THE SIGRID RAUSING TRUST

ALBANIAN HELSINKI COMMITTEE
KOMITETI SHQIPTAR I HELSINKIT

RESEARCH REPORT

ON THE PROCESS OF VETTING OF JUDGES AND PROSECUTORS AND THE PROGRESS OF CRIMINAL PROCEEDINGS TOWARD THEM

December
2024

This report was prepared by the Albanian Helsinki Committee (AHC) in the context of institutional support provided by the Sigrid Rausting Trust Foundation. The contents of this material are the sole responsibility of AHC and the experts who worked to compile it.

Statistical and qualitative information processed by:

Ms. Ardita Kolmarku, Jurist/Project Manager, AHC
Ms. Rabie Zika, Paralegal/Project Assistant, AHC

Experts observing public judicial hearings of the vetting process (alphabetical order):

Ms. Amilda Haxhiu, External Expert, AHC
Mr. Armand Sokoli, External Expert, AHC
Ms. Eriselda Ndreca, intern at AHC
Mr. Nikolin Muçaj, intern at AHC
Ms. Rabie Zika, Paralegal/Project Assistant, AHC staff

Experts who analyzed decisions of the vetting bodies (alphabetical order):

Ms. Amilda Haxhiu, External Expert, AHC
Mr. Armand Sokoli, External Expert, AHC
Ms. Baisa Sefa, External Expert, AHC
Mr. Emidio Tedeschini, External Expert, AHC
Ms. Migena Kondo, External Expert, AHC

Expert for analysis of criminal proceedings toward the subjects of vetting:

Ms. Erida Skëndaj, Executive Director, AHC

Qualitative review:

Ms. Erida Skëndaj, Executive Director, AHC
Mr. Niazi Jaho, Legal Advisor, AHC

Rr. Brigada e VIII, Building "Tekno Projekt"
Shk. 2 Ap. 10, Tirana-Albania
Post Office Box no. 1752
Mob: 0694075732 Web site www.ahc.org.al

THE SIGRID RAUSING TRUST

TABLE OF CONTENTS

List of Abbreviations

IQC – Independent Qualification Commission
SAC – Special Appeals College
HJC – High Judicial Council
HPC – High Prosecutorial Council
IMO – International Monitoring Operation
PC – Public Commissioners
ECtHR – European Court of Human Rights
ECHR – European Convention of Human Rights
AHC – Albanian Helsinki Committee
CPC – Criminal Procedure Code
HCJ – High Council of Justice
HIDAACI – High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest
APC – Administrative Procedure Code

INTRODUCTION

The process of transitory re-evaluation, otherwise known as the vetting of judges and prosecutors, bears with it special significance for guaranteeing the functioning of the rule of law, independence of the justice system, by contributing to the strengthening of accountability and responsibility of the judicial and prosecutorial system. Although this process represents only one link of the Justice Reform, and is of a transitory and extraordinary character, the expectations and results from it in the past seven years have made a positive contribution to changing the environment of public distrust in the justice system and breaking the myth of impunity among the justice system ranks.

The vetting process is conducted by special independent constitutional institutions, the Independent Qualification Commission (IQC) at the first instance and the Special Appeals College (SAC) at the second instance, and is a constitutional process, which is based on article 179/b of the Constitution of the Republic of Albania, the Annex of the Constitution, and law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania." An important part of this process is the Constitutional Institution of the Public Commissioners, which represents the interest of the public in the vetting process by exercising the right to file complaints against IQC decisions.

The mandate of the vetting institutions began in June 2017, with the appointment of their members by the Assembly en block. For a few more months, all three institutions will be concluding the seventh year of their activity. Two and a half years ago, the length of the process at the time made its progress in time difficult and therefore the completion of the vetting process, at the first instance, within the five-year mandate of the IQC. On 10.02.2022, the Assembly approved constitutional amendments that enable the extension of the mandate of the Public Commissioners (PC) and the IQC members until December 31, 2024. For Public Commissioners (PC) and IQC members, the new constitutional mandate was extended from five to seven years and a half (until December 2024), while the mandate of the Special Appeals College remains unchanged, namely 9 years, until June 2026. The International Monitoring Operation (IMO) was conceived in the Constitution and the law as a supporting and overseeing structure for the transitory re-evaluation process.

Vetting is a process *sui generis,* of an administrative nature, which does not seek to criminally punish judges and prosecutors who are subjected to it. At the conclusion of this process, if the subjects have not resigned or their status has not ended for other reasons, the vetting institutions decide to confirm them in their posts, to dismiss them from office, or suspend from office for a one-year period. Nevertheless, according to article 281, paragraph 3, of the Criminal Procedure Code, the re-evaluation bodies have an obligation to file criminal referrals with the prosecution office if, during the administrative process, they discover data, facts, or evidence that represent a criminal offense that is prosecuted on their own initiative.

According to our criminal law, the only basis for bringing an individual under criminal responsibility is that his/her actions or inaction include elements of a certain aspect of a criminal offense, envisaged by the criminal law. respect for and completion of the elements of the criminal offense is of great importance because it has to do with the implementation of the principle of

lawfulness. Furthermore, it is just as important in the sense of determining the criminal liability to determine whether the criminal offense's statute of limitations has expired on the person that the criminal offense is attributed to or is suspected of committing it. The elements of when the offense occurred, how it appears in its content, or when the damage was proven, determine the time of its offense and, therefore, the action of prosecution.

Because of the importance of the exercise of functions by the above bodies and the sensibility toward their activity, the Albanian Helsinki Committee (AHC) has been observing partially, since 2018, the bodies responsible for carrying out the vetting process and the activity of the prosecution office regarding criminal proceedings toward subjects who resigned or were dismissed in the context of the vetting process.

