draft_rregullore_mbledhja_e_pergjithshme_e_prokuroreve_1423_1424.pdf

prosecutors, or 96.7% of their total number.¹²⁵⁾

Upon verification of the quorum, the draft regulations were presented, which was voted through a blank sheet of paper, where prosecutors wrote YES/NO, whether they agreed with its approval, or proposed changes. The regulations were approved by the overwhelming majority of prosecutors,¹²⁶⁾ precisely 262 prosecutors voting FOR and 2 prosecutors voting AGAINST.¹²⁷⁾

The General Prosecutor introduced the list of candidates for HPC members, by level of prosecution office and the number of vacancies for each level. In accordance with article 149/3 of the Constitution, it was reported that there were 2 candidates from the General Prosecution Office, namely Ms. Anila Leka and Mr. Kostaq Beluri, running for 1 vacant position. There were 2 candidates for 2 vacancies for prosecutors at the Appeals Prosecution Offices, namely Mr. Arben Dollapaj and Mr. Bujar Sheshi. For the 3 vacant posts in the HPC for First Instance Prosecution members, 6 prosecutors were running, namely: Ms. Antoneta Sevdari, Mr. Besnik Cani, Mr. Besnik Muçi, Mr. Gentian Osmani, Mr. Dritan Prençi and Mr. Vatë Staka. Unlike the process of election of non-magistrate members for both Councils, which envisages a minimal number of candidates for vacancies, for candidates from the judiciary and the prosecution office, law no. 115/2016 does not envisage minimal quotas, which reduces competitiveness between candidates for these positions. This is particularly so when the number of vacancies coincides with the number of candidates representing the same level of the prosecution office.

Before the voting procedure, candidates presented their platforms. The majority of the platforms were not visionary and mostly focused on an analysis of reform in the justice system. There were few candidates who had envisaged objective and well-structured platforms to display in a concise manner their objectives and viewpoints as potential HPC members. There were few candidates who, in presenting their platforms, maintained a proper balance between the need to have a meritocratic promotion and evaluation of prosecutors and the need to

125 We have a quorum because more than half of the total number of prosecutors are present.

126 http://www.pp.gov.al/web/rregullorja_e_miratuar nga_mbledhja_e_pergjithshme_e_prokuroreve_1431.pdf

127 This number does not coincide with the number of prosecutors who voted in the end for candidates, but at the moment of voting for the Draft Regulations, this was the number of prosecutor candidates present in the Meeting.

raise the accountability of prosecutors through a disciplinary process that is as objective, professional, and impartial as possible. The voting process was conducted in accordance with order no. 277, dated 07.12.2018 “On the approval of the sample voting sheet for prosecutor members of the HPC” issued by the General Prosecutor.¹²⁸⁾ The voting procedure was conducted by level of the prosecution office and their distance, while requests for emergency movements were considered in few exceptions. The process concluded at 15:05,¹²⁹⁾ while the vote counting was realized in accordance with article 13 of the Regulations by the Voting Commission.

The process-verbal of the voting process in the general meeting of prosecutors on 11.12.2018 shows that the total number of votes cast was 1770 (because one prosecutor with the right to vote voted several times for candidates competing for the vacant positions). Of the total number of votes, 1544 votes were declared valid and 226 were declared invalid. In spite of instructions given for members with a right to vote, we notice that 12.7% of votes of the meeting members were invalid, a relatively high number compared to the total. The number of votes cast is: 885 votes for candidates from first instance courts’ prosecution offices, of which 778 are valid votes and 107 are invalid votes; 590 votes for candidates from prosecution offices at the appeals level, of which 478 are valid votes and 112 are invalid votes; 295 votes for candidates from the General Prosecution Office, of which 288 are valid and 7 are invalid votes.

Based on the vote count, which were read and displayed for all present, candidates of each level received the following votes:¹³⁰⁾

a. Candidates from among prosecutors at first instance courts ran for three posts and were voted according to this ranking (starting with the candidate receiving the highest number of votes):

1. Mr. Gentian Osmani 181 votes;
2. Ms. Antoneta Sevdari 161 votes;
3. Mr. Besnik Cani 148 votes;
4. Mr. Dritan Prençi 127 votes;
5. Mr. Vatë Staka 86 votes;
6. Mr. Besnik Muçi 75 votes;

128 http://www.pp.gov.al/web/urdheri_per_miratimin_e_fleteve_te_votimit_1426.pdf

129 Voting began at 13:03.

130 http://www.pp.gov.al/web/vendim_1429.pdf

b. Two candidates from among prosecutors at the appeals courts ran for 2 vacant posts, which did not enable a competition between them. the candidates were voted as follows (starting from the candidate receiving the highest number of votes):

1. Mr. Bujar Sheshi 246 votes;
2. Mr. Arben Dollapaj 232 votes;

c. Candidates from among prosecutors at the General Prosecution Office ran for one vacant post and were voted as follows (starting with the candidate receiving the highest number of votes):

1. Mr. Kostaq Beluri 202 votes;
2. Ms. Anila Leka 86 votes;

In accordance with article 115/5 of law no. 115/2016, candidates with the highest number of votes elected to the HPC, by level of prosecution office are:

From among prosecutors at first instance courts:

1. Mr. Gentian Osmani;
2. Ms. Antoneta Sevdari, later dismissed by the second level vetting body, the Special Appeals College;
3. Mr. Besnik Cani.

From among prosecutors at the appeals courts:

1. Mr. Bujar Sheshi;
2. Mr. Arben Dollapaj.

From among prosecutors at the General Prosecution Office:

1. Mr. Kostaq Beluri.

C) Potential complaints

Pursuant to article 116 of law no. 115/2016, no later than 5 days from the announcement of the decision in the official website of the General Prosecution Office, complaints may be filed with the Administrative Court of Appeals for violations of the procedure related to the call of the general meeting, verification of participation, voting, and the vote count, the finding and declaration of invalid votes and the

announcement of results during the general meeting for the election of HPC members.

In the concrete case, the announcement of the results of the general meeting on the official website of the General Prosecution Office was done on December 11, 2018¹³¹⁾ and there were no information on the official website of the Administrative Court of Appeals or the media about any potential complaint.

2.2 Procedures pursued for judge members in the High Judicial Council

2.2.1 Legal basis for the election of members of the High Judicial Council

The legal basis for the election of judge members of the HJC is summarized in section no.2 (*election of HJC members*), sub-section I (*procedure for election of judge members of the HJC*) of law no. 115/2016, including articles 7-18 and in article 276. In particular, referring to article 7/1 of law no. 115/2016, the general meeting of judges of all levels elects 6 members of the HJC, of which:

- a) three of the elected are judges of the first instance courts. At least 1 of them is a judge from a first instance court outside Tirana.
- c) two of the elected are judges of appeals. At least 1 of them is a judge at an appeals court outside Tirana.
- c) one of the elected is a judge at the High Court.

2.2.2 Expression of interest for the position of the member at the High Judicial Council

According to article 276 / 1 of law no. 115/2016, no later than 1 month from the entry into force of this law, judges interested in the position of HJC member should present to the Independent Qualification Commission (IQC) a request for the expression of interest to run and documentation requested for the transitory re-evaluation according to the vetting law. If the IQC was not created, the law envisaged that the request should be submitted to the General Secretary of the Assembly.

131 http://www.pp.gov.al/web/vendim_1429.pdf

Due to the delay in the establishment of the IQC, in its announcement of January 9, 2017,¹³²⁾ the Assembly published the call by which it asked judges interested in the position of HJC member to submit their interest to run and a copy of documentation requested for re-evaluation to the General Secretary of the Assembly. Meanwhile, according to article 276/2 of law no. 115/2016, within the same deadline, judges interested in this position should submit to the chief justice of the High Court, the relevant documentation based on forms made available by the High Court.

According to media reports, by the said deadline, 14 judges submitted their expression of interest. Meanwhile, the official websites of the mentioned institutions did not have any announcement on the details of the expression of interest.

Referring to article no. 276/3 of law no. 115/2016, within 7 days from the submission of documentation, the chief justice of the High Court had to verify the fulfillment of legal criteria, according to procedures envisaged in article 11 of the law and notify the IQC and the candidate, if any of them did not meet the criteria. On 25.01.2017, the list for the "Announcement of official candidates for the High Judicial Council"¹³³⁾, was published on the official website of the High Court and it contained the following names:

- There were 2 official candidates from the High Court, namely: Mr. Artan Zeneli and Mr. Medi Bici.
- There were 3 official candidates from the Appeals Courts, namely: Mr. Ilir Toska from the Tirana Appeals Court, Ms. Nertina Kosova from the Serious Crimes Appeals Court, and Mr. Besim Trezhnjeva from the Durrës Appeals Court.
- There were 9 candidates from the Judicial District Courts, namely: 7 candidates from the Tirana Judicial District Court (Ms. Alma Brati, Mr. Artan Lazaj, Mr. Astrit Faqolli, Mr. Bledar Abdullai, Ms. Brunilda Kadi, Ms. Brunilda Kasmi, Ms. Manjola Xhaxho), 1 candidate from the Serious Crimes First Instance Court (Mr. Dritan Hallunaj) and 1 candidate from the Kurbin Judicial District Court (Ms. Marçela Shehu)

132 <https://www.parlament.al/News/Index/5706>

133 http://www.gjykataelarte.gov.al/web/Shpallen_kandidatet_zyrtare_per_Keshillin_e_Larte_Gjyqesor_4137_1.php

The process of verification of candidates was not transparent because the High Court did not publish data on the documentation submitted by candidates, on the commission that verified the fulfillment of criteria, or the full results of the verification, and only the names of the judges meeting those criteria were published.

Given that from the first list, some of the candidates selected by the Appeals Courts outside Tirana (as will be analyzed further) did not qualify during the re-evaluation procedure, one year and a half from the announcement of the first list, the chair of the High Court published on August 1, 2018, the reopening of the call for the expression of interest by judges of Appeals Courts outside Tirana for the position of the HJC member, setting September 15, 2018, as the deadline. The announcement, though it was initially published on the official website of the High Court, it is now only published by the media.¹³⁴⁾ During the first weeks of the reopened call, no candidate submitted any expression of interest. That is why on August 22, the High Court published the reopening of the call for judges of appeals courts outside Tirana,¹³⁵⁾ with the deadline until September 6, 2018. On the same date, the High Court published the announcement¹³⁶⁾ with the names of candidates who expressed interest for the HJC from these courts, namely Ms. Brikena Ukperaj and Mr. Luan Dervishi. The same announcement stated that the High Court would continue immediately with the procedure to verify the fulfillment of conditions by candidates, according to definitions of article 7/2 and 4, of law no.115/2016 and then the court would officially announce the candidates on its official website.

On September 13, 2018, the High Court published through its official website the notification for the “Announcement of the final list of judge candidates for the HJC,”¹³⁷⁾ which contained the following names:

134 <http://www.panorama.com.al/gjykata-e-larte-ne-kolaps-pas-shkarkimit-te-brocit-mbetet-me-kater-anetare-del-njoftimi-per-aplikimet-ne-klgj/>
<https://www.reporter.al/rihapet-thirrja-per-gjyqtar-apeli-kandidat-per-klgj/>
<http://shqiptarja.com/lajm/gjykata-e-larte-jep-njoftimin-rihapet-gara-per-klgj-tw-aplikojnw-gjyqtarwt-jashtw-tiranws>

135 http://www.gjykataelarte.gov.al/web/Rishpallje_e_thirrjes_per_paraqitjen_e_shprehjes_se_interesit_nga_gjyqtaret_e_gjykatave_te_apelit_jashte_Tiranes_per_pozicionin_e_anetarit_te_5317_1.php

136 http://www.gjykataelarte.gov.al/web/Kandidatet_qe_kane_paraqitur_interesin_per_ne_KLGJ_nga_gjykatat_e_apeleve_jashte_Tiranes_5333_1.php

137 http://www.gjykataelarte.gov.al/web/njoftim_shpallja_lista_perfundimtare_kandidate_klgj_1841.doc

- From the High Court, there is one official candidate, namely Mr. Medi Bici.
- From the Appeals Courts, there are four official candidates, two of which from the Appeals Courts outside Tirana, namely Mr. Ilir Toska, Ms. Nertina Kosova, Mr. Luan Dervishi and Ms. Brikena Ukperaj.
- From the Judicial District Courts, there are six official candidates, of which one from a district court outside Tirana, namely Ms. Alma Brati, Mr. Astrit Faqolli, Ms. Brunilda Kadi, Ms. Manjola Xhaxho, Ms. Marçela Shehu, Mr. Dritan Hallunaj.

Law no. 115/2016, article 11/5 envisages, *“If even after the second call, there are no candidates from the unrepresented levels of the judiciary, their election shall be done by lottery from among judges who ran for the vacant position. Each candidate who meets the criteria to be elected member of the Council and the criteria for promotion or to be transferred to unrepresented levels of the judiciary, shall have a right to run for the relevant vacant position.”*

2.2.3 Process of transitory re-evaluation (vetting) of judge candidates in the HJC

Pursuant to article 276 of law no. 115/2016, within 3 months from the date of submission of the expression of interest and documentation, the IQC should have done the transitory re-evaluation of judges running for the post. The deadline was not respected because the IQC was created with considerable delay. Further on, the same article envisages that the judge who, by decision of the IQC, does not pass the re-evaluation procedure is excluded from the competition, even when an appeal has been filed against the commission decision. As a result, the election of candidates continues without the participation of this candidate. Further on, we'll analyze the results of the vetting process on each of the lists announced by the High Court.

A) Re-evaluation of judge candidates for the HJC, referring to the list of January 25, 2017

All the candidates of this list underwent the priority re-evaluation process and the name of each was included in the first lottery drawn by the IQC on November 30, 2017.¹³⁸⁾ The vetting of candidates for member of the HJC from among judges, included in the list of January 25, 2017, led to the following results:

138 <http://kpk.al/2017/12/12/njoftim/>

Judge candidates running for member of the HJC confirmed in office by the Independent Qualification Commission are as follows:

- (i) **Mr. Medi Bici, judge at the High Court** was confirmed in office by decision of the IQC on 31.07.2018. No appeal was filed against the decision and it became final.
- (ii) **Mr. Ilir Toska, judge at the Tirana Appeals Court** was confirmed in office by decision of the IQC on 21/06/2018. No appeal was filed against the decision and it became final.
- (iii) **Ms. Nertina Kosova, judge at the Serious Crimes Appeals Court** was confirmed in office by decision of the IQC on 18/07/2018. The Public Commissioner appealed the decision and on 09.11.2018, the SAC drew the lottery to assign a panel of judges.
- (iv) **Ms. Alma Brati, judge at the Tirana Judicial District Court** was confirmed in office by decision of the IQC on 05/07/2018. The Public Commissioner appealed the decision. From the day of the lottery drawn to assign the panel of judges to date, several public hearings have been held, but though it has been 6 months, the case is yet to receive a final decision by the SAC during the period covered by this report.
- (v) **Mr. Astrit Faqolli, judge at the Tirana Judicial District Court** was confirmed in office by decision of the IQC on 27/05/2018. The Public Commissioner appealed the decision. The Special Appeals College held on March 7, 2019, the first public judicial hearing on the case. The case took place precisely 6 months after the lottery to assign a panel of judges. the case remains in process during the period covered by this report.
- (vi) **Ms. Brunilda Kadi, judge at the Tirana Judicial District Court** was confirmed in office by decision no. 57 of the IQC on 01/08/2018. The official website of the Public Commissioners informs of the decision to not file an appeal against the decision.¹³⁹⁾ As a result, the IQC decision became final.
- (vii) **Ms. Manjola Xhaxho, judge at the Tirana Judicial District Court** was confirmed in office by decision no. 19 of the IQC on 14/05/2018. The official website of the Public Commissioners informs of the decision to not file an appeal against the

139 <http://ikp.al/wp-content/uploads/2018/11/47.Njoftim-për-mosankimin-e-vendimit-nr.-57-datë-1.8.2018-znj.-Brunilda-Kadi.pdf>

- decision.¹⁴⁰⁾ As a result, the IQC decision became final.
- (viii) **Mr. Dritan Hallunaj, judge at the Serious Crimes Court of First Instance** was confirmed in office by decision no. 56 of the IQC on 01/08/2018. The official website of the Public Commissioners informs of the decision to not file an appeal against the decision.¹⁴¹⁾ As a result, the IQC decision became final.
- (ix) **Ms. Marçela Shehu, judge at the Kurbin Judicial District Court** was confirmed in office by decision no. 20 of the IQC on 04/06/2018. The official website of the Public Commissioners informs of the decision to not file an appeal against the decision.¹⁴²⁾ As a result, the IQC decision became final.

Judge candidates running for HJC member dismissed from office by the Independent Qualification Commission are as follows:

- (i) **Mr. Artan Zeneli, judge at the High Court** was dismissed from office by decision of the IQC on 14.09.2018. The cause of the dismissal according to the IQC have to do with the asset criterion because, according to the IQC, the subject took steps to hide his assets, filed inaccurate disclosure statements, and did not convincingly explain the legitimate source of his wealth. The subject exercised his right to file a complaint against the decision on February 4, 2019, and the SAC reviewed the case and, in the end, ruled unanimously to uphold the IQC decision.¹⁴³⁾
- (ii) **Mr. Besim Trezhnjeva, judge at the Durrës Appeals Courts** was dismissed from office by decision of the IQC on 13/04/2018. The reason for the decision making of the IQC had to do with the assets criterion because the subject had insufficient disclosure on assets and violated public trust in the justice system. The subject of re-evaluation appealed the decision and, in the end, the SAC decided on 26.07.2018 to uphold the IQC decision.¹⁴⁴⁾

140 <http://ikp.al/wp-content/uploads/2018/07/Njoftim-për-mosankimin-e-vendimit-nr.-19-datë-14.5.2018-të-KPK-së-për-subjektin-e-rivlerësimit-znj.-Manjola-Xhaxho.pdf>

141 <http://ikp.al/2018/09/17/njoftim-per-mosankimin-e-vendimit-nr-56-date-1-8-2018-te-kpk-se-per-subjektin-e-rivleresimit-z-dritan-hallunaj/>

142 <http://ikp.al/wp-content/uploads/2018/07/Njoftim-për-mosankimin-e-vendimit-nr.-202c-datë-4.6.20182c-të-KPK-së2c-për-subjektin-e-rivlerësimit-znj.-Marçela-Shehu-1.pdf>

143 <http://www.kpa.al/njoftim-92/>

144 <http://www.kpa.al/njoftim-17/>

- (iii) **Mr. Artan Lazaj, judge at the Tirana Judicial District Court** was dismissed from office by decision of the IQC on 11.07.2018. The reasons for the IQC decision had to do with the assets criterion as the subject provided insufficient disclosure and did not provide convincing explanations on this criterion, thus not reaching a credible level in the explanation of wealth. The subject of re-evaluation appealed the decision. On January 31, 2019, the SAC panel of judges announced its decision and considered that “failure to review the request of the subject of re-evaluation to exclude from further adjudication the IQC commissioner by another panel of judges, represents a serious procedural violation. Therefore, the panel of judges decided to overturn decision no. 34, on 11.07.2018 of the IQC. Based on article F/3 of the Annex of the Constitution, the SAC may send back for review to the IQC the case of the subject re-evaluation, but conducted re-evaluation itself from the moment it declared the serious procedural violation during the IQC hearing session. In the end, the SAC decided to dismiss the subject and its decision is final.
- (iv) **Mr. Bledar Abdullai, judge at the Tirana Judicial District Court** was dismissed from office by decision of the IQC on 30/07/2018, because the subject provided inadequate disclosure of legitimate financial resources to justify his wealth. The subject of re-evaluation appealed the decision. On 30.10.2018, the SAC drew the lottery to assign a panel of judges, the head of the panel and the rapporteur. Until the time of this report, the SAC has not held a hearing or reviewed the appeal of the subject in chamber.

Of the list of candidates for the HJC, there appears to be only one candidate on whom the vetting process was interrupted due to resignation. Namely, Ms. Brunilda Kasmi, judge at the Tirana Judicial District Court submitted her resignation from her position as judge. By decision of 25/06/2018, the IQC decided to interrupt the vetting process and declared the right of the subject of re-evaluation to be appointed, among others, a member of the High Judicial Council.

B) Re-evaluation of the candidates of the list of September 13, 2018

The second list announced by the High Court on 13.09.2018 contained the names of many judge candidates competing for member of the HJC, who were also included in the first list published on January 25, 2017. The re-evaluation procedures for the two new candidates included in this list led to the confirmation in office of one of the candidates and the dismissal from office of the other.

- (i) The judge candidate running for member of the HJC who was confirmed in office is Ms. Brikena Ukperaj Lubonja, judge at the Vlora Appeals Court. The subject was confirmed in her post by decision of 25.06.2018 of the IQC. Referring to data published on the official website of the Public Commissioner, the Public Commissioner did not appeal the decision and as a result, it became final.
- (ii) The judge candidate running for HJC member who was dismissed from duty is Mr. Luan Dervishi, judge at the Shkodra Appeals Court. The subject was dismissed from office by IQC decision of 26/11/2018, because it was deemed that he had problems with the wealth criterion, including inaccurate disclosure of assets, lack of legitimate exercised his right to appeal the decision and on resources to justify them, hiding of assets, fake disclosure, and in circumstances of conflict of interest. The subject exercised his right to appeal the decision and a lottery was drawn at the SAC on 01.03.2019 to assign a panel of judges.

C) Data processed on the progress of the vetting of candidates for members of the HJC from the judiciary

Procedures for the transitory re-evaluation of candidates communicated in both lists led to the confirmation in office of almost 2/3 of them, precisely 10 of the candidates, and the dismissal from office of 5 judges, and the interruption of the process for one candidate who resigned.

For three of the members confirmed in office by the IQC, the Public Commissioner exercised the right to appeal the decisions to the SAC and therefore the confirmation decision was not final. The subjects of re-evaluation appealed all five dismissal decisions to the SAC. For two of the subjects, the SAC expressed its decisions whereby in

one instance the IQC decision was upheld and in the other, it was overturned due to procedural violations, but in the end, the subject was still dismissed. The three other appeals remain in process at the SAC during the period covered by this report and so the decision is not final. For the five dismissal decisions of the IQC, it appears that the candidates for the HJC were penalized due to the wealth criterion, arguing that there was hiding or inaccurate or insufficient disclosure of assets.

In total, the 6 IQC decisions to confirm in office or dismiss the judges running for the HJC, which were appealed (by the Public Commissioner or the subjects themselves) are still in the process of review by the SAC during the period covered by this report and, therefore, are not final. For the rest of the subjects, confirmed or dismissed by the IQC, a total of 10 candidates, the decisions are final.

The average length of adjudication at the SAC varies on average 7-9 months from the date of the IQC decision. The pace of adjudication of these cases, in our opinion, could be more dynamic.

2.2.4 General meeting of the judges

A sufficient number of candidates, precisely 10 judges representing different levels of the judiciary, passed the vetting process and the process continued with procedures envisaged in law no. 115/2016, the notification and conduct of the general meeting of judges, which is given the attribute to make the election of the HJC members.

a) Convening the meeting and preliminary procedures

After the conclusion of the vetting process for all candidates of the list published by the High Court, the IQC, pursuant to article 276/5 of law no. 115/2016, on 27.11.2018, conveyed to the chief justice of the High Court the names of judge candidates who successfully passed vetting. The list with the official names of candidates was not published on the official website of the IQC or the website of the High Court.

As it would result from the monitoring of the general meeting, of the 10 judges confirmed in office by the IQC, 1 of them is a judge at the High Court, 3 are judges at the Appeals Courts (one of which in the Serious Crimes Court of Appeals), 3 in the Tirana Judicial District Court, 1 in the Kurbin Judicial District Court, and 1 in the Serious Crimes Court of First Instance.

Pursuant to article 13 of law no. 115/2018, within the 3-day deadline envisaged by law, upon receipt of the list from the IQC, the chief justice of the High Court, by announcement no. 4132 Prot., dated 30.11.2018, convened the general meeting of judges¹⁴⁵⁾ for 12.12.2018. A few days before that, the draft regulations of the meeting for the election of HJC members was published on the official website of the High Court.¹⁴⁶⁾

Meanwhile, on 10.12.2018, a lottery was drawn to elect members of the Voting Commission, who according to the Draft Regulations are responsible for administering the voting process for the election of the HJC members. Pursuant to article 16/4 of law no. 115/2016, there were 4 candidates who were at the same time assistant-magistrates at the High Court. The manual lottery drawn for assigning the members of the commission led to the election of: Mr. Durim Kadiu (chairman), Mr. Engert Pëllumbi (member) and Mr. Florian Kalaja (member).¹⁴⁷⁾

Regarding the summoned meeting, a notification was published on 11.12.2018 on the official website of the High Court on the submission of a request by Ms. Alma Brati to withdraw from the competition for HJC member.¹⁴⁸⁾

b) Conduct of the meeting and announcement of results

The general meeting of judges was held on 12.12.2018. The announcement of the meeting did not contain an agenda and the issues to be reviewed.

At the start of the meeting, the draft regulations of the meeting were introduced, which were approved unanimously by an open vote. During the proceedings of the meeting, one could notice that the meeting did not observe the same procedure as in the general meeting of the prosecutors, on a YES/NO vote to approve or amend the Draft Regulations. The final version of these regulations has not been published yet on the website of the High Court (unlike the general meeting of the prosecutors, whereby the final regulations were published on the official website of the General Prosecution Office).

145 http://www.gjykataelarte.gov.al/web/publikim_copy_1_1873.pdf

146 http://www.gjykataelarte.gov.al/web/draft_rregullore_finale_1878.pdf

147 http://www.gjykataelarte.gov.al/web/njoftimi_i_shortit_1877.pdf

148 http://www.gjykataelarte.gov.al/web/document_1879.rtf. The referred reason is personal and during the meeting, all measures were taken to reflect this change in all ballots.

Further on, the general meeting continued with the presentation of **platforms by candidates**, which generally did not contain well-established objectives, but mainly consisted in highlighting the current problems of the justice system, lack of cooperation with the High Council of Justice, lack of motivating support for judges in the system, etc. There were few candidates who displayed visionary platforms and targeted clear objectives, as well as maintained a balance between the need to promote a meritocratic career within the justice system and the need to increase accountability and disciplinary responsibility of the system through the HJC.

The general number of judges on the voting lists was 354 while the number of participating judges who voted to elect 6 judge members of the HJC was 339. During the meeting, one of the persons present addressed verbally issues with the violation of legal provisions by the chief justice of the High Court, for not including in the list of voters some of the High Council of Justice Inspectors. The High Court chief justice, in his response, clarified that during the general meeting, only those persons who have the status of a judge according to provisions of law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania” and, as a result, only those HJC Inspectors who had the judge status could vote.¹⁴⁹⁾

According to the process-verbal published on the website of the High Court “On the results of the vote to elect the member(-s) of the High Judicial Council,” it appears that the total number of votes cast is 2035, of which 1694 valid ballots and 341 invalid ballots. In spite of instructions provided in the meeting on the manner of voting for members with a right to vote, we still find that 16.7% of the ballots were invalid. This is a relatively high number, which, if compared to the total, could have led to overturning the results on the elected candidates had the judges respected the voting procedure. Due to damages, 26 ballots were replaced.¹⁵⁰⁾

The five candidates in the first instance courts who ran for three vacant posts on the HJC received the following votes (starting from the candidate with the highest number of votes):

149 <https://www.parlament.al/Files/sKuvendi/kom/Raport%20monitorimi%20per%20zgjedhjen%20e%20anetareve%20te%20KLGJKLP.pdf>

150 http://www.gjykataclarte.gov.al/web/untitled_copy_1_1886.pdf

- (i) Ms. Marçela Shehu, Kurbin Judicial District Court, received 289 votes¹⁵¹⁾.
- (ii) Mr. Dritan Hallunaj, Serious Crimes Court of First Instance, received 215 votes.
- (iii) Ms. Brunilda Kadi, Tirana Judicial District Court, received 135 votes.
- (iv) Mr. Astrit Faqolli, Tirana Judicial District Court, received 129 votes.
- (v) Ms. Manjola Xhaxho, Tirana Judicial District Court, received 42 votes.

The three candidates from Appeals Courts who ran for 2 vacant posts on the HJC received the following votes (starting from the candidate with the highest number of votes):

- (i) Ms. Brikena Ukperaj, Vlora Court of Appeals, received 287 votes.¹⁵²⁾
- (ii) Mr. Ilir Toska, Tirana Court of Appeals, received 200 votes.
- (iii) Ms. Nertina Kosova, Serious Crimes Court of Appeals (Tirana), received 111 votes.

Participation of one candidate from the High Court who ran for one post on the HJC did not enable a competitive race for the post. Namely:

- (i) Mr. Medi Bici, member of the High Court, received 290 votes.

Published on the official website of the High Court is decision no. 242, dated 12.12.2018 "On the announcement of winning candidates for judge members of the High Judicial Council."¹⁵³⁾ In accordance with article 115/5 of law no. 115/2016, HJC members with the highest number of votes winning the 6 vacant positions on the Council, by level of the Judiciary are:

Members elected to the HJC from among judges at first instance courts:

- (i) Ms. Marçela Shehu
- (ii) Mr. Dritan Hallunaj
- (iii) Ms. Brunilda Kadi

151 Invalid votes: 50.

152 Invalid votes: 52.

153 http://www.gjykataelarte.gov.al/web/untitled_1885.pdf

Members elected to the HJC from among judges at appeals courts are:

- (i) Ms. Brikena Ukperaj
- (ii) Mr. Ilir Toska

Member elected to the HJC from the High Court:

- (i) Mr. Medi Bici.

c) Potential complaints

The announcement of results after the end of the general meeting does not have a final character. According to article 18 of law no. 115/2016, no later than 5 days from the day of the announcement of the decision on the official website of the High Court, complaints may be filed with the Administrative Court of Appeals, for violations of procedures related to convening the meeting, verification of participation, voting and counting of votes, statement and announcement of invalid votes and the announcement of the result during the general meeting of judges for the election of HJC members.

In this concrete case, the announcement of the results of the general meeting on the official website of the High Court occurred on December 13, 2018¹⁵⁴) and there was no information on the official website of the Administrative Court of Appeals or the media about any potential appeals. As a result, after the 5-day window went by and after declaring the results of the General Meeting of Judges final, on December 20, 2018, as the media reports, the first meeting of the High Judicial Council was conducted.

154 http://www.gjykataelarte.gov.al/web/Mbledhja_e_Pergjithshme_e_Gjyqtareve_date_12_12_2018_5450_1-9.php

CHAPTER II

MONITORING OF THE TRANSITORY COMPETENCES OF THE HIGH COUNCIL OF JUSTICE

1. Organization and functioning of the HJC

The creation of the High Council of Justice was envisaged for the first time in the law “On main constitutional provisions.”¹⁵⁵⁾ According to this law, the HCJ was the authority responsible for the justice system, with competences related to the appointment, transfer, and disciplinary proceedings of judges.¹⁵⁶⁾ From 1992 until 1998, the HCJ functioned only on the basis of constitutional provisions and internal regulations. The constitutional provisions of the 1998 Constitution, the composition and functioning of the HCJ was envisaged in article 147. The HCJ was a collegial body, which met not less than once every 2 months¹⁵⁷⁾ to exercise the competences granted by law.¹⁵⁸⁾ The institution’s members included the President of the Republic, the Chief Justice of the High Court, Minister of Justice, 3 members elected by the Assembly, and 9 judges of all levels, elected by the National Judicial Conference.¹⁵⁹⁾ The President of the Republic, chief justice of the High Court, and the Minister of Justice were *ex officio* members. The President of the Republic was considered to have a status *primus inter pares*¹⁶⁰⁾ and his vote carried the same weight as the other members of the HCJ.

155 Law no. 7561, dated 29.4.1992 “On some amendments and completions in law no. 7491, dated 29.4.1991 On main constitutional provisions.”

156 Article 15 of the law “On main constitutional provisions” envisaged, “The High Council of Justice is chaired by the President of the Republic and consists of the Chief Justice of the Cassation Court, the Minister of Justice, General Prosecutor, and 9 jurists known for their capabilities, elected once in every five years in the joint meeting of the Cassation Court and the General Prosecution Office, without the right to immediate re-election. The High Council of Justice is the only authority to decide on the appointment, transfer, and disciplinary responsibility of judges of the first instance, appeals, and prosecutors. The manner of functioning and the exercise of activity of the High Council of Justice is determined by the regulations that it approves.”

157 Article 18 and Article 19(1), HCJ Law

158 According to article 2 of the material law no. 8811, dated 17.5.2001 (amended), the HCJ exercises these duties: “a) Proposes to the President of the Republic the appointment of judges of first instance courts and appeals courts; b) Decides on the dismissal of judges of first instance courts and appeals courts; c) Decides on the transfer of judges; ç) Decides on taking disciplinary measures on judges; d) Cares for the qualification of judges; dh) Decides on the criteria for the evaluation of judges, checks and guarantees the evaluation process, and reviews complaints by judges regarding their evaluation; e) Appoints and dismisses the chief justices and deputy chief justices of the first instance courts and appeals courts, appoints and dismisses inspectors of the High Council of Justice Inspectorate; f) Carries out other duties assigned by law.”

159 Article 147(1) Constitution of Albania, 1998.

160 Anastasi, Aurela, “Appointment of judges as an important constitutional matter,” Magazine “Ligji mundësi zhvillimi për gratë”, no. 15.