Data published by IQC on its official website as well as data from the media[1] show that this Commission is expected to conclude the transitory re-evaluation of all subjects under its responsibility by the end of 2024. Furthermore, also according to the media, it has been referred that from the start of the vetting process from early 2018 until today, 130 subjects affected by decisions of the vetting bodies have addressed the European Court of Human Rights.[2] Until September 30, 2024, it appears that the IQC had issued 799 decisions, of which only 47% (or 369 decisions) entailed confirmation in office, 33.4% (267 decisions) entailed dismissal, 13.1% (105) are decisions for interruption of the process, 6% (48) are decisions for concluding the process without a final decision, 1% (8 decisions) are for dropping the process, and 0.2% (2 decisions) are for suspension from duty.[3]

It appears that until June 30, 2024, the Special Appeals College reviewed and announced 259 decisions of the Re-evaluation Jurisdiction. Of these decisions of the College, it appears that the highest number belongs to 2023 with 55 decisions. Until June 30, 2023, the SAC had registered **384 cases** of the re-evaluation jurisdiction or 48% of the decisions issued by the IQC by September 2024. Until June 2024, it appears that the College tried 67.44% of the cases while these data were not included in the appealed decisions of the IQC and the decisions of the College itself date from July 1 – September 30, 2024. Taking into consideration the progress of the last two years, the College may need approximately three years for the complete review of cases under its re-evaluation jurisdiction. Meanwhile, the College's mandate expires in the middle of this projected deadline, namely in June 2026 (for about one year and a half).

It is worth emphasizing that the European Commission, in its report on Albania for 2024, evaluated as a direct result the referral by the IQC to the prosecution office in September of this year, of 19 cases of vetting with criminal elements prima facie, for further investigations, which represents the following of a key EU recommendation.[4] Nevertheless, to date, there has been no complete analysis, as to how many of the 50% of the dismissed or resigned subjects from the vetting process,

[1] https://top-channel.tv/video/top-channel-vetingu-130-te-rrezuar-ne-strasburg-iu-drejtuan-gjyqtare-dhe-prokurore-te-pakonfirmuar/
[2] Ibid.
[3] https://kpk.al/wp-content/uploads/2024/10/Raport-statistikor-shkurt-2018-30-Shtator-2024.pdf
[4] https://neighbourhood-enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf , p. 6

were in such circumstances. Data indicate very few pursued criminal cases and even fewer of them sent to court by the prosecution body.

Furthermore, in the European Commission report on Albania for 2024, there is a positive evaluation of the fact that Public Commissioners respected all recommendations for exercising the right of appeal to the College. Meanwhile, it is requested of the College to undertake urgent measures to fasten the pace of proceedings at the appeals level, in order to respect its constitutional mandate. The final decisions of the IQC are evaluated as having established important standards for the verification of backgrounds, assets, and the proficiency of magistrates, which the EU deems that should be approved and be sustainable in relevant judicial processes.[5]

With the conclusion of the mandate of the IQC and PC, one of the challenges that the process of continued vetting beyond January of the coming year (2025) is the replacement of the Public Commissioners by the head of the Special Prosecution Office. AHC considers that the workload assigned to the SPAK head, adding this competence, is great. This is based on the volume of criminal cases that SPAK has on, with the highest expectations of the public being on the continuation of the positive results that have been achieved in terms of criminal investigation of corruption, especially by high-level officials, and of organized crime. In its opinion of three years ago addressed to the Assembly of the Republic of Albania, in support of extending the mandate of the IQC and the PC until December of this year, AHC also referred concern about the premise that this competence creates for "conflicts or overlapping in jurisdiction" in the field of criminal investigations that SPAK exercises.

Another challenge for the vetting process is the continuation of the review of complaints submitted to the European Court of Human Rights and the progress of decision-making by the College regarding the standards that have been elaborated in the practice of this jurisprudence to date. This is a process that AHC will continue to monitor, considering also the practical cases of the ECtHR in the past, present, and future.

EXECUTIVE SUMMARY

This research study of AHC has been categorized into three parts. The first two parts refer to the progress of the vetting process during 2022, analyzing the monitored hearing sessions, conducted at the IQC and SAC, as well as the contents of the decisions that they delivered. Meanwhile, the third part analyzes the impact that the vetting process has had on the activity of the justice system bodies tasked with the investigation and adjudication of criminal offenses, during the years 2021-2022.

For the period under review, the IQC has issued 37 decisions, of which seven were issued for interrupting the process of re-evaluation as a result of the resignation of the subjects, 22 decisions were issued for confirmation of the subjects in office, while four decisions were issued for their

[5] Ibid, p. 29.

dismissal. During this period, the IQC has issued one decision for the suspension of the subject from office for a one-year period and the obligation to pursue the training program according to the curricula approved by the School of Magistrates. In three cases, the IQC decided on the conclusion of the vetting process without a final decision, because one subject passed away while in two cases, it was decided to terminate the status of the magistrate as a result of the dismissal by the High Judicial Council (HJC) of two subjects. The SAC (hereinafter the College) issued 11 decisions, of which five led to the dismissal of the subject of re-evaluation from office.

Overall, referring to jurisprudence of the European Court of Human Rights (ECtHR), the process has passed the test of providing and respecting guarantees of due legal process, with some exceptions.[6]

Based on the processing of data secured by the observers, it results that in general, the hearing sessions conducted at the IQC and the SAC respected the formal elements of solemnity, were transparent in as much as may be deducted from the statements of the parties in the session and, in almost all cases, the subjects of re-evaluation confirm that they were provided the right to become familiar with the relevant file and the results of the administrative investigation.

At the same time, observers report that based on the reporting of the case (in both bodies of the re-evaluation process) by the member of the panel of judges, the perception is created that the process of investigation was comprehensive. We emphasize that this is a perception based on the reporting of the cases as observers do not have access to the investigation case file.

It drew the attention of observers engaged by AHC that the public was not allowed in the hall where the hearing session was conducted at the College. The SAC argues that this situation is the result of the implementation of anti-Covid restrictive measures. Therefore, the hearing is followed from outside the hearing room, through a provided television screen. We emphasize that the lack of the presence of the public in the room to follow the hearing session that, according to law should be public, does not provide for the same level of access and understanding of the entire dynamics of the process conducted and the analysis of the conduct of the panel of judges and the parties by an impartial and objective observer, thus having a negative impact on the respect for the principle of publicity and transparency of the entire process.

[6] We find it appropriate to mention the case of Thanza v. Albania, in which the EctHR did not find the approach of the vetting bodies in accordance with article 6 of the Convention for the subject of re-evaluation A.Th. In the case, A.Th. had not declared the fact that together with a friend of his, the subject had been prosecuted briefly for the criminal act of corruption, but the criminal proceedings had been dropped. The Court notes that, in conclusion, the petitioner did not have anything to respond with regarding the criminal proceeding dropped in 2016 and that the reasoning of the SAC for this reason, appears to have been rather formalistic in a context that required care in the rigorous implementation of the requirements of the domestic law. ...Based on the above, the Court finds that the evaluation of the proceedings against the petitioner in 2016 and his contact with L.H. raise serious concerns about respect for his right to due legal process. Considering the above findings in a cumulative manner, the Court concludes that the approach by the vetting bodies in the evaluation of the second component of the re-evaluation process, resulting in indirect findings was sufficient for dismissal from duty, but does not respect the principle of fairness of the process that is imposed by article 6 § 1 of the Convention in the case in question. Therefore, it represents a violation of that article with regard to the second component of the vetting process.
(See Thanza vs. Albania, application no. 41047/19, July 4, 2023, paragraphs 119-123).

During the period that is under observation, the IQC plans almost 1- 3 hearing sessions per day, while after this period, there is a slower pace of sessions, with 1 – 2 hearings during the week. On the other hand, the SAC had a slower pace of work as during the period under observation, there were a total of six public hearing sessions.

The publicity of the entire process is an essential element toward the fulfillment of the purpose that the entire reform had; among others, also the return of public trust in the justice system. in this context, it is necessary that not only the hearing sessions be open for the participation of interested parties, but also that the decisions are published within a reasonable time in order to understand the reasons for the concrete decision-making on the subjects of re-evaluation. In both of the vetting bodies, the practice to date has been consolidated with regard to the publication of decisions, but not within the deadlines established by law. Furthermore, in order to guarantee this principle, we have not found a unified practice with regard to the publication of differing or parallel opinions prepared by the international observers of the IMO. At the same time, it has been found that the decisions of both bodies that are pursuing these procedures, the intermediate decisions are not reflected in a summarized manner. Although this is not a binding requirement of the law, it does serve transparency before the public.

The period of investigation, from the moment when the lots are drawn, lasts an average of two years and the review of the appeal to the IQC decision (if there is one such) lasts just as much. In total, the entire process of re-evaluation lasts about four years (for subjects for which there is an appeal or who present an appeal against the IQC decision). In the opinion of AHC observers, this length of time is disproportionate as it pertains to the lack of objective reasons.

We must bring to attention especially the financial impact that the cases of dismissed subjects have; until the decision becomes final, that is, before the decision-making of the SAC where the appeal has been presented, the subjects receive 75% of the salary. For instance, for one of the subjects of re-evaluation for which the SAC made a decision during the period under review, the IQC was made on 21.2.2020 while the date for the decision of the SAC is 28.6.2022. In other words, that is about 28 months after the IQC decision, during which period the subject was paid by 75% of the salary. Based on this analysis, it is estimated that the dragging out of the re-evaluation process, besides affecting a component of due legal process, it also has a high financial bill for the state budget, as the subjects should be treated financially, according to law, until the decision becomes final.

Meanwhile, the solution of the essence of the cases has shown some disproportionate cases during the evaluation of different criteria, which may be justified by the principle of judicial efficiency, but not with the real length of time that the process took. Concretely, we encountered cases in which the vetting bodies had an added focus on the two other criteria (proficiency and background checks), not that of assets, when the subject of re-evaluation appears to have modest wealth and, vice versa, a more detailed investigation on the criterion of assets and more superficial on the two other criteria, when the subject appears to have considerable wealth.

During the analysis of cases of decision-making to interrupt the re-evaluation process due to the termination of the status of the magistrate as a result of the resignation presented by the subject and approved by the competent body (High Judicial Council or High Prosecutorial Council), it

results that the Commission takes a similar approach on all reviewed cases, followed by a unified position also by the College. For all cases of resignations or situations that are equal to it in terms of the effect they have, the College decided to interrupt the process of transitory evaluation and prohibit the appointment as judge or prosecutor of any level, member of the High Judicial Council or High Prosecutorial Council, High Justice Inspector, or General Prosecutor, for a 15-year period.

Based on a detailed analysis of decisions of the IQC and the College, we have found that there is a different approach by the panels of judges with regard to reflecting denunciations presented by the public; in some cases, there is good elaboration of the denunciations by the public and in some others, there is a superficial presentation of them. in fact, in some cases, these denunciations have not been reflected even in the reasoned decision by the majority; however, there are traces of them in the published opinion of the minority, which as it highlights in one instance, the presented denunciations raised concerns about adjudication in conditions of conflict of interest in at least three instances. As a result, it is recommended that there is a more unified and transparent approach by the bodies carrying out the transitory re-evaluation in the reflection of denunciations presented by the public on the subjects of re-evaluation. For this reason, AHC suggests that the following hearing sessions of the College and the final decision substantially reflect the founded denunciations that have been presented by the public, addressing also the position or evaluation of the subject toward these denunciations.

According to data that AHC possesses from the prosecution offices, there appear to be 22 judges, prosecutors, or senior officials of the justice system who were referred or prosecuted during the years 2021-2022.

With regard to the criminal acts for which the referral to the prosecution office was made, or for which criminal proceedings have begun, the overwhelming majority of cases, 11 cases are for article 257/a/2 of the Criminal Code (concealment or faulty declaration of assets[7]), only in three instances there have been criminal proceedings, namely for article 319/ç of the Criminal Code (Passive Corruption), one case refers to article 248 of the Criminal Code (abuse of office) and in other cases, there is no specific information from the prosecution offices of general jurisdiction.

In four instances, the referring subject in the prosecution office for these subjects was the public body, IQC, in two instances, it was the Sector for the Fight against Narcotics at the State Police, in eight cases, it was a citizen, while for the remainder, such information may not be identified.

In four instances, the Prosecution Offices of General Jurisdiction decided to not start criminal proceedings, thus failing to properly implement (according to AHC), the provisions of the Criminal Procedure Code. It is disturbing that the prosecution offices of general jurisdiction, in certain cases, made decisions to not start criminal proceedings within a matter of a few days upon receipt of the referral material; even in the cases when the subjects were dismissed by final decision of the SAC, which found serious violations of the criterion of assets or the criterion of professional proficiency.

[7] Referred/ prosecuted separately or together with other criminal acts, such as the articles of the Criminal Code, namely 143 “Fraud,” 143/a/6 “Concealment of assets,” 180 “Concealment of income,” 181 “Failure to pay taxes and dues,” 248 “Abuse of office.”