The material law on the HCJ no. 8811, dated 17.5.2001 (amended) envisaged that the function of the member of this institution *“is incompatible with the function of the prosecutor, member of leading and executive bodies, political parties, or the activity of the lawyers at first instance and appeals courts.”* Regarding the functions and field of activity, the HCJ was the authority responsible for the protection, appointment, transfer, dismissal, education, moral and professional evaluation, career, and control of the activity of judges of the first instance and appeals courts.¹⁶¹⁾ HCJ, upon proposal of the Minister of Justice, publicly announced vacancies for judges,¹⁶²⁾ reviewed and decided on candidates presented on the basis of public calls,¹⁶³⁾ proposed to the President of the Republic the appointment of a judge,¹⁶⁴⁾ and carried out disciplinary proceedings of judges in accordance with articles 31-34 of the HCJ material law.

The HCJ, in fulfilling its duties and functions, had the assistance of the HCJ Inspectorate, which consisted of the Chief Inspector and the inspectors, who were appointed and dismissed by the HCJ.¹⁶⁵⁾ The inspectorate collected and processed the necessary data and prepared the evaluation on the professional capabilities of the judge. The inspectorate also conducted verifications on disciplinary proceedings proposed by the Minister of Justice in cases when the HCJ deemed and requested. It verified or sent the Minister of Justice to address the complaints of citizens and other subjects addressing the HCJ on actions by judges, deemed as being in contravention of the regular fulfillment of duties. The inspectorate, when it noticed legal causes for disciplinary proceedings, sent the Minister of Justice immediately an explanatory report and relevant documentation to review the disciplinary proceedings. The inspector verified also issues of declared assets of judges, as well as legal incompatibility of their activity and conduct.¹⁶⁶⁾

The composition and activity of the HCJ has been often the target of criticism or judicial evaluation by the Constitutional Court and

161 Artilec 1, law no. 8811, dated 17.5.2001 “On the organization and functioning of the High Council of Justice,” amended by law no. 9448, dated 5.12.2005.

162 Neni 28, HCJ Law

163 Neni 29, HCJ Law

164 Neni 30, HCJ Law

165 Neni 14, HCJ Law

166 See article 16 of the HCJ Law

the ECtHR.¹⁶⁷⁾ The Venice Commission and the Commissioner for Human Rights have stated that the three HCJ members appointed by Parliament should be appointed by a qualified majority as that is essential for ensuring that the administration in office will not appoint its political supporters.¹⁶⁸⁾ Also, decision no. 11/2004 of the Constitutional Court, although it did not state a constitutional problem, argues the overlapping of the work of the two Inspectorates (of the Ministry of Justice and that of the HCJ) as follows:

“the existence of two inspectorates which appear to overlap one another, the clear definition and determination of the notions inspection, control, verification, avoiding the intertwining of competences between the two inspectorates and two institutions (Ministry of Justice and the HCJ) regarding the administration of justice and services, as well as the setting of clear boundaries over control in courts and judges, are some of the issues that need study and review by relevant bodies in the general context of improvement of legislation.”¹⁶⁹⁾

Another problem encountered in the HCJ activity has been the overlapping of the role of this institution with the HIDAACI. Thus, according to article 61/1 of the HCJ material law, the HCJ may “verify and start cases regarding the assets declared by judges.” Based on law no. 9049, date 10.4.2003 “On the declaration and audit of assets, financial obligations of elected officials and some public officials” (amended), the HIDAACI carries out the control and verification of the wealth of judges. These legal provisions have created disagreements of legal competence between these institutions that have led to institutional “confrontations” in some cases. Disagreements were created because when the HIDAACI found a judge to have problems with declaring assets, it punished the judge administratively and then

167 Case **Mishgjoni vs. Albania (Complaint no.18381/05)** Strassbourg, December 7, 2010, decision in Albania published at http://www.qbz.gov.al/botime/permbledhese/permbledhje%20gjednj_2016.pdf, Case of Agim Hysi vs. Albania (**Complaint no. 38349/05**), decision in Albanian published at: <http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%20142/VENDIM%20I%20GJEDNJ,%20date%2022.5.2018%20HYSI.pdf>

168 Study of Res Publica. “Impunity in disciplinary proceedings for judges. Analysis of some of the causes that stimulate impunity in the activity of the High Council of Justice,” funded by the Open Society Foundation, May 2015.

169 Decision of the Constitutional Court no. 11, 27.05.2004.

asked the HCJ to take disciplinary measures on the judge, but without making available the investigation file.¹⁷⁰⁾ The HCJ claimed in such cases that it could not impose disciplinary measures on the judge based on findings offered by HIDAACI because, in accordance with the material law of the HCJ, it should organize a fair process.¹⁷¹⁾ On the other hand, the HIDAACI states that the findings of its investigation are indisputable by any other administrative authority.¹⁷²⁾

Other problems encountered in the functioning of the HCJ may include failure to exercise competences that have led to delays in the appointment of magistrates, although there have been vacancies there have been announcements of vacancies without proposals by the Minister of Justice, there have been delay in the full evaluation of judges, surpassing the boundaries of the law in procedures followed for the selection of candidates for judges in the Administrative Court, lack of objective criteria in the transfer of judges, promotion of inspectors in violation of the law, etc.¹⁷³⁾ These were some of the reasons that led the high-level experts (HLE) of the justice reform to propose changes to the structure of this Council.¹⁷⁴⁾ The recommendation of the high-level group of experts, based also on the Venice Commission report, was that the HCJ should be depoliticized, be independent from politics and that its members should be elected by qualified majority in parliament.¹⁷⁵⁾ According to these experts, the composition of the Council should reflect a majority from the judiciary, but the diversity of opinions among the membership is also valid.¹⁷⁶⁾ **The role of the President as HCJ Chair and that of the Minister of Justice as the body with exclusive competence for the start of disciplinary proceedings were viewed as problematic by the**

170 Ministry of Justice, Analytic Document, detailed information by sector of the justice system (For conduct of full analysis of the current situation in the justice system, to familiarize with and highlight problems and needs for improvement), p. 68, accessed at: https://drejtesia.gov.al/wp-content/uploads/2017/10/Analiza_e_sistemit_te_drejtesise_FINAL-1.pdf

171 *Ibid.*

172 *Ibid.*

173 Ministry of Justice, Analytical Document, Detailed information by sector of the justice system, cit.supra, p. 65-66.

174 Special Parliamentary Committee on Reform in the Justice System. Group of High-Level Experts. Analysis of the justice system in Albania.

175 *Ibid*, p.15

176 *Ibid.*

HLE group.¹⁷⁷⁾ Also, the lack of basic constitutional criteria for the election of members by the Assembly does not ensure transparency and quality in composition and gives unlimited discretion to the lawmaker in defining these criteria, as the minimal majority required for their vote in the Assembly does not provide sufficient guarantees in terms of respect for the HCJ independence.¹⁷⁸⁾

Other identified problems have been the low frequency of meetings,¹⁷⁹⁾ lack of clarity in the criteria and procedures for the professional evaluation of judges,¹⁸⁰⁾ lack of clarity for the implementation of disciplinary measures and transfers,¹⁸¹⁾ problems with the meeting and organization of the National Judicial Conference, etc.

In order to respond to the needs for a more independent, more functional, and more efficient council in the appointment, transfer, and proceedings on judges, the Justice Reform package got rid of the HCJ and envisaged the establishment of the High Judicial Council (HJC) and the High Justice Inspector (HJI).

According to article 147/a of the Constitution, the HJC appoints, evaluates, promotes, and transfers judges of all instances, decides on disciplinary measures on judges of all instances, proposes to the President of the Republic the candidates for judges of the High Court, approves the rules of judicial ethics and oversees their adherence, leads and takes care of the conduct of work in the administration of courts, proposes and administers its own budget and that of courts, informs the public and the Assembly on the situation in the judicial system and exercises other functions assigned by law. The Minister of Justice may participate, without the right to vote, in meetings of the High Judicial Council when issues related to strategic planning and budgeting for the judiciary are to be discussed.¹⁸²⁾ On the other hand, the HJI is responsible for verifying complaints, investigation of violations on its initiative and start of disciplinary proceedings on judges and prosecutors of all levels, members of the HJC and HPC, the General Prosecutor, according to the procedure determined by

177 *Ibid*, p. 29, 30.

178 *Ibid*, p.33

179 *Ibid*, p., 58

180 *Ibid*, p. 66

181 *Ibid*, p. 67-68.

182 Article 147/a(3), Constitution of the Republic of Albania.

law.¹⁸³⁾ Also, the HJI is responsible for the institutional inspection of courts and prosecution offices.¹⁸⁴⁾

2. Transitory competences of the HCJ according to the new legislation of justice reform

As has been analyzed in the Constitutional Court decisions, the transitory provisions are the ones that regulate the moment of transfer from one system to another, presenting the way in which new provisions will be implemented with regard to actual situations or existing relationships. Fulfilling this purpose (realization of this passage), they lose their effect.¹⁸⁵⁾

Article 179 of the Constitution, approved by law no.76/2016, in the context of justice reform,¹⁸⁶⁾ envisages the way and in some cases the expiry of the mandates of members of existing institutions, until the establishment of new institutions. The purpose of article 179 is to determine the rules applicable during the transitory period between the time when “old” provisions cease, and “new” provisions begin to take effect. Also, this article seeks to establish precisely the effects of the approved constitutional provisions and not allow the violation of constitutional principles guaranteed in the context of the Constitution.¹⁸⁷⁾

Article 179/5 of the Constitution envisages that the HJC would be created within eight months since the entry into effect of this law. Concretely, law no. 76/2016 was published in the official gazette no. 138, on July 27, 2016, and entered into effect 15 days after the publication, precisely on August 11, 2016. In spite of this provision, in fact, the establishment of the Council came two and a half years after the approval of the constitutional amendments. Its first constituting meeting was held on December 11, 2018. The reasons for the delay in the establishment of the HJC were analyzed earlier in this report.

183 Article 147/d(1), Constitution of the Republic of Albania.

184 Article 147/d(2), Constitution of the Republic of Albania.

185 Decision no. 24, dated 09.06.2011 of the Constitutional Court

186 Law no. 76/2016, dated 22.7.2016

187 Commentary on the constitutional reform in the justice system (2016) – Commentary by the Open Society Foundation for Albania and the Institute for Public and Legal Studies – p.450

Also according to article 179/5 of the Constitution, HCJ members conclude their mandate after the establishment of the High Judicial Council, **but no later than the election of all members of the High Judicial Council, according to the law.** Further on, article 179, paragraph 12 of the Constitution envisages that the President of the Republic remains HCJ chair until the creation of the HJC, within 8 months from the entry into force of this law. likewise, article 227/1 of law no. 115/2016 envisages that HCJ members remain in office until the creation of the HJC and that the mandate of the members expires on the day when the last HJC member is elected, but in any event, no later than 8 months after the entry of constitutional amendments into force. The spirit of these constitutional provisions interpreted in harmony with article 227/1 of law no.115/2016 is that the mandate of the HCJ members may not last longer than 8 months after the entry into force of constitutional amendments no.76/2016.

In some of its decisions, the Constitutional Court has interpreted the remaining in office of members of the Constitutional Court itself after the conclusion of the mandate until their replacement. Decision no. 24/2001 of the Constitutional Court reiterates *"the rule of continuity of remaining in office of the constitutional judge has been envisaged in order to guarantee, above all, the normal functioning of the Court in case of creation of vacancies, as a result of inaction by any of the bodies, which the Constitution says have a special role in this moment for the replacement of old judges with new judges. Based also on the collegial nature of this independent constitutional institution, any inaction would have consequences for the functioning of the Court."* In the same decision, the Constitutional Court argues, *"Unlike the judge of the High Court, article 125/5 of the Constitution envisages that the Constitutional Court judge remains in office until the appointment of his/her successor."* **Thus, the remaining in office of the member of the Constitutional Court after the completion of the mandate relies on and is justified by precisely constitutional provisions, while in the case of the HCJ members, the new constitutional law no. 76/2019 has envisaged a deadline for the establishment of the new body that will replace the HCJ, precisely 8 months from its entry into force.** The Constitution also refers to the remaining in office of HCJ members until the creation of the HJC, but no later than the election of all members according to law. In this concrete case, the material law is precisely law no. 115/2016

whereby again, the transitory provisions, state that the process of the completion of the mandate of HCJ members is the day when the last member of the HJC is elected, but in any event, no later than 8 months after the entry into force of the constitutional amendments. Furthermore, the Constitution expressly states the continuation of the mandate of the President as HCJ Chair until the creation of the HJC within 8 months after the entry into force of the Constitutional amendments. Thus, all these provisions analyzed in their entirety and in harmony with one-another lead to the evaluation that the mandate of HCJ members ceases no later than 8 months after the entry into force of the constitutional amendments. Moreover, the Constitution could not draw a distinction about the end of the mandate of the HCJ chairperson from the end of the mandate of its other members.

Also, in decision no. 34/2017, the Constitutional Court indirectly touches upon the issue of the continuity of the HCJ until the creation of the HJC. In this decision, the CC has taken under review the request of two organizations of judges to invalidate some provisions of law no. 96/2016. Concretely, the CC states *“as the formulation of item 5 of article 179 of the Constitution ‘that members of the HCJ conclude their mandate after the creation of the HJC, but no later than the election of all HJC members according to law’ expresses and seeks to ensure the constitutional value of the institutional continuity and coherence and, as a result, the normal functioning of the HCJ during the transitory period.* As long as the will of the constitution-maker was to not interrupt the functions of the HCJ, the Court deems that the HCJ, like other existing constitutional institutions, will continue to exercise its functions until the full constitution of new constitutional bodies and, in this sense, the implementation of articles 160/1 and 173/1 of the law should be in full accordance with this interpretation of the Court, in respect of the spirit of the Constitution. However, in this decision, the Constitutional Court did not analyze clearly the issue of the deadline of remaining in office of the HCJ members, whether it will be within 8 months after the entry into force of constitutional amendments or beyond this deadline in case the HJC is not created within the 8-month deadline.

Regarding this issue, it is also worth citing the minority opinion of judge S.B. in decision no. 41, dated 19.07.2012, which again analyzes the continuity in office of the Constitutional judge. Concretely, in the minority opinion, the constitutional judge states *“the continuity of the judge in office should be understood and implemented as a continuity*

within a reasonable length of time. A long period of remaining in office after the end of the mandate, which could represent the use of a substantial part of the regular 9-year mandate, though not functionally equivalent to re-appointment, juridically risks looking like re-appointment, in violation of article 125/2 of the Constitution.” **In our opinion, the HCJ members who remained in office for about 2 and a half years after the approval of constitutional amendments in justice reform were placed in the same position.**

The extension of the mandate of HCJ members beyond constitutional and legal deadlines could call into question the legitimacy of the institution and its decision-making. Delays in the establishment of the HJC also led to the strained functioning of the HCJ, which would exercise in a limited manner some of the competences envisaged by law. The created situation led to problems with regard to the good governance of the judiciary, which faced a series of other problems during this transitory period, particularly regarding vacancies created in the High Court and other courts as a result of dismissals or resignations of some judges due to the vetting process.

One of the issues that was the subject of review by the Constitutional Court in decision no. 34/2017, cited above, is the exercise of transitory competences of the HCJ until the foundation of the HJC. Article 160/1 of law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania” envisages that “*until the creation of the High Judicial Council and the High Justice Inspector, the High Council of Justice and the existing inspectorates will continue to exercise their previous competences, according to rules envisaged in this law.*” Likewise, article 173 of law no. 96/2016 envisages that during the transitory period, the HCJ will exercise competences such as deciding the dismissal of judges of first instance courts and appeals courts, taking disciplinary measures for judges, establishment of criteria for the evaluation of judges, control and guarantee of the evaluation process and review of judges for their evaluation and control on their qualification.¹⁸⁸⁾ In the request submitted by the *petitioner*, the National Association of Judges of the Republic of Albania and the Union of Judges of Albania, presented that the regulation of transitory competences of the HCJ in law no. 96/2016 is in contravention of article 179 of the Constitution. According to the requesting party, law no. 96/2016, in flagrant violation of article 179 of the Constitution, removed from

188 Article 173, b, c, d, dh of the Status Law.

the HCJ competences that relate to (a) the appointment of judges of the first instance and appeals; b) transfers of judges; c) appointments and dismissals of chief justices of courts; d) their delegation; e) the appointment of HCJ inspectors.¹⁸⁹⁾ This clash created an institutional vacuum with serious state consequences going up to the blocking of the constitutional activity of the HCJ as the sole self-governing body of the justice system.¹⁹⁰⁾ The Constitutional Court argued in its decision (no. 34/2017) that this finding of the petitioner may be considered to represent constitutional omission because the formulation of article 179/5 of the Constitution expresses and seeks to ensure the constitutional value of the institutional continuity and coherence and, as a result, the normal functioning of the HCJ during the transitory period. The Constitutional Court finds that the law also contains some other regulations of a transitory nature that further detail transitory constitutional provisions. Thus, it finds that they do not represent norms outside the delegation of the constitution (constitutional omission) but detailing of them.

In law no. 96/2016, we notice that the lawmaker envisaged two groups of competences during the transitory period of the creation of the HJC, a period of time that is conditioned by the temporary functioning of the HCJ. The first group of competences includes exclusive competences of the new governing body of the justice system, HJC. Such exclusive competences include the temporary appointment of magistrates conducted only by the HJC, the proposal of members of the High Court, approval of ethics rules, institutional inspection of courts and prosecution offices, proposal of judicial budget, etc. The other group of competences during the transitory period includes those awarded to the HCJ. These transitory competences were envisaged in an exhaustive manner by the lawmaker. The transitory competences are limited in time and scope.

3. Analysis of the monitoring of the HCJ's transitory decision-making

AHC experts monitored the official website of the HCJ, which shows that 36 decisions of this institution were published. Precisely,

189 Decision of the Constitutional Court 34/2017, p. 4868.

190 *Ibid.*

the published decisions are those listed chronologically from no. 1 to no. 36. Decision no. 36 dates to 07.05.2018.¹⁹¹⁾

Such decision making had to do mainly with requests of the day's agenda, related to temporary assignment, delegation of judges, expiry of the status of the magistrate due to retirement or resignation by judges, disciplinary proceedings, etc. The approach of this analysis will focus on describing the transitory competences by comparing them to the full competences of the new governing bodies, namely the HJC.

3.1 Appointment of magistrates according to article 160/1, letter "a" of law no. 96/2016

Transitory Period	After creation of the HJC
Appointment of judge magistrates	
<p>HCJ</p> <p>a) Appoints magistrate <i>candidates graduating in 2016</i>, in accordance with Part III, Chapter II, of this law, at least two months after the entry into force of this law (article 160/1, letter "a," law no. 96/2016").</p>	<p>HJC</p> <p>a) <i>Appoints</i>, evaluates, promotes and transfers judges of all levels, (artice 147/a of the Constitution)</p>

Article 160, paragraph 1, letter "a" of law no. 96/2016 has given the HCJ competence to grant the title "Magistrate" only to candidates graduating from the School of Magistrates in 2016. The appointment of candidates for magistrate should have been done within 2 months from the entry into force of this law. During the transition period, the appointment of magistrates, should be conducted by the HCJ according to criteria and procedures envisaged "in accordance with Part III, Chapter II" of law no. 96/2016. Given that article 160, paragraph 1/a of law no. 96/2016 refers to part three, chapter two of this law, this chapter envisages some provisions on the appointment of magistrates. Concretely, the criteria for the appointment as magistrate are envisaged in article 35 of law no. 96/2016, ranked as the first article of this chapter.

191 Decision no. 36, dated 07.05.2018 ; <http://www.kld.al/vendime/vendim-nr-36,-date-07-05-2018>

Article 35

1. The graduate shall be appointed magistrate if he meets concurrently the following criteria:

a) having graduated from the initial training at the School of Magistrates with a score of at least 70% of the maximum reachable scores;

b) having achieved evaluation scores of at least “good” in each of the assignments during the professional internship in the third year of the initial training;

c) having passed the asset declaration and background check, carried out by the Councils in accordance with the provisions in paragraphs 2 to 6 of Article 32 of this Law.

2. A graduate may apply for appointment as magistrate following an invitation in accordance with Article 39 paragraph 1 of this Law, within the period of two weeks beginning with the date of the publication of the graduates’ list. For justified reasons a graduate may apply to be appointed also in the following year.

3. A candidate judge may, by notice in writing to the Council, apply for appointment as a judge. The request shall contain, in a preferential list, three courts where the graduate seeks to be appointed. A candidate for prosecutor may by notice in writing to the Council apply for appointment as a prosecutor. The request shall contain, in a preferential list, three prosecution offices where the graduate seeks to be appointed.

4. Within the period of one month as of the date of the publication of the graduates’ list the Councils shall:

a) appoint as magistrate, each person who appears in the graduates’ list, who satisfies the criteria for appointment, as well as has applied under the provisions of paragraph 2 and 3 of this Article,

b) reject appointing as magistrate any person who appears on the graduates’ list and having submitted the request under points 2 and 3 of this Articles, however, not satisfying the criteria for appointment.

5. The Council shall approve more detailed rules regarding the reasons justifying putting up the candidacy in the upcoming year under the provisions of paragraph 2 of this Article.

Referring to article 35 of law no. 96/2016 (reflected above), 3 criteria are envisaged for the appointment of the graduated candidate for graduate. The **first criterion** requires that the candidate should have graduated from the School of Magistrates, in the initial training, by at least 70 percent of the maximal points possible. The **second criterion**

requires that the candidate should have been evaluated at least “good” for all tasks assigned during the professional internship in the third year of the initial training. The **third criterion** requires that the candidate has passed again the verification of assets and integrity, conducted by the Councils. Article 32/2 of law no. 96/2016 envisages that the High Judicial Council and the High prosecutorial Council obtain information from the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest, the prosecution office, tax and customs administration bodies, the National Bureau of Investigation, state intelligence services, as well as every disciplinary body that oversaw discipline in the labor relations of the candidate. Given that the National Bureau of Investigation was not possible to establish during the transitory period of the HCJ, information on the verification of the integrity of candidates for magistrates will be conducted by the General Prosecution Office and the state intelligence services, or disciplinary bodies in labor relations of the candidate.

Based on the above, for the appointment of candidates, the HCJ *first* should have asked the School of Magistrates for the ranking according to article 35/1 of law no. 96/2016. *Second*, the HCJ should have asked HIDAACI, the General Prosecution Office, the Tax and Customs Administration Directories, and State Intelligence Services for reports on candidates for magistrates for the verification of assets and integrity, with regard to any other excluding cause referring to article 35/2, letter “c” and article 35/2-6 of law no. 96/2016. *Third*, it should have asked candidates for magistrates that in their request for appointment to the HCJ, they should have ranked three courts, based on reference in which the graduate wished to be appointed to, according to references of article 35/3 of law no. 96/2016. Based on this data, the HCJ would verify the fulfillment of conditions for the appointment of candidates according to articles 32 and 35 of the law and would decide on the appointment or rejection of each candidate.

The exercise of this transitory competence did not go undebated in the HCJ. In the meeting of the HCJ on January 20, 2017,¹⁹² there were differing opinions and lack of clarity on the part of HCJ members regarding the law to be implemented for the appointment of magistrates. One issue of discussion in the meeting was how the criteria of articles 32 and 35 of law no. 96/2016 would be evaluated, particularly the criteria of assets and that of integrity. The material prepared by the HCJ working group had attached to it the letters

192 <http://www.kld.al/vendime/procesverbal-dat%C3%AB-20-01-2017-1-1-1>

from HIDAACI and the Prosecution Office, regarding candidates for magistrates of 2016. Based on the minutes of the meeting of January 20, 2017, it appears that the HIDAACI responded that “I cannot provide the requested information because these subjects are yet to undergo full control,” while the Prosecution office had declared that the subjects did not have any problems.

According to some HCJ members, the appointment as “Magistrate” by the HCJ during the transtiro period should not have been done without having data on wealth and integrity from the HIDAACI and the National Information Service. Other members presented in the meeting the option to appoint magistrates according to criteria of the old law and, on a case by case basis, according to articles 173 and 175 of law no. 96/2016, respect the criteria of the latter as well.¹⁹³⁾ Nevertheless, the majority of members, based on the interpretation of the spirit of the law and the purpose of not blocking its implementation, decided to appoint the candidates as “magistrates” in the absence of verifications of the criteria of wealth and integrity, according to article 35/1, letter “c” and article 32 of law no. 96/2016. In the meeting of January 20, 2017, the HCJ took 8 decisions to appoint candidates of the School of Magistrates graduated in 2016 as magistrates. For all candidates, the appointment was made based on the final evaluation by the School of Magistrates and the fact that “*there is no information and data that infringe upon the candidate’s integrity.*”¹⁹⁴⁾ Reading the HCJ decisions on the appointments as “Magistrates,” the formulation is standard, as follows:

*“The High Council of Justice, convened on 20.01.2017, based on article 35 and 160 of law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” letter no. 326 Prot., dated 29.07.2016 of the School of Magistrates “Information on the evaluation of candidates for magistrates of the third year, judges, who attended studies at the School of Magistrates during the period October 2013 – June 2016,” as well as on official documents received from the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest, the General Prosecution Office, prosecution offices at judicial district courts, by majority of votes, **decided:** 1. To appoint as “Magistrates” (judge) the graduate of the School of Magistrates...”*

193 P. 22. PV Meeting, January 20, 2017

194 P. 31-32 PV Meeting of January 20, 2017.

As mentioned above, while information obtained from the prosecution offices states that the subjects do not have problems with integrity, on the other hand, HIDAACI had said it could not provide the requested information, because the subjects had not yet undergone full control. On 06.01.2017, the HCJ requested information in writing from HIDAACI and the National Information Service; however, the majority of HCJ members did not deem it necessary to wait for enhanced reports on assets and integrity of candidates, because from the moment these candidates are appointed as magistrates and assigned as judges, they are subjects to the law on vetting and, therefore, will not escape the filter of evaluation of wealth and integrity.¹⁹⁵⁾

The other reason why the majority of HCJ members decided to appoint “magistrate” candidates on January 20, 2017, had to do with the 2-month deadline envisaged in article 160(2)(a) of law no. 96/2016. According to this provision, the HCJ *“appoints magistrate candidates graduated in 2016, in accordance with part III, chapter II, of law no. at least two months after the entry into force of this law.”* Therefore, the HCJ working group concluded that the appointment should take place by January 22, 2017. Law no. 96/2016 was published in the Official Gazette on November 7, 2016 and entered into force on November 22, 2016. The two-month deadline set in article 160 (2) of this law expired on January 22, 2017.

Referring to HCJ published decisions¹⁹⁶⁾ on the appointments of Magistrates graduating in 2016, we find that the decisions were made referring to the new legal basis, namely article 35 and 160 of law no. 96/2016. With regard to the first criterion, the HCJ was based on the evaluation of the School of Magistrates,¹⁹⁷⁾ whereby all candidates graduated with the evaluation “very good.” The HCJ decision and even the process-verbal of the meeting lack the reference to minimal points (70 points), as required by article 35/1, letter “a” of law no. 95/2016. Regarding the second criterion envisaged in article 35/1, letter “b” of

195 See argument presented in P. 18 of PV of Meeting of January 20, 2017.

196 Decision no. 2, dated 20.01.2017, Decision no. 3, dated 20.01.2017, Decision no. 4, dated 20.01.2017; Decision no. 5, dated 20.01.2017; Decision no. 6, dated 20.01.2017; Decision no. 7, dated 20.01.2017; Decision no. 8, dated 20.01.2017; Decision no. 9, dated 20.01.2017.

197 Letter no. 326 Prot., dated 29.07.2016 of the School of Magistrates “Information on the evaluation of candidates of the third year, judges, who attended studies at the School of Magistrates during the period October 2013 – June 2016.”

law no. 96/2016, which requires at least “good” evaluation for every assignment during the professional internship, the HCJ decision and the process-verbal of the meeting of 20.1.2017 contain no reference.

Another controversial issue in HCJ meetings has to do with the interpretation of article 160/1, letter “a” of law no.96/2016, on whether the scope of this article would extend only over candidates for magistrates of 2016, or also include other candidates until the establishment of the HJC. This discussion arose as a need also to delays in the creation of the HJC and HPC and due to the graduation of new generations of magistrates from the School of Magistrates in 2017 and 2018. Given that the HCJ gave the HCJ expressly the right to appoint only candidates for magistrates graduating in 2016, in order to avoid leaving generations of magistrates without appointment until the creation of the two councils, proposals were made to amend law no. 96/2016. This legal initiative came from two MPs of the governing majority who proposed the removal from article 160/1 and 2 of law no. 96/2016, the reference to 2016 and open the way to the HCJ for appointing all magistrates graduating from the School of Magistrates from 2016 onward, until the creation of the HJC.¹⁹⁸⁾ Being a legal initiative that required a qualified majority in parliament, the proposal did not manage to get the required number of votes and, therefore, was rejected.

On May 14, 2018, candidates for magistrates, 10 for judges and 6 for prosecutors, addressed the HCJ and the General Prosecution Office with a request for their appointment as magistrates within July 2018¹⁹⁹⁾ Based on article 175 of the Constitution, article 160/1 and 173/1 of law no. 96/2016 and decision no. 34/2017 of the Constitutional Court, candidates for magistrates claimed that the “HCJ and General Prosecution Office should exercise not only the competences envisaged expressly in the law, but also those competences that ensure the normal functioning of the HCJ and GPO as governing bodies of the justice system during the transitory period.” In the absence of a reaction from the HCJ or GPO, the candidates for magistrates, in November 2018 filed a lawsuit with the administrative court of

198 <http://www.kohajone.com/2018/05/14/magjistratura-ps-kld-dhe-prokuroria-te-vijojne-emerimet-deri-ne-ngritjen-e-klgj-dhe-klp/> ; <http://www.scan-tv.com/magjistratet-e-qershorit-semerohen-dot-nisma-ne-kuvend-emerimet-te-behetnga-prokurori-e-kld-ne-tetor-25-pranime-vitin-tjeter-50/>

199 <https://shqiptarja.com/lajm/magjistratet-leter-kld-presim-emerimin-ne-sistemin-e-drejtësisë-brenda-korrikut?r=pop5s>

appeals, suing the HCJ, GPO, and the Government for not appointing them as magistrates.²⁰⁰) The administrative court recognized the right of the magistrates to obtain payment until their appointment. With the creation of the HJC, this impasse was addressed, as one of the first decisions of this Council was to start procedures for the appointment of graduates of the School of Magistrates in 2018 (decision no. 8, dated 27.12.2018). By means of this decision, the Council started the process of appointment of magistrates who graduated from the School of Magistrates in 2018, seeking reports for the verification of the wealth and integrity of candidates for magistrates, from competent institutions envisaged in article 32/2 of law no. 96/2016.

3.2 Assignment of magistrates according to article 160/2, letter “b” of law no. 96/2016

Article 160/1, letter “b” of law no. 96/2016 envisages that the HCJ “makes decisions for the *assignment into positions* of candidates for magistrates graduating *in 2016*, according to part III, chapter III, of this law, *within three months* after the entry into effect of this law.” According to this provision, the assignment into positions of appointed magistrates shall be done within 3 months after the entry into force of law no. 96/2016, i.e., within February 22, 2017.

Article 39 of law no. 96/2016

Assignment of appointed magistrates to positions

1. *By the end of June in each year, after having completed the procedures on the lateral transfer and promotion, each Council shall announce the vacancies for the appointees.*

2. *By the end of July in each year, each Council shall publish its decisions on the assignment of appointees to vacant positions as magistrates.*

3. *Assignment of appointees having recently graduated at the School of Magistrates to positions is a priority and it must be based:*

- a) *on their ranking on the graduates’ list, in the sense of Article 34 of this Law,*
- b) *subject to letter a), paragraph 3 of this Article and implementing it to the extent possible, on meeting preferences expressed by successful graduates from the initial training course. ...*

200 <http://albanianfreepress.al/news/2018/11/magjistratet-e-rinj-pasi-kryeprokurores-kld-se-dhe-qeverise-118716/>

5. For being assigned to a position in the administrative courts, the appointee must have one and a half year of work experience in the public administration or having had the evaluation grade of 'very good' in the administrative law subjects at the School of Magistrates.

AHC notes that the assignment into positions of magistrates graduating in 2016 was made by decision no. 13²⁰¹) of the HCJ on 10.02.2017. The decision states:

*"The High Council of Justice, convening on 10.02.2017, based on **articles 34, 39, 160/1, letter "b"** of law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania," on letter no. 326, Prot., dated 29.07.2016 of the School of Magistrates "Information on the evaluation of candidates for magistrates, third year, judges, who attended studies in the School of Magistrates, during the period October 2013 – June 2016," on **decisions of the High Council of Justice** no. 2; no. 3; no. 4; no. 5; no. 6; no. 7; no. 8 and no. 9, as well as **on preferences expressed in writing by the magistrates themselves,***

DECIDED:

To assign to positions the magistrates who completed the School of Magistrates during the period October 2013 – June 2016, to carry out functions of judges at the courts below ..." (Enhanced emphasis).

The eight magistrates graduating in 2016 from the School of Magistrates were appointed to the Judicial District Courts of Tirana, Durrës, Shkodra, Lushnje and Pogradec as well as the Administrative Courts of First Instance in Tirana, Durrës and Vlora. The HCJ decision on the appointment of these magistrates was accompanied by debates among its members. In the meeting of 10.02.2017, the issue was raised on whether the ranking of magistrates for their assignment to positions should be done by degree ("excellent," "very good," "good," "sufficient," "insufficient") or according to points of exams in the School of Magistrates. Law no. 115/2016 "On the governing bodies of the justice system," article 268 envisages "The evaluation of all components of the first and second year, on the scores obtained for each subject or element of the initial education program and as a whole, as well as the evaluation of the final exam, organized after the second year, shall be made by the relevant commissions and the

201 <http://www.kld.al/vendime/vendim-nr-13,-datë-10-02-2017>

Pedagogical Council, according to a 5 scale ranking: a) Excellent; b) Very good; c) Good; ç) Satisfactory; d) Unsatisfactory.

On the other hand, article 34/2 of law no. 96/2016 envisages the ranking of candidates for magistrates by points, based on the results of exams during the first and second year, the final exam, and the evaluation during professional internship.²⁰²⁾ Among HCJ members there were debates about the ranking brought by the School of Magistrates. For some members, the 5-scale system was the one to follow in the evaluation as that would eliminate any subjectivity of lecturers in the evaluation of candidates and would give a greater margin of action to the HCJ to assign candidates to courts, depending on the needs of the system, without concentrating the best ones in districts such as Tirana and Durrës.²⁰³⁾ Other members defended the position that the magistrate students are students emerging from a very strong selective test and the motivation they have to emerge the best in exams has to do precisely with the fact that the ranking is related to the assignment of the court they will be assigned to.²⁰⁴⁾ Another argument put forth by this group of HCJ members has to do with the fact that the "assignment to position" is regulated specifically by chapter III of law no. 96/2016. On the basis of article 39 and 34 of this law, candidates will be ranked according to results in exams, throughout the first and second years.

Referring to debates by HCJ members, AHC is of the opinion that article 34 of law no. 96/2016 requires the ranking of candidates and such ranking would not be accurate if we refer to the scale of evaluations and not the system of points. The latter makes a real difference between candidates. Therefore, it would be an erroneous legal interpretation if the legal reference for the ranking would be another provision that is not special for this situation, as is article 268 of law no. 115/2016. Special regulation takes priority in resolving situations in which the law regulates the legal relationship in a clear and explicit manner. However, the majority of HCJ members, in their discussions, stood by the evaluation of candidates on the basis of the evaluation scale and not points. According to the majority of

202 Article 34(2) of law no. 96/2016 "Graduates are ranked on the list based on the results of exams during the first and second years, the final exam, and evaluations during the professional internship."

203 See PV of the Meeting on 10.02.2017, p. 22-38 published at <http://www.kld.al/vendime/procesverbal-datë-10-02-2017>

204 *Ibid.*

them, all candidates for magistrates to be assigned to positions have received “very good” evaluation at the School of Magistrates and their differences in the points system do not represent an essential difference. Only 3 members of the HCJ, a minority, asked for the implementation of article 34 of law no. 96/2016, for the assignment of magistrates to positions referring to the system of points and their preferences. In the end, the vote of HCJ members on the assignment to position for each candidate for magistrate graduating from the School of Magistrates in 2016 was based on the preferences of magistrates themselves and on their ranking according to the evaluation scale and not the general system of points during the three years of their training (initial/professional internship). Of 8 candidates for judges, 7 of them were assigned to positions at the courts they had picked as first preferences. Thus, AHC notes that article 34/2 and article 39/3, letter “a” of law no. 96/2016 were not respected in this decision making.

Annex 10 of the regulations of the School of Magistrates envisages the system of evaluation of candidates for magistrates in the initial training. The regulations appear to have been amended after the approval of new legislation of justice reform, namely by decision no. 23 on 23.10.2017. Evaluation for each candidate consists of the total evaluation of all components of the first year, the second, and the third. Total evaluation is done by Decision of the Pedagogical Council at the end of the academic year and is the sum of:

- a) 2250 points of the first year;
- b) 1400 points of the second year;
- c) 200 points, evaluation of final exam;
- d) 600 points, evaluation of the professional internship of the third year. The final result of the third year comes after the multiplication of the evaluation by 300 points with the coefficient 2.

As may be noted, the maximal number of points that may be awarded to the candidate for magistrate at the end of the School of Magistrates is 4450 points.

Another issue raised for discussion among members, related to the transitory competence of the HCJ for the assignment of magistrates to positions, was whether magistrates may be appointed to administrative courts. According to article 39/5 of law no.96/2016, the appointee

assigned to a position in the administrative court should have at least one year and a half of work experience in the public administration *or* have very good results in the administrative law courses at the School of Magistrates. This provision requires that even magistrates graduating in the years 2013-2016 could have the possibility to be appointed to the administrative court, if they meet one of these criteria. However, article 5 of the law in force at the time on the administrative court (no. 49/2012)²⁰⁵ envisages other criteria for appointment as an administrative judge from those in law no.96/2016, namely that the magistrate should have served as a judge for 5 years and should take the exam to qualify for the administrative court. In this sense, the HCJ meeting of 10.02.2017 stated a clash between the viewpoints of members on the contradiction and priority between these two laws. The issue whether candidates for magistrates graduating in 2016 should have been appointed in the administrative court was put forth for a vote in the HCJ meeting. In the vote, the members were divided into 6 (six) votes in favor and 4 (four) votes against and, as a result, their appointment to the administrative court was accepted. For the three candidates graduating in 2016, who had expressed as their primary preference an assignment to the Administrative Courts, the majority of HCJ members decided in favor of this preference. In no case during the process of reporting their preferences for the Administrative Courts was there any discussion on the fulfillment of criteria envisaged by the new justice reform legislation (law no. 96/2016) for the assignment to these courts, namely work experience for at least one year and a half in the public administration or having very good results in administrative law courses in the School of Magistrates.

3.3. Setting of disciplinary measures according to article 160/1, letter “c” of law no. 96/2016

On the basis of article 160/1 letter “c” of law no. 96/2016, the HCJ imposes disciplinary measures, upon proposal by the Minister of Justice, based on the procedure and criteria envisaged in part V, chapter I of this law. On the other hand, article 160/1, letter “e” envisages that during the

205 Law no. 49 was amended in the context of justice reform by the parliament, on 30.03.2017, i.e. more than one month after the meeting of the HCJ, where among others, the provision envisaging the 5-year experience as a criterion for the appointment of administrative judges was invalidated. Concretely, see law no. 39/2017 On some additions and amendments to law no. 49/2012, “On the organization and functioning of administrative court and the adjudication of administrative disputes,” amended

transitory phase, the HCJ imposes disciplinary measures for inspectors, based on by-laws in force.

Law no. 96/2016, articles 172/2 and 174 regulate some issues regarding disciplinary proceedings of judges during the transitory phase. HCJ competences during the transitory phase related to these proceedings are regulated in article 172 and 174 of this law.

Disciplinary investigations during the transitory phase.

- During the transitory phase, the HCJ Inspectorate is the competent body for investigating disciplinary violations by judges and prosecutors, until the creation of the High Justice Inspector.
- The HCJ is competent for reviewing disciplinary proceedings started before the entry into force of law no. 96/2016 and were not concluded at the time of entry into force of this law. The deadline for the completion of these unfinished disciplinary investigations would be 22.02.2017, **or 3 months** from the entry into force of law no. 96/2016.
- After that date, based on article 160/5 of law no. 96/2016, the Inspectorate of the Ministry of Justice should have conveyed investigative materials to the HCJ Inspectorate, which would be the sole body competent for disciplinary proceeding investigations until the creation of the new body, the High Justice Inspector. The applicable law in this instance would be the old law, i.e. law no. 8811/2001 "On the organization and functioning of the High Council of Justice," amended, as well as decision no. 137/2013 of the HCJ.

Disciplinary proceedings during the transitory phase

- The HCJ could conduct disciplinary proceedings during the transitory phase after the entry into force of law no. 96/2016.
- The procedure and criteria for imposing disciplinary measures on judges are set in part V, chapter I of law no. 96/2016 (articles 105 - 116), *but part of these provisions is invalidated by the Constitutional Court.*²⁰⁶⁾
- If the disciplinary proceeding had started before the entry into force of law no. 96/2016, it should have concluded **within 6 months** from the entry into force of this law, i.e. on 22.05.2017. The rules of disciplinary proceedings in this case would be those envisaged in the status law 96/2016.

206 Articles 100-104 were invalidated by decision of the Constitutional Court no. 34/2017.

Article 172/4 of law no. 96/2016 envisages that in any event, competent bodies will implement the law most favorable to the magistrate who has committed disciplinary violations. If we compare the disciplinary sanctions of the new law no. 96/2016 to the old law no. 9877/2008 “On the organization of the judicial system,” we find that there are differences. AHC notes that there are disciplinary measures that are no longer in the new legal regulation or new measures have been envisaged. For instance, the measure of sending the magistrate for 1-2 years to another court at of the same level is no longer in the list of disciplinary measures envisaged in law no. 96/2016. On the other hand, disciplinary measures such as the temporary reduction of salary and suspension from office are novelties in the new law no. 96/2016. While the previous law had a sanction of confidential warning and public reprimand. The table below enables a better comparison between the type of disciplinary measures envisaged in both laws.

Law no. 9877/2008 “On the organization of the judicial system in the Republic of Albania”	Ligji nr. 96/2016 “Për statusin e gjyqtarëve dhe prokurorëve në Republikën e Shqipërisë”
<p>Article 33</p> <p>Disciplinary measures are imposed in proportion to the committed violation.</p> <p>Disciplinary measures include:</p> <ul style="list-style-type: none"> a) reprimand; b) warning of reprimand; c) temporary demotion for 1 to 2 years at a lower level court; ç) dispatch for 1 to 2 years to a court of the same level outside the judicial district court where the judge is appointed; d) dismissal from duty. 	<p>Article 105</p> <p>Councils may determine one or more of these disciplinary measures:</p> <ul style="list-style-type: none"> a) confidential reprimand; b) public reprimand; c) temporary reduction of salary: <ul style="list-style-type: none"> - up to 40 percent for a period no longer than one year; - in case of magistrates who have resigned, a fine proportionate to the temporary reduction of salary. ç) demotion from a position of a higher level to a lower level or from a position in the special court for the adjudication of the criminal offences of corruption and organised crime or at the Special Prosecution Office to a court of general jurisdiction or another prosecution office; d) suspension from office while benefitting the minimum salary as set out in a Council of Ministers’ decision, for a specified period between 3 months to 2 years; dh) dismissal from duty.

Regarding the implementation of the law applicable for disciplinary violations committed before the entry into force of law no. 96/2016, one controversial issue in HCJ meetings has been the juridical power of by-laws dating before the entry into force of this law. The by-law that detailed the disciplinary proceedings on judges before the entry into force of law no. 96/2016 was the decision of the High Council of Justice (HCJ) no. 137, dated 21.02.2003 "Regulations on the disciplinary proceedings on judges." Meanwhile, HCJ decision no. 195/2/a, dated 05.07.2006 "On the organization and functioning of the Inspectorate of the High Council of Justice" stipulates among other things the disciplinary violations, verification of disciplinary violations, disciplinary proceedings and their review, as well as disciplinary measures on the Chief Inspector and Inspectors of the Inspectorate of the High Council of Justice. According to article 174/6 of law no. 96/2016 these by-laws approved before its entry into force shall be applied as long as they do not run counter to this law.

In the HCJ meeting on 24.03.2017, disciplinary measures proposed against three judges were reviewed, following a disciplinary proceeding requested by the Minister of Justice respectively in January, February, and December of 2016.²⁰⁷⁾ The request of the Minister of Justice for the disciplinary proceedings against the judges was presented on the basis of the old law, no. 9877/2008 "On the organization of the judiciary." At the time of review of these requests by the Minister of Justice to the HCJ, the new law no. 96/2016 had entered into force. For two of the judges, the Ministry of Justice proposes the disciplinary measure of "warning" while for one of the judges, it seeks a harsher disciplinary measures, that of "dismissal from duty" (referring to article 33/2, letters "b" and "d" of law no. 9877/2008). According to the transitory provisions of law no. 96/2016, the HCJ is the competent body for reviewing these disciplinary proceedings. Meanwhile, law no. 96/2016 no longer envisages the "warning" but envisages "confidential" and "public" reprimand, specifically in articles 106 and 107. Based on an analysis of the violations, their kind, the flow of events, and the new legal references, the Minister of Justice asked that the measure be modified and proposed the disciplinary measure "confidential reprimand" envisaged by article 105/1, letter "a" of law no. 96/2016.

207 file:///C:/Users/ Procesverbale/kld-2017-03-24.pdf

For all three judges, the HCJ decided against the proposal of the Minister of Justice on the disciplinary measure. For two of the cases, the HCJ decision was unanimous “against” while for one case, the majority of members, namely six of them, decided “against” and four voted “for.” During the discussion of the proposed measures, it resulted that judges had become familiar in advance with the documentation supporting the disciplinary measure and had been provided the opportunity to present explanations and the relevant documentation. During the meeting, the judges presented in a summarized manner their points about the results of the inspection and the proposal by the Minister of Justice. HCJ members also had the opportunity to ask questions of them and they had been able to provide their explanations and clarifications. **In general, the spirit of the questions addressed to the judges was of a favorable nature, which does not indicate an impartial objective approach by HCJ members. For the case of the judge for whom dismissal from duty had been proposed as a result of violations regarding a final court decision, members’ discussions were dominated by the interpretation that the final decision may not be reviewed, whether there are violations of procedural provisions or of the material law.** One of the HCJ members criticized the report of the Inspectorate, stating that the report’s contents *“should have been gone from the lexicon of inspectors; we should know once and for good that we no longer have such expressions about a judicial ruling; this is not the competence of inspectors.”* Another member stated *“This is a final decision, whether we like it or not. Personally, I would say that if I had been the judges, maybe I would have made this decision, but this is a final decision and the main issue is that if there is a problem, that’s why it was stressed here that the judiciary functions on the basis of levels, I can go to the municipality and the state advocate’s office.”* One of the members quotes in his remarks the previous law about the issuance of the disciplinary measures, stating that *“The previous law in paragraph c) envisages cumulative conditions, unjustified and repeated violation, and secondly, when these have led to or may lead to consequences, as referred by the material we have been given, there seems to be no verification of any of the condition; if yes, we’d be discussing whether maybe it could be the second; there is no verification of the unjustified or repeated violation of provisions because we cannot refer to the same process.”* **Reference to the old justice legislation by HCJ members during discussions on disciplinary measures is wrong, for**

cases when disciplinary proceedings began against a judge before law no. 96/2016 went into effect and these disciplinary proceedings continue after the entry into force of this law. As stressed earlier, according to article 172/2 of law no. 96/2016, on these proceedings, responsible bodies apply procedural rules envisaged in this law. **Furthermore, during the discussion of these disciplinary measures in the HCJ meeting, some of the provisions of law no. 96/2016 had not yet been invalidated by the Constitutional Court. These provisions envisage also violations of a procedural nature by judges, which are cause for the issuance of disciplinary measures, in spite of the fact whether the decision on the case in question has assumed final form or not.**

During the HCJ meeting of 18.01.2018,²⁰⁸⁾ the Ministry of Justice raised the concern about failure to respect the 3-month and 6-month deadline within which the HCJ should have concluded the disciplinary investigation and disciplinary proceedings, if they had begun before the entry into force of law no. 96/2016. The Minister of Justice raised the concern why the agenda of the meeting had included only the review of 3 requests for disciplinary proceedings while there had been 10 requests, particularly since all these disciplinary proceedings should have been concluded before 22.05.2017.²⁰⁹⁾ During the meeting, the representative of the Inspectorate responded that the cases were not submitted for review earlier due to the busy agenda of the HCJ and its Chairman and that there was no request by previous ministers to include them in the agenda. The three subjects whose disciplinary measures would be reviewed, and who were on the meeting's agenda, had been selected alphabetically.²¹⁰⁾

The Ministry of Justice raised the same concern and, in the meeting of 24.01.2018, it was pointed out again that the HCJ had not respected the 6-month deadline for the completion of disciplinary proceedings envisaged by article 172/2 of law no. 96/2016. The meeting reviewed 12 requests of the Minister of Justice of the time on the disciplinary proceedings on 12 judges, 10 of which from the Judicial District Courts and 2 in the Administrative Courts of First Instance. Requests for disciplinary proceedings against these judges were supported and argued by the Ministry of Justice present in the meeting. For 10 of

208 <http://www.kld.al/vendime/procesverbal-datë-18-01-2018>

209 Process-verbal 18.01.2018, p. 36

210 Process-verbal 18.01.2018, p. 37.

the judges, the request was to dismiss them from duty, while public reprimand was requested for 2 of them.

The HCJ meeting of January 24, 2018 was accompanied by discussions as to how to interpret article 60/1, letter "c" of law no. 96/2016 vis-à-vis article 172 and the Constitutional Court decision no. 34/2017, which invalidates a considerable number of provisions for violations and disciplinary proceedings of judges.²¹¹⁾ **During discussions of the meeting on January 24, 2018, among HCJ members there were moments of unclarity, mutual accusations and tension with regard to legislation applicable to disciplinary measures, reasons that had led the HCJ to blocking decisions beyond legal deadlines and there were different interpretations about the manner in which this legislation would be applied in view of Constitutional Court decision no. 34/2017.**

According to one HCJ member, the Minister of Justice could have requested disciplinary proceedings before the entry into effect of the Constitution and new laws of the judiciary, while after entry into force this authority is passed on to the HCJ, which through the Inspectorate, may start disciplinary proceedings and review these issues at the same time.²¹²⁾ According to this member, decision no. 34/2017 of the Constitutional Court invalidated all violations corresponding to disciplinary measures envisaged by the new law on the status.²¹³⁾ One of the HCJ members stated, *"The council did not neglect its responsibilities for any moment with regard to the review of these measures because we have not had such a case on the table. ... We do not know what the Minister brings to the Inspectorate... Decision no. 34/2017 invalidated those provisions that determine the violations. The measures are in effect, but in order to impose a measure, it is the conclusion of the disciplinary process; we need to know what the violations are. ... We have wanted for one year to know whether the Council may be held accountable and we certainly have responsibility, but the Assembly also bears responsibility for it has not done what it should."*²¹⁴⁾ Another member proposed that the Council apply the most favorable provisions and that article 172(4) of law no. 96/2016 should be considered that take a stance on whether the most favorable law means that there is no violation or

211 <http://www.kld.al/vendime/procesverbal-datë-24-01-2018>

212 Process-verbal 24.01.2018. p 4

213 Process-verbal 24.01.2018, p. 5

214 P. 9 – 10 of the process-verbal

wait for this legal vacuum to be filled by the Assembly, in order to make a comparison; therefore, she asked the members to take a stance in principle on this provision.²¹⁵⁾ Another HCJ member refused the favorable interpretation of article 172(4) of law no. 96/2016, arguing that we're in front of legal vacuum caused by decision no. 34/2017 of the Constitutional Court and that the favorable law is applied when a comparison can be drawn between two laws and this is not the case. The interpretation suggested by this HCJ member was to refer to the law of the time when the violation was committed.²¹⁶⁾ Furthermore, in his opinion, article 172 of law no. 96/2016 did not envisage the consequence of what happens if proceedings are not conducted within 6 months and, therefore, the law leaves this as a guiding deadline to be completed within 6 months.²¹⁷⁾ Meanwhile, the Minister of Justice and another member were of the opinion that the constitution could be applied directly, namely article 140/2, letter "a," and, read together with article 160/1, letter "c" and article 172 of law no. 96/2016, they could be the legal basis for taking the measure to dismiss the judge. The Minister of Justice maintained this position until the end of the transitory phase of the HCJ. According to the Minister, when the conduct of the judge discredits the figure and standing of a judge, article 160/1, letter "c", read together with article 140/2,²¹⁸⁾ article 115 of law no. 96/2016 and keeping in mind the application of the decision of the Constitutional Court no. 34 of 10.04.2017, give the right to the Minister of Justice, until the creation of the High Justice Inspector, to bear the legal competence to ask the HCJ to impose the disciplinary measure of dismissing the judge from duty.²¹⁹⁾

In spite of the juridical debate regarding applicable legislation and the legal vacuum created by CC decision no. 34/2017, in its meeting of January 24, 2018, the HCJ decided against disciplinary measures proposed by the Minister of Justice of the time for 10 judges, which the Minister of Justice present in the meeting supported the proposal of her predecessor. Meanwhile, for 2 judges, the HCJ did not make a decision due to the justified absence of one of the judges; for the other

215 Page 9

216 P. 11

217 P. 9

218 Article 140/2 says: The judge is dismissed by the High Judicial Council when:
a) he/she commits serious professional or ethical violations that discredit the standing and figure of the judge during the exercise of duties.

219 Process-verbal of meeting on 07.05.2018, p. 61, 76.

judge, two HCJ members were in conflict of interest, which reduced the minimal number of members required for decision-making to form a quorum. **The HCJ decision-making was dominated visibly by the division between members from the judiciary on the one hand and the Minister of Justice and President, on the other. Concretely, during the vote for the proposal of disciplinary measures, in 8 cases the vote of judge members of the HCJ was unanimous while the proposal by the Minister of Justice always had the support of the President and the support of one HCJ judge member in 3 cases.**

For three of the mentioned cases, HCJ members from the judiciary, although they voted against the dismissal, proposed a lighter disciplinary measure, namely “warning of reprimand,” “public reprimand” and “confidential reprimand.” Concretely, in one case, HCJ members, although they voted against the proposal of the Minister of Justice to dismiss judge Dh. B., they voted in favor of a warning on the basis of article 146(3) of law no. 96/2016²²⁰⁾²²¹⁾, although the new law does not envisage a warning of reprimand, but only confidential reprimand and public reprimand. This may have been a lapsus because in the same meeting, for judge T.K., it was argued: *“It is highlighted that there are violations in the concrete case, but based also on the discussion we had earlier, I want to argue my vote against, we are in front of legal vacuum (we can’t let this go unpunished), but taking into account also the principle of proportionality and the fact of how long the gentleman has been a judge, and his behavior throughout this time, I consider that the second measure should be used, “reprimand,” which in this concrete case is called “Public reprimand” (according to the new law), which is equivalent to “Warning of reprimand.”*²²²⁾

With regard to the evaluation from a factual standpoint of the violations for which the disciplinary proceedings on the judges had begun, again the HCJ members were divided with judge members generally following the same line of arguments, different from the arguments provided by the Ministry of Justice. First, these disagreements were on display in the cases when the prosecution office had asked to drop the criminal cases on the judges who

220 Article 146(3) of Law “On status” envisages: The Council is not obliged to stick to the disciplinary measure proposed by the High Justice Inspector and provides an argued decision in writing at least within two weeks from the end of the session.

221 Process-verbal of 24.01.2018, p. 33-34.

222 Process-verbal of 24.01.2018, p. 59

were recommended for disciplinary proceedings. According to the Minister of Justice, in spite of the decision by the prosecution office, the fact that the judge bears no penal responsibility does not automatically free him from administrative responsibility.²²³⁾ Meanwhile, one of the members, on this concrete case, noted that the decision of the prosecution office to drop the case shows that the assets and private interests declared by the judge at the HIDAACI are the product of legitimate resources.²²⁴⁾ Another member from the judges on the HCJ added to this argument that for the prosecution decision, the HIDAACI as the petitioner, did not file a complaint.²²⁵⁾ *On another case, through questions to the defense lawyer of the proceeded judge, the HCJ member points out that the prosecution office dropped the case because the fact did not exist.*²²⁶⁾ In other words, the non-existence of the fact leads to the same fact being impossible to exist for administrative (disciplinary) responsibility.

In some cases, proposals of the Minister of Justice or the HCJ Inspectorate for disciplinary measures on the judges were rejected by the HCJ, with the arguments that the violations claimed by the Minister refer to cases on which there are final court decisions. For one of the judges, his defense lawyer told the Council, *"Since the judicial verdict is final, there is the legal presumption that it is fair, independent, impartial, within reasonable time, so there is no room even formally for questioning procedural provisions pursued; if we did, we would be questioning the very content of the final judicial verdict."*²²⁷⁾ This decision of the majority of HCJ members was based also on the practice of the Constitutional Court, namely decision no. 11 of 27.05.2004, according to which, the HCJ may not check or assess the lawfulness of final judicial decisions. These issues are the subject of review by higher courts and, in accordance with the decision of the High Court's Administrative College, they may not be subject to review by the HCJ.²²⁸⁾ To that reaction *the Minister of Justice argued in one instance that decision no. 11 of 2004 of the Constitutional Court states that the HCJ may take disciplinary measures on judges without conditioning whether*

223 *Ibid*, p. 13

224 *Ibid*, p. 18

225 *Ibid*, p. 19

226 *Ibid*, p. 101

227 *Ibid*, p. 27, p.67 quote from Gj.Gjoni

228 See process-verbal of meeting of 07.05.2018, the case of Laurent Fucia.

*this decision has assumed final form, except for cases when the decision is accompanied by acts and conduct that seriously discredit the standing and figure of the judge and generally tarnish the prestige and authority of the judiciary.*²²⁹⁾ In other instances, HCJ members considered that the dismissal due to inaccurate disclosure is an administrative violation that neither discredits the figure of the judge nor does it represent a criminal offense, and therefore, vote against the proposed dismissal.²³⁰⁾

In the debates transcribed in the process-verbal of the meeting of January 24, 2018, we find elements of corporatism as, in some cases, questions by HCJ members for the judges were to support the defense of the colleagues for whom disciplinary proceedings were proposed and there were suggestive stances and questions. For instance, to the question of the HCJ member to the judge's defense lawyer about the experience and workload of the latter, the lawyer was not able to provide responses for very specific questions. The HCJ member reacts as follows: *"You have come here to defend one man leave honorably from his post or not, or to leave without honor... you're unprepared even for that."*²³¹⁾ These favorable positions, in some cases, have to do with the fact that HCJ members themselves had had similar problems in their past or because the members know the skills/capacity of the judges being proposed for disciplinary measures. Thus, in the case of one judge who was proposed for disciplinary proceeding because he is a shareholder in two commercial companies, the HCJ member says during the question and answer session: *"I ask these questions because I know the law 'On fonclit...' very well, because I suffered the same conflict of interest issu myself."*²³²⁾ For another judge, another HCJ member states, *"...particularly since in this case we have to do with a very good judge. She has been my student and she was a very good magistrate student. The violation is not unjustified."* In another instance, the HCJ member states, *"You think that because of the decision to drop the case, which decided that the fact does not exist, could there be also disciplinary proceeding for a circumstance that the Minister of Justice has brought the referral*

229 *Ibid*, p. 64-65

230 Process-verbal of 24.01.2018, p. 18, 19

231 *Ibid*, p.31

232 *Ibid*, p. 58

*exactly as it is and without any administrative investigation?"*²³³⁾

Another issue discussed by the HCJ is whether during the transitory phase the institution may review cases of dismissal of members of the High Court when any of its judges has committed a criminal offense.²³⁴⁾ In the meeting of 17.07.2017, the chief justice of the High Court submitted a request for a disciplinary measure of dismissing High Court judge M.A., for whom there was a final penal verdict that found her guilty of an offense. There was debate among the members because some of the HCJ members thought claimed that the issue should be reviewed by the HJC while others did not rule out the possibility of having the HCJ reviewing the disciplinary measure of dismissal of a High Court judge when there was a final penal verdict. However, **the Minister of Justice refused to propose the disciplinary measure of dismissal because, in his opinion, this competence was not up to the HCJ but rather to the HJC.** The Minister of Justice stated that the HCJ should continue to exercise all competences it had until the moment of change in legislation in the context of justice reform, but not assume competences of the HJC.²³⁵⁾ *The Minister of Justice suggested that in these circumstances, the issues should be resolved by the High Court in collaboration with the President. in his opinion, given that the sentencing of the former judge M.S. is included in the cases of prohibition to exercise a public function, the President of the Republic may find that we are in the circumstances of impossibility to resolve the issue in the sense of the law on decriminalization and is the verifying authority for members of the High Court.* It is the competence of the President of the Republic to declare the existence of this circumstance of impossibility to resolve it according to the law on decriminalization and therefore, the president interrupts the mandate and notifies the High Court, which, according to constitutional procedure, makes the announcement of the conclusion of the mandate of judge M.A. Based on this reasoning, the Minister of Justice refused to submit a proposal for dismissal of the High Court judge due to a judicial ruling that declared her guilty for committing a criminal offense. In these circumstances, the HCJ members decided against the review of the High Court chief justice. *According to the majority of members, the HCJ could have expressed*

233 *Ibid*, p. 104

234 Process-verbal of 24.03.2017

235 Process-verbal of 17.07.2017, p. 7.

its views on the possibility of dismissal of the High Court member only if the request for disciplinary proceedings was submitted by the Minister of Justice, because article 160(1)(c) states clearly that this competence begins only with the submission of the request by the Minister of Justice.

3.4 Suspension of judges, according to the procedure and criteria envisaged in article 160/1/ç of law no. 96/2016.

Article 160/1/ç of law no. 96/2016 grants another transitory competence to the HCJ, which has to do with the suspension of judges. articles 151-157 of law no. 96/2016 envisage two kinds of suspensions: (a) mandatory suspension and, (b) discretionary suspension. Mandatory suspension is issued when the remand measure of “arrest in prison” or “house arrest” is issued for the judge for the commission of a criminal offense, or when the judge becomes the defendant in a serious crime committed willingly (article 151 of law no. 96/2016). This procedure starts with the notification by court chief justices to the HJC²³⁶) and during the transitory phase, to the HCJ.

Discretionary suspension is regulated in article 152 of law no. 96/2016. This provision envisages *“if the council Në këtë dispozitë parashikohet që “Where the Council is satisfied that the continuation of the charged magistrate in office may be prejudicial to the criminal or disciplinary investigation, or it prevents the fair and regular conclusion of the criminal or disciplinary investigation, or seriously discredits the figure of the magistrate, the Council may suspend a magistrate from duty if: a) a criminal investigation is initiated against the magistrate; b) he/she is qualified as a defendant, for a crime committed by negligence; c) disciplinary investigations or proceedings for disciplinary misconduct have been initiated.”* Discretionary suspension may begin even when the Council creates the conviction, based on sufficient evidence, according to articles 67 and 151/2 of law no. 96/2016, that the magistrate may not remain in office temporarily due to reasons linked with physical or mental health.

During the transitory phase, the HCJ took two suspension decisions in 2017 and 4 suspension decisions in 2018. By decision no. 12/2017, the HCJ decided the suspension of the judge because she is being

236 Article 151(3) The chairpersons of the courts and prosecution offices who issue the respective decisions are obligated to notify the Council on facts as referred to in paragraph 1 of this Article. The Councils shall immediately after taking the information from a prosecution office or a court decide, by operation of law, on the suspension of the magistrate.

prosecuted for passive corruption, according to article 151 of law no. 96/2016. By decision no. 26/2017, the HCJ decided to revoke the suspension. The revocation was decided by the HCJ based on the final decision of the court on the innocence of the suspended judge. By decision no. 57/2017, the HCJ decided to suspend the judge after the remand measure of “arrest in prison” was imposed on him. By decisions no. 22, 23 and 24 of 2018, the HCJ decided to suspend the judge because he was indicted for passive corruption (article 151 of law no. 96/2016).

The issue of suspensions was also accompanied in some instances by debates between HCJ members, with regard to the interpretation and, therefore, the applicability of provisions of law no. 96/2016, considering the facts of the concrete case. Thus, in the HCJ meeting of 7.02.2017, there were discussions on “Suspension of exercising a public duty or service” on Elbasan Judicial Districtjudge P.H, was was indicted. According to some of the members, what complicates the situation in this concrete case is that there was already a prohibitive measure issued by judicial decision on the judge, namely prohibition of exercising her functions as a judge, in the context of the criminal investigation. The members stated that they would be overlapping the court decision by issuing a suspension measure on top of a prohibition measure. The debate also included other arguments, according to which the HCJ, as a transitory body, has the competence to implement law no. 96/2016 for the suspension of judges, as well as article 140/3 of the Constitution. This decision is not made automatically but only if the Council is convinced that if the indicted magistrate’s remaining in office, prejudices the criminal investigation, obstructs the fair or orderly conclusion of the investigation, or serious discredits the standing and figure of the magistrate.²³⁷⁾

3.5. Evaluation of the work of judges and provision of assistance in the transitory re-evaluation of judges

According to article 160/1/dh of law no. 96/2016, the High Council of Justice and existing inspectorates will conduct the ethical and professional evaluation of the work of judges, as envisaged in article 171 of this law, including assistance in the transitory re-evaluation of judges, on the basis of the law “On the transitory re-evaluation of judges and prosecutors in the Republic of Albania.” This evaluation

237 <http://kld.al/vendime/procesverbal-dat%C3%AB-7-02-2017>

is to be conducted by the High Council of Justice and the existing inspectorates until the final establishment of the HJC.

The provisions of the new law no. 96/2016 do not allow the conduct of the accelerated re-evaluation of judges, which before the law going into effect, had as its subject the judges who ran for promotion and were appointed in their posts after 2009. Article 171/ 2-10 of law no. 96/2016 establish the procedures to be followed for fulfilling the obligation of the HCJ to help with the vetting process. *During HCJ meetings, the inspectorate of this Council conveyed the concern about the fulfillment of transitory legal obligations that this Inspectorate has for helping with the process of the evaluation of the professional skills of judges in the context of the vetting process. according to the Inspectorate, legislation in this regard is not complete and needs detailed instructions from the vetting bodies.* in the meeting of 15.09.2017, the HCJ inspectorate prepared detailed information on this issue. The Inspectorate states that it encountered problems on which it needs detailed instructions from the IQC and that these problems have to do mainly with specifying some subjects of re-evaluation, the accurate period of professional re-evaluation, and regarding detailed procedures of the professional evaluation. The Inspectorate states that there is a total of 466 subjects of transitory re-evaluation for the period October 21, 2016 until March 31, 2017. The Inspectorate raises as an issue the current number of inspectors who have difficulties with fulfilling its competences as a support body, on a high number of subjects, i.e. 466 such. Meanwhile, law no. 96/2016 does not enable the completion of vacancies that the Inspectorate has. On the other hand, the vetting law no. 84/2016 sets 90 days as a deadline and, adding the fact that the duties of Inspectors in this support process will take place not only in offices but also outside in relevant courts to collect information.