In such instances, the prosecution offices did not administer the relevant files of the vetting institutions and concluded on the criminal offenses for which the referral was filed, relying on the conclusions of decisions of an administrative nature of the vetting institutions, such as lack of concealment or inaccuracies. This position contains contradictory elements as the prosecution office itself, in the reasoning part off these decisions refers that the vetting process is an administrative, not a criminal process.

Unlike the practice of the prosecution offices of general jurisdiction, SPAK has a considerably higher efficiency regarding criminal proceedings against these subjects as it appears to have conducted eight criminal proceedings against subjects of vetting, of which five for 2021 and 3 for 2022. Regarding these criminal proceedings, seven of them were sent to court, with part of them concluding with a guilty verdict.

Based on data provided by the decision that are the subject of this research, we notice that special investigation techniques were used partially by SPAK. According to AHC, to ensure the burden of proof for the charges that the prosecution office bears, investigations into corruption could be more productive if the wiretapping of private premises (offices of judges and prosecutors) had been sought, based on the specific circumstances of cases, where it appears that the evidence for the taking of bribes by judges/prosecutors are not direct but are indirectly proven through the transcripts of conversations of other indicted individuals. It is worth specifying that this conclusion does not refer to investigations into the criminal offense envisaged by article 257/a of the Criminal Code (Refusal to declare, failure to declare, concealment, or fake declaration of assets, private interests), whose nature in general[8] does not fulfill the legal criteria of the measure of punishment requested as a condition for the application of these special means during their investigation, according to paragraphs 1 and 2 of article 221 of the Criminal Procedure Code.

Referring to the contents of the request for sending the case to court, AHC notices that no data is reflected in them on the financial investigation of corruption for assets in considerable values that appears to have been concealed/undeclared, how these assets are intertwined with the suspected but not investigated activity, such as it may be the case in at least three instances, the potential ties of the indicted individual with segments of crime or organized crime.

Based on an interpretation of the Special Court for Corruption and Organized Crime, it is concluded that all subjects that were not indicted until January 2022 (independently from whether they were found with problems in the context of the vetting process), may not be prosecuted for article 257/a/2 of the Criminal Code (concealment, failure to declare, or fake declaration of assets), as their statute of limitations has expired according to article 66 of the Criminal Code. this finding is very disturbing with regard to the impunity for at least 90% of the judges and prosecutors dismissed by the vetting process who do not appear to have been prosecuted.

AHC notices considerable delays in the investigative process of these subjects that extend over 2-3 years. These deadlines are very long, as judged in the context of the not-so-high level of complexity in investigations, as long as in the majority of cases, there has been no investigation

[8] Except for paragraph 1, letter "b," of article 221 of the Criminal Procedure Code.

into corruption or involvement of the indicted individual in the activity of organized crime. As a whole, the overextended deadlines of criminal proceedings, as well as the transfer of cases between prosecution offices, weaken the efficiency of the investigative process and the burden of proof that the prosecution body has to prove the charges brought in court.

AHC considers that the judge of the preliminary hearing session should take a more proactive role as the researched cases highlight that there has been no decision-making about the return of acts to the prosecution office, because it had not fully investigated other criminal facts that emerge in the context of the investigations, linked with criminal offenses in the field of corruption, organized crime, or money laundering.

Unlike the phase of the investigations, the adjudication on the essence of the case took place within fast and reasonable time windows. The request of the indicted individual for abbreviated adjudication, approved by the court, has also contributed to this end. In terms of reasoning, we notice that decisions of both courts present in a chronological manner the facts of the case, the research and claims of the parties, including here the summary of their final conclusions, as well as the evaluation of the court for them. overall, the arguments used are clear and convincing and also provide responses in a transparent manner to the requests and challenges of the defense of the indicted individual. In several cases, these decisions also mention the standards elaborated in the jurisprudence of the ECtHR. AHC considers that it is necessary that there be a more synthetized and clearer summary of the facts of the case, avoiding mechanical paraphrasing of data that emerge during the phase of preliminary investigations.

During this period, it results that the SCCOC of first instance has issued four guilty verdicts for four indicted individuals, two of whom convicted for the criminal act envisaged by article 257/a/2 of the Criminal Code that sanctions the concealment and fake declaration of assets, and two other indicted individuals convicted for passive corruption of judges, prosecutors, and other functionaries of the justice system. For three of these subjects, the Appeals SCCOC made final decisions that upheld the conviction sentence or that amended the sentence by issuing a sentence that was slightly harsher than the first one.

METHODOLOGY

This research study has been drafted in three parts, which had different a different subject.

a. Hearing sessions at the IQC and the SAC

The first part reflects the findings from the monitoring of hearing sessions conducted at the IQC and SAC to highlight the conduct of the panels of judges with regard to respect for the procedural rights of the subjects of re-evaluation.

AHC observers monitored the hearing sessions according to a predetermined methodology. At the end of every hearing session, the experts submitted to AHC staff the questionnaire on the monitoring of the hearing session as well as a summary of the key elements of the session, called a *factsheet*. In some instances, when considered appropriate and of interest to the public, the staff proceeded with their publication as well.[9]

During this period (the period of time under review), 35 subjects underwent their re-evaluation before the Independent Qualification Commission; of these, 26 subjects' hearing sessions were monitored by AHC observers.

For some of the subjects of re-evaluation, more than two hearing sessions were held, bringing the number of monitored hearing sessions to a total of 29 such. Of the monitored sessions, 28 of them are hearing sessions for the reporting of the case and only one of them is for announcing a decision. AHC did not deem it necessary to follow the hearing sessions for announcement of decisions given that the hearing session itself did not contain procedural elements of value for reflecting in the report.

At the Special Appeals College, experts monitored a total of six hearing sessions for three subjects of re-evaluation. For one subject, there were three public hearing sessions. Of the conducted sessions, five such had to do with the reporting of the case and one session had to do with the announcement of a decision.

b. Decisions of IQC and SAC

The second part analyzes the decisions of these bodies, including not only the procedural aspects thereof, but also paying attention to the implementation of material law.