During the meeting of 16.10.2017, discussions focused on information from the working group of the HCJ,²³⁸⁾ on the activity conducted since the date of the last meeting, 02.10.2017, based on transitory legal obligations in terms of support for the transitory re-evaluation of judges' professional capabilities. The working group held meetings on a daily basis, but also meetings with all other actors involved in the process of the professional re-evaluation of judges. as a product,

238 Raised by HCJ by decision no. 43, dated 22.09.2017

the working group drafted acts submitted for formal approval to the meeting day, namely:

- a) standard Report form on analyzing the professional evaluation of the subject of re-evaluation drafted by the HCJ Inspectorate,
- b) regulations for the selection by lottery of 5 cases to analyze the professional skills by the HCJ Inspectorate in the transitory re-evaluation process of the subjects of re-evaluation,
- c) calendar for the organization of lotteries and actions by the Inspectorate to complete reports on analyzing the professional capabilities of 35 priority subjects in the vetting process.²³⁹⁾

During the meeting of the HCJ on January 24, 2018, Chief Inspector Ms. Xhaferllari responded to the request of the Minister of Justice, Ms. Gjona about detailed statistical information, sought by the Inspectorate on the progress of the ethical and professional re-evaluation process of judges. In this report, the Chief Inspector stated that because the request of the Minister of Justice was submitted on 15.01.2018, the referred to data should be taken with a bit of reservation because they are in the first phase of preparation. Thus, it results that:

- a) For the years 2005-2006, a total of 248 judges have been evaluated.
- b) For the years 2007-2009, a total of 295 judges have been evaluated.
- c) For the third round of 2010-2012, 17 re-evaluation acts have been approved, of which 16 are judges.
- d) Presently, serving in the judicial system are 362 judges, of which 4 judges have 3 evaluations, 248 judges have 2 evaluations, 48 judges have 1 evaluation, and 62 judges have no evaluations.

The Chief Inspector states that the progress of evaluation for the years 2010-2012 is ongoing. The Inspectorate, based on the HCJ decision, has made it its priority to prepare reports for the transitory re-evaluation. Regarding this reporting, the Ministry of Justice raises the concern that there are still judges who have no evaluation by the Inspectorate, while the Chief Inspector states that part of these judges were appointed after 2012 and they will not have an evaluation by this HCJ because its competence is to evaluate their work until 2012. During this discussion, one of the HCJ members stated that the

239 Process-verbal of 16.10.2017

institution gave priority to the work of the Inspectorate in the context of the vetting process, in order for relevant reports to be passed on to the IQC. Meanwhile, we should keep in mind that half the positions in the Inspectorate are vacant and inspectors are also responding to the verification of complaints.

Based on communication that AHC has had with the support bodies in the context of the vetting process, it results that the Inspectorate of the High Council of Justice (HCJ) and the General Prosecution Office state that they do not possess conclusions regarding professional capabilities in the detailed and reasoned reports submitted to vetting commissions for the subjects under their competence. As a result, AHC has highlighted that the way in which support bodies operated vis-à-vis the IQC where these reports were administered was not unified. Meanwhile, the Directory for the Security of Classified Information and the High Inspectorate for the Declaration and Audit of Assets possessed in their reports on each of the checked subjects the preliminary conclusions or evaluations on the two components they assist with.²⁴⁰⁾

3.6 Temporary transfer of judges for completing judicial panels in courts and the temporary assignment of judges to institutions of justice

The temporary transfer of judges to complete judicial panels in courts and their assignment to temporary positions to enable the exercise of duties and the functioning of justice bodies is another transitory competence of the HCJ, referring to article 160/1 letter “f” and 160/4 of law no. 96/2016. Meanwhile, the transfer of judges is regulated by article 42 of of law no. 96/2016²⁴¹⁾ and is the exclusive competence of the HJC, except for cases envisaged in article 160/1 letter “f” and paragraph 4 of the same law, which envisage expressly the cases when the HCJ may exercise this competence in a transitory

240 http://www.ahc.org.al/wp-content/uploads/2018/11/RAPORT-studimor-Monitorimi-i-procesit-te-vettingut-te-gjyqtareve-dhe-prokuroreve_Jan17-Qer18.pdf

241 According to article 42/1 of law no. 96/2016 the “Transfer” is:
a) a temporary or permanent move from a position at the court or prosecution office to another position at a court or prosecution office of the same level,
b) assignment from a secondment position to a position at a court or prosecution office, which is at the same level as the previous position, and
c) assignment from a secondment position to a position at a court or prosecution office of first instance, as long as the magistrate never was in previous position.

manner. Article 44/1 of law no. 96/2016 envisage the cases of transfer without the consent of the magistrate and these cases are concretely the following:

- a) implementing a disciplinary measure;
- b) where a magistrate's position is abolished as the result of changes in the administrative structure and territorial powers of the courts or prosecution offices, following an assessment based on objective and transparent criteria;
- c) as a consequence of establishing a family relationship amounting to an environmental incompatibility in the sense of Article 8, of this Law (**this paragraph was invalidated by decision no. 34/2017 of the Constitutional Court**);
- c) in case of temporary shortage of magistrates in a court or prosecution office which cannot be covered by the magistrates in the mobility scheme in accordance with the provisions contained in Article 46 of this Law.

Article 46/6 of law no. 96/2016 envisages also the maximal time of the temporary transfer of the magistrate, for a given period, but in any case, for no longer than one year.

H CJ meetings conducted after the entry into force of law no. 96/2016, there were discussions on the way of interpreting and implementing these two transitory competences of the HCJ (temporary transfer to courts and the temporary assignment to institutions of justice), in the absence of by-laws, because the HJC is not yet established and also what legal impact the previous by-laws of the HCJ were going to have. Concretely, the HCJ's Action Plan, until the establishment of the HJC, states that the HCJ decision no. 319 of 03/05/2013, which regulates the delegating of judges for the review of a judicial case is issued pursuant to law no. 8811/2001 "On the organization and functioning of the HCJ," amended, and law no. 9877/2008 "On the organization of the judiciary in Albania," while both laws were invalidated with the entry into force of the new justice reform laws no. 96 and no. 98 of 2016. Given that according to law no. 96/2016, "delegation" no longer exists, but "transfer" exists, it may be argued on the power of the said decision given that, in its entirety, it does not go against law no. 96/2016, according to article 174/6 of it tij.²⁴²⁾ This issue was discussed

242 "On the Action Plan of the High Council of Justice until the establishment of the High Judicial Council," p.22/e).

also in the HCJ meeting of January 20, 2017, whereby the HCJ Chief Inspector stated that the HCJ decision (cited above) may be applicable only in cases of temporary transfers to complete judicial panels and that for this, the opinion of the EURALIUS Mission has also been solicited. The Chief Inspector refers to article 1674 of law no. 96/2016, according to which by-laws dating before the entry into force of law no. 96/2016 are applicable unless they are not in contradiction with the rules of this law.²⁴³⁾

Temporary transfers to complete judicial panels in certain judicial cases are referred to by the HCJ with the term delegation, according to the cited HCJ by-law of 2013. In the majority of meetings of the HCJ, there have been a considerable number of delegations of judges from one court to another. For a relatively high number of judicial cases, delegations reach in some cases even over 100. Below, we'll mention only some of them. in the meeting of 20.01.2017, the HCJ selected the judges to be transferred temporarily to complete judicial panels, for about 113 cases.²⁴⁴⁾ The selection was done through lottery of judges from different courts (categorized by levels and material competence depending on the subject of the case). Three HCJ members assisted with the lottery, while given the high number of cases, there are considerable vacancies and deficiencies in courts' judicial panels, which highlights a volume of cases that does not correspond to their number. In its meeting of February 10, 2017, the HCJ conducted through the lottery the selection for the temporary transfer of judges to complete judicial panels for 15 cases.²⁴⁵⁾ In its meeting of 24.03.2017, the HCJ realized through the lottery the selection for temporary transfer of judges to complete judicial panels for 43 cases.²⁴⁶⁾ In its meeting of 17.11.2017, the HCJ realized through the lottery the selection for the temporary transfer of judges to complete judicial panels for 78 cases.²⁴⁷⁾ In its meeting of 12.06.2018,²⁴⁸⁾ the HCJ conducted through lottery the selection for the temporary transfer of judges to complete judicial panels for 76 cases. HCJ decisions to

243 P.47 of process-verbal, accessible at: <http://www.kld.al/vendime/procesverbal-datë-20-01-2017-1-1-1>

244 *Ibid*, p.51 - 63

245 <http://www.kld.al/vendime/procesverbal-datë-10-02-2017>

246 <http://www.kld.al/vendime/procesverbal-datë-24-03-2017>

247 <http://www.kld.al/vendime/procesverbal-datë-17-11-2017>

248 <http://www.kld.al/vendime/procesverbal-datë-12-06-2018>

delegate (transfer) judges contain the legal basis and provide data for the judges being transferred, the courts and relevant case the temporary transfer (delegation) is done for.

In the HCJ meeting of January 18, 2018, the Ministry of Justice expressed concern raised by some court chief justices about the functioning of these courts with numbers of judges below the one stated in their staffing patterns. Namely, the number of judges for the Kavaja Court is 4 (four) judges, while for the Lushnje Judicial District Court it is 5 (five) judges. the actual numbers are: 2 (two) at the Kavaja District Court and 3 (three) at the Lushnje District Court. According to the Minister, the HCJ has decided to appoint a judge from the Kavaja Judicial District Court as a judicial aide to the High Court by decision no. 33/2017, in spite of the lack of judges. Meanwhile, the Kukës judicial district court should have 4 (four) judges but actually has 2 (two). Absences in this court are the result of the retirement of two judges. The Minister of Justice recommends to the HCJ to exercise its competences and temporarily transfer judges from courts with lower caseload, pursuant and in reference to provisions in law no. 96/2016, namely article 160/1, letter "f," conducting the temporary transfer for a period of time. Also, it is recommended that the Inspectorate carry out a statistical review of the number of actual judges in every court, accompanied also with the caseload registered in every court and the average caseload of judges in the lower-caseload courts, highlighting an average of the number of judges that may be transferred. Based on the findings of these statistical reviews, the Ministry proposes that legal procedures continue to conduct the temporary transfer of judges. This concern found the support of other HCJ members and the Inspectorate was tasked to draft the report with the requested statistical data.

In the meeting of May 7, 2018, the HCJ Chief Inspector reported that on the basis of the Ministry of Justice request from January 18, 2018, and the HCJ decision, a working group was established, consisting of representatives from the Inspectorate, in cooperation with representatives of the Ministry of Justice, which drafted the written report.²⁴⁹⁾ This report analyzes the current situation, obtains statistical data from the first instance courts, and analyzes the applicable legal framework, which allows the temporary transfer of judges. At the end of this report, the working group came up with some conclusions

249 <http://www.kld.al/vendime/procesverbal-datë-07-05-2018>

for the courts that need temporary transfers, the minimal number of judges necessary to be transferred, the minimal period of transfer, courts closest to the courts where the transfers will take place to that do not have a high caseload, and judges who have given their consent for being transferred from these courts. During discussions in this meeting, the other members view as an issue the burden in some administrative courts, including the Administrative Court of Appeals, which should be included in the working group's report. Another concern raised in this meeting was the one for the need to respect requirements arising from article 46 of law no. 96/2016, which regulates temporary transfers. According to one of the members, Mr. Gerd Hoxha, the HCJ should apply the procedure and declare the public call for judges interested to be transferred to these courts and then seek the consent of the chief justices of the courts where they exercise their duties. The criterion of geographic proximity that has been viewed as the basis of the report of the working group is no longer a reference criterion in new law no. 96/2016. If judges do not give their consent, then the procedure goes on to the provision of law no. 96/2016 that envisages transfer without consent. **In the opinion of this member, the way in which the conduct of transfers has been conceived by the working group leaves room for "favors."** In the end, the HCJ chair supports the proposal that enables the conduct of a more transparent procedure and asks the working group to review the report.

In its meeting of 13.06.2018, the HCJ reviewed fully report no. 1049 Prot, dated 29.03.2018 "On the incomplete staffing of courts and possibilities for temporary transfers," as well as additional report no. 1895, based on the HCJ decision no. 32, dated 07.05.2018.²⁵⁰) There were contradicting views in the meeting between the Minister of Justice and some of the HCJ members. According to the Minister of Justice, the initiation of the procedure of temporary transfers was done upon request of the Ministry of Justice and while the report from the working group states that the number of courts seeking transfers is expanded beyond those requested, which are the Judicial District Courts of Kavaja, Lushnje and Kukës. Temporary transfer to administrative courts of first instance is not requested while the temporary transfer in the Administrative Court of Appeals is a legal

violation. HCJ members stated that in the previous meeting (May 7, 2018), when the decision was made to announce vacancies in the courts where the transfers would be sent, the Minister was absent but that does not make the HCJ decision-making invalid. Likewise, members stated that the courts for which announcements was made for temporary transfers are facing an extraordinary caseload, with some instances reaching 4- or 5-years' worth of cases. This decision making of the HCJ seeks to facilitate the activity of these courts and that we are not dealing with appointments.²⁵¹⁾ Two of the HCJ members supported the argument that there may be no transfer in the Administrative Court of Appeals because there are no vacancies (article 42 of law no. 96/2016). In closing, the members voted for the temporary transfer and, by majority vote, the temporary transfer in the Administrative Court of Appeals was not voted due to the above argument.

251 *Ibid*, see p. 6 of the process-verbal

CHAPTER III

MONITORING OF TRANSITORY COMPETENCES OF THE GENERAL PROSECUTION OFFICE

1. Prosecution office before Justice Reform

The Constitution of 1998 envisaged that *“prosecutors are organized and function in the judicial system as a centralized body.”* According to article 3 of the material law no. 8737, of 12.02.2001 *“On the organization and functioning of the prosecution office in the Republic of Albania,”* the Prosecution Office is organized and functions under the leadership of the General Prosecutor as a **centralized structure**, which includes the office of the General Prosecutor, the Council of the Prosecution Office, and the prosecution offices in the judicial system.

The **principle of institutional hierarchy** meant the subordination of the lowest prosecution office from the highest. According to this principle, the General Prosecutor is at the top of the prosecution office and he/she coordinates work inside the prosecution office and the prosecutor of the highest level influenced the work of the lowest prosecution office. The highest prosecutor could delegate to the lower prosecutor the exercise of criminal prosecution, as well as decide himself, in spite of the opinion of the case prosecutor. Also, the general prosecutor, based on complaints by defendants or even *ex officio* orders by a reasoned decision the taking over of investigations, if the district prosecutor does not exercise criminal prosecution or does not drop it by the set deadline. The hierarchy of prosecutors was sanctioned further with amendments to the law on the organization and functioning of the prosecution office in 2008.²⁵²⁾

The material law of the prosecution office 2001 regulated also the professional career of prosecutors, their appointment, promotion, transfer, and disciplinary proceedings. In all of these procedures, the General Prosecutor had a leading and important role, assisted by the Council of Prosecution. Namely, the General Prosecutor, among other things:

252 Article 3/b Law no.10051, dated 29.12.2008

- proposes to the President of the Republic the general number of prosecutors, after soliciting the opinion of the Minister of Justice, and sets the number of prosecutors for each prosecution office, including the General Prosecution Office;
- proposes to the President of the Republic the appointment, transfer, promotion, removal from office and dismissal of prosecutors;
- assigns heads of prosecution offices and their deputies in prosecution offices of district courts, according to criteria and procedures, established in this law;
- orders the appointment of acting prosecutors according to criteria established in this law;
- takes care of exercising legal and constitutional competences of the prosecution office;
- orders the conduct of inspections, starts disciplinary proceedings, and decides to undertake disciplinary measures, and orders the start of criminal proceedings against prosecutors;
- directly oversees the inspection service in the prosecution office and approves the annual plan of general inspections in the prosecution office;

Assisting the General Prosecutor was the Prosecution Council, which consists of seven members, of which six are prosecutors and one a representative of the Ministry of Justice. A representative of the Office of the President of the Republic may also participate in the meeting of the Council. The Prosecution Council holds advisory functions, such as the organization of the competition for the appointment of candidates for prosecutors, giving opinions to the General Prosecutor about the appointment of acting prosecutors, their dismissal, and any other initiative of a disciplinary nature. The Prosecution Council reviewed the evaluation of prosecutors' work and presented for approval to the General Prosecutor the final evaluation report on the professional capabilities of prosecutors. Likewise, the Prosecution Council gave its opinion to the General Prosecutor about the promotion of prosecutors, their transfer, and candidates for heads of prosecution offices and their deputies, submitting its opinion on the candidates after the competition procedure. In cases when the General Prosecutor does not agree with the opinions suggested by the Council, he presents his different reasoned decision.

The centralized and hierarchic organization of the General Prosecution Office as well as the process of appointments, transfers, and dismissals was the subject of criticism and judicial reviews. The group of high-level technical experts as a body attached to the Special Committee on Justice Reform analyzed with concern the procedure for the appointment of the General Prosecutor and the procedure for the appointment and dismissal of key personnel in the prosecution personnel.²⁵³⁾ Also according to the Venice Commission, it is important that the General Prosecutor is not re-elected, at least not by the legislative or executive and that the time period should not coincide with the mandate of the parliament or the government. This takes away the possibility for politicization of the General Prosecutor. Another problem that was identified is that the law on the prosecution office does not establish the manner in which prosecutors are selected from among candidates qualified during the testing. Before justice reform, there was no legal provision on whether a ranking is done according to test results or not, nor the obligation of transparency on the method of their selection.²⁵⁴⁾ Moreover, the law *does not envisage any obligation or priority procedure* for filling vacancies with candidates who graduated from the School of Magistrates, as opposed to those coming from the ranks of other professionals. This has led to, not so rarely, in practice, prosecutors who graduated from the School of Magistrates were unable to exercise their functions although they benefit the full salary of a prosecutor, while vacancies are filled with Judicial Police officers. This practice does not support professional growth in the prosecution office or the standard for highly trained prosecutors.²⁵⁵⁾ Another legal deficiency in the law on the prosecution office was the lack of criteria that the General Prosecutor uses in his decision making for promoting candidates. The opinion of the Prosecution Council and ranking in evaluation were not binding criteria nor the obligation to make reasoned decisions on their selection. A standard evaluation procedure, linked with specific criteria for measuring capability, competence, and integrity, was lacking."²⁵⁶⁾ Thus, given that the role of the Prosecution Council is not binding in decision-making, the appointments, transfers, and promotions were the exclusivity of the General Prosecutor. The lack of clear and objective criteria could allow room for abuse.

253 P.14

254 P. 131

255 *Ibid.*

256 P. 131

2. The Prosecution Office after Justice Reform

With the approval of the constitutional amendments and the legal package of the new material laws of the new justice system in 2016, the organization and functioning of the prosecution office underwent considerable change. It is now the case prosecutors who have the function of criminal prosecution and this is related to the kind of criminal offense committed. The criminal offenses of corruption and organized crime, according to article 148/4 will be investigated by the Special Prosecution Office and the Special Investigative Unit for the prosecution of the criminal offenses of corruption, organized crime, and criminal offenses according to article 135, paragraph two of the Constitution. The Special Prosecution Office and the Special Investigative Unit are independent from the General Prosecutor.

Law no. 96/2016 has given the General Prosecutor the space to exercise some competences in a transitory manner, until the creation of the HPC. Namely, on the basis of article 160/2, 4 and 5, and article 172 of this law, the General Prosecutor exercised the following transitory provisions:

- appoints magistrates graduating in 2016, in accordance with part III, chapter II, of this law, at least two months after the entry into force of this law,
- makes decisions for the assignment to positions of magistrate candidates graduating in 2016, according to part III, chapter II, of this law, within three months from its entry into force,
- suspends prosecutors, according to the procedure and criteria envisaged in the law; conducts the evaluation of work, as envisaged in the transitory provisions of this law, including assistance for the transitory re-evaluation of prosecutors,
- verifies the conclusion of the appointment in case of resignation and reaching the retirement age,
- decides the assignment to temporary positions of magistrates to enable the exercise of duties and functions of justice institutions,
- until the creation of the High Justice Inspectorate, investigates disciplinary investigations through the inspectors, General Prosecution.

Disciplinary investigations that are unfinished on the date of the entry into force of law no. 96/2016 by inspectors in the General Prosecution Office are completed within 3 months from the entry into force of this law, according to provisions in force before the entry into force of this law. disciplinary proceedings that are unfinished at the General Prosecution Office at the moment of entry into force of law no. 96/2016, should be conducted within the 6-month deadline after its entry into force. Responsible bodies, according to article 160 of this law, apply procedural rules envisaged in this law. Competent bodies for disciplinary proceedings apply the principle of the most favorable law for the magistrate who has committed the disciplinary violation.

3. Decisions of the General Prosecutor during the transitory period

AHC sent the General Prosecution Office a request for information on March 11, 2019, seeking some orders and decisions that belong to 2018 on the transfer of prosecutors and their temporary assignment as heads of prosecution offices and measures taken toward prosecutors who refused to become part of the lottery in the “Shullazi” case. In its response, the Prosecution Office made available the requested orders and decisions, including the decisions for the suspension of two prosecutors.

However, in spite of the AHC request, the General Prosecution Office did not make available the process-verbals and advisory opinions issued by the Prosecution Council, did not establish whether there had been other decisions/orders pursuant to transitory competences aside from the orders and decisions requested specifically, and did not make available information requested on the judicial appeal by prosecutors of orders regarding transfers and disciplinary proceedings during the transitory phase.

According to documentation made available, it results that from January 2018, the Temporary General Prosecutor (GP) conducted a series of appointments and movements in prosecution offices of all levels, based on article 160/2/c of law no. 96/2016.

Unlike the monitoring of the transitory competences of the HCJ, where observers had access to the process-verbals of every meeting that was the subject of this research report, **in the case of transitory**

competences of the GP, AHC observers only had access to the decisions of this institution. These decisions reference the legal basis and the summary of the decision that specifies the relevant decision making. AHC was not able to become familiar with the arguments for these decisions, which may be reflected in the other part of documentation of this institution, e.g. the explaining reports on decisions, process-verbals and opinions of the Prosecution Council, which according to old legislation is the consultative body that the General Prosecutor consults on this decision making too. These materials are not published on the institution's official website. As a result, the findings and conclusions of AHC on this chapter are partial due to the limited documentation that was the subject of this research.

Being unable to become familiar with the concrete circumstances that conditioned the decision-making of the General Prosecutor and the arguments for the decisions made it difficult to evaluate how much these decisions were based on the law. **We also notice that except for two suspension decisions, the other decisions issued pursuant to the transitory competences during 2018 were not argued or were argued partially in terms of what conditions and circumstances they were taken in, and why the chief prosecutor considered making such decisions. For instance, in the case of the temporary assignment of prosecutors as heads of prosecution offices, including the changes in leadership of the Serious Crimes Prosecution Office, decisions lack the information whether any preliminary analysis was conducted on work performance of previous leadership and the heads being assigned temporarily to these positions, why the need arose to make these changes, what was the result from the evaluations, and whether the decision making of the Temporary General Prosecutor was based on criteria of merit, impartiality, and objectivity.** The same finding applies to the temporary transfer of three prosecutors from the Serious Crimes Prosecution Office of first instance to Prosecution Offices outside Tirana. The lack of such information made it difficult to conduct a full analysis of these decisions in terms of their lawfulness and, more concretely, respect for the criteria envisaged by legislation in force, for each exercised transitory competence.

During the transitory period, the General Prosecutor made available 17 decisions/orders, which had to do with:

- a) suspension from duty of two prosecutors (2 cases) on which criminal charges were brought regarding disclosure of assets, until the conclusion of investigations or the trial of criminal proceedings started against them;
- b) interruption of assignment and return of prosecutors to prosecution offices where they had been appointed earlier (3 cases);
- c) temporary assignment of 8 prosecutors as Heads of Prosecution Offices of Judicial Districts (in some districts), including the Serious Crimes Prosecution Office;
- d) temporary assignment of three prosecutors from the Serious Crimes Prosecution Office to judicial district prosecution offices;
- e) removal in one instance from the function of the head of the Serious Crimes Prosecution Office of prosecutor Mr. Besim Hajdarmataj.

In reference to the announcement made public for the media on its official website, in the context of reorganization, proper functioning of the prosecution office, increase of performance and public confidence in this institution, on January 9, 2018, the General Prosecutor issued the following orders:²⁵⁷⁾

- (i) Order no. 13, on prosecutor Mr. Dritan Gina, acting head of the Elbasan Judicial District Prosecution Office; his acting as head is interrupted and he is returned as prosecutor to the prosecution office where he was assigned before.
- (ii) Order no. 14, on prosecutor Mr. Ardian Nezha, prosecutor at the Puka Judicial District Prosecution Office; he is appointed temporary head of the Elbasan Judicial District Prosecution Office.
- (iii) Order no. 15, on prosecutor Mr. Pali Deçolli, acting head of the Fier Judicial District Prosecution Office; his acting as head is interrupted and he is returned as prosecutor in the Durrës Judicial District Prosecution Office where he is appointed.
- (iv) Order no. 16, on the temporary assignment of prosecutor Mr. Fatmir Lushi as acting head of the Fier Judicial District Prosecution Office.

257 http://www.pp.gov.al/web/NJOFTIM_P_R_MEDIAN_1137_1.php

- (v) Order no. 12, on prosecutor Mr. Artur Ismailukaj, acting head of the Kukës Judicial District Prosecution Office; his acting as head is interrupted and he is returned as prosecutor at the Tropoja Judicial District Prosecution Office where he had been appointed.
- (vi) Order no. 11, on the temporary assignment of prosecutor Ms. Alketa Nushi, who had been appointed as prosecutor in the Mat Judicial District, as head of the Kukës Judicial District Prosecution Office.

After that date, it results that the temporary GP also issued the following orders/decisions:

- (vii) Order no. 136 of 09.05.2018 “On the removal from function” as head of the Serious Crimes prosecution Office Mr. Besim Hajdarmataj. This decision is disputable with regard to its lawfulness because the order references as a legal basis article 160/4 of law no. 96/2016, which does not envisage the removal from function of the head of the serious crimes prosecution office as a transitory competence. Article 160/4 of law no. 96/2016 envisages that the General Prosecutor may decide to assign prosecutors to temporary positions in order to enable the exercise of duties and the functions of justice institutions. This competence also is not envisaged in the provisions of the Constitution or of law no.97/2016, referenced in the introduction of the decision.
- (viii) Order no 157, dated 06.06.2018, which decides the temporary assignment of Mr. Ylli Pjetërnika as head of the Shkodra Judicial District Prosecution Office. The order is based on article 160/4 of law no. 96/2016.
- (ix) Order no. 158, dated 06.06.2018 for the temporary assignment of Mr. Anton Martini from his position as head of the Shkodra Judicial District Prosecution Office to a prosecutor in the Serious Crimes Court of First Instance.²⁵⁸⁾

258 http://www.pp.gov.al/web/Caktohet_drejtuesi_i_perkohshem_i_Prokurorise_se_Shkodres_1217_1.
<https://sh.time.mk/c/104cdc7cf8/transferimi-i-prokuroreve-dhe-sherri-tek-krimet-e-renda-kush-jane-dosjet-vip-qe-lihen-pas.htmlphp>

- (x) Decision no. 140, dated 11.05.2018 on the suspension from duty of Ms. Rovená Gashi, prosecutor at the General Prosecution Office. The decision results to be based on articles 148/d/ 4, letter "b" and 179/ 7 of the Constitution of the Republic of Albania; on articles 151/1/letter "b" and 2/letter "b", articles 155 and 160/2/letter "c" of law no. 96/2016. Referring to data published on the official website of the GP, the suspension of Ms. Gashi was decided after the Chief Prosecutor became familiar with information from the Durrës Judicial District Court Prosecution Office, regarding the pressing of charges and the indictment of prosecutor Gashi for the criminal offense: "Refusal to declare, failure to declare, hiding or erroneous declaration of assets, personal interests of elected persons and public officials or any person who has the legal obligation for declarations," in the form of erroneous declaration, envisaged by article 257/a-2 of the Penal Code. The prosecutor is suspended until the conclusion of investigations or the trial of the criminal proceedings registered with the prosecution office in the Durrës Judicial District Court.
- (xi) Decision no. 141, dated 11-05-2018, on the suspension of Mr. Dritan Gina, prosecutor at the prosecution office in the Tirana Judicial District Court. The decision is based on articles 148/d/4, letter "b" and 179/7 of the Constitution, articles 151/1/letter "b" and 2/ letter "b;" 155 and 160/2/letter "c" of law no. 96/2016. Referring to data published on the official website of the GPO, the suspension of Mr. Gina was decided after the Chief Prosecutor became familiar with information from the Durrës Judicial District Court regarding the pressing of charges and the indictment of prosecutor Gina for the criminal offense: "Refusal to declare, failure to declare, hiding or erroneous declaration of assets, personal interests of elected persons and public officials or any person who has the legal obligation for declarations," in the form of erroneous declaration, envisaged by article 257/a-2 of the Penal Code. The prosecutor is suspended until the conclusion of investigations or the trial on the criminal proceedings registered with the prosecution office in the Durrës judicial district court.²⁵⁹⁾

259 http://www.pp.gov.al/web/Pezullim_nga_detyra_per_znj_Rovena_Gashi_dhe_z_Dritan_Gina_1197_1.php

- (xii) Order no. 136, dated May 9, 2018, for the dismissal from duty of the head of the Serious Crimes Prosecution Office Mr. Besim Hajdarmataj, who remains a prosecutor in the Serious Crimes Prosecution Office. By means of this decision, the General Prosecutor assigned Ms. Donika Prela temporarily to head the Serious Crimes Prosecution Office. Referring to data published on the official website of the General Prosecution Office, *"This change seeks to accelerate the investigation of sensitive cases that the Serious Crimes Prosecution Office is working on. We have the confidence that this change in leadership will lead to faster and more effective criminal prosecution of high priority cases. The criminal prosecution of crime and corruption remain the highest priority for the Chief prosecutor."*²⁶⁰) However, the arguments for this move do not enable full transparency on this decision making, because there is a lack of an evaluation of the work of prosecutor Hajdarmataj as head of the serious crimes prosecution office, whether deficiencies or poor performance were encountered, and what it consisted in. At the same time, there is no concrete evaluation for prosecutor Prela and why she would lead to results in heading this prosecution office, what results she had in previous assignments, and her work performance.
- (xiii) Order no. 197, dated 20.09.2018, for the temporary assignment of Mr. Besim Hajdarmataj from a prosecutor at the Serious Crimes Prosecution Office to the Pogradec Judicial District Prosecution Office.
- (xiv) Order no. 198, dated 20.09.2018, for the temporary assignment of Mr. Olsian Çela, from a prosecutor at the Serious Crimes Prosecution Office to the Berat Judicial District Prosecution Office.
- (xv) Order no. 199, dated 20.09.2018, for the temporary assignment of Ms. Sonila Muhametaj, from a prosecutor at the Serious Crimes Prosecution Office to the Puka Judicial District Prosecution Office.

260 http://www.pp.gov.al/web/Prokurorja_e_Pergjithshme_znj_Arta_Marku_caktoi_perkohesisht_znj_Donika_Prela_ne_krye_te_Prokurorise_per_Krime_te_Renda_1196_1.php

- (xvi) Order no. 138, dated 09.05.2018 for the temporary assignment of Ms. Anita Jella as head of the Durrës Judicial District Prosecution Office.²⁶¹⁾
- (xvii) Order no. 104, dated 04.04.2018, for the temporary assignment of Ms. Enkeleda Millonai as head of the prosecution office in the Elbasan Judicial District Court. The order is based on article 160/ 4 of law no. 96/2016. Prosecutor Millonai is assigned to this post after the resignation of the head of the Elbasan Judicial District Prosecution Office Mr. Ardian Nezha²⁶²⁾.