For the part of analysis of decisions, the experts engaged by the Albanian Helsinki Committee took under review 48 decisions of the bodies responsible for the transitory re-evaluation of judges (the vetting process) for the period January – November 2022, namely 37 decisions of the Independent Qualification Commission and 11 decisions of the Special Appeals College, all of

[9] 19 of the factsheets were published to inform the public in real time about the findings of the experts, thus not missing out on the current value of them.

which were transcribed and reasoned on the official websites of these two bodies that are key for carrying out the vetting process.

The team of experts that this important analytical and research process was entrusted to represent experienced jurists in public law, administrative law, constitutional law, and in the field of advocacy.

From a methodological standpoint, experts collected and processed data resulting from decisions, based on a well-defined methodology and based on a standardized questionnaire. The reflection of processed data in a dedicated electronic version of the questionnaire was realized with the support of AHC staff while the qualitative processing of data preserved the independence, impartiality, and internal professional conviction of the experts.

The focus of the analysis on these decisions included the reflection of the conduct of the panel of judges, both from a formal-procedural aspect and content-wise, the role and interventions of international observers, the level of respect for the principle of the publicity of the hearing session, guaranteeing the principle of the equality of legal arms in the process, the principle of contradictoriness and evaluation of the level of respect for the burden of proof, the length of the vetting process and the transparency in the reasoning of decision-making, the pursued standards in the analysis and implementation of basic criteria of the transitory re-evaluation process, as well as an overall professional evaluation of the observers regarding the protection of personal freedoms and rights of subjects that were subjected to the vetting process.

c. Criminal Proceedings on Judges and Prosecutors who were dismissed or had resigned as a result or during the vetting process

The third part assesses the impact that the vetting process had on the activity of the bodies of the justice system that are tasked with the investigation and adjudication of criminal offenses, including criminal acts in the field of corruption and organized crime, as well as those committed by special subjects. The sample of this analysis included decisions of the prosecution offices of general jurisdiction and the special prosecution office (non-initiation, dropping, or sending to court, as well as requests for sequestration of assets), criminal judicial decisions on subjects of the transitory re-evaluation process (mainly judges and prosecutors who had resigned or were dismissed by the vetting process, as well as those under review). Regarding the decision-making of the prosecution offices and the courts, the research study extends over the period 2021 – 2022.

AHC relied on a methodology drafted by experts of the field of criminal law, procedural criminal law, and the vetting legislation. AHC was able to secure the decisions researched in this report, through requests for access to information, based on the law on access to information no. 119/2014.

In its electronic communication of January 23, 2023, the General Prosecution Office informed AHC that, based on information obtained from prosecution offices of general jurisdiction, only the prosecution offices of Tirana, Elbasan, and Durrës confirmed the start or non-start of criminal investigations into the subjects of the vetting process. Furthermore, it was recommended to AHC to continue further communication with these prosecution offices in order to obtain the requested information.

On 24.09.2023,[10] the Prosecution Office of the Tirana Judicial District responded to the AHC request by making available to it, partially, the requested information, but not the relevant documentation. This was the case because the issues linked with the subjects of the re-evaluation process are still in the investigation phase and the decisions regarding these subjects might be made available only at the conclusion of preliminary investigations.

On 31.03.2023, the Prosecution Office of the Durrës Judicial District responded partially to the AHC request, by making available two decisions regarding non-starting criminal proceedings into the subjects of re-evaluation, and made available general data about four subjects of re-evaluation, on whom criminal proceedings had begun at this prosecution office and they continue to be under investigation.[11] As a result of the general character of information, by a letter on 08.09.2023, AHC addressed another request for completing information to the Prosecution Office of the Durrës Judicial District. In its response, the Prosecution Office of the Durrës Judicial District provided information only on the identification data (name, family name) of the subjects, as well as the date when the criminal proceedings had begun, stating that they are under investigation.[12]

On 15.03.2023, the Prosecution Office of the Elbasan Judicial District responded partially to AHC's request for information, by making available two decisions for not starting criminal proceedings against the subjects of re-evaluation, who had been prosecutors.[13] Furthermore, information regarding the criminal proceedings of 26.05.2020, received from SPAK on a former judge, was also made available to AHC. This criminal proceeding was passed on for competence to the Prosecution Office of the Tirana First Instance Court, by decision no. 02.06.2021. However, the Prosecution Office of the Tirana Judicial District Court did not provide any information.

SPAK informed AHC about a total of eight criminal proceedings into subjects of vetting by this prosecution office, of which five criminal proceedings for 2021 and three criminal proceedings for 2022.[14] Regarding these criminal proceedings, one of them is under investigation (until December 2, 2022, when the response from SPAK was provided) and seven of them have been sent to court, with some of them concluding with a guilty verdict (as will be analyzed further). SPAK states that there have been no decisions of dropping criminal proceedings or transfers due to lack of material competence to prosecution offices of general jurisdiction. AHC addressed separate requests for information to SPAK prosecutors and sought access to acts that are not investigative secrets, such as information to send criminal cases to court for adjudication, requests for confiscation of assets, etc. In concrete terms:

[10] Letter no. prot. 377/1, dated 24.03.2023, with the subject "Provision of response" (Prosecution Office at Tirana First Instance Court addresses AHC).
[11] Letter no. prot. 396/1, dated 31.03.2023, with the subject "Provision of response" (Prosecution Office at Durrës First Instance Court addresses AHC).
[12] Letter no. prot. 1510/1, dated 14.09.2023, with the subject "Provision of response" (Prosecution Office at Durrës judicial first instance court of general jurisdiction) addresses AHC.
[13] Letter no. prot. 2605/1, dated 15.03.2023, with the subject "Provision of response" (Prosecution Office at Elbasan First Instance Court addresses AHC).
[14] Letter no. prot. 650, dated 05.12.2022, with the subject "Provision of response to your letter no. 561, dated 31.10.2022", (SPAK addresses AHC).

- On January 16, 2023, on the subjects of re-evaluation B.D. and Sh.S.[15] The requested information was made available to AHC within two days.[16]
- On January 16, 2023, on the subject of re-evaluation M.S.[17] The requested information was made available to AHC within four days.[18]
- On January 16, 2023, on the subject of re-evaluation A.Ll. The requested information was made available to AHC within four days.[19]
- On January 16, 2023, on the subjects of re-evaluation E.H. and S.H.[20] The requested information was made available within 11 days.[21]

Upon receipt of information from the prosecution offices of general jurisdiction and SPAK, AHC continued with requests for information from the First Instance Court and the Appeals Special Court for Corruption and Organized Crime, as these resulted to be the only courts with processes and/or decision-making on subjects of vetting. Concretely:

On January 17, 2023, AHC addressed a request for information to the first instance Special Court for Corruption and Organized Crime,[22] regarding to four judicial decisions for the four subjects of the vetting process A.LL., E.H., E.K. and S.H., as well as copies of decisions issued by this court in preliminary hearings, on requests by special prosecutors against indicted individuals (former judges and former prosecutors) M.S., B.D., and Sh.S. The requested information was made available to AHC and copies of these decisions have been analyzed in this research study.