For the above decisions, the General Prosecution Office used as a basis mainly *article 148/d/ 4, letter "b" and the 179/ 7 of the Constitution of the Republic of Albania; articles 151/1/letter "b" and 2/letter "b"; 155 and 160/2/letter "c" of law no. 96/2016, "On the status of judges and prosecutors in the Republic of Albania."*

4. Judicial appeals on decisions of the General Prosecutor

The two prosecutors suspended from duty during 2018 because charges were brought against them by the Durrës Judicial District Prosecution Office, namely Ms. Roven Gashi and Mr. Dritan Gina, exercised their right to judicial appeal at the Tirana Administrative Court of First Instance, which rejected the submitted lawsuits. The right to appeal was exercised on the decision of the Administrative Court of First Instance at the Administrative Court of Appeals. This court, by decision no. 181 of 08.11.2018, decided to accept the lawsuit and invalidate decisions no. 140 of 11.05.2018 and no. 141 of 11.05.2018 of the General Prosecutor for the suspension from duty of prosecutors Roven Gashi and Dritan Gina.²⁶³⁾

Referring to the legal basis cited by the General Prosecutor in the decision for the suspension from duty of the two prosecutors,

261 http://www.pp.gov.al/web/Prokurorja_e_Pergjithshme_znj_Arta_Marku_caktoi_perkohesisht_znj_Donika_Prela_ne_krye_te_Prokurorise_per_Krime_te_Renda_1196_1.php

262 http://www.pp.gov.al/web/Caktohet_drejtuesi_i_perkohshem_i_Prokurorise_se_Elbasanit_1187_1.php

263 <http://www.gjykataadministrativeapelit.al/detajeteceshjes3.php/?id=%2021300>

specifically article 151/1/letter “b” of law no. 96/2016, this provision envisages, *“The magistrate is suspended from duty by decision of the relevant council when: ...b) he/she is indicted for a serious offense committed intentionally.”* The Administrative Court of Appeals argued that the fundamental claims of the petitioners seeking to invalidate the administrative acts are:

- a) *the fact that the criminal offense attributed to them is not a serious crime;*
- b) *the criminal offense attributed to them is not conducted only intentionally, and,*
- c) *they are not indicted, in accordance with legal norms.*

The Court of Appeals reached the conclusion that the offense envisaged in article 257/a-2 of the penal Code is not a serious crime. To reach that conclusion, the college had in mind the type of criminal offense the petitioners are accused of and concretely the objective elements of this offense, the type of punishment that is envisaged – fine or imprisonment up to 3 years, and the fact that this penal offense is in the material competence of the Judicial District Court. Concretely, we cite a paragraph of the arguments presented by the Administrative Court of Appeals, *“Among other things, in this concrete case, referring to the relevant penal provision that the petitioners are charged with, article 257/a-2 of the Penal Code, referring to the way in which the criminal offense is claimed to have been committed, through erroneous declaration, the types of punishment envisaged by this criminal provision, the punishment by fine or imprisonment, the level of imprisonment sentence envisaged by this provision, up to three years, and given that this criminal offense is envisaged in the material competence of the Judicial District Court, which is tried in its substance by a panel of judges consisting of one judge, it results that in this concrete case, we have to do with a serious crime.”*

Also prosecutors Mr. Besim Hajdarmataj and Mr. Olsian Çela addressed the Tirana Administrative Court of First Instance to challenge the GP decisions regarding their transfers from the Serious Crimes Prosecution Office to the Judicial District Prosecution Offices of Berat and Pogradec. The Administrative Court admitted the requests of the petitioners and invalidated the decisions of the GP. With regard to the case of Mr. Hajdarmataj, the court argues in its decision of admitting the lawsuit and the invalidation of the Administrative Act as illegal that, *“In the case of issuing order no. 179, dated 20.09.2018, on*

the temporary assignment of Mr. Besim Hajdarmataj as prosecutor to the Pogradec Judicial District Prosecution Office, the petitioned party failed to prove the purpose for which the act was issued. Not being in compliance with article 59 of law no. 96/2016 'On the status of judges and prosecutors in the Republic of Albania.''' As a conclusion, the court ruled to order the sued party, the General Prosecutor, to reinstate petitioner Mr. Hajdarmataj to his previous position in the serious crimes prosecution office.²⁶⁴⁾

Meanwhile, with the establishment of the High Prosecutorial Council, upon request of the two prosecutors Mr. Hajdarmataj and Mr. Çela to the HPC, the institution has decided to reinstate them to their previous posts.²⁶⁵⁾

With regard to the above, it is worth noting that there may have been other lawsuits in the court, but AHC was only able to secure the above information by using the official website of the Administrative Court of First Instance and materials made available by the Tirana Administrative Court of Appeals.

5. Public and media debate on transitory decision-making of the General Prosecutor

Media has published some views and opinions regarding the transfers and appointments conducted in a transitory manner by the TPG. In some cases, it is worth mentioning that the media does not possess the necessary information regarding legal provisions for such decision-making and, therefore, these decisions are labeled wrongly. For instance, the transfer of prosecutor Mr. Hajdarmataj from the Serious Crimes Prosecution Office to the Judicial District Court Prosecution Office has been categorized erroneously by the media as dismissal.²⁶⁶⁾ The lack of knowledge in covering the decision-making of the General Prosecutor leads to failure to correctly inform the public, creating confusion.

Media has continuously reported that some movements/transfers

264 <http://www.gjykata.gov.al/umbraco/Surface/SearchSurface/GenerateAndDownloadFinalDecisionReport?caseId=80-2018-06256&courtId=80>

265 <http://www.oranews.tv/article/kerkesa-e-prokuroreve-cela-dhe-hajdarmataj-sjell-debate-mes-anetareve-te-klp>

266 <https://www.reporter.al/arta-marku-shkarkon-prokurorin-e-ceshtjes-tahiri/>

conducted by the General Prosecutor were influenced by acquaintance with the appointed prosecutors, for instance the appointment of prosecutor Ms. Donika Prela to head the Serious Crimes Prosecution Office, whereby the media refers to their knowing one another while attending the School of Magistrates.²⁶⁷⁾ Another case discussed extensively in the media is the suspension of prosecutors Ms. Rovenka Gashi and Mr. Dritan Gina after the Durrës Judicial District Prosecution Office brought charges against them for penal offenses.²⁶⁸⁾

Debates and controversies covered in the media having to do with the decisions of the General Prosecutor also have to do with the judicial case known publicly as the “Shullazi case.” The prosecutors who had previously run the Shullazi case or even the “Tahiri” case had been transferred to other prosecution offices and it was requested that a lottery be drawn to determine the prosecutors that would take over the case. Media reported that the meeting to draw the lots was accompanied by strong debates and the refusal of some prosecutors to participate in the lottery. The media reported that the refusal by some prosecutors to become part of this lottery led, as a result, to the decision of the GP to transfer those prosecutors to other prosecution offices as a punishment measure.²⁶⁹⁾ Meanwhile, press release has been published on the official website of the General Prosecution Office, from 21.09.2018, which explains among other things, *“The serious crimes prosecutors on whom disciplinary investigations were ordered refused to participate in the lottery to represent in trial a very sensitive case for public opinion. Thus, these prosecutors acted in breach of the law that*

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- 267 <https://tvklan.al/perplasjet-ne-prokurorine-e-krimeve-te-renda/>;
<http://shqiptarja.com/lajm/kush-eshte-donika-prela-prokurorja-qe-ka-ne-dore-dosjen-e-adriatik-llalles>;
<http://www.gazetatema.net/2017/11/21/iken-adriatik-llalla-zbulohet-dokumenti-i-opdat-dhe-euralius/>;
<http://gazeta-shqip.com/lajme/2018/01/24/struktura-e-re-e-prokurorise-marku-rivleresim-te-gjithe-prokuroreve/>;
<http://shqiptarja.com/lajm/shembet-drejtesia-shkrihen-kld-dhe-krimet-e-renda-arta-marku-humbet-kompetencat>;
<https://www.reporter.al/frike-apo-perplasje-e-brendshme-marku-shkemben-akuza-me-prokuroret/>;
<http://www.oranews.tv/article/kunderpergjigjen-prokuroret-padi-ndaj-arta-markut-dhe-donika-preles>
- 268 <https://balkanweb.com/lajm-i-fundit-hetim-per-pasurine-prokurore-rovenga-gashi-dhe-dritan-gina-arta-marku-i-pezuillon-nga-detyra/>
- 269 <https://www.reporter.al/dosja-e-emiljano-shullazit-zhyt-ne-kaos-prokurorine-e-krimeve-te-renda/>

*obliges them to be part of the lottery as long as they are prosecutors of that prosecution office, acting in open violation of the constitutional obligation, according to which "The prosecution office exercises criminal prosecution and represents charges in court in the name of the state..." ...This, as well as the violation of ethics rules, are the sole reasons that forced me, as the Temporary General Prosecutor, to stick hard to and not withdraw from implementing the constitution and the laws of my country, ordering initially the start of disciplinary investigations according to provisions of article 160/5 of law no.96/2016, on these prosecutors who refused to exercise the responsibilities assigned to them by the constitution and the law... ...Every prosecutor who refuses to do his/her job will face disciplinary responsibilities and even penal ones, depending on the case."*²⁷⁰⁾ **However, AHC notes that on this issue, there was not adequate transparency on the official website of the General Prosecutor, in terms of publishing information on the disciplinary proceedings and decision making after its conclusion.**

270 http://www.pp.gov.al/web/Deklarate_e_Prokurorit_te_Pergjithshem_Arta_Marku_1224_1.php

CHAPTER IV

MONITORING OF MEETINGS OF THE HJC AND HPC

1. Start of functioning of the two Councils (HPC and HJC)

With the selection of members for the HJC from the general meeting of judges, on December 12, 2018, and the selection of members from among prosecutors' ranks for the HPC from the general meeting of prosecutors on December 11, 2019, both Councils began their activity within a few days.

The first meeting of the HPC, held on 19.12.2018, consisted in *the approval of regulations for the election of the Chairperson and Deputy Chairperson of the High Prosecutorial Council, the election of the Chairperson and Deputy Chairperson of the High Prosecutorial Council,*²⁷¹⁾ *approval of the proclamation decision on the date of creation of the Council,*²⁷²⁾ *the lottery for determining non-prosecutor members to serve for a 3-year mandate and the lottery for determining prosecutor members coming from prosecution offices at the first instance courts and appeals courts, which would serve 3-year terms.* **The official website of the HPC appears to only have the respective decisions but not the relevant regulations for the procedure for the election of the HPC chair and deputy chair and the names of selected members to serve 3-year mandates.**

Based on the monitoring of the first meeting of the HPC, we found that in accordance with article 279/ 7 of law no. 115/2016, the manual lottery (balls) procedure led to the selection of non-prosecution members for a limited 3-year mandate, namely Mr. Gent Ibrahimini and Mr. Sandër Beci. Prosecutor members from the first instance and appeals levels to serve a limited 3-year mandate are: Ms. Antoneta Sevdari,²⁷³⁾ Mr. Arben Dollapaj and Mr. Kosta Beluri. The other prosecutor and non-prosecutor members will serve full 5-year mandates.

The first meeting of the HJC was held on 20.12.2018. The agenda of the meeting included *the proclamation of the date of establishment of the HJC,*²⁷⁴⁾ *the approval of regulations for the election of the HJC chair and deputy chair, the election of the chair and deputy chair of the HJC*²⁷⁵⁾²⁷⁶⁾, *the lottery for the selection of two judge members and two non-judge members*

271 <http://klp.al/wp-content/uploads/2019/03/Nr.3-Dat%C3%AB19.12.2018-.pdf>

272 <http://klp.al/wp-content/uploads/2019/03/Nr.1-Dat%C3%AB18.12.2018-P%C3%ABr-krijimin-e-KLP.pdf>

273 Ms. Sevdari was dismissed later by decision of the SAC, which automatically led to the interruption of her mandate as a prosecutor member of the HPC.

274 <http://klgj.al/vendime/vendim-nr-4-dat%C3%AB20-12-2018>

275 <http://klgj.al/vendime/vendim-nr-2-dat%C3%AB20-12-2018>

276 <http://klgj.al/vendime/vendim-nr-3-dat%C3%AB20-12-2018>

to serve 3-year mandates on the HJC. Unlike the HPC, regulations for the election of the chair and deputy chair of the High Judicial Council are published on the official website of the institution.²⁷⁷⁾ **Decision no. 5, dated 20.12.2018, does not publish the names of members who will serve limited 3-year mandates in the HJC. However, this information was obtained by the authorized AHC observer and the judge members who will serve limited mandates are Mr. Medi Bici (from the High Court), Mr. Ilir Toska (from the Court of Appeals) and Ms. Brunilda Kadi (from the First Instance Court). The non-judge members to serve limited mandates are: Mr. Erjon Muharremaj and Mr. Maksim Qoku.** During the second meeting of the HJC on 21.12.2018, the Chair reported on impasses created because mandates of some courts chairmen have expired and continue to serve in their posts despite this situation, as well as of chairs who in most courts are serving as acting chairs assigned by the HCJ. This is on the list of 10 priority issues of the HJC but the list is not accessible to the public or reported in HCJ meetings.

Law no. 115/2016 is the material law that regulates the principles and most important issues for the creation, organization, and functioning of the two Councils. The law does not envisage the Council's obligation to set priorities with regard to decision-making of the Councils, except for priorities that are part of the strategic plan for the judicial system and the strategic plan for the prosecution system, which are drafted and implemented in cooperation with the Ministry of Justice. **Despite this, AHC deems that both Councils should have drafted a plan of measures to carry out in the mid-term and long-term, highlighting decision-making of an emergency nature. This would be as a result of the almost two-year delay in the establishment of the two Councils, which naturally created impasses in the functioning of the justice system, which needed to be addressed in an organized manner in their decision-making.** Upon consultation of this draft report with the monitored institutions, the HJC informed us that from the moment of creation, it has worked to draft the strategic two-year plan and the relevant action plan, which are near finalization and will be consulted during June-July 2019.

277 <http://klgj.al/vendime/vendim-nr-1-dat%C3%AB-20-12-2018>

2. Equipping the Councils with necessary infrastructure, budget, and personnel

From the moment of creation, the High Judicial Council and the High Prosecutorial Council faced difficulties in terms of necessary infrastructure, budget, and personnel.

HJC members exercise their activity in the HJC building while the HPC members, in the absence of appropriate infrastructure, have been accommodated in the premises of the General Prosecution Office. The opening of the race for the vacant position of the General Prosecutor on March 29, 2019²⁷⁸⁾ as well as the exercise of other HPC functions that are linked with the prosecutors of this prosecution office might create perceptions regarding violation of objectivity and impartiality of HPC members.

Although the HJC is settled in the building of an institution that no longer exists, the lack of adequate space for membrs and for HJC members remain problematic. HJC members, unlike those of the HCJ, exercise their functions full time. In the second meeting of the HJC on 21.12.2018, the Chair discussed the possibility of accommodating HJC members in offices which could not be individual due to the temporary situation. There were also discussions about realizing meetings of the Commissions in the offices of the Chair and Deputy Chair. The issue of accommodation in offices was accompanied with debates and comments by members from the judiciary, given that they were members coming from the judicial system and should be guaranteed more dignified treatment. Given that this is a temporary situation, it was decided to not pass this discussion on a vote, but to resolve it with agreement and in the spirit of tolerance between members.

Referring to articles 79/2 and 178/2 of law no. 115/2016, the Councils are responsible for determining the structure of the administration and each unit, the creation of other organizational units within the administration, setting the tasks and responsibilities for all organizational units and individual positions, etc.

The organizational structure of the HPC administration was discussed in the meeting of 21.01.2019, where members discussed

278 <http://klp.al/index.php/2019/04/01/keshilli-i-larte-i-prokurorise-shpall-fillimin-e-procedures-per-perzgjedhjen-e-kandidateve-per-prokuror-te-pergjithshem-permes-procedures-se-hapur-te-thirrjes-publike-per-aplikim-bazuar-ne-rregullor/>

among other things a *draft decision on the approval of the HPC structure and the budget for 2019*. During the workings of this meeting, 3 structure variants were proposed. In the end, the HPC decided to vote the principle proposing the highest number of employees, namely 75 employees. **This structure was approved by Decision no. 17, dated 21.01.2019,²⁷⁹⁾ but is no explanatory report on this structure appears to have been published.**

The organizational structure of the HJC administration was discussed and approved in the meeting of 18.01.2019. Council members were acquainted before with this draft structure and their suggestions were reflected in the structure. The structure was approved by majority vote of the members.²⁸⁰⁾ **Decision no. 12 of 18.01.2019 is not published while media stories inform us that this decision was conveyed to the Assembly together with the explanatory report attached to the decision, the structure, and the annex for the budget projection supporting the structure.**²⁸¹⁾ Print media outlets appear to have published information that the organizational structure of the HJC administration includes 144 employees.²⁸²⁾ If this number is real, it is twice as much as the number of HPC employees.

Law no. 99/2018 “On the 2019 budget” envisages an amount of 400 million ALL as a reserve fund for the justice system, for the establishment and functioning of the new institutions, upon preliminary approval by the Assembly.²⁸³⁾ Following consultations with the Ministry of Finance, it appears that for 2019, both Councils can afford 125 employees for the HJC and 65 employees for the HPC. These structures were approved amid debates in the meeting of 19.02.2019 of the parliament’s Committee of Laws.²⁸⁴⁾ The transcribed process-verbal of the meeting shows that the version submitted for an opinion from EURALIUS is 61 employees for the HPC while EURALIUS and the Ministry of Justice envisage 106 employees for

279 <http://klp.al/wp-content/uploads/2019/03/Nr.17-Dat%C3%AB-21.01.2019-.pdf>

280 <http://www.kld.al/vendime/vendim-nr-12-dat%C3%AB-18-01-2019>

281 <http://www.parlament.al/Files/Projekte/20190227150401raporti%20%20KLGJ%20KLP.pdf>

282 https://shqiptarja.com/uploads/ckeditor/5c543d954e14ckerkesa%20menyra%20funksionimit_001.pdf

283 http://www.qbz.gov.al/botime/fletore_zyrtare/2018/PDF-2018/183-2018.pdf

284 <http://www.parlament.al/Files/Procesverbale/20190304105239Procesverb al%2019.02.2019.pdf>

the HJC.²⁸⁵⁾ After passage in the Committee of Laws, the structures were approved in the plenary session of the Assembly on 21.02.2019 by decisions no. 32/2019²⁸⁶⁾ and no. 33/2019.²⁸⁷⁾ In the end, the number of approved employees for the HJC by the Assembly is 125, 30 less than the HJC proposal, and the number of employees for the HPC is 65 persons, which is 10 less than the HPC proposal. According to the two decisions of the Assembly, the fund for the creation and functioning of the HJC and HPC is approved by decision of the Council of Ministers. The fund for the creation and functioning of the HJC and HPC is not yet approved by the Council of Ministers.²⁸⁸⁾ It approved on April 17, 2019, some additions to CMD no. 187, dated 08.03.20017 (amended),²⁸⁹⁾ whose scope includes the salaries of HJC and HPC employees. Additions approved in this CMD determine the salary levels for HJC and HPC functionaries and cabinet members and the categories of salaries for employees in the High Judicial and Prosecutorial Councils.

In the absence of the allocation of relevant funds from the state budget, during the monitoring of HPC meetings, we noticed that the presentation of heads of the Korça Appeals Prosecution Office and the Serious Crimes Appeals Prosecution Office was done by securing transportation individually by the assigned Council members.

Based on article 53/2 of law no. 96/2016 and article 176/3 of law no. 115/2016, on 25.01.2019 a call was published for all first instance and appeals prosecutors who do not serve in limited mandate positions and are not ordered to be acting in any other position to express interest to be ordered in the position of Advisor to the HPC.²⁹⁰⁾ After the

285 Page 9 of the process-verbal.

286 <http://www.parlament.al/Files/Akte/20190301110223vendim%20nr.%2032,%20dt.%2026.2.2019.pdf>

287 <http://www.parlament.al/Files/Akte/20190301110319vendim%20nr.%2033,%20dt.%2026.2.2019.pdf>

288 Referring to decisions published until the meeting of April 17 at: <http://www2.kryeministria.al/newsrooms/vkm/>

289 CMD "On the approval of the structure and salary levels of civil servants/employees, deputy minister and employees of cabinets, at the council of ministers, ministries, administration of the president, assembly, central election commission, high court, general prosecution office, some independent institutions, institutions reporting to the PM, institutions reporting to line ministries, and the administration of the prefect," amended

290 <http://klp.al/index.php/2019/01/25/per-plotesimin-e-6-gjashte-pozicioneve-keshilltare-prane-keshillit-te-larte-te-prokurorise-permes-procedures-sekomandimit-te-prokuroreve/>

deadline expired, 10 persons had expressed interest, of which only Ms. Pranvera Gruda did not meet the criterion of the status of magistrate and gave up the race. The Commission for the Verification of Ethical and Professional Activity published opinions on the 9 candidates. Aside from data on ongoing disciplinary practices, the opinion of the prosecution office heads was asked on whether the prosecutors' acting as advisors to the HPC would harm the smooth functioning of the prosecution offices that they headed.²⁹¹ The Commission decided to exclude 3 candidates for the following reasons.

Interested candidates	Opinion	Approved/Dismissal
Mr. Arjan Muçaj (Gjirokastra Judicial District Prosecution Office)	http://klp.al/wp-content/uploads/2019/02/Opinion-Arjan-Mu%C3%A7aj.pdf	Approved unanimously
Artur Cara (Fier Judicial District Prosecution Office)	http://klp.al/wp-content/uploads/2019/02/Opinion-Artur-Cara.pdf	Approved unanimously
Mr. Erion Pustina	http://klp.al/wp-content/uploads/2019/02/Opinion-Erion-Pustina.pdf	Appointment harms the smooth functioning of the Pogradec Judicial District Prosecution Office
Mr. Ervin Beqiri	http://klp.al/wp-content/uploads/2019/02/Opinion-Ervin-Beqiri.pdf	Appointment harms the smooth functioning of the Korça Judicial District Prosecution Office
Ms. Marsida Frashëri	http://klp.al/wp-content/uploads/2019/02/Opinion-Marsida-Frasher.pdf	General Prosecution Office notified the High Judicial Council that by decision no. 17 of 01.02.2019 of the General Prosecutor, disciplinary investigation had been initiated into Ms. Marsida Frashëri, prosecutor at the Shkodra Judicial District Prosecution Office.
Mr. Mihallaq Blea (Lezha Judicial District Prosecution Office)	http://klp.al/wp-content/uploads/2019/02/Opinion-Mihallaq-Blea-e-re.pdf	Approved unanimously
Ms. Mirela Kapo (Kruja Judicial District Prosecution Office)	http://klp.al/wp-content/uploads/2019/02/Opinion-Mirela-Kapo.pdf	Approved unanimously

²⁹¹ <http://klp.al/?s=komandim>

Ms. Ornela Rrumbullaku (Kavaja Judicial District Prosecution Office)	http://klp.al/wp-content/uploads/2019/02/Opinion-Ornela-Rrumbullaku.pdf	Approved unanimously
Ms. Vitjuna Mata (Vlora Judicial District Prosecution Office)	http://klp.al/wp-content/uploads/2019/02/Opinion-Vitjuna-Mata.pdf	Approved unanimously

3. Subject of the activity of the Councils so far, referring to competences envisaged by law no. 115/2016

Since the creation of the HPC on December 19, 2018, until mid-April 2019, the subject of the Council's activity has been:

- a) Approval of rules for the election of the chair and deputy chair of the Council and their election.
- b) Approval of the proposed structure and budget for 2019.
- c) Creation of four standing Commissions.
- d) Establishing the number of candidates for magistrates as prosecutors in the School of Magistrates for the academic year 2019-2020 (25 posts).
- e) Drafting and approval of regulations for the involvement of prosecutors in activity outside their functions (teaching), regulations for the conduct of the lottery to select cases in the context of the vetting process of subjects for the period 08.10.2013 – 08.10.2016.
- f) Review of requests submitted by heads of prosecution offices to fill vacancies by temporary assignments to these positions.
- g) Review of the request by parliamentary opposition groups to dismiss the General Prosecutor.
- h) Approval of regulations regarding the criteria and procedure for the selection of candidates for General Prosecutor.
- i) Approval of regulations for promotion of prosecutors at the Special Prosecution office Against Corruption and Organized Crime and establishment of the Temporary Special Commission for the evaluation of candidates for the Special Anti-Corruption Structure (SPAK), etc.

From the creation of the HJC on December 20, 2018, until mid-April 2019, the subject of the activity of the Council has been:

- a) Approval of regulations for the election of the chair and deputy chair of the HJC and their election.
- b) Start of procedures for the appointment of magistrates graduating from the School of Magistrates in 2018 and setting the maximal number of magistrate candidates to be admitted to the school for the 2019-2020 academic year (25 posts).
- c) Start of the procedure for the temporary assignment (transfer) of judges of serious crimes courts to the special courts against corruption and organized crime.
- d) Approval of the composition of its standing commissions and establishment of temporary commissions.
- e) Review of some draft-regulations "On the criteria and procedure of functioning of the assignment scheme of judges and the draft-regulations," "On the criteria and procedure of the temporary transfer of judges for trying a special judicial case in another court," etc.
- f) Review of the draft instructions "On the salaries of judges on holidays and weekends," etc.
- g) Assigning judges to trying special judicial cases in other courts.
- h) Approval of the list of candidates for advisors and legal aides who meet the criteria to participate in the preliminary training program at the School of Magistrates, etc.

More concretely, we'll analyze below some of the decisions of the Councils that were monitored by AHC observers:

Pursuant to articles 62 and 160 of law no. 115/2016, the Councils created the standing commissions. The approval of the composition of HJC commissions was realized during the meeting of 18.01.2019. Regarding the distribution of members to commissions, the Council took into consideration: *first*, the criterion of experience and contribution that every member might give in the relevant commissions, *second*, the respective mandates of the members, and, *third*, references for each member. More concretely, the composition of HJC commissions is displayed below:

Composition	Commission of Strategic Planning, Administration, and Budget	Disciplinary Commission	Career Development Commission	Commission for the Evaluation of Ethics and Professional Activity
Members	Ms.Naureda Llagami	Mr.Medi Bici	Mr.Illir Toska	Ms.Brikena Ukperaj
Members	Ms.Fatmira Luli	Mr.Dritan Hallunaj	Ms.Marçela Shehu	Ms.Brunilda Kadi
Members	Mr.Medi Bici	Mr.Maksim Qoku	Mr.Alban Toro	Mr.Erjon Muharremaj
Substitute members	Ms.Brikena Ukperaj	Mr.Alban Toro	Ms.Naureda Llagami	Ms.Fatmira Luli
Substitute members	Mr.Erjon Muharremaj	Ms.Brunilda Kadi	Mr.Dritan Hallunaj	Mr.Medi Bici

The HPC official website features the notification that on 26.12.2018, 4 standing commissions were created, pursuant to article 160 of law no. 115/2016. For the constitution of these commissions, there appears to be no prior announcement of holding an open door meeting. The relevant Commissions and their composition since the moment of their constitution was in accordance with provisions in article 160 of law 115/2016,²⁹²⁾ but the dismissal of Ms. Sevdari by the SAC will lead to a restructuring of the commissions.

Composition	Commission of Strategic Planning, Administration, and Budget	Disciplinary Commission	Career Development Commission	Ethics Commission
Chair	Mr.Gent Ibrahim	Mr.Bujar Sheshi	Mr.Sandër Beci	Mr.Alfred Balla
Members	Ms.Antoneta Sevdari,	Mr.Besnik Cani,	Mr.Arben Dollapaj,	Mr.Kostaq Beluri,
Members	Ms.Nurihan Seiti	Mr.Tartar Bazaj	Ms.Antoneta Sevdari	Ms. Gentjan Osmani
Substitute Members	Mr.Arben Dollapaj, Mr.Alfred Balla	Mr.Arben Dollapaj, Mr.Alfred Balla	Mr.Bujar Sheshi, Mr.Gent Ibrahim	Mr.Tartar Bazaj, Mr.Besnik Cani

292 <http://klp.al/index.php/2019/02/14/keshilli-i-larte-i-prokurorise-miraton-ngrijten-e-kater-komisioneve/>

Explanatory reports and draft decisions compiled by the standing commissions, which are reviewed during the plenary meeting, are not published on the official website of the Councils, nor are they made available to the observers during the monitoring process. Reporting of these materials by members in a summarized manner makes it difficult to understand their contents. **This has made many of the qualitative data of the monitoring conducted by AHC observers to be highlighted with difficulty and partially.**

As a result of decision-making by the vetting bodies, vacancies were created in the position of the chief justice of the courts in Puka, Korça, and Berat. This issue was discussed in the second meeting held by the HJC on 21.12.2018. The HJC discussed article 26/2 of law no. 98/2016 "On the organization of the judiciary in the Republic of Albania," which envisages a new concept for the leadership of the court through the chair, deputy chair, and court council. The draft regulations compiled on the spot, which required immediate decision-making, was accompanied by debates and discussions between the members. There were debates because the invalidation of some provisions of law no. 115/2016 by the Constitutional Court had created an impasse in the HJC decision-making, which cannot exercise its competence to realize appointments, but can only carry out temporary assignments of magistrates. As long as IQC decisions are not of a final nature, the HJC did not carry on with the announcement of vacancies for the position of the court chairman, and members agreed on this line of thought.

The procedure to be pursued by prosecutors who do not pass the test of the transitory re-evaluation in the IQC has always been addressed in the HPC. In accordance with law no. 84/2016, magistrates are suspended *ex lege* until the decision-making by the SAC. In these circumstances, one of the magistrate members of the Council proposed to request a shortened decision by the IQC in order to then continue with drafting an act to replace it. **This proposal in itself is disputable as long as we have to do with decision-making of vetting bodies that is not of a final form. Meanwhile, we notice that the standard pursued by the Council is different in this case, given that the HJC has not continued with the announcement of vacancies and has delegated the exercise of the chair's competences to the deputy chair.**

The process for the creation of the delegation scheme of magistrates or their temporary transfer, referring to articles 44, 45 and 46 of law no. 96/2016 has been subject of discussion in the HJC. The reason has been the influx of requests submitted and the situation created by resignations and dismissals of judges in the context of the vetting process. According to draft acts compiled by the Career Development Commission, there are two important moments that members have kept in mind: *setting in motion the process to create a delegation scheme, which is a voluntary one, i.e. requires the consent of magistrates and considering “immediate” the consent for temporary transfer.* In order to guarantee a transparent procedure and due to the nature of this scheme, members amended the draft act by a majority vote to say *“Seek the consent of all magistrates at the first instance and appeals courts in the Republic of Albania to run for the delegation scheme without leaving their positions.”*²⁹³⁾

The request of the head of the Berat Judicial District Prosecution Office regarding vacancies in this prosecution office was reviewed as an emergency in the third meeting of the HPC on 21.01.2019. The request asked the return to their positions in the Berat Prosecution Office of two prosecutors commanded to the Tirana and the Shodra Judicial District Prosecution Offices. **During the HPC meeting, there were many different discussions by members who, in the end, only decided to send back only the prosecutor commanded to the Shkodra Judicial District Prosecution Office.**

Referring to the legal obligation of Councils to support vetting bodies for the realization of the evaluation of professional capabilities, envisaged in article 171/1 of law no. 96/2016, the standing Committee for Ethical and Professional Evaluation was set up in the HJC. The commission consists of 5 members, 3 of which representing the judicial system and 2 are non-magistrate members; the commission was approved unanimously.²⁹⁴⁾

CHAIR	NON-JUDGE MEMBERS	JUDGE MEMBERS
Dritan Hallunaj	Maksim Qoku	Medi Bici
	Erjon Muharremaj	Ilir Toska

293 <http://klgj.al/vendime/vendim-nr-14-dat%C3%AB-22-01-2019>

294 <http://klgj.al/vendime/vendim-nr-15-dat%C3%AB-22-01-2019>

Another issue that was the subject of activity of the councils has been the decision-making on the start of procedures for the verification of the integrity and assets of candidates for prosecutor and judges graduating from the School of Magistrates. During the meetings, the Councils established the criteria for competing for the School of Magistrates and approved regulations for the evaluation of candidates on a points system. It was stated that the maximal capacity of the School is a total of 75 positions for all candidates, judges and prosecutors, including advisors/legal aides.

For graduated magistrates who have not yet been appointed, based also on the decision of the Administrative Court that ruled on the payment that magistrates would receive during the period between graduating from the School of Magistrates and their appointment as magistrates, the HPC suggested attaching them to the commissions in order to give their contribution to easing some of the workload. Unlike the HPC, the HJC started procedures for the appointment of magistrates graduating from the School of Magistrates in 2018, a process that was preceded by a procedure for the verification of the integrity and assets of the candidates before appointment to duty.

The subject of the activity of the HPC has also been the creation of the Special Anti Corruption and Organized Crime Prosecution Office. The scheme applied for filling vacancies in the Special Prosecution Office is through the promotion procedure, on the basis of article 48 of law no. 96/2016. The deadline for application was 1 month and the number of prosecutors for SPAK was decided to be 15 because the volume of their work and the workload is perceived to be much higher than that of the Serious Crimes Prosecution Office. In its meeting of February 6, 2019 (one day before the deadline for applications for SPAK candidates), the HPC announced the extension by two days of the application deadline until February 19, 2019. The extension was successful in that 12 candidates were added to the 15 others who had applied in the first call, taking the total number of applicants to 27 for the 15 positions in this prosecution office.²⁹⁵⁾ The list of candidates appears published in the media,²⁹⁶⁾ while there is no special section in the HPC official website dedicated to the profile of candidates for such important institutions.

295 <http://www.gazeta-shqip.com/2019/02/22/mbyllet-gara-zbulohet-numri-i-kandidateve-per-spak-un/>

296 <http://www.panorama.com.al/emrat-spak-kush-jane-27-prokuroret-qe-duante-hetojne-korrupsionin/>

The HJC, by decision no. 9 on 27.12.2019, started procedures for the temporary assignment of judges from serious crimes courts to the special courts against corruption and organized crime. According to this decision, judges in the first instance and appeals courts for serious crimes, who consider continuing their duty as judges in the special court should express their interest on this through a written request to the HJC. The decision does not set a deadline given to candidates to express interest. It also says that judges and their family members should give their consent for periodical control of their bank accounts and personal telecommunications, according to law no. 95/2016 “On the organization and functioning of institutions to fight corruption and organized crime.” The HJC officially informed AHC that 14 of 15 judges gave their consent and they are working in the Serious Crimes Court of First Instance and of the 11 judges working in the Serious Crimes Appeals Court, 8 of them gave their consent. The HJC highlights that for the creation of the special court, the vetting of candidates who have given their consent and the creation of the special prosecution office are expected because without them, there could be no cases before the courts. AHC deems that the **establishment of the Speical Prosecution Office and Court should be a process coordinated between the two Councils, despite the peculiarities of procedures in each Council.** No special section on the HJC official website has been devoted to the profile of candidates applying for important positions in the judicial system.

On 29.03.2019, pursuant to the legal obligation envisaged in article 148/a/3 of the Constitution and Section I and II of Chapter IV of law no. 97/2016, the HPC announced the start of the procedure for the selection of candidates for General Prosecutor.²⁹⁷⁾ This was done in accordance with the 30-day deadline set for candidates who meet the legally required conditions in the law and approved regulations to submit expression of interest. The announcement published on the HPC website indicates that 4 candidates submitted the requested documentation for the position: Ms. Arta Marku, Ms. Fatjona Memçaj, Mr. Lulzim Alushaj and Mr. Olsian Çela.²⁹⁸⁾ The same finding applies

297 <http://klp.al/index.php/2019/04/01/keshilli-i-larte-i-prokurorise-shpall-fillimin-e-procedures-per-perzgjedhjen-e-kandidateve-per-prokuror-te-pergjithshem-permes-procedures-se-hapur-te-thirrjes-publike-per-aplikim-bazuar-ne-rregullor/>

298 <http://klp.al/2019/05/03/njoftim-mbi-listen-e-kandidateve-te-cilet-kane-aplikuar-per-pozicionin-e-prokurorit-te-pergjithshem-brenda-afateve-te-percaktuara-nga-keshilli-i-larte-i-prokurorise/>

to these candidates in terms of transparency on the official website of the Council as for SPAK candidates.

The draft decision for the establishment of the temporary Commission for the review of 183 complaints on decisions to suspend proceedings taken by the HCJ chief inspector was a subject of debate and discussion in the HJC by Council members. In the end, it was decided that this Commission set up according to article 62/13 of law 115/2016 should be called "Temporary Commission for the review of complaints against decisions of the Chief Inspector of the former High Council of Justice to archive complaints or drop investigations on a judge."²⁹⁹ One of the unclear points addressed by the members consisted in the period that this commission should exercise its activity; whether this period should extend until the creation of the HJI or until the conclusion of the review of the 183 complaints that had been submitted.

4. Nature of discussions by Council members, according to AHC monitoring

Pursuant to the legal obligation envisaged in articles 68 and 166 of law no. 115/2016, all 11 respective members of the two Councils participated in all plenary meetings monitored by AHC. **AHC also noticed that the atmosphere of discussions in the Councils reflected a pro-active role and continued involvement in debates through the display of opinions of all members, both magistrates and non-magistrates.** As examples, we may mention the debates on the criteria that candidates should meet in applying for the School of Magistrates or even debates on the number of prosecutors to be selected for the Special Prosecution Office.

It is worth underscoring the positive fact of debates by all members during plenary meetings of the Councils took place in a moderate manner and i respect of ethics rules. Displayed criticism toward deficiencies or different interpretations of the new justice legislation indicated a spirit of constructiveness. Both magistrate and non-magistrate members displayed provided their opinions, reflecting an intertwining of theoretical and practical approaches.

299 <http://klgj.al/vendime/vendim-nr-31-dat%C3%AB-02-2019>

In some repeated cases, HJC decisions were opposed by a minority of magistrate members who displayed their opinion that they were not familiar in advance with the proposed draft decisions by the Chair. One of these is the discussion on the treatment of complaints addressed to the Council. The HJC Chair clarified that these complaints are submitted and documented in a special register by the administrative staff, while a copy is sent for review to the Disciplinary Commission, but this was not welcomed by the minority of magistrate members.

5. Rapport between magistrate and non-magistrate members in decision-making in the Councils

Despite active discussions and debates among members of both Councils, their decision-making generally was based on the agreement of their overwhelming majority.

In very sporadic instances, on certain issues, there were divided opinions among magistrate and non-magistrate members. One case of clear division of the positions of members in the HPC is the decision to reinstate in the Serious Crimes Prosecution Office of prosecutors Olsian Çela and Besim Hajdarmataj, who were transferred by the General Prosecutor the previous year to the judicial district prosecution offices of Berat and Pogradec. The HPC voted the decision by 6 votes in favor by magistrate members (prosecutors) and 5 votes against by non-magistrate members.

Also, there were debates on the review of an urgent issue in the HPC, on the request submitted by a prosecutor of the Tirana prosecution office to extend his retirement time. The majority of non-magistrate members were in favor of approving the request while the majority of magistrates sought more time to become familiar with legislation in force. In this case, the non-magistrate member who reported on the case together with 4 other members (including magistrate ones) voted in favor of the request as a minority. Articles 66/9 and 164/9 of law no. 115/2016 envisages that in case of administrative individual decision-making by the Councils, regarding the professional status of a concrete subject, the minority member may ask that his/her opinion is attached to the decision of the Council. **Members of the Council enjoy the right to argue their minority opinion, which is attached to the decision.**

6. Controversial issues for the Councils regarding clarity, completeness, and unity of the formulation of provisions of law no. 115/2016

Decisions of the Constitutional Court that invalidated some articles of law no. 115/2016 “On the governing bodies of the justice system” and some articles of law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania” have created difficulties in the interpretation and implementation of this legislation in the decision-making of the two Councils. Due to the lack of the necessary parliamentary quorum, the Assembly has not managed to fill the legal vacuum created in these two basic material laws for the activity of the Councils.

The legal vacuum has been the subject of discussions on certain issues in the agenda of some of the HJC and HPC meetings. There have been debates in the Councils regarding the *constitutionality and legality*, in the circumstances when the Constitutional Court has invalidated the two articles of the law “On the governing bodies of the justice system,”³⁰⁰ which gave the Council the right to exercise only some of the competences envisaged in the Constitution in its plenary meetings. Meanwhile, the Councils were to exercise all other competences in their standing committees according to provisions in force of the law (not invalidated). Only complaints against Commission decisions would be reviewed by the Council in plenary session.

Other issues that blocked the decision-making of both Councils as a result of the invalidation of article 61 and 159 of law no. 115/2016, were addressed by members by finding the most favorable solutions, referring to provisions in force of other reform laws in the justice system, such as law no. 98/2016. Unable to undertake the procedure to appoint the court chair and in the absence of functionality of the delegation scheme, which is accompanied by a series of procedures, the HJC members referred to article 26/2 of law no. 98/2016, which envisages that in the absence of the chairperson, his/her competences are exercised by the deputy chair, while the latter is elected by the egeneral meeting of judges of the respective court.

300 Article 61 and 159 of law no. 115/2016 “On governing bodies of the justice system”

A controversial issue in the HJC activity was the letter of 13.12.2018, which reflects some problems addressed by the General Inspector of the HCJ Inspectorate. The correspondence, among other things, highlights the status of certain inspectors, whose mandate has expired but request to be informed whether they will continue to serve in their posts. Transitory provisions of certain laws, namely article 165/1 and 2 of law no. 96/2016 and article 283/10 of law no. 115/2016, envisage that part of the inspectors are attached to the HJC, while others automatically go to the HJI (an institution that is not established yet). **For the discussion of this issue and for reaching concrete conclusions, the assistance of international missions USAID and EURALIUS was solicited.**

A controversial issue was that of the compatibility of the HJC regulations “On the criteria and procedure for the functioning of the judge delegation scheme” with provisions of law no. 96/2016. During its meeting of 14.02.2019, the HJC took under review the requests of 4 judges who expressed an interest to be part of the delegation scheme. According to article 9/1 of the Regulations, the Council has the competence to decide to accept or refuse the candidacy, based on the proposal provided by the Career Development Commission. According to the opinion reported by representatives of this Commission, it results that these 4 candidates were refused, one of them because he had been transferred temporarily to another court (letter f, article 4 of the Regulations),³⁰¹⁾ while the inclusion of three other candidates in the scheme was deemed to lead to the violation of the functionality of the court where they exercised their functions (article 4/e of the Regulations).³⁰²⁾³⁰³⁾ According to the opinion of the non-magistrate member in the minority, **letter “e” of article 4 of the Regulations creates in itself an excluding criterion and does not comply with article 45 of law no. 96/2016, which has envisaged two cumulative conditions: the magistrate should have at least 1 year of experience in the position and can run.** In spite of this opinion, the refusal to include the 4 candidates in the delegation scheme was voted by 10 votes in favor and 1 against.

It results that a total of 179 requests were submitted to the HJC by heads of courts for the delegation of 259 judges, due to failure to form

301 <http://klgj.al/vendime/vendim-nr-17-dat%C3%AB-29-01-2019-1-1>

302 <http://klgj.al/vendime/vendim-nr-27-dat%C3%AB-14-02-2019>

303 <http://klgj.al/vendime/vendim-nr-28-dat%C3%AB-14-02-2019>

judicial panels. Because of the influx of requests and the emergency situation created in the judicial system, members deemed that the scheme for delegation and temporary transfers are insufficient to respond to the needs. In these conditions, the Council decided that it would be the Career Development Commission that will propose to the plenary session to approve the temporary regulations and procedure for the assignment of a judge to try a special judicial case in another court. **These regulations will be implemented when the delegation and temporary transfer scheme do not function, with or without consent.**

The HPC reviewed the request of parliamentary groups of the opposition to start disciplinary proceedings against the General Prosecutor, arguing that she did not identify the criterion of non-electability of HPC member Mr. Bujar Sheshi. On the case in question, the request became the subject of proactive discussions in the plenary meeting of the HPC, whether the request was in the competence of the plenary session. Referring to data published by the HPC,³⁰⁴⁾ it results that this body declared its non-competence on the request. According to media reports,³⁰⁵⁾ in its letter to the heads of parliamentary groups, the HPC stresses that the right to start disciplinary proceedings against the chief prosecutor is not within their competences. This right belongs to the High Justice Inspectorate and that until the end of the mandate of the Appeals College, disciplinary proceedings against the General Prosecutor are reviewed by the Appeals College.

7. Transparency of the Councils to media and authorized observers

The periodical monitoring of plenary meetings of both Councils, we found that only the initial meeting for the constitution of these two institutions was covered by the media, while following meetings were closed to the media. Because the media was not allowed to broadcast following meetings, on 11.03.2019, AHC addressed access to information requests to find out the legal basis that were referenced

304 <http://klp.al/index.php/2019/02/22/kerkesa-per-shkarkimin-e-arta-markut-klp-nuk-eshte-ne-kompetencen-tone/>

305 <https://www.vizionplus.tv/klp-opozites-shkarkimi-i-arta-markut-i-takon-inspektoriati-te-larte-te-drejtise/>

for such decisions. On 13.03.2019, the HCJ informed AHC that its first plenary meeting was open to the public, guests, and media, which covered it extensively. The HJC did not provide any information on the legal references used to limit media access in the following meetings. Meanwhile, through its response on 28.03.2019, the HPC stated that articles 164, 165, 166 and 167 of law no. 115/2016, do not contain any reference provisions for the Council to realize open meetings. In the context of transparency, the HPC informed us that it published announcements on plenary meetings and, within 24 hours from the day of the meeting, the official website showed the audio registration of the plenary sessions. The HPC also referenced that it is in its discretion to assess how to hold the meetings. After this letter, AHC issued an open letter to the HPC on 2.04.2019, explicitly quoting article 2 of law no. 115/2016 and reference to transparency and the intent of new justice legislation to ensure progress and not regress in terms of transparency. Article 231/1 of law no. 115/2016 exclusively references the holding of closed door meetings only for the JAC; article 191 references closed-door meetings for both councils.

On 7.01.2019, AHC addressed officially both Councils through a request to monitor plenary meetings and the activity of standing Commissions, which should function on the basis of articles 62 and 160 of law no. 115/2016. The letters highlighted identifying data of 4 observers authorized by AHC to carry out this monitoring process. The HJC responded on 15.01.2019 to say that there would be an announcement electronically by meeting organizers on all future meetings. The HPC responded on 16.01.2019 that for more detailed information, we could contact directly their media advisor. AHC was not periodically notified in advance by the organizational staff of these institutions, making it impossible to monitor their first meetings.

On February 7, AHC was informed by the media about another meeting of the HJC that we were not notified about. After communication and meetings with representatives of this institution, it was clarified that the lack of notifications was the result of workload, the urgency of meetings, and caseload. After this communication, a meeting was held on 12.03.2019 and we were not notified, again. We noticed lack of advance notification also from the HPC. We found out through the press that the contact point of this Council had not issued an advance notice on the meeting. The HPC official website has published the audio recording of this meeting. **This concern raised**

officially by AHC electronically did not receive any official response from the HPC. On 25.09.2019, AHC was notified through an HPC contact point about the conduct of an ad hoc meeting as it had begun 15 minutes earlier. Advance notice and the meeting agenda were not published in advance on the HPC website, making it impossible to monitor it on time. AHC reacted on the issue through a press release.

On 12.03.2019, AHC sought information whether according to article 149/b-1, 2 of the Constitution, HPC had made a decision on the existence of a cause for non-electability of its member Mr. Bujar Sheshi. The letter did not receive an official response from HPC. During plenary meeting no. 8 of the HPC on 19.03.2019, it was decided by majority vote that representatives of international assistance missions participate and address questions to candidates for prosecutors of the special prosecution office and for General Prosecution, during the interview process and other evaluation phases. On March 21, based on the active role it has played in the implementation of justice reform, AHC expressed an interest to monitor the procedure. **The letter is yet to receive an official response.**

In meetings that were monitored by AHC, observers were not provided the meetings' materials. Meeting agendas in cases of advance notice on websites was accessed individually by observers, except for the above cases, AHC observers' the administration of these institutions did not limit access in any instance.

The publication of materials by the Councils does not follow the same standard and practice. The HPC website³⁰⁶⁾ features audio recordings of plenary meetings and only 1 process-verbal of the first meeting on 19.12.2018,³⁰⁷⁾ in violation of the legal provision in article 167/3 of law no. 115/2016. Meanwhile, the HJC did not publish any audio recording of plenary meetings in violation of article 69/ 2 of law no. 115/2016, and process-verbal documents with summaries of documents were published in respect of article 69/3 of the law.

Decisions published by the Councils until March 2019 are based on the law while for certain instances in which legal vacuum has been encountered or members had different interpretations of the law, the Councils proceeded by using juridical logic and systematic interpretation of provisions of a law or group of laws. Councils'

306 <http://klp.al/>

307 <http://klp.al/wp-content/uploads/2018/12/Procesverbali-i-mbledhjes-se-pare-te-KLP.pdf>

decision-making considered to not follow procedures and practices that resulted as “problematic” from HCJ activity.

At present, there are 114 requests at the HJC for delegation of judges to different courts, for the purpose of the normal functioning of the judicial system. The draft regulations “On criteria and procedure of functioning of the delegation scheme for judges,”³⁰⁸⁾ compiled by the Career Development Commission was approved in principle and in its entirety by all members.³⁰⁹⁾ The regulations consist in defining detailed rules for the criteria and procedure of functioning of the delegation scheme and service in it according to article 45 of law no. 96/2016, “On the status of judges and prosecutors in the Republic of Albania.” **This delegation scheme that is based on consent of the judge envisages his/her assignment for a period of no less than 6 months for the review of judicial cases in the Court that has the need.**

Referring to the draft regulations “On the criteria and procedure of temporary transfer of judges,” compiled pursuant to article 46 of law no. 96/2016, the temporary transfer of the judge is realized only when the need of the court may not be fulfilled through the delegation scheme. Unlike the delegation scheme, when no judge gives consent, temporary transfer may also be done without consent, according to criteria of article 46/2 of the mentioned law. A literal reading of article 11 of the Regulations, given that transfer without consent is a very delicate situation, it results that the Council respected legal provisions by setting as a criterion the service of a judge from courts with lowest average caseload per judge and the least experience as a judge in that court.

308 Delegation indicates assignment of the judge by the HJC in the delegation scheme for the trial of judicial cases in courts.

309 <http://klgj.al/vendime/vendim-nr-22-dat%C3%AB-7-02-2019>

CHAPTER V

MONITORING THE ESTABLISHMENT AND FUNCTIONING OF THE JUDICIAL APPOINTMENTS COUNCIL (JAC)

1. Lists prepared for the lottery of 2019

On the basis of article 221/1 of law no. 115/2016, the lottery for the selection of JAC members may only include those magistrates and judges of the Constitutional Court who, at the moment the lottery is organized, meet the conditions prescribed by this law.

On the basis of article 221/3 of law no. 115/2016, no later than November 15 of each calendar year, the Constitutional Court, HJC and HPC verify whether candidates for JAC members meet the conditions envisaged in item 1 of this article and present to the President of the Republic and the Assembly the list of candidates who meet the conditions.

Until the creation of the HJC and HPC, law no. 115/2016 envisaged in transitory provisions the creation of a temporary JAC. According to article 284 of this same law, in preparing for the lottery of the temporary JAC members, four institutions needed to draft lists of persons who meet the conditions prescribed by the law in order to be JAC members. More specifically:

- a) The General Prosecutor drafts a list with the names of all prosecutors in the General Prosecution Office and the prosecution offices at the appeals level;
- b) The General Secretary of the High Council of Justice drafts a list of all judges in the appeals courts and the judges of the administrative court of first instance.
- c) The Chairman of the High Court drafts a list with all the names of all judges of the High Court.
- d) The Chairman of the Constitutional Court drafts a list with the names of all members of the Constitutional Court.

Unlike article 221/3 of law no. 115/2016, which for the JAC envisages that the lists should be submitted no later than November 15 of each calendar year, for the temporary JAC, article 284 of law no. 115/2016 does not envisage any deadline for the submission of lists, but states that each of the mentioned institutions “*submits [the list] immediately to the President of the Republic.*”

With regard to the lottery for JAC 2019, only two of the institutions published their lists on their official websites, namely the Constitutional Court and the General Prosecution Office. Meanwhile, the High

Court and the High Council of Justice did not pursue a transparent procedure for the publication of names. More specifically:

a. The list of candidates from the Chairman of the Constitutional Court – this institution published a list of the members who meet the conditions envisaged by law and a list of members who do not meet the legal conditions. These lists were published on the official website of this institution on November 15, 2018, i.e. the day before the drawing of the lottery and within the legal deadline envisaged by article 221/3 of law no. 115/2016. However, the lists only contained the names of candidates and there is no information on the verification of meeting the criteria envisaged by article 221/1 of law no. 115/2016.

b. The list of candidates from the General Prosecutor – this institution published a list of members who meet the conditions prescribed by law and a list of members who do not meet the legal conditions. These lists were published on the official website of the institution on November 14, 2018, i.e. before the date of the lottery and within the legal deadline envisaged by article 221/3 of law no. 115/2016. Unlike the lists of the Constitutional Court, the lists from the General Prosecution Office provide all details on the fulfillment of conditions prescribed by law. However, no further information is provided on the procedure pursued by this institution for the verification of these criteria (e.g., the way how information was obtained, details on the commission that compiled the lists, etc.).

With regard to the list of prosecutors who do not meet the conditions prescribed by law, we find that it contains only the names of prosecutors for whom the only disqualifying criterion is non-completion of the School of Magistrates. Meanwhile, no details are provided on the reason why names of all prosecutors in the justice system are not included who do not meet other conditions required by law together with information on the conducted verifications.

c. The list of candidates from the Chairman of the High Court – this institution sent the President of the Republic and the Parliament Speaker a list with the members who meet the legal criteria. The list is dated November 13, 2018, i.e. within the deadline set by article 221/3 of law 115/2016. The list is not published on the official website of this institution and was made available to the public only during the lottery in the Assembly premises. Also, the names of the list

were published by some media outlets a few days before the lottery.

The list only contains the names of candidates and does not provide any information on the procedure followed to verify whether they meet the legal criteria. Nevertheless, by letter of the Chancellor of the High Court on 20.12.2018, in response to a letter of the Albanian Helsinki Committee, it was stated that the only judge who did not meet the criteria prescribed by law was Mr. Xhezair Zaganjori, regarding the exercise of the magistrate functions for a period of 10 years.

d. The list of candidates from the General Secretary of the High Council of Justice – this institution did not send the President of the Republic and the Parliament Speaker a list of the judges who meet the conditions envisaged by law within the legal deadline in article 221/3 of law no.115/2016. After the decision of the President of the Republic to not draw the lottery, the Parliament Speaker sent a letter to the HCJ Secretary on 3.12.2018, no. 3732/4, which is not published on the official website of this institution. In response to the letter, the HCJ General Secretary, by letter no. 3427/1 Prot., dated 04.12.2018, passed to the Parliament Speaker the list of names of judges from the Appeals Courts and Administrative Courts who meet the criteria set by law and of those who do not meet these conditions. These two lists were not published on the HCJ website but were made public during the lottery for JAC 2019 in the Assembly premises. The names of the list were not published by the media before the lottery. Unlike the lists of the Constitutional Court, the HCJ lists provide all details on the fulfillment of criteria set by law, but do not provide further information on the procedure followed for verifying these criteria. Unlike the lists of the General Prosecutor, the lists prepared by the HCJ General Secretary contain the names and details of the judges who were excluded from the lottery, including for reasons other than completion of the School of Magistrates.

According to article 221/5 of law no. 115/2016, the candidates excluded from institutions that prepare lists are notified in writing, individually, and with arguments on the reasons for being excluded. They may complain within 5 days from the day of notice to the Administrative Court of Appeals. None of the websites of these institutions published information on whether such written individual notification was carried out.

2. Lottery drawn for JAC 2019 members

a. Failure of President to draw lottery due to legal vacuum

The President of the Republic of Albania refused to draw the lottery for the election of the temporary JAC members for 2019. Based on the monitoring and as made public through the media, through letter no. 30479, dated 23.11.2018, the President of the Republic notified the Assembly of the Republic of Albania that he finds it impossible to draw the lottery. The letter was not made public on the official website of the President's office, but the letter was sent to the AHC after it asked the President's office in writing for information on 7/12/2018.

With regard to the legal vacuum cited by the President of the Republic, it should be underscored that both the Constitution and law no. 115/2016 envisage a standard procedure for the selection of the JAC and a special procedure for the selection of the first JAC that becomes the temporary JAC. The JAC, in the normal procedure, is elected on the basis of article 149/d of the Constitution and article 221 of law no.115/2016 and the lists with candidates are prepared by the Constitutional Court, HJC, and HPC.

Meanwhile, transitory provisions envisaged in article 179/11 of the Constitution and article 284 of law no.115/2016, as analyzed before, stipulate that for the temporary JAC, the lists of candidates are prepared by the General Prosecutor, the General Secretary of the High Council of Justice, the Chairman of the High Court, and the Chairman of the Constitutional Court. The analysis of these provisions concludes that until the moment when the provisions for the selection of the ordinary JAC may not be applied (i.e., until the creation of the HJC and HPC), the legal reference shall be the transitory provisions for the temporary JAC. As long as the HJC and HPC were created late, only after the lottery for JAC 2019, can we state that this JAC has been constituted in a temporary manner. From a legal standpoint, at the moment of approval of justice reform, it was thought that the new institutions would be established within 8 months (article 179/5 and 11 of the Constitution), but this deadline was not respected for a series of causes of an objective and subjective nature. As a result, transitory provisions will continue to be applied as long as the lawmaker has not set a final deadline for their applicability or their limitation in time and as long as it is not possible to apply provisions for the election of the ordinary JAC.

Further on, it is worth highlighting also that the replacement role of the Assembly in drawing the lottery in the absence of the President doing this is envisaged in the provisions for the appointment of the ordinary JAC (article 149/d/3 of the Constitution and article 221/8 of law no. 115/2016). In the transitory provisions, this role is only envisaged by the Constitution (article 179/11) but not the transitory article 284 of law no. 115/2016.

b. Lottery drawing at the Assembly

The lottery for the JAC was drawn on 07.12.2018 in the premises of the Assembly, according to the Order of the Speaker of the Assembly of the Republic of Albania, no. 3, on 03.12.2018, and no. Prot. 3732/3. Regarding order no. 2 *“On the definition of the procedure and regulations for drawing the lottery for the election of the members of the Judicial Appointments Council”* on 03.12.2018, it is not possible to understand the reasons for determining new procedures and regulations while the previous ones had been already set through Order no. 1, on 22.11.2017, of the Assembly Speaker, regarding the lottery for JAC 2018, which was invalidated through order no. 2/2018.

The lottery process was open and transparent for the media and observers present. Observers were accommodated in such a manner as to have visual access to the lottery procedure. The lottery was registered in audio and video, while the media aired the process live. However, not all observers had advance access to the files and list of candidates, due to the incorrect calculation of the participants and observers by the General Secretary of the Assembly.³¹⁰ These documents were made available only at the end of the process.

With regard to the transparency aspect, it is highlighted that Order no. 409, on 05.12.2018 *“On the establishment of the technical secretariat that will organize procedures for the JAC (temporary”* was not published in advance on the Assembly’s website, but was handed

310 The file contained the following documents:

Order no.3, on 03.12.2018 *“On setting the date for the lottery to elect members of the Judicial Appointments Council (temporary);”* Order no. 2, on 03.12.2018 *“On setting the procedure and regulations for the lottery to elect JAC members (temporary);”* Order no. 409, on 05.12.2018 *“On the establishment of the technical secretariat that will organize procedures of the Judicial Appointments Council (temporary);”* 4 relevant letters issued by the Chair of the Constitutional Court, Chair of the high Court, the General Prosecutor, and General Secretary of the High Council of Justice.

to participants during the lottery together with other documents. The contents of the list of candidates to be part of the lottery for members or substitute members of the JAC was as follows:

- 2 candidates from the Constitutional Court
- 3 candidates from the High Court
- 1 candidate from the General Prosecution Office
- 1 candidate from the prosecution office at appeals courts
- 14 candidates from the appeals courts
- 16 candidates from the administrative courts

At the end of the manual lottery, the following appeared to be elected to the temporary JAC 2019:

1. Ms. Vitore Tusha from the Constitutional Court
2. Mr. Bashkim Dedja from the Constitutional Court
3. Mr. Ardian Dvorani from the High Court
4. Ms. Arta Marku from the General Prosecution Office
5. Mr. Fatri Islamaj from Appeals Courts
6. Ms. Margarita Buhali from Appeals Courts
7. Ms. Fatjona Memçaj from the Prosecution Office of the Appeals Court
8. Mr. Eriol Roshi from the Administrative Courts

Substitute members for the temporary JAC 2019 were elected:

1. Mr. Medi Bici from the High Court
2. Mr. Gurali Brahimllari from the Appeals Courts
3. Ms. Klodiana Veizi (Mema) from Administrative Courts.

Because of the lack of candidates, vacancies were created in the JAC (as members or substitute members) that should represent the following institutions:

- 1 member from the Prosecution Office in the Appeals Courts
- 3 substitute members, respectively from the Constitutional Court, General Prosecution Office, and the Prosecution Offices at Appeals Courts.

After the lottery, the process-verbal of the meeting was published on the Assembly's website³¹¹⁾ as was the report on the JAC election process,³¹²⁾ which reflected all details of the lottery. During the lottery procedure, opposition representatives raised a series of questions on the lawfulness and constitutionality of the lottery due to the legal vacuum highlighted also by the President of the Republic. It was specifically claimed that:

- a) For JAC 2017 and JAC 2018, under the interpretation of the head of the committee of laws at the time, in violation of the constitution, blocked the functioning of the JAC with the argument that until vetting procedures were concluded, the institution could not function. This obstructed the establishment of the Constitutional Court and the appointment of the High Justice Inspector.
- b) At the time of creation of JAC 2017, vacancies in the Constitutional Court were only 3 and now they are 8 (and later, with the dismissal of Mr. Dedja, 9), i.e. the entire new Constitutional Court will undergo the analysis of the temporary JAC 2019.
- c) The temporary General Prosecutor is a prosecutor assigned to this post but has the status of the district prosecutor and therefore does not meet criteria envisaged by law.
- d) Two of the three candidates of the High Court are simultaneously candidates for the Constitutional Court, which puts them in conflict of interest, and one of these members, based on a decision of the Constitutional Court, should have terminated his mandate.
- e) The vacancy in temporary JAC 2019 due to the absence of one member will influence the ranking of candidates and, therefore, the body is incomplete and non-functional.

The lottery process conducted by the Assembly was extensively reported in the media, which also covered the position of the President on refusing to draw the lottery due to the legal vacuum.

c) Monitoring report of the People's Advocate

The People's Advocate published the monitoring report on its official website, which is critical of the lottery procedure.³¹³⁾

311 <https://www.parlament.al/Files/Lajme/Dokument/ProcesverbalShortiperKEDdate7122018.pdf>

312 <https://www.parlament.al/Files/Lajme/Dokument/Relacioni7dhjetor2018.pdf>

313 <https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20KED%202018%20.pdf>

With regard to the transparency of the procedure, the People's Advocate highlights that none of the materials and orders published by the Assembly Speaker was made available to the institution, before the lottery procedure. Also, the notification for declaring the lottery on the websites was not complete and adequate. Further on, the People's Advocate notes that it appeared that its report published on the lottery of JAC 2018 was not taken into consideration and particularly, none of the issues presented there was addressed.

With regard to the lists, the People's Advocate noted that each of the institutions used the constitutional and legal criteria differently. These criteria should have been implemented rigorously by relevant institutions, but there are plenty of examples to the opposite. The People's Advocate is particularly critical on the list of the High Court, which highlights that *"if the same criteria that were applied to select the list from the general prosecution office and/or that received from the general prosecution office or the appeals prosecution offices, the High Court would have no representation given that none of its members meet all the criteria of the law."* Otherwise, if the same criteria as those used by the High Court were used for the other institutions, *"then the lottery for candidates of the general prosecution office and appeals prosecution offices would have many more candidates as well as substitute members from each category, which is not the case."*

As a conclusion, the People's Advocate asks relevant institutions to continue legal amendments in order for the manner of selection of bodies is more effective and in accordance with the law, otherwise, different interpretations of the law *"potentially reduce public trust in this selection process in particular and the application of justice reform in general."*

3. Functioning of JAC 2019

Referring to the systematic interpretation of articles 221/3 and 284 of law no.115/2016 *it is unclear what will be considered the temporary Judicial Appointments Council*. The members of JAC 2017 underwent the vetting process late and the majority did not pass it. Therefore, JAC 2017 was not constituted with full legitimacy to exercise effective decision-making. The same happened with JAC 2018. A literal reading of the legal provisions indicates that the JAC created in a temporary

manner may function even without the prior passing of candidates through vetting. However, in the spirit of the constitution and new justice reform legislation, members of the JAC selected by lottery in 2017 – 2018 could not effectively exercise decision-making as long as the majority of their members did not successfully pass vetting. Otherwise, the credibility and quality of the decision-making process would be undermined if the majority of these members would be dismissed through vetting.

As a result, JAC 2017 never met while JAC 2018 only held one meeting in March 2018, suspending its activity while waiting for the completion of vetting procedures. Returning to the analysis of the activity of JAC 2019, it is clear that the practice pursued has not been consistent. Although a considerable part of members and substitute members did not undergo vetting procedures, JAC 2019 began work fully and made its first decisions. Referring to the above analysis, it would be more logical to wait for the completion of vetting also for JAC 2019 members.

Regarding the above, we wish to also highlight the different stance of JAC 2019 on this issue, in the context of the consultation of the preliminary draft of this report. JAC 2019 deems that a distinction should be drawn between legitimacy, i.e. the constitutional standard of the establishment and composition of the JAC, and the expectation of having a composition of the JAC that is as credible as possible. Among the main arguments of the JAC, we note that, first, the constitutional and legal provisions for the conditions to be met for being JAC members, naturally there is no reference to the condition of successfully passing the vetting process; second, the transitory re-evaluation process is in itself transitory and, therefore, it is clear that this definition had to do with the first JAC which was going to be selected by the Assembly or the President. However, this is not a legal or constitutional criterion for the election of JAC members; third, the JAC states that procedures and deadlines set in the Constitution and laws on the election of judges of the Constitutional Court and the HJI are short, in no case more than 3 months, and as such should be unavoidably respected. Their violation is impossible to think of legitimizing or justifying with the need that JAC members pass successfully for good the transitory re-evaluation process. The fact that JAC members in general, or part of them, have yet to undergo the vetting process does not and should not be accepted as representing

an element of prejudice and infringement of the JAC's integrity as an institution and its activity; fourth, according to JAC 2019, anyone may express his/her views, but only JAC members have the right and responsibility to evaluate and decide themselves on the issue of the constitution and continuation of its activity, in an independent manner, interpreting and applying only the constitution and the law. Therefore, JAC 2019, although it listened with patience and respect, it did not allow any opinion or warning, as there may have been before, politics or any group of interest to interfere with the process of analyzing the situation and its decision-making.

Regarding the above, in the context of transparency and the spirit of cooperation with state institutions, AHC deemed it reasonable to reflect in a summarized manner the arguments of JAC 2019 regarding the fact that the legitimacy of this institution is not harmed or interdependent on the vetting of its members. **Nevertheless, AHC again shares the same position as before in this report and its publicly held position on the fact that failure of all JAC members to undergo the vetting process on time, before they began to exercise the competences assigned in the Constitution and the Law, represents a practice that is different from that of the previous JACs, of 2017 and 2018.** The exercise of competences of JAC 2019 before the successful completion of the vetting of the majority of its members potentially affects the credibility and quality of their decision-making process. As long as JAC 2019 was established according to transitory provisions of law no.115/2016, because the HCJ and HPC had not yet been established, the members of this JAC should have been subjected to the re-evaluation process with priority. Effectively, the JAC 2019 members and substitute members were envisaged in the priority list of subjects to undergo the vetting process at the IQC, as will be analyzed further in this report. However, the vetting pace for these members was not fast and dynamic so as to enable the fastest possible completion of this process in at least one level of the vetting process. Also, it is no justification that the JAC should respect a three-month legal deadline for the verification and ranking of candidates for the Constitutional Court and the HJI because this three-month deadline was not respected with JAC 2019 either, although this was not conditioned with the conclusion of the vetting process of the members of this JAC.

Article 149/d/3 of the Constitution envisages in principle that the

JAC should consist of 9 members, selected by lottery from among judges and prosecutors who have been issued no disciplinary measures; meanwhile, the same article, paragraph 5, delegates to the special law the definition of other criteria for the level of qualification together with the rules for the organization and functioning of the JAC. These criteria presently are in article 221 of law no. 115/2016. Further on, article 229/1 of law no. 115/2016 envisages that participation in JAC meetings is mandatory and that members who are absent are replaced by substitute members; on the other hand, paragraph 3 of this article envisages that the JAC decides by majority vote in the presence of at least 5 members. The systematic interpretation of these provisions indicates that the JAC may be constituted even with a number lower than 9 members, as happened with JAC 2019, as long as at least 5 members respect the conditions envisaged by the law for participation and voting during the meeting. In the current situation, the creation and functioning of the JAC with its full membership of 9 members would be objectively impossible, in the conditions where the constitution and law no. 115/2016 require the participation of two members from the Constitutional Court while this institution only has one member and the new members may only be appointed after the listing of candidates conducted precisely by the JAC.