On January 16, 2023, AHC addressed a request for information to the Appeals Special Court for Corruption and Organized Crime,[23] to provide judicial decisions issued by this court for three subjects of the vetting process A.LL., E.H., E.K. The requested information was made available for AHC electronically and the copies of these decisions have been analyzed in this research study. Meanwhile, this Court informed AHC that there had been no complaints during this period against decisions by the judge of the preliminary hearing sessions, which review the request of the prosecution office to send the case to court at the SCCOC of first instance.

Part of the monitoring methodology has also been obtaining official data from institutions of transitory re-evaluation, the Independent Qualification Commission (IQC) and the Special Appeals College (SAC), regarding the number of subjects that had been dismissed, resigned, the functions they held, number of subjects that these institutions filed criminal referrals for, pursuant to article 281/3 of the Criminal Procedure Code, whether there were cases when the prosecution offices were set into motion upon their own initiative to start criminal proceedings, given that the

[15] Letter no. prot. 23, dated16.01.2023 with the subject "Request for information and making documentation available" (AHC addresses special prosecutor D.M.)
[16] Letter no. prot. 687/1, dated 18.01.2023 with the subject "Submission of information and documentation" (Special prosecutor D.M. addresses AHC).
[17] Letter no. prot. 21, with the subject "Request for information and making copy of documentation available."
[18] Letter no. prot. 688/1, dated 20.01.2023.
[19] Response by email dated January 20, 2023, by the case prosecutor and with the official letter no. 686/1, dated 23.01.2023 by the head of SPAK (delegated to section head for signature).
[20] Letter no. prot. 22, with the subject "Request for information and making copy of documentation available."
[21] SPAK letter no. prot. 685, dated 27.01.2023, with the subject "Provision of Response"
[22] Letter no. prot. 35, with the subject "Request for information and making copy of documentation available."
[23] Letter no. prot. 29, with the subject "Request."

vetting process has a public character.[24] Furthermore, we have requested the exchange of correspondence between the bodies of the vetting process and the prosecution office, in the context of information regarding criminal referrals or the start of cases upon initiative. The IQC[25] responded partially to AHC's request for information while the SAC[26] responded fully (the provided data will be analyzed further).

d. Methodological Limitations

In conclusion, it is worth emphasizing that for the three parts of this research study, the completeness of the analyzed information represents also the limitation in its drafting. In the circumstances when not all prosecution offices or the IQC responded in a detailed manner with accurate data, and not having in the focus of the research the other acts of the investigative file of the criminal case or the acts of the file of the vetting bodies (where evidence for the subjects is administered), it may be said that the authors of this research study had a methodological limitation.

They did keep such an element in mind while studying the administered procedural acts and the formulation of findings and conclusions. In spite of this limitation, the Helsinki Committee took care to disassemble such data and appraise them in the given context.

[24] Letter no. prot. 532 and 532/1, dated October 26, 2022, with the subject "Request for information and making copy of documentation available," submitted by AHC for the Independent Qualification Commission and the Special Appeals College.
[25] Letter no. prot. 4058/1, dated 11.11.2022, with the subject "Provision of response to the request for information" (IQC addresses AHC)
[26] Letter no. prot. 1449/1, dated 07.11.2022, with the subject "Provision of response to the request for information" (SAC addresses AHC)

PART I
MONITORING OF HEARING SESSIONS[27]

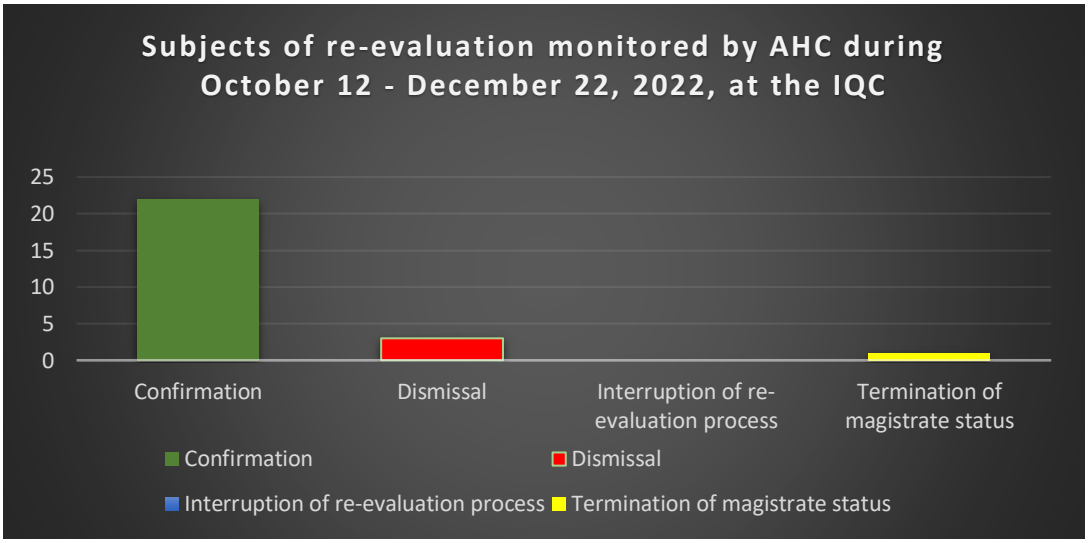
[27] October 12 – December 22, 2022

1. Monitoring of hearing sessions in the Independent Qualification Commission and the Special Appeals College

At the Independent Qualification Commission, during the period October 12 – December 22, 2022, a total of 22 subjects were confirmed in their posts, three subjects were dismissed, and one subject sought the termination of the status of magistrate. The subjects of re-evaluation, during the period of monitoring, consisted of 16 magistrates who were judges and 10 magistrates who were prosecutors.

Data from the monitoring indicate that the hearing sessions during this period, at the Independent Qualification Commission had a fast pace, with hearing sessions planned for almost every single day, and in not so few cases, even three hearing sessions on the same day.

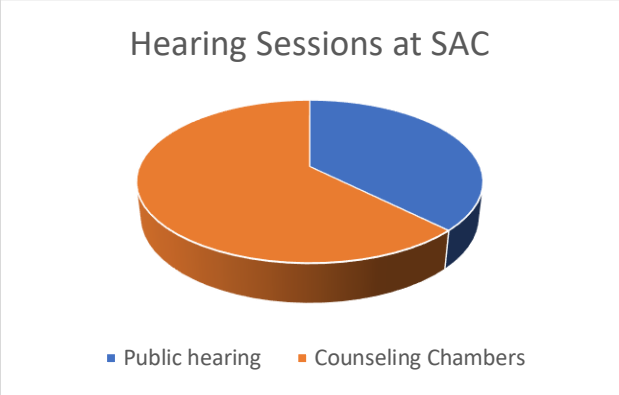
AHC finds that the momentum of hearing sessions in the past two months shows the devotion to conclude hearing sessions within 2022. The same pace of work is not highlighted for 2023, given that planning now consists of one to two hearing sessions per week.



A different situation appears at the Special Appeals College, whereby the pace of public hearing sessions is slower. This is also a result of the lower number of members, which enables the functioning at the same time of only one panel of judges and not more than that. During the period of monitoring by AHC, a total of six public hearing sessions were held for three subjects of re-evaluation, all three subjects monitored by AHC experts. For one of the re-evaluation sessions, there were a total of three hearing sessions after the panel of judges decided to start the judicial investigation of the case and accept, as evidence, the acts presented by the subject of re-evaluation. For another subject, it had been decided initially to adjudicate in the counseling chamber and then it was decided to move to a public hearing session.[28]

[28] Subject of re-evaluation H.M. The SAC had initially announced that it had decided in the counseling chamber to adjudicate the case in a public hearing session, based on article 51, paragraph 1, letter b, of law no. 49/2012 "On Administrative Courts and the adjudication of administrative disputes."

During the monitoring period, a total of 16 hearing sessions were held; of these, ten were held in counseling chambers and six were held in public hearing sessions.



Of the monitored subjects for which there appears to have been a public hearing during this period at the SAC, it results that two of them were confirmed in their posts by the Independent Qualification Commission and one of them was dismissed. For the subjects that were confirmed in their posts, the Public Commissioner exercised the right to file a complaint against the decision.[29] All three monitored subjects are judges. In all three instances, the SAC decided to uphold the earlier decision of the Independent Qualification Commission.

2. Hearing sessions

2.1. Hearing sessions held at the IQC: General evaluation and respect for solemnity

The IQC conducts the re-evaluation procedures for subjects pursuant to article 55 of the vetting law 84/2016. Taking into consideration the respect for the formal elements and the solemnity during the monitored hearing sessions, it has been found that the panel of judges takes care to explain the procedure of the hearing session and then continue with the introduction of the panel of judges, the secretary of the case, the international observers, and the introduction of the subject of re-evaluation, whereby there is an identification of his/her personal information and the subject is invited to register with the secretary. Afterwards, the session continues with the announcement of thanking the present members of the public and the media, and with making clear that it is not permitted to have video recordings of the session and that the use of electronic means should be done silently.

In his/her introductory remarks of each hearing session monitored by AHC, the subject of re-evaluation confirms obtaining the investigative case file in accordance with article 47 of law no. 84/2016 and articles 45-47 of the Administrative Procedure Code. Further on, the subject presents his/her explanations regarding the contents of the report on him/her. After this moment, the members of the panel of judges and the IMO representative have the right to address questions to the subject. At the end of the hearing session, the subject of re-evaluation is invited to express his/her opinion about the procedure that has been followed.

It is worth emphasizing that observers have not noticed delays in the start of judicial hearing sessions, finding the activity of the IQC very punctual in terms of respect for the time table. This finding also applies to the intermediate breaks with the panel of judges returning to the hearing session hall at the scheduled time. The average length of hearing sessions was between one and three hours and only two of them lasted more than three hours. The longest hearing session to have

[29] In keeping with paragraph 7, of article 55, of law no. 84/2016, the Public Commissioner, within 30 days from the conclusion of the hearing session, has the right to exercise the right to file a complaint.

been held was one for ten hours in one day. During this hearing session, the AHC observers noticed the inclination of the subject of re-evaluation to extend the length of the session, seeking subsequent breaks (not always accepted by the panel of judges), consultations with the legal representative outside the session hall for several minutes, and requests to postpone the session because the subject of re-evaluation felt tired.[30] As highlighted continuously for the SAC as well, the need for uninterrupted adjudication should not lead to the smooth conduct of the process and its effectiveness.

In general, hearing sessions were not postponed due to the absence of judges or of subjects of re-evaluation. Out of all monitored hearing sessions, there were three that were postponed. Due to the unpredicted extension of one hearing session planned for an earlier time, two other hearing sessions scheduled for that day were postponed.[31] In one case, a request was made to postpone the hearing session as the subject of re-evaluation presented to the HJC a request for the termination of the status of magistrate due to resignation,[32] as a result of early retirement, based on paragraph 1(a), article 64 of law n. 96/2016.

2.2 Hearing sessions at the SAC: General evaluation and respect for solemnity

The hearing sessions conducted at the SAC respect solemnity. At the SAC, the panel of judges consisting of five members, in accordance with article F of the Annex of the Constitution, opens the public hearing session with the verification of the parties in the judicial process, starting with the panel of judges, the Public Commissioner, the subject of re-evaluation, international observers, and the judicial secretary, as part of the normal procedure in the spirit of respect for transparency and the preservation of the solemnity of the hearing session.[33] Following this moment, the subject of re-evaluation and the PC confirm access to the judicial case file and the documents/deliberations of the litigating parties, in accordance with article 47 of law no. 84/2016 on vetting.

However, based on the observation of experts engaged in the observed hearing sessions, they found that at the SAC, the judicial case is not reported according to article 464 or 483 of the Criminal Procedure Code. Besides being a legal obligation, the ordinary public finds it difficult to comprehend the nature and procedural roles in this judicial process.