Nevertheless, it should be highlighted that the Constitution and law no. 115/2016 do not expressly discipline a situation such as that of the absence of candidates for the JAC lottery. Although it should be concluded that the JAC, as highlighted earlier, may be created and function even with just 5 members, it is not clear what happens when there are new candidates to fill JAC vacancies. Also, it is not clear whether the lottery for the JAC may be drawn only in December, electing the JAC members for the following year, or whether it may be drawn before that deadline, i.e. at the moment when there are new candidates for vacant positions in the JAC of the year, who meet the conditions and legal criteria to be members of this JAC. In both cases, we are in front of some problems analyzed below:

First, if the lottery could only be drawn in December, it will be never possible to fill vacancies in the JAC during the one-year period of the mandate. Second, if the lottery for JAC vacancies could also be drawn during the year of its activity, setting the date of the lottery would be a very delicate aspect and political forces would exercise pressure on institutions to draw it or not to draw it on a given date, based on candidates meeting the criteria on that date.

In conclusion, it is noted that law no. 115/2016 did not envisage filling of vacancies during the length of the mandate of the JAC for vacancies in its membership, giving priority to the continuation of JAC work against the formal aspect of filling vacancies. This is so on the one hand due to the annual deadline for the election of a new JAC and, on the other, for respecting constitutional provisions that set December as the month for drawing the lottery.

4. Composition of the JAC and the vetting process for its members

After the creation of JAC 2019, there have been several developments that have had a direct and indirect impact on the composition of this body:

a) Member from the Constitutional Court, **Mr. Bashkim Dedja**, was dismissed from duty by decision of the SAC on December 17, 2018.³¹⁴⁾ As a result, JAC 2019 was left with only 7 members while there were no substitute members from the Constitutional Court, as noted earlier in this report.

b) Member of the Constitutional Court, **Ms. Vitore Tusha**, was proposed by the President of the Republic as a candidate for the post of the chair of the High State Audit,³¹⁵⁾ before the lottery for the JAC. After the creation of the JAC, the Committee on Economy and Finances proposed to the Assembly to not approve the candidate,³¹⁶⁾ highlighting, among other things, that “...the appointment of Ms. Tusha in the position of the chairperson of the High State Audit would jeopardize the normal proceedings of the newly created body, calling into question more important processes than that of the replacement of the chairperson of the High State Audit...” Afterwards, on December 21, 2018, with 71 votes against, 3 abstentions, and 1 in favor, the Assembly rejected decree no. 10929, of 5.11.2018 “On the proposal of the chairperson of the High State Audit,” of Ms. Vitore Tusha.³¹⁷⁾ This case is interesting because

314 <http://www.kpa.al/wp-content/uploads/2019/02/Vendimi-i-anonimizuar-subjekti-B.-Dedja.pdf>

315 <http://president.al/njoftim-per-perzgjedhjen-e-znj-vitore-tusha-kandidate-ne-pozicionin-kushtetues-te-kryetarit-te-klsh-se/>

316 <http://www.parlament.al/Files/Projekte/20181219160101Raport%20i%20Komisionit%20p%C3%ABr%20Ekonomin%C3%AB%20dhe%20Financat.pdf>

317 <https://www.parlament.al/News/Index/7103>

the Constitution and the Law do not envisage what happens in case a magistrate or judge is transferred to another institution of the justice system during his/her mandate as JAC member. Based on the interpretation of the spirit of the reform, it should be noted that if a judge or magistrate remains within the justice system, but with a new post (e.g. moving from the Appeals Court to the High Court), his/her mandate in the JAC continues, while this mandate ends if the JAC loses the status of judge or magistrate.

c) Member from the High Court, **Mr. Ardian Dvorani**, withdrew from the competition for member of the Constitutional Court, by his letter of January 28, 2019.³¹⁸⁾ This led to avoiding a potential conflict of interest for competences exercised by the JAC in evaluating candidates for member of the Constitutional Court.

d) Substitute member **Mr. Medi Bici** appears to be a candidate for member of the Constitutional Court, an aspect that initially created potential conflict of interest because during the first meetings of JAC 2019, substitute members also participated. In reference to JAC comments and suggestions on this report, Mr. Bici withdrew from his candidacy for judge of the Constitutional Court on 28.03.2019. On 12.12.2018, Mr. Bici was also elected member of the HJC and his mandate as member of the High Court has been suspended. As a result, there is lack of clarity on the fact whether these two functional duties may be carried out simultaneously. Regarding this issue, JAC 2019, in its comments and suggestions on the draft of the AHC report, highlights that the simultaneous exercise of the duty of the JAC member and HJC member is not envisaged in the Constitution and the Law as a circumstance of incompatibility. Despite this argument, AHC deems that even in the conditions when the simultaneous exercise of these duties is not expressly envisaged in the constitution and the law as a prohibiting criterion for holding a position, in our opinion, the two functions may not be exercised simultaneously. As long as the status of judge of the High Court for Mr. Bici is suspended, this automatically suspends any function he may hold because of his capacity as member of the High Court and, therefore, JAC member. Furthermore, although the legal framework does not envisage this expressly, holding the position of the member of the JAC, which conducts the verification and evaluation of candidates for HJI, creates

318 http://www.gjykataelarte.gov.al/web/terheqje_nga_kandidimi_ne_gjkushtetuese_1912.pdf

to some extent a conflict with holding the functions of the member of the HJC, which will review disciplinary proceedings initiated by the HJI.

4.1. Transitory re-evaluation (vetting) of members of JAC 2019

The vetting process so far (during the period of time covered by this report) for JAC 2019 members points to the following information:

- a) The four members, Ms. Vitore Tusha, Mr. Ardian Dvorani, Ms. Arta Marku, Ms. Fatjona Memçaj and substitute member Mr. Medi Bici were confirmed in their posts by IQC decisions, which became final before the lottery was drawn for JAC 2019.
- b) Member from the Constitutional Court Mr. Bashkim Dedja, was dismissed from duty by SAC decision on December 17, 2018,³¹⁹⁾ and as a result, JAC 2019 was left with 7 members, given that it did not have a substitute member from the Constitutional Court.
- c) Member Mr. Eriol Roshi, was confirmed in his post by IQC decision on February 7, 2019.³²⁰⁾ According to the website of the Public Commissioner, no appeal was submitted to the SAC on this subject.³²¹⁾
- d) Other members are awaiting the re-evaluation procedure. Namely, the IQC lottery for substitute member Gurali Brahimllari was drawn on May 16, 2018,³²²⁾ the lottery for member Mr. Fatri Islamaj was drawn on November 11, 2018,³²³⁾ and the lottery for member Ms. Margarita Buhali and substitute member Ms. Klodiana Veizi (Mema) was drawn on January 16, 2019.³²⁴⁾ In any case, the date of hearing sessions has yet to be published.

319 <http://www.kpa.al/wp-content/uploads/2019/02/Vendimi-i-anonimizuar-subjekti-B.-Dedja.pdf>

320 <http://kpk.al/2019/02/07/njoftim-104/>

321 <http://ikp.al/2019/04/04/njoftim-per-mosankimin-e-vendimit-nr-104-date-7-2-2019-te-kpk-se-per-subjektin-e-rivleresimit-z-eriol-roshi/>.

322 <http://kpk.al/2018/05/16/njoftim-15/>

323 <http://kpk.al/2018/11/16/njoftim-75/>

324 <http://kpk.al/2019/01/16/njoftim-100/>

5. Activity of JAC 2019 to date (for the period January – March 2019)

5.1 First constituting meeting of JAC 2019

The first meeting of the (temporary) JAC was held on January 15, 2019, at the premises of the High Court, in the meeting hall. The public learned about it from publication on the official website of the JAC³²⁵⁾ of a media note³²⁶⁾ on its Chairman Mr. Dvorani convening the meeting, in accordance with article 149/d-4 of the Constitution. The agenda of the meeting was published in the notice released by the institution and the media.³²⁷⁾

Present in the meeting were the 7 permanent members and 3 substitute members of JAC 2019. Also present were representatives of international assistance missions (OPDAT, EURALIUS), representatives of the parliament's committee on laws, the General Secretary of the Assembly, the People's Advocate, and representatives of the President's office.

While monitoring of the first JAC 2019 meeting, which lasted for 5 hours, we noticed that the meeting was characterized by active discussions by participants. The process-verbal of the meeting is published on the official JAC website.

As highlighted earlier in this report, the lack of full JAC membership

325 It is not an individual webpage of this institution, but a categorization within the official website of the High Court: http://www.gjykataelarte.gov.al/web/Njoftime_per_median_5485_1.php

326 http://www.gjykataelarte.gov.al/web/njoftim_per_median_mbi_mbledhjen_e_pare_te_ked_15_01_2019_1901.pdf

327 The first meeting of the (temporary) Judicial Appointments Council 2019 is to take place based on this agenda:

1. Constitution of the (temporary) Judicial Appointments Council 2019.
2. Preparation of by-laws and internal regulations, according to obligations and delegations of law no. 115/2016, necessary for the organization and functioning of the Judicial Appointments Council. The deadlines, priorities, and actions for their preparation and approval in the shortest and most reasonable time possible.
3. Information on vacant positions, declared by the President of the Republic, Assembly and High Court, for member of the Constitutional Court, number of candidates and administration of relevant documentation.
4. Information on problems related to the vacant position of the High Justice Inspector, the number of candidates and administration of relevant documentation.
5. Issues of organization, documenting, and administration of documents and cases, as well as needs for administrative and personnel support from the High Court for the smooth functioning and effectiveness of the activity of the Judicial Appointments Council.

is not cause for obstructing the exercise of the JAC activity and decision-making, which according to article 229/3 of the law decides even in the presence of a quorum of 5 members.

The JAC decided to engage initially on drafting the internal regulations for its organization and functioning. Also, in the first meeting, it was highlighted that 40 magistrates and non-magistrates have applied for the vacant positions in the JAC and they will be verified by the JAC.

With regard to unusual workload, the JAC deemed it essential to increase the number of administrative personnel in the High Court, in order to be available to the activity of the JAC. The JAC decided to address the HJC and HPC, asking it to enable the alleviation or removal of the workload of the activity of JAC members as judges or prosecutors in order for them to be devoted fully to the activity of this institution. In the end, the need was highlighted to continue cooperation with representatives of international assistance missions in the country, such as EURALIUS and OPDAT, during 2019. It was decided to hold the next meeting one week later, on 21.01.2019.

Regarding participation in meetings of the Council, in accordance with article 229/1 of the law, it is mandatory. Although not expressly noted, article 220/3 states that the participation of substitute members is envisaged only when members are not present or have a conflict of interest. During the first monitored meeting, the substitute members not only were present, but on certain items on the agenda of the meeting, they expressed their views and opinions. On this issue, JAC 2019, after consulting the draft report of the AHC notes, *"JAC 2019, especially given the situation, whereby no normative or regulatory by-law on its functioning was prepared, discussed, or approved, considered that the entire preparatory legislative phase as well as the discussion of draft acts should engage also substitute members. ...The Council decided from its first meeting that the engagement of substitute members in these cases, first was not mandatory for them and, secondly, they could discuss to provide their opinion and would not have, as they do not have, a right to vote on decisions to be made by the JAC."*

The People's Advocate present in the meeting highlighted once again the concern about the failure of some of the members to meet conditions and legal criteria, elements that should have been kept in mind at the moment of the lottery procedure and selection procedures by relevant institutions. Referring to these concerns, AHC notes that

the Constitution and law no. 115/2016 have legal vacuum regarding the conclusion of the mandate of the JAC member early, if conditions of non-electability are verified for the exercise of the function or other circumstances as envisaged for the HJC and HPC. Likewise, the laws do not envisage the body that will declare by decision the conclusion of the mandate. Law no. 115/2016 envisages in articles 223, 224, and 225 only cases of incompatibility, conflict of interest, resignation, or exclusion of members, but these are individual cases related to the subject and activity of the JAC in certain meetings and do not lead to the termination of the mandate of the JAC member.

The opposition representative invited to the meeting used repeatedly statements that were intimidating and had 'political' tones. This led to a prolongation of the meeting, not reaching concrete results. Also, with regard to the organization of the JAC activity, through the creation of working groups to draft regulations envisaged by law, AHC is of the opinion that the aspect of the collegiality of work in drafting these regulations is a very important element. As a result, there is no basis for arguments given by some JAC members for not participating in these working processes due to prior contribution as JAC 2018 members.

5.2 Further activity of JAC and its transparency

During the first two months since the constitution of JAC 2019, this institution met 6 other times. During these meetings, the JAC activity was not adequately transparent, based on data and arguments provided in the report.

JAC meetings were held behind **closed doors**, pursuant to article 233/1 of law no. 115/2016, which envisages that "*meetings of the Judicial Appointments Council are closed.*" However, HAC sent a special letter to the JAC so that, in the interest of public interest and the importance of this institution, to enable the participation of one AHC observer in the JAC meetings. To date, this request has not been considered. Meanwhile, in its comments and suggestions on this draft report, JAC 2019 highlights among others, "*The Council has no discretion to decide to allow third parties into its meetings because it has to apply the imperative law envisaged in articles 233 and 242 of law no.115/2016*". However, there is still a contradiction in this approach of the JAC 2019 as such discretion is granted to the Council in the Internal Regulations, whereby JAC 2019 itself states *these regulations envisage the possibility*

that individuals or subjects may be summoned and invited to participate in Council meetings on issues for which the Council seeks cooperation or the fulfillment of procedural obligations in the capacity of experts. Although the JAC highlights the fact that all invited experts, including those of international assistance missions, did not participate in the Council meetings that did not have to do with the scope of their activity, for which they are summoned, AHC deems that the low level of transparency displayed on the Council's website does not enable a fair and objective adjudication regarding this argument.

AHC notes that the JAC transparency is also harmed due to failure to publish meeting materials on time and due to providing very limited information for the public accessing the JAC official website. More specifically, the JAC official website does not feature the process-verbal of the meetings. The JAC website only provides a brief and insufficient summary on them.

According to article 233/3, law no. 115/2016 *"The Council communicates with the public after every meeting through a press release that provides information at least on:*

- i. time of the meeting;*
- ii. participation;*
- iii. candidates, their updated CV, posts they are competing for and proposing institutions;*
- iv. brief explanation of procedures and the method pursued to verify legal conditions and criteria used to rank candidates;*
- v. the final act of verification and ranking of candidates.*

From the analysis of these communications, it is our opinion that during the first meetings there has not been full accountability on the meetings (in some cases, there is no information on the participants, in some others about their time, in all cases the summary is provided in very brief form: a few lines on a meeting that went on for hours, etc.). After consultation of this report with JAC 2019, we were told that during the period January – March 2019, the Council held 14 meetings and not 6 as highlighted in greater detail in the remainder of the report. For each of the 14 meetings, JAC 14 provided the duration, date, and its agenda, although AHC has only reflected information published for the public on the JAC 2019 official website, until the end of March 2019, which is the period until when our monitoring extends. Also, AHC does not share the same evaluation as JAC 2019

that definitions of article 233/3 of law no.115/2016 refer to cases when meetings of the Council address issues that have to do with procedures for the verification and evaluation of candidates. In our opinion, this provision contains elements that have to do also with these meetings, to specify the nature of information to be published when there are such meetings as well. However, this does not exempt JAC 2019 from the obligation to communicate to the public a press release after each meeting. Meanwhile, the process-verbal of the meeting is precisely the document that provides a better overview of the JAC's activity to the public.

AHC does not share the same view as JAC 2019 on the concept of the "time of the meeting." According to JAC, the terminology refers to the date and hour of the start of the meeting and not the "duration of the meeting." In our opinion, the time of the meeting also includes the time at which the meeting concluded. Providing this element, not only is included in this concept, but also does not harm the JAC's activity, except for enabling a more complete public perception of the workload and volume of activity of this body.

Regarding this aspect highlighted by our monitoring, JAC 2019 notes that it has encountered numerous objective difficulties and technical barriers to the realization of its obligations, such as inadequate support personnel, deficient technology for carrying out duties and progressively increased JAC workload and support personnel due to the unusual number of vacancies in the process, all accompanied with the extraordinary situation of the caseload of the High Court. As may be realized from the summary of JAC meetings, they have been numerous and lasting for considerable time, which requires greater commitment of means and personnel to transcribe meeting minutes.

For meetings held by JAC to date, information published on the JAC official website highlights the following data:

i) Meeting of 21.01.2019³²⁸⁾

Specifically, for this meeting, there is no information on participation, time of the meeting, invitees, and no process-verbal published. The agenda is published and it planned a discussion and approval of internal regulations for the organization and functioning of the JAC. Also, a summary of the meeting was published and it is as follows:

328 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_21_01_2019_5499_1.php

- Regarding the prepared materials, the Council considered that the time set in the previous meeting to discuss on this project was insufficient.
- JAC members considered that it was indispensable for the People's Advocate to take the necessary time to present its opinions on the act.
- The following meeting would be held on 28.01.2019 at 16.00.

ii) Meeting on 28.01.2019³²⁹⁾

Specifically for this meeting, there is no information on participation, time of the meeting, invitees, and no process-verbal published. The agenda is published and it planned a discussion and approval of internal regulations for the organization and functioning of the JAC. Also, a summary of the meeting was published and it is as follows:

- At the start of the meeting, the chair of JAC 2019 notified the Council about his will to withdraw from running for the vacant position of a judge of the Constitutional Court³³⁰⁾.
- The Council discussed and approved part of the provisions of the draft act.
- The following meeting would be held on 01.02.2019, at 10.00.

iii) Meeting on 01.02.2019³³¹⁾

Participating in the meeting were all JAC members and two substitute members. The meeting lasted for about two hours. The process-verbal of the meeting has not been published on the website. Invited to the meeting were the People's Advocate and subjects envisaged in article 233/2 of law no. 115/2016, namely the President of the Republic, Assembly Speaker, and the standing committee of laws in the parliament, one of which belongs to the opposition. An EURALIUS expert was invited to the meeting due to the legal assistance with the preparation and approval of the JAC regulatory draft acts. The agenda of the meeting included:

- Continue discussion and approval of draft internal regulations for the organization and functioning of the JAC,

329 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_28_01_2019_5510_1.php

330 http://www.gjykataelarte.gov.al/web/terheqje_nga_kandidimi_ne_gjkushtetuese_1912.pdf

331 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_01_02_2019_5518_1.php

- Discussion on the progress and continuation of JAC cooperation with EURALIUS for 2019.
- Also, a summary of the meeting was published:
- The Council discussed and decided in principle on some issues that have to do with the position and role of the People's Advocate and the subjects invited to its meetings and activities, and approved some other provisions of the internal draft regulations for the organization and functioning of the JAC.
- The Council valued the progress of cooperation between JAC and EURALIUS during 2018 and talked about the continuation of this cooperation for the legal support and assistance in the process of approving the JAC regulatory and normative draft acts, as well as the strengthening of JAC capacities in fulfilling constitutional obligations.
- The following meeting would be held on 08.02.2019.

iv) Meeting on 08.02.2019³³²⁾

Participating in the meeting were all members and all substitute members of the JAC. The meeting lasted for about 6.5 hours. The process-verbal of the meeting is not yet published on the official website. Invited to the meeting were the People's Advocate and subjects envisaged in article 233/2 of law no. 115/2016, namely the President of the Republic, Assembly Speaker, and the standing committee on legal issues in the Assembly, one of which belongs to the opposition. Two experts of the EURALIUS mission were invited to the meeting due to support with legal assistance in the preparation and approval of JAC regulatory draft acts. The agenda of the meeting was to continue discussions and the approval of the internal draft regulations for the organization and functioning of the JAC.

A summary of the meeting was published:

- The Council discussed and approved fully the internal draft regulations for the organization and functioning of the Judicial Appointments Council.
- The following meeting would be held on 15.02.2019

332 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_08_02_2019_5527_1.php

v) Meeting on 15.02.2019³³³⁾

Participating in the meeting were all members and substitute members of the JAC. No information is provided on the length of the meeting. The process-verbal has not been published yet on the official website. Invited to the meeting were the People's Advocate and subjects envisaged in article 233/2 of law no. 115/2016, namely the President of the Republic, Assembly Speaker, and the standing committee on legal issues in the Assembly, one of which belongs to the opposition. Two experts of the EURALIUS mission were invited to the meeting due to the support of legal assistance in preparing the JAC regulatory draft acts. The meeting's agenda focused on discussion and approval of the draft decision on the procedure of the lottery to assign rapporteurs for the vacant positions in every institution.

A summary of the meeting was published:

- Approval of the draft decision on the procedure of the lottery to assign rapporteurs for vacant positions in every institution.
- The following meeting would be held on 22.02.2019.

vi) Meeting on 22.02.2019³³⁴⁾

Participating in the meeting were all members and substitute members of the JAC. No information is provided on the length of the meeting. The process-verbal has not been published yet on the official website. Invited to the meeting were the People's Advocate and subjects envisaged in article 233/2 of law no. 115/2016, namely the President of the Republic, Assembly Speaker, and the standing committee on legal issues in the Assembly, one of which belongs to the opposition. Experts of the EURALIUS mission were invited to the meeting due to the support of legal assistance in preparing the JAC regulatory draft acts. The meeting's agenda focused on discussion and approval of the draft decision on the procedure of the lottery to assign rapporteurs for the vacant positions in every institution.

According to the meeting summary, at the end of discussions in principle on this draft decision, the Council decided that the next meeting would be held on Friday, 01.03.2019.

333 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_15_02_2019_5534_1.php

334 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_22_02_2019_5540_1.php

6. Approval of the internal Regulations for the organization and functioning of the JAC

In its meeting of February 8, 2019, according to the official website, the JAC discussed and approved fully the “Internal regulations for the organization and functioning of the Judicial Appointments Council.” This is the first decision of JAC 2019, which is also published on the institution’s website.³³⁵⁾

Regarding the transparency aspect, there are no details on discussions inside the meeting and procedures for voting, and the process-verbal has not been published.

Some of the most important aspects of these regulations have to do with rule 7/3, which envisages cases of participation of substitute members in the meetings. Specifically, according to this rule, “Substitute members have the right to participate in meetings and activity of the Council, in cases when preliminary work is realized or when the agenda of the meeting reviews issues such as those defined in letters “b”, “c”, “ç”, “d” and “dh” of article 8/1 of these Internal Regulations,” i.e. in all meetings in which the JAC exercises its competences in a general manner. Meanwhile, the only case that does not envisage the participation of substitute members is that of letter “a” of the same article, i.e. when the JAC: “reviews and decides on issues related to procedures for the verification of legal criteria, assets, integrity, professional and personal background, and procedures for the evaluation of professional and moral criteria for the selection, assigning points, and ranking of candidates for judges for the Constitutional Court and High Justice Inspector.”

The regulations envisage that aside from members, substitute members, the People’s Advocate, bodies envisaged by article 233/1 of law no. 115/2016, article 13 of the Regulations envisage, “On a case by case basis, according to stipulations of the law or the needs for support with consultation or special knowledge, the Council shall engage and summon to its activities and meetings experts or subjects with special knowledge of the relevant field.” This prescription as analyzed above excludes from participation monitors and observers who seek to be embedded to oversee the conduct of meetings; therefore, the standard followed to allow experts who have special knowledge creates inequality vis-à-vis observers of organizations specializing in monitoring the justice system.

335 http://www.gjykataelarte.gov.al/web/Akte_te_K_E_D_5475_1.php

Article 17/7 of the regulations envisage that the summarized process-verbal of the meeting would be made available publicly on the High Court's official website immediately after the meeting. The publication is done immediately after it is signed by Council members. The regulations do not regulate which part of the process-verbal is published and what the publication of its summary indicates. As analyzed earlier in this report, the published summaries of JAC meetings are very general and limited in information and do not provide transparent access to the Council's activity. On the contrary, in view of the published summaries, the JAC may be considered a closed institution in public opinion.

With regard to internal procedures, on 15.02.2019, JAC approved decision no. 2 "On the procedure of the lottery to assign rapporteurs for vacant positions in every institution."³³⁶⁾

7. Activity of the independent commission for coordinating, monitoring, and following the implementation of law no. 115/2016, regarding JAC monitoring

The independent commission for monitoring and following the implementation of law no.115/2016 (ICCM), in its periodical monitoring for the period November 2018 - January 2019,³³⁷⁾ highlights that regarding the JAC, the report has been approved on "Monitoring the process to establish the temporary JAC in the justice system and some recommendations for its functioning." This report is not published on the official website of this institution, which makes it impossible to objectively provide an opinion or evaluation of its contents.³³⁸⁾ In this regard, AHC draws attention for greater transparency in the activity of this important oversight institution vis-à-vis public opinion and experts or interested organizations. After consulting this draft report with the ICCM, this body stated that it is not an institution with juridical personality and does not administer any official website of its own. This website is part of the website of

336 Published in the Official Gazette no. 19, February 19, 2019

http://www.qbz.gov.al/botime/fletore_zyrtare/2019/PDF-2019/19-2019.pdf

337 <https://www.parlament.al/Files/sKuvendi/kom/Raporti%20i%20KPKMN%20periudha%20Nentor%202018-Janar%202019.pdf>

338 <https://www.parlament.al/Strukture?kategorie=2004&strukture=2053>

the Assembly of Albania and is administered by the later; therefore, AHC conveyed its concern to the Assembly.

During the period November 2018 – January 2019, ICCM sent relevant institutions a large number of letters regarding JAC and these institutions provided their responses. Meanwhile, none of these letters was published by this Commission, or did not publish in a summarized manner what the nature and subject of these letters was. Even in this regard, ICCM activity did not demonstrate transparency on the Assembly website.

The ICCM highlights that during the first meetings of JAC 2019, the members of this Commission were not invited to attend, based on article 233 of law no. 115/2016, by the JAC chairperson. The Commission nevertheless considers that article 288 of law no. 115/2016, is a special provision that grants the ICCM the right to attend JAC meetings. Specifically, the provision envisages that the ICCM, among others, “coordinates between institutions and bodies that implement the legal provisions of this law and follows the implementation of legal provisions by respective institutions, envisaged by law, within stipulated legal deadlines.”

Nevertheless, the report for the period November 2018 – January 2019 contains a summary of the report on the “Monitoring the process for the establishment of the temporary Judicial Appointments Council in the Justice System and some recommendations for its functioning.” This summary notes among others:

- a) Based on the Commission’s interpretation, JAC members who have not yet undergone the vetting process are fully exercising their functions.
- b) Conflict of interest between JAC members who have run for the position of member of the Constitutional Court should be avoided.
- c) In the future, the HPC should create conditions for representation in the JAC, by annual rotation, of candidates who have completed the School of Magistrates.
- d) It is recommended to relevant institutions to correctly read and apply in practice the criterion of “completion of the School of Magistrates.”

Based on the above analysis, the conclusions of this body have a general nature, lack legal arguments and, in some cases, lack clarity or concreteness. Specifically, the report says that members of JAC 2019 who have not yet undergone the vetting process are fully exercising their functions, but on the other hand, the ICCM does not analyze why the process for the normal constitution and functioning of JAC 2017 and JAC 2018 failed. Was there uneven interpretation and application of the law for these three JACs and what was the impasse that caused this situation? It is recommended to the HPC to create conditions in the future for annual rotation on the JAC of candidates who have completed the School of Magistrates, but there are no arguments as to what legal basis such a recommendation is based on, given that law no. 115/2016 does not envisage such a clause. In these circumstances, it would be of interest that instead of this recommendation, the bodies that have the right to legal initiatives to look at the possibility of amending law no. 115/2016 in order to create the conditions and space for representation by rotation in the JAC of candidates who have completed the School of Magistrates.

Given that the ICCM is an independent body created in the Assembly of Albania, it is our opinion that in its activity, this Commission should be led by the principles of objectivity and impartiality. In this regard, its conclusions and recommendations to governing bodies of the justice system (including the JAC) should not lack a unified approach of constructive critique. That way, the ICCM would contribute effectively to improving shortcomings encountered in the creation and functioning of governing bodies of the justice system.

Regarding the opinions and suggestions presented for the ICCM, this body, after consultation on the draft report of AHC, notes that the ICCM does not draft regulations for governing bodies of the justice system, does not have decision-making authority, and therefore AHC's evaluation should be reviewed from the standpoint of the authority given in the law and decision of the Assembly. In AHC's opinion, law no. 115/2016, article 288, has granted important competences of monitoring, oversight, and coordination to ICCM vis-à-vis governing bodies of the justice system. Although it is attached to the Assembly, this commission is labeled independent in its name and, to legitimize the scope of its activity, it enjoys all attributes to state both progress and challenges in terms of implementation of law no.115/2016 by governing bodies of the justice system. Aiming at the best possible

implementation of the law, the ICCM may also highlight problems in terms of lack of clarity, need for improvement, or addressing potential legal vacuums emerging from its monitoring, oversight, or coordinating activity the institution has. Highlighting these problems or recommendations does not at all give this body a decision-making role, but rather a proactive role, fulfilling its mission in the process to guarantee the correct and fair implementation of the law.

CHAPTER VI

MONITORING THE SELECTION OF THE HIGH JUSTICE INSPECTOR (HJI)³³⁹⁾

339 Report concluded on April 5, 2019.

1. Legal basis for the election of the High Justice Inspector

The legal basis for the creation and functions of the High Justice Inspector (HJI) is envisaged in articles 147/d – 147/ë of the Constitution and part IV of law no. 115/2016 “On governing bodies of the justice system,” articles 193-216. Transitory provisions for the first election of the JAC are included in article 179/9 of the Constitution and articles 282-283 of law no.115/2016.

According to article 147/d/3 of the Constitution, the HJI is elected by the Assembly with a qualified 3/5 majority. The HJI’s mandate lasts for a 9-year period, without the right to re-election. The Constitution envisaged a transitory provision, according to which until the parliamentary elections to be held after the entry into force of the constitutional reform law, but no later than September 1, 2017, the election of the High Justice Inspector would be done by two thirds of the Assembly members, while other elections would be done by three fifths of the Assembly members. This transitory provision does not appear to have been implemented because the HJI was not able to be elected during this constitutional timeframe.

The procedure for the selection of HJI candidates to be voted by the Assembly is done by the JAC, which selects and ranks 5 of them, based on criteria prescribed by law, according to a transparent and public procedure. After the JAC submits the list of 5 candidates ranked based on its evaluation, if the Assembly does not reach a majority of 3/5 within 30 days from the submission of the list, the candidate ranking first is declared appointed (article 147/d/4 of the Constitution and articles 199/2 and 201 of law no.115/2016).

2. Criteria for the selection of the High Justice Inspector

The Constitution stipulates the basic qualifying criteria for HJI candidates, such as an outstanding career as a jurist for no less than 15 years of work in the profession and high moral and professional integrity. The Constitution envisages as an excluding criterion the holding of political functions in the public administration or leadership positions in political parties during the last 10 years before running (article 147/d/3 of the Constitution).

Meanwhile, law no. 115/2016 details the qualifying criteria as formal and material for HJI candidates, such as Albanian citizenship, level of education, experience of no less than 15 years in the profession, excluding criteria such as criminal record, active disciplinary measures at the time of running for the post, holding political functions in the public administration or leadership positions in political parties during the last 10 years, and connections with the former State secret service (article 199/1 and 201/“e” of law no.115/2016).

The High Justice Inspector enjoys the status of the High Court judge and may be dismissed from duty only by decision of the Constitutional Court (article 147/d-5, and article 147/e-2 of the Constitution). Further on, according to article 147/ë of the Constitution, being a High Justice Inspector is not compatible with any other political or state activity, as well as professional activity conducted for payment, except for teaching, academic or scientific, according to law.

The law stipulates in detail the procedure for announcing the vacant post by the JAC and the component elements for announcing the documentation necessary for application, relevant deadlines for announcing the vacancy (3 months from the end of the incumbent HJI’s mandate) and the review of candidates for the conditions of appointment by the JAC (article 201/ “c” and “d” of law no. 115/2016). Also, law no. 115/2016 envisages the selection phase by JAC of candidates for HJI who meet the formal criteria, their ranking according to (material) criteria of article 240 of this law that have to do with moral, ethical, and professional criteria. Ranking in the short list of 5 candidates is envisaged in article 147/d-4 of the Constitution but is not mentioned in law no. 115/2016 article 201, letter “e.” The law also sets the obligation to publish the list of valid candidates and reasons for excluding candidates (article 201, letter “ë” of law no. 115/2016).

3. Procedures for running for High Justice Inspector

The justice reform legal framework envisaged that an important body such as the HJI should be established for the first time within six months from the entry into force of the constitutional amendments (article 179/9 of the Constitution). This deadline was not respected even after two years since the approval of justice reform. In fact, the

HJI was not elected even after the establishment of the two Councils, creating impasses in their activity for disciplinary proceedings on judges and prosecutors.

Law no. 115/2016 establishes detailed rules regarding the submission of the expression of interest to run for High Justice Inspector, which change on the basis of characteristics of the subjects that compete. The main distinction between these candidates is whether they should undergo the vetting process. Judges, prosecutors, or any other subject according to law no. 84/2016 is subjected to vetting and has an interest to run for HJI, within the 1-month legal deadline of the creation of the IQC, should submit interest for the HJI position by submitting a special letter and relevant documentation regarding the re-evaluation procedure (article 282/1 of law no. 115/2016). In the case of delays in the creation of the IQC, the request for the expression of interest was submitted to the General Secretary of the Assembly. In any event, in this case, the law does not clearly envisage the deadline within which the request should be submitted. Meanwhile, for persons who did not have the obligation to undergo vetting but had an interest to run for the HJI, law no. 115/2016, article 282/2, envisaged that any jurist interested for the position should, within two months from entry into force of law no. 115/2016, submit an application to the JAC. For this category of subjects, no other body was envisaged for submitting the expression of interest to run in the circumstances when the JAC was not established within 2 months from the entry into force of law no. 115/2016.

During the deadlines mentioned in the above paragraphs, four candidates expressed an interest to run for HJI, three of which are magistrates and one is a jurist. More specifically, from among subjects who should undergo vetting, candidates are Mr. Artur Malaj, judge at the Tirana Administrative Court of Appeals, and Ms. Marsida Xhaferllari, HCJ Chief Inspector. It results that one third candidate withdrew. With regard to candidates Malaj and Xhaferllari, the official websites of the relevant institutions (IQC or Assembly) provide no information on which of them the request for submission of interest was submitted. With regard to these candidates, annual report 2016³⁴⁰⁾ and annual report 2017³⁴¹⁾ of the Assembly provide no further information on the HJI institution. Meanwhile, AHC analyzed

340 <http://www.parlament.al/Files/RaporteStatistika/raport-2016.pdf>

341 <http://www.parlament.al/Files/RaporteStatistika/raport%202017.pdf>

the report of monitoring the Justice Cross-Sector Strategy 2017 – 2020 published on the website of the Ministry of Justice,³⁴²⁾ which highlights that the two mentioned candidates presented their candidacy to the Assembly, on a date before the IQC was created. Nevertheless, even in this case, the published information is insufficient as it provides no details on the day the candidacy was submitted in order to verify respect for deadlines prescribed by law.

Regarding the two other candidates, one from among magistrates, who withdrew the candidacy, and another from among lawyers, there was no public information for a long time. With the creation of JAC 2019, the official website of the High Court (in the section on the JAC) published the letter of January 14, 2019,³⁴³⁾ to the JAC Chairperson, through which Ms. Albana Shtylla, who had submitted her candidacy for HJI on February 14, 2017, withdrew her candidacy because on June 17, 2017, she was elected by the Assembly a member of the Special Appeals College.

Meanwhile, we learned from the media³⁴⁴⁾ that another candidate was Ms. Leterije Lleshi, but even in this case there is no information published on the official websites on the way the candidacy was submitted and, especially, the institution the application was submitted to and the date of submission so as to verify respect for legal deadlines.

4. Transitory re-evaluation and evaluation of candidates for High Justice Inspector

With regard to judges, prosecutors and other subjects who should be subjected *ex lege* to the vetting process, article 282/1 of law no. 115/2016 envisages that they should be re-evaluated by the IQC with priority. If these subjects are not confirmed in their posts by the IQC, as the first instance body of the vetting process, they are excluded from the list of candidates reviewed by the JAC because they are

342 https://drejtesia.gov.al/wp-content/uploads/2018/05/Intersectorial_Justice_strategy_monitoring_report_2017_-_Per_WEB.doc (page12)

343 http://www.gjykataelarte.gov.al/web/terheqje_nga_kandidimi_ne_ild_albana_shtylla_1959.pdf

344 <http://top-channel.tv/video/gjyqtaret-ska-kush-i-heton-inspektoriati-i-larte-i-drejtesise-ende-sekziston/>

considered unfit for election (article 282/3 of law no. 115/2016). So, as envisaged for institutions such as the HJC and HPC, the HJI too may only be elected after the completion of vetting procedures, if there are candidates who, according to law, should undergo this process. The complaint of the candidate in the Special Appeals College does not change the situation in his/her favor.

AHC notes that although the obligation to pass the vetting process successfully may be envisaged to avoid delays in the creation of the HJI, upon approval of law no.115/2016, in the circumstances of prolonged delays since the approval of justice reform, such a clause remains current to give the process a more dynamic pace during the evaluation of candidates for the HJI by JAC 2019.

Article 282/4 of law no. 115/2016 further envisages that, after proper candidates pass the re-evaluation process successfully by decision of the IQC, the latter notifies the JAC and passes to it the file in order to conduct their evaluation and ranking.

With regard to candidates who are jurists and do not undergo the vetting process *ex lege*, it is envisaged that the JAC conducts their evaluation, with support from IQC to the extent possible, for the application of provisions of the vetting law (article 282/2 of law no. 115/2016).

Also, the law had set a preclusive deadline for the JAC, February 1, 2017, for the start of the procedure of evaluations on whether candidates for HJI met the criteria and for ranking them. The procedure should have been concluded within 10 days and then, without delay, the relevant report should be submitted to the Assembly (article 282/5 of law no. 115/2016). Even in this case, it is underscored that this deadline envisaged by the law was not respected because the vetting process for the last candidate, as will be analyzed further, only concluded in March 2019, i.e. more than 2 years after the expression of interest by candidates for this position. Non-functioning of JAC 2017 and JAC 2018 had an impact on these delays.

Article 282/3 of law no. 115/2016 continues to envisage that if the IQC is created and the re-evaluation process of candidates who expressed an interest in the position of the HJI has not ended by February 1, 2017, these candidates are excluded from the election process. This deadline was not respected because on that date, the IQC was not created due to opposition to the law on vetting no. 84/2016 in the Constitutional Court and then due to the parliamentary boycott of the opposition

that created delays in the establishment of parliamentary committees for the selection of candidates for members of the vetting bodies. Due to the failure to establish the IQC on time, which was one of the legal conditions for the February 1, 2017, deadline, the consequence of this provision to exclude candidates could not have an impact on them.

4.1 Vetting of candidates for HJI who expressed interest in 2017

a) HJI candidate who expressed interest in 2017 Mr. Artur Malaj, judge at the Tirana Administrative Court of Appeals, was confirmed in his duty by unanimous IQC decision on August 3, 2018. Meanwhile, international observers raised some questions regarding the assets of the candidate and a person related to him. Based on the IMO recommendation,³⁴⁵⁾ on October 26, 2018, the Public Commissioner filed a complaint³⁴⁶⁾ against the IQC decision in the SAC, based on arguments related to failure to justify assets. The Public Commissioner requested the overturning of decision no. 62, of 3.8.2018 of the IQC and dismissal from duty of the subject of re-evaluation Mr. Artur Malaj. Until the end of March 2019, the SAC has not announced a date for the hearing session on the case.

b) HJI candidate who expressed interest in 2017 Ms. Marsida Xhaferllari was summoned and appeared in the IQC hearing sessions. On March 11, 2019, the IQC closed the re-evaluation of the subject Marsida Xhaferllari without a final decision.³⁴⁷⁾ By majority vote, the IQC panel argued that Ms. Xhaferllari, who has held the post of HJC Chief inspector until the creation of the HJC, has lost the status of the magistrate and, therefore, the IQC decided to declare the end of the vetting process for the subject without a final decision. It is also reported that the IMO³⁴⁸⁾ raised doubts on whether the subject had the status of magistrate. The decision for Ms. Xhaferllari is the first of its kind by the IQC although the body had conducted a profound administrative investigation on all three criteria. The announcement

345 <http://ikp.al/wp-content/uploads/2018/10/Rekomandim-dat%C3%AB-10.8.2018.pdf>

346 <http://ikp.al/2018/10/26/ankim-kunder-vendimit-nr-62-date-3-8-2018-te-kpk-se-per-subjektin-e-rivleresimit-z-artur-malaj/>

347 <http://kpk.al/2019/03/11/njoftim-118/>

348 <https://www.reporter.al/kpk-mbyll-pa-vendim-vettingun-e-marsida-xhaferllarit/>

on the IQC website also highlights that the subject of re-evaluation did not undergo testing in the School of Magistrates (based on article 42/2 and 4, of law no. 84/2016). Meanwhile, the subject herself insisted that she enjoyed the status of the magistrate given that the law applied when she had left her job as a judge, to take over the duty in the Ministry of Justice, did not include provisions about losing this status. Regarding this issue, AHC monitored the hearing sessions on the subject and noticed in a public statement³⁴⁹ that the vetting law does not envisage in any case the conclusion of the process without a final decision. The measures that the commission may take are listed in article 58 of this law and are divided into three categories. The subject may be confirmed in office, suspended from duty, or dismissed from duty. Law no. 84/2016, article 4/6, envisages that the Commission may refer the Code of Administrative Procedures, if administrative procedures pursued by it are not envisaged by provisions of the Constitution or of this law. The Independent Qualification Commission, in its decision on Xhaferllari, referenced article 95 of the Administrative Procedure Code. "The public body declares the administrative procedure without a final decision on the case when the subject for which the procedure was initiated or its purpose has become impossible." Seen in its entirety, the process on Ms. Xhaferllari, in the opinion of AHC, raises the question mark of why did the vetting process have to be delayed for 14 months, while the subject was in the priority list and did not enjoy the status of the magistrate, according to the IQC?

In closing, it is highlighted that the vetting process on the two magistrate candidates has been very slow. Referring to article 282/1 of Law no. 115/2016, these candidates should have been re-evaluated with priority by the IQC, but although this body re-evaluated over 100 candidates until the start of 2019, the vetting on HJI candidates was only concluded in March 2019, while the relevant lottery was drawn on November 30, 2017.

349 https://www.facebook.com/KomitetiShqiptariHelsinkit/posts/1877009845755870?_xts__%5B0%5D=68.ARA6yucyUdntatN1NQ0hf0qTSpjWwBbcosqiVmWvvYVa6n6yIbtTZKMeA85e6Ae_psLehbZ4pNGCzc8iJlZP3JuydoysrQG6Hd7_0dU_NlyKJfz9GQloHHmXMBUniXXPMVeCmt4OvMTjdq52NU2ow8Jeuvf4jFfUCW0cKKQGPDbQHzPVdpF1GRXYefLDwFs-DaI1gvE-dt1PGTh0NddntfiqHTI9-IDVj2cEkcsjjgVhQoB2q6CmzIFL-85YEKmbPZlfea0XXY5gPdEUu4dCC6T9MPvJ1z0pNfVhfQOunr5i8R1ufQI3ZrhH54wZW0XwuW2VZV7DwUCWUNn89cS_jwq49w&_tn_=K-R

4.2 Activity of JAC 2019 for the selection and administration of candidates for HJI

a) Administration of candidates that applied in 2017

Regarding the administration of candidates for HJI who expressed an interest to run in 2017, JAC 2019, in the context of consultations on the AHC draft, stated that there were no issues with the administration or inventory of documentation of these candidates, which it found deposited in the Council's offices.

An analysis of process-verbals of JAC 2018 and JAC 2019, we notice that the procedure for the administration and verification of candidacies for HJI was debated for long. In particular, in the sole meeting held by JAC 2018, it appears that this aspect was discussed between the members. Page 29 of the process-verbal of the meeting³⁵⁰⁾ of 19.03.2018 reflects that maybe applications for the HJI were submitted to the High Court secretary's office. The head of the parliament's Committee of Laws Mr. Ulsi Manja stated that as long as there was no public announcement by the JAC, because the institution had not been constituted, the applications received in the address of the secretariat of the High Court should not be administered by the JAC, but preliminarily there should be a publication of a public announcement on the realization of the procedure in accordance with legal provisions. Meanwhile, People's Advocate Ms. Erinda Ballanca expressed an opposite view based on the principle of administrative law, according to which, *"when a request or complaint arrives and is addressed to a body, even if it is the wrong body, in the concrete case the wrong body was the High Court, i.e. the secretariat, in my opinion, the chairman of the High Court, at the moment the JAC was constituted as a body, sends it to the JAC."*³⁵¹⁾ This opinion had the support of the chairman of JAC 2018, Mr. Broci, as in the concrete case it is about an inventory of these requests and not their administration.

Given that JAC 2018 after this meeting suspended its activity and the sole published decision-making of JAC 2018, of 26.03.2018, had as its subject the resignation of member Ms. Rovená Gashi, AHC cannot conclude whether the discussion of the case of deposited applications before the constitution of the JAC for the HJI position is reviewed through a voting procedure and whether there was concrete decision-making.

350 http://www.gjykataelarte.gov.al/web/prverb_i_ked_19_03_2018_1816.doc

351 P. 30 of process-verbal of 19.03.2018

Meanwhile, according to information published on the official website of the High Court, JAC 2019 also discussed about the issue of candidates for the HJI but, although this institution has convened more than 14 times until the end of March 2019, the official website only has the process-verbal of the first meeting on January 15, 2019.³⁵²⁾ Pages 60-61 of the only published process-verbal specifies that 4 persons applied for the HJI in 2017 but one of them resigned. In total, the number of candidates for HJI was 3, two magistrate candidates and one non-magistrate candidate. The official letter no. 354 of 21.05.2019, through which JAC 2019 provided presentations and explanations on the AHC draft report, it is not highlighted whether there was decision making on the administration of these applications, but as noted above, JAC 2019 did not identify issues in this regard because the documentation of candidates was submitted to the Council office. Also, JAC 2019 stated that it did not review the documentation of remaining candidates and those withdrawn, their completeness, time of application, nominative body, because in its opinion, it was unnecessary and impossible because the normative by-laws for the verification and evaluation of candidates had not been approved.

In closing, AHC highlights that JAC 2019, in spite of the intensive activity it had at the start of its operations, should have enabled necessary transparency in terms of its decision-making regarding candidates for HJI submitted during 2017 and the administration of their documentation.

b) New announcement by JAC 2019 on candidates for the position of the High Justice Inspector

Continuing its activity, JAC 2019 on March 1, 2019, after decision no. 3³⁵³⁾ of the JAC, of the same date, published the announcement “On the opening of the procedure of application for the vacant position of High Justice Inspector.”³⁵⁴⁾ According to this announcement, March 20, 2019, was the last deadline for candidates to submit expression of interest and support documentation.

352 http://www.gjykataelarte.gov.al/web/procesverbali_i_mbl_se_pare_te_ked_1913.pdf

353 http://www.gjykataelarte.gov.al/web/vendim_nr_3_2019_per_shpalljen_e_vakances_per_ildrejttese_1936.doc

354 http://www.gjykataelarte.gov.al/web/Per_shpalljen_e_procedures_se_aplikimit_per_plotesimin_e_vendit_vakant_ne_ILD_5555_1.php

Regarding previous candidates, it is noted that the latter should submit their expression of interest again (*"candidates so far who applied through transitory constitutional and legal provisions, should submit the mentioned documentation, updated"*), but no legal basis or JAC reasoning on this decision is referenced. Since the announcement only cites "updating of documentation," it is not understood whether previous candidates continue to remain part of the selection process, but have the burden of updating forms, or whether they should express interest again by starting a new procedure.

Official letter no. 354 of 21.05.2019, through which JAC 2019 provides its presentations and explanations on the AHC report, reflects a more complete picture on the issue. JAC 2019 states that it highlighted it as a constitutional and legal problem the fact that at no moment during the process of running for the vacant position of HJI were there 5 candidates for verification and evaluation by the JAC, while the Constitution seeks the submission to parliament of a list of 5 candidates selected by the JAC. In these factual circumstances, considering the stipulations of the Constitution and the law, the content, purpose, and spirit of these provisions, JAC 2019, in its meeting on March 1, 2019, discussed and decided to reopen the race for the vacant position of HJI (attached is a part of the arguments and motivation of JAC 2019 for this decision). Also, JAC 2019 states that by reopening the race for the vacant HJI position, JAC 2019 is inevitably placing competing candidates on the same footing, to not create inequality between them due to the time of application. As a result, in its opinion, it is requested that the three existing candidates for the vacant position, by updating documentation, should express the continued interest in participating in the competition for the vacant HJI position.

Per the above, AHC deems that from a formal standpoint, JAC 2019 should have taken a decision on candidates for HJI submitted in 2017. Although facing an extra-legal situation regarding the non-functioning of JAC 2017 and JAC 2018, in our opinion, the status of candidates for HJI in 2017 could not be equaled to the candidates who would express their interest to run for this position after the call published by JAC 2019. If JAC 2019 had decided a condition for application the submission of additional documentation, this might be asked of candidates for HJI submitted in 2017, through a communication by individual letters to each candidate and this list of three candidates could have been attached to the list of candidates to be submitted recently after the publication of the call in March 2019.

Also, JAC 2019 should have been more transparent in its call published in March 2019 on the official website of the High Court, for the expression of interest by persons wishing to run for HJI, to publish the reasons why this call was opened, which had to do with not reaching the necessary number of at least 5 candidates for the vacant position.

c) Review of candidates submitted for HJI after the call of JAC 2019

On 21.03.2019, the JAC published on its official website the list³⁵⁵⁾ of candidates who applied for the vacant position of the HJI. 13 candidates expressed interest, namely: Mr. Altin Hazizaj, Mr. Artur Malaj, Mr. Artur Metani, Ms. Elira Kokona, Mr. Eris Hysi, Mr. Ferdinand Caka, Mr. Genci Gjonçaj, Mr. Genci Ismaili, Mr. Klodian Rado, Ms. Lefteri Lleshi, Ms. Marsida Xhaferllari, Ms. Mimoza Qinami, Ms. Suzana Frashëri. Three of the candidates were the same persons who applied in 2017, for which AHC presented its findings and evaluation in the above section and they are Mr. Artur Malaj, Ms. Marsida Xhaferllari and Ms. Lefeteri Lleshi.

Regarding the candidates, we find that a few days after the publication of the official list, one of the candidates, Mr. Ferdinand Caka, submitted his withdrawal,³⁵⁶⁾ for personal reasons.

In accordance with article 201/2/d) of law no. 115/2016, the JAC has the obligation to review without delay and, in any case, within the 1-month time window from the end of the application deadline (which coincides with March 20, 2019), whether the candidates presented meet the formal legal criteria envisaged in article 199/1 of the law.

Regarding internal procedures, on 15.02.2019, JAC approved decision no. 2, "On the lottery procedure to assign rapporteurs for vacant positions in every institution,"³⁵⁷⁾ whereby in particular, it is stated that "*the day and time of holding the electronic lottery procedure for deciding rapporteurs for vacant positions in every institution is set no later than 5 days since the day of publication of the list of candidates for the vacant position in the Constitutional Court by subjects that set into motion the Judicial Appointments Council or that of publishing the list of candidates for the vacant position of the High Justice Inspector by this Council.*" (point 5 of the decision). Further on, on 11.03.2019, the JAC approved also decision no. 4 "On the procedure of verifying the candidates for vacant positions in the Constitutional Court

355 http://www.gjykataelarte.gov.al/web/Shpallje_e_listes_se_kandidateve_pe_vendin_vacant_Inspektor_i_Larte_i_Drejtewise_date_21_03_2019_5663_1.php

356 http://www.gjykataelarte.gov.al/web/ferdinand_caka_1976.pdf

357 Published in the Official Gazette no. 19, February 19, 2019
http://www.qbz.gov.al/botime/fletore_zyrtare/2019/PDF-2019/19-2019.pdf

and the High Justice Inspector,”³⁵⁸⁾ which specifies further regulations for the evaluation and analysis of candidates.

Although the list of HJI candidates is published on March 21, 2019, the lottery envisaged in the cited decision for the rapporteur of the vacant position was drawn only on April 5, 2019, as the JAC reports itself,³⁵⁹⁾ i.e. in violation of the 5-day deadline set by the JAC itself one month earlier. The lottery, as the JAC states, was not drawn electronically as the procedure approved by the JAC stipulates, but was done manually “*due to the technical impossibility of conducting it electronically.*”³⁶⁰⁾ The result of this lottery is the selection of Ms. Margarita Buhali, one of the JAC candidates who has not undergone the transitory re-evaluation procedure.³⁶¹⁾

Regarding the violation of the 5-day deadline for drawing the lottery for the JAC rapporteur for the vacant HJI position, JAC 2019 states that procedures for the verification and evaluation of candidates could not be started without approving the package of relevant normative by-laws as this is ordered by the same law in article 229. Indirectly, JAC 2019 deems that the reason for the delay was precisely the time and engagement of this body in drawing the package of by-laws. In spite of the workload imposed by this process, considering that the JAC began its activity on January 15, 2019, and given the urgency of filling the vacancies for the HJI and member of the Constitutional Court, it is our opinion that this period was adequate for concluding this normative legal package.

Regarding the verification that the JAC should conduct on the 13 candidates for the HJI, AHC cannot share any findings or data on this phase, because the period covered by this report extends until the end of March 2019, which corresponds only with 10 days from the 1-month deadline that JAC 2019 had available to conduct this verification. Further monitoring of this process will be in the focus of AHC’s future activity.

358 Published in the Official Gazette no. 32, March 15, 2019

http://www.qbz.gov.al/botime/fletore_zyrtare/2019/PDF-2019/32-2019.pdf

359 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_02_04_2019_5743_1.php

360 http://www.gjykataelarte.gov.al/web/Mbledhja_e_K_E_D_e_dates_05_04_2019_5774_1.php

361 The lottery for Ms. Buhali was drawn only on January 15, 2019, per the relevant announcement <http://kpk.al/2019/01/16/njoftim-100/>

CHAPTER VII

RECOMMENDATIONS

AHC hopes that the findings, progress, and problems identified in this report, as well as the evaluations passed on important aspects that have been in the focus of our monitoring, will serve further improvement of the quality of new legislation of justice reform for the organization and functioning of the governing bodies of the justice system and the implementation as correctly and professionally as possible thereof by all bodies tasked with direct or indirect responsibilities for the implementation of this legislation. In this regard, AHC also deemed it reasonable to share some concrete recommendations as follows.

1. The minimal quota envisaged in article 51/5 does not match that envisaged in article 53/1 of law no.115/2016, which envisages, "...shall be forwarded to the General Secretary of the Assembly in a list of names of the candidates that received the highest results, but no more than 10 candidates and in any case no less than three times the number of vacancies...". According to this provision, for two vacancies in each of the Councils, there should be at least 6 candidates (3 per vacant position). As a result, we recommend to the Ministry of Justice and the Assembly to review article 51/5 and article 53/1 of law no. 115/2016, which should be harmonized to avoid lack of clarity, subjectivism, and uneven application of the law.

2. Article 152/2 of law no.115/2016 envisages only the immediate publication of the names of candidates who meet the legal criteria, while the result on those who do not meet the legal conditions and the causes for exclusion are communicated individually to candidates. It is our opinion that this provision should clearly reflect the obligation to publish the list of candidates who do not meet the legal conditions to be members of the Councils (HJC and HPC). Transparency in the phase of preliminary verification on whether legal conditions are met is an indispensable element, which should accompany this process. As a result, we recommend to the Ministry of Justice and the Assembly to review this provision.

3. We recommend in the future to the People's Advocate to publish on the official website the platforms of candidates for non-magistrate members in both Councils. Although this is not a legal requirement,

seen from the standpoint of public transparency, it may harm the public's judgment regarding the meritocracy of the evaluation process for these platforms by the Commission.

4. As a function of transparency in the process of selection of candidates and appointment of members in both Councils, we recommend to the People's Advocate and the Assembly in the future to enable access at any time to documentation highlighting procedures pursued according to law no. 115/2016, archiving these documents according to relevant sections, structured in a user-friendly manner for the public.

5. AHC deems that article 35/13 of law no. nr.115/2016 could be reviewed by the Ministry of Justice and the Assembly in the context of the situation created with the disqualification of one candidate from civil society who was running for HJC member, after the ad hoc parliamentary sub-committee acted in the circumstances of a legal vacuum, not having an attribute expressed in the law to exclude from the race candidates qualified by the General Secretary who are later found to be in conditions of non-electability.

6. AHC suggests to the general meeting of judges and the general meeting of prosecutors to unify to the extent possible the drafts of regulations that make it possible to detail procedures for the selection of magistrate members for both councils.

7. AHC notes that to enable a higher level of competitiveness among candidates for HJC and HPC members representing lecturers in the Schools of Law and the School of Magistrates, it is necessary that the Ministry of Justice and the Assembly in the future review relevant provisions of law no.115/2016 that envisage the quota and formula for the selection of these candidates.

8. Law no. 115/2016 could be clearer in terms of issues dealing with the financial treatment of ad hoc commission members, vacancies created for the functioning of the ad hoc commission for candidates from advocates, such as lack of clarity created by the absence of the JAC chair as to who would replace him/her. As a result, we recommend to the Ministry of Justice and the Assembly to revisit relevant provisions in order to complete and clarify them.

9. AHC suggests to all bodies and structures tasked to review, verify, evaluate, and approve candidates for both Councils (HJC and HPC) to keep in mind, to the extent possible and without violating legal criteria, to set a proportional balance of the gender element for elected members. As noted, the composition of the created Councils indicates a just balance of gender representation in the HJC but ten men and one woman in the HPC.

10. AHC suggests to the HPC and HJC to continue immediately working to exercise quickly and efficiently all the important competencies assigned by law, particularly regarding the selection process for the new General Prosecutor, members of the special anti-corruption and organized crime prosecution office and court, reorganization of courts, etc.

11. AHC suggests to the HPC and HJC to draft a calendar of priorities in their work, paying special attention to the resolution of those problems that have created impasses in the functioning of the judicial and prosecutorial system, leading to prolonged delays in cases on citizens.

12. To conduct a more fair evaluation of the activity of the Councils, AHC suggests to the HPC and HJC to make available to persons from the public present in the hall copies of the explanatory reports and draft decisions drafted by the standing commissions. Their publication on the internet in advance, before the plenary session, would be useful for better transparency to the public and more fair and objective evaluation of the work of the Councils.

13. To increase public confidence in the activity of the two Councils (HJC and HPC), we suggest that during the process of appointments or promotions of judges and prosecutors, including running for the special Prosecution Office and Court, the Councils publish on their official websites the CVs of the candidates in a special section devoted to their profiles.

14. We suggest to members of the two Councils (HJC and HPC) that for decisions on which there are opinions against (minority), they should be argued and this minority opinion should be attached to the decision publishing it on the official websites of the Councils.

15. AHC suggests to the two Councils (HJC and HPC) to not only enable the participation of the media in the plenary sessions, but also allow the media to conduct audio-visual recordings. For this, the two Councils may accredit media representatives authorized for these recordings. The implementation of this recommendation would enable a higher degree of transparency on the part of the Councils and respect for freedom of the media to obtain and provide information to the public.

16. AHC suggests to the two Councils (HJC and HPC) that, through a special section on their official websites, they enable as complete transparency as possible to the media and public on the meetings and activity of their standing committees but also the ad hoc commissions.

17. AHC recommends to the High Prosecutorial Council to implement legislation in force on access to information, because for some official requests of AHC, this body did not provide responses (official letters of the AHC on 12.03.2019, 19.03.2019, etc.).

18. AHC recommends to the HPC³⁶²) that pursuant to legal provisions reflected in article 167/3 of law no. 115/2016, it publishes the summaries of process-verbal of plenary meetings.

19. ACH recommends to the HJC that pursuant to article 69/2 of law no. 115/2016, it publishes the audio recording of plenary meetings.

20. AHC suggests to the Assembly of Albania that, through constructive dialogue, it review carefully and approve the legal vacuum created as a result of the decisions of the Constitutional Court on some of the provisions of law no. 96/2016 and no.115/2016. This would enable the normal functioning of the two Councils (HJC and HPC), according to the principle of lawfulness, and would make effective the decision-making of these Councils on important processes related to the status of judges and prosecutors and the establishment of the special prosecution office and court against corruption and organized crime.

21. We recommend to the Constitutional Court, High Judicial Council and the High Prosecutorial Council that, in the context of

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competences they have according to article 221 of law no.115/2016, they make public on their websites the lists of candidates who meet the legal conditions to be members of JAC 2020 and the lists of candidates who do not. Also, in the context of transparency to the public, AHC suggests that the official websites publish the procedure pursued to verify legal conditions of candidates for members of JAC 2020.

22. For the sake of transparency, AHC suggests to the Constitutional Court, the HJC and HPC that, based on article 221/5 of law no.115/2016, they publish information on their official websites on whether the individual written notification of candidates who do not meet the legal criteria to be members of JAC 2020 has been conducted.

23. For the sake of transparency, we suggest to the President and/or Assembly of the Republic of Albania (tasked with drawing the lottery for JAC 2020) to make available in advance to observers the full files and list of candidates for members of JAC 2020. We also suggest to these institutions to publish on their official websites the data on members of the Technical Secretariat that will organize the lottery.

24. AHC recommends to the Constitutional Court, HJC and HPC that in drafting lists for JAC 2020 and the JAC of following years, to rigorously and evenly implement constitutional and legal provisions that envisage the criteria for their involvement in the relevant lists.

25. AHC suggests to the Ministry of Justice of the RA to review provisions of law no. 115/2016 on specifying circumstances of incompatibility to exercise at the same time the functions of the member of the HJC and HPC with the functions of the JAC member. The member elected from among magistrates to the HPC or HJC may not be at the same time a member of the JAC because his/her status as a magistrate has been suspended until the end of the mandate as member of the HJC or HPC.

26. Considering that the Constitution and law no. 115/2016 have a vacuum regarding the early conclusion of the JAC member's mandate, if the conditions of incompatibility are verified in exercising the function or for other circumstances envisaged for the HJC and HPC, and that there is no provision of a body that will declare through a

decision the end of the JAC mandate, AHC suggests to the Ministry of Justice and the Assembly to fill this legal vacuum by making the necessary additions.

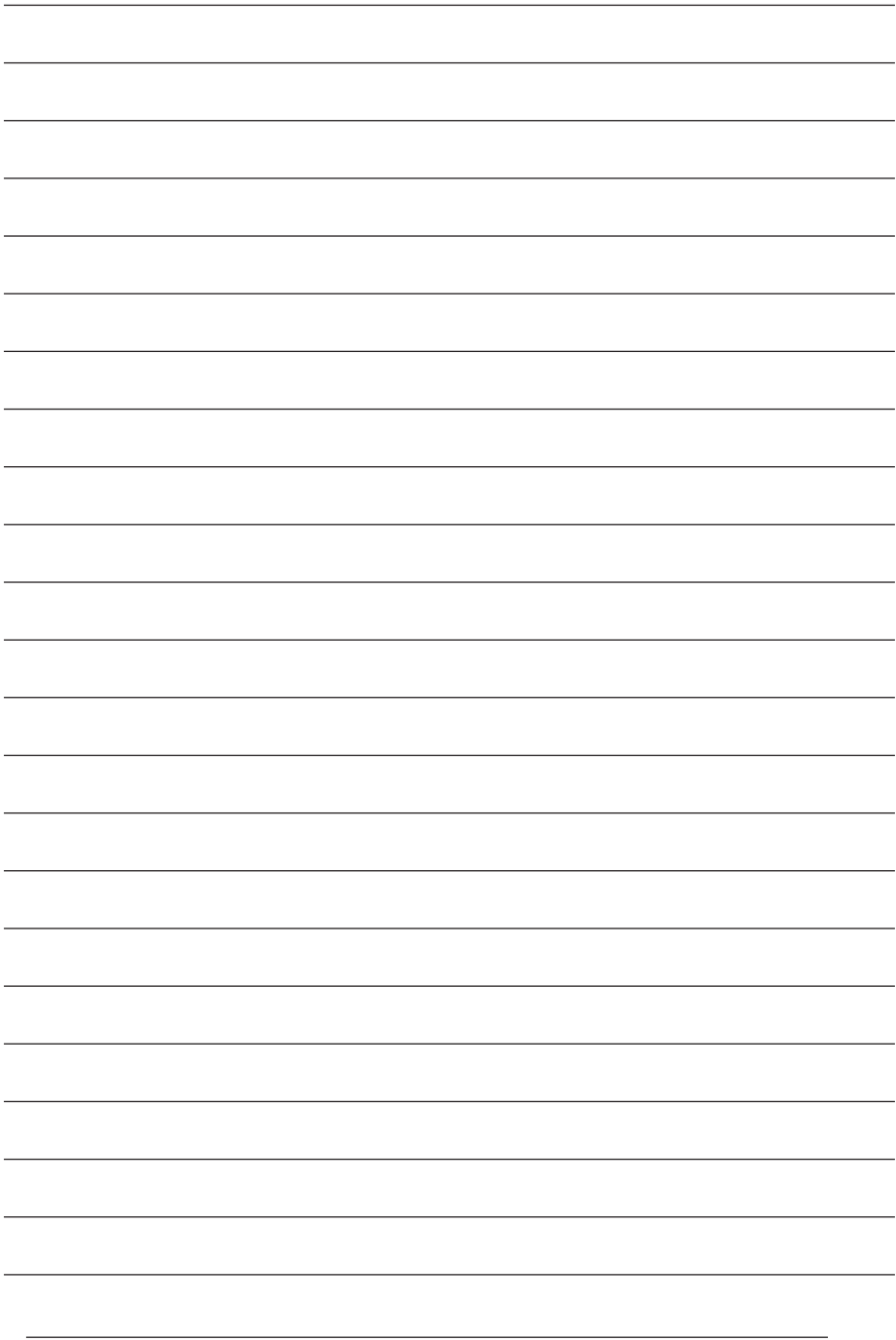
27. AHC suggests to the Assembly the review of provisions of law no.115/2016 (article 233/1 of this law), in order to guarantee access of independent observers to following and monitoring JAC meetings, which would contribute to greater transparency and accountability of this important governing body of justice.

28. AHC suggests to the General Secretary of the Assembly, in cooperation with the Independent Monitoring and Coordination Commission (IMCC), to coordinate the regular publication of IMCC reports or important aspects of the activity of this body, which enable greater transparency to the media and public.

29. AHC suggests to the IMCC to reflect with objectivity, professionalism, and impartiality in its periodical reports, all the problems identified from the monitoring and oversight of justice governing bodies, and to address recommendations that help rigorous implementation of legislation by them.

30. AHC suggests to JAC 2019 to publish on time and without delay on the website of the High Court all process-verbal of meetings conducted by this Council.

31. AHC suggests to JAC to devote consistent attention to transparency, on the website of the High Court, in the process of verifying legal criteria and ranking of candidates for HJI. We note this because JAC meetings, by law, are closed, while public confidence in the phase of creation of new justice bodies is very important. A transparent approach also enables openness to constructive feedback or suggestions by civil society organizations monitoring the process.



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