Intermediate breaks in the hearing session were frequent, but deadlines for starting it were not always respected. In one hearing session, observers noticed a 60-minute delay to restart that session. The panel of judges did not present the reasons for the delay in starting the judicial hearing sessions, while the official website of the SAC on the internet did not feature other hearing sessions scheduled for that date. For the subject of re-evaluation E.T., the judicial hearing session of 05.12.2022 lasted for more than five hours. During the process, observers notice a high volume of evidence presented by the subject of re-evaluation while the parties presented

[30] Hearing session for subject of re-evaluation A.Y.
[31] Hearing session for subject of re-evaluation A.Y. on 14.04.2022 lasted more, causing a delay in the two other hearing sessions scheduled for the two other subjects of re-evaluation S.P and R.K.
[32] The legal representative sought the interruption and postponement of the hearing session with the argument that the subject, on 05.11.2022, presented to the HJC the request for the termination of the magistrate's status through the presentation of his resignation, based on letter "a," paragraph 1, of article 64, of law no. 96/2016.
[33] Article 461 of the Civil Procedure Code.

their positions in such a way as to ensure interpretation into a foreign language for the IMO observer. During the two breaks held during this hearing session, the time for their restart was not respected by the panel of judges. Although the SAC respected the principle of uninterrupted adjudication, the need arises to preserve a balance with regard to the efficiency of the procedure.

At the hearing session held at the SAC for the subject of re-evaluation H.M., it was decided to make a break in the counseling chambers for one hour and thirty minutes. The AHC observer found this break to be excessive and inefficient, because in appearance, there appeared to be no new requests during the session. For this subject of re-evaluation, it was found that initially the SAC had decided that the hearing session be held in counseling chambers, but it was later decided that it be held publicly to correct the procedural violations of the IQC. The public hearing session provides more guarantees than the one in counseling chambers. Nevertheless, the observer reports that in this hearing session, the panel of judges did not inform concretely what the serious procedural violations were on the IQC decision and it did not report the case according to article 464 or 483 of the Civil Procedure Code. The defense lawyer of the subject of re-evaluation, at the start of his remarks, asked to be informed on the serious procedural violations of the IQC, which the SAC deemed as such. Based on the presentation of the subject of re-evaluation, it was claimed that the IQC decision was not signed by the case rapporteur and it was not argued by him according to article 308 of the Civil Procedure Code, the rapporteur in the IQC case had been dismissed earlier by the High Council of Justice and, in the sense of article 107-108 of the Administrative Procedure Code and article 123 of the CPC, the IQC decision is absolutely invalid, drawing a parallel with the judicial decision of the ECtHR "Cani vs. Albania," and the evaluation of assets by the IQC was done not in accordance with law no. 84/2016 and the evidence presented by the subject of re-evaluation. The subject of re-evaluation sought the administration of new evidence, the opening of the judicial investigation, and the sending back of the case. The panel of judges, after making an intermediate decision in counseling chambers, decided to reopen the judicial investigation and the administration of new evidence submitted by the subject of re-evaluation and the rejection of all other requests.

The AHC observer did not attend this hearing session in person, but was in the SAC corridor to monitor it from the audiovisual screen, which was adjacent to the counseling chambers of the SAC. The AHC observer noticed that the counseling chambers were visited by legal advisors while the panel of judges had withdrawn to make an intermediate decision in counseling chambers.[34]

In the same hearing session, the decision of the SAC, in which the College would conduct a new financial analysis on the subject of re-evaluation and whose result would be made known to the subject of re-evaluation with the announcement of the final verdict or the reasoned decision, was not very clear. Per the above, the defense lawyer of the subject asked why the results of the new financial analysis of the subject of re-evaluation would not be made known before the announcement of the verdict and be subjected to judicial deliberations. The panel of judges did not provide legal explanations but only confirmed its decision-making. The AHC observer, based on information obtained during the hearing session, deemed the need to respect

[34] Article 306 of the Civil Procedure Code stipulates: In the counseling chambers, when the case is being discussed and the decision is being drafted, only the judges who make up the panel of judges may remain. It is not allowed that the secretary of the hearing session, experts, or other persons enter and stay during the deliberation of the case.

the principle of contradictoriness, referring to article 19 and 20 of the CPC.[35]

In another hearing session for the subject of re-evaluation M.A., the planned session had been dedicated only to the presentation of closing arguments in writing by the Public Commissioner and the subject of re-evaluation. The panel of judges, upon the conclusion of remarks by the Public Commissioner, submitted questions, for which the PC sought additional time to respond and present new facts on. It is notable that, in the sense of articles 302-303 of the CPC and the preceding provisions, the panel of judges had concluded the judicial investigation earlier.

3. Data on the decision-making, dynamics, and transparency of the vetting process

The principle of transparency is a fundamental principle for the conduct of the transitory re-evaluation process for judges and prosecutors, as only through open and transparent procedures, the stakeholders and the public may be informed about the progress and results of this process whose major objective is the return of public trust in justice. For this reason, there are many guarantees in the regulatory framework of the entire process that aim at protecting strongly this fundamental principle of the process. In this context, transparency is secured not only through the opportunity to follow every hearing session for which third parties may have an interest, but also publishing every decision-making of the vetting bodies. Of great importance in this sense are the reasoned decisions of the SAC and the IQC, whereby the subject of re-evaluation finds the reasons for the relevant decision-making, as well as responses to his/her claims, but interested parties may also follow the positions held by the IQC and the SAC.

3.1. Publication of decisions by the IQC and SAC

With the exception of one case, the reasoned decisions of the IQC have been published for the subjects of re-evaluation within the envisaged legal deadline. Concretely, for prosecutor K.Sh., the decision was rendered on 12.12.2022 while the publication of the decision on the official website of the IQC took place on 21.02.2023 in violation of the 30-day deadline from the date of the hearing session, envisaged in article 55/7 of law no. 84/2016[36].

However, in accordance with article 55 (6) of law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors," the decision is announced at the end of the hearing session, the decision exclusively was announced on the same day as the hearing session for a subject of re-evaluation.[37] For all other subjects, the announcement of the decision has been made starting from the following day after the issuance of the verdict and maximally up to ten days after the conclusion of the

[35] Article 19 Parties should make known to one-another, at the right time, the means and facts on which they base their claims, the evidence they will be presenting, and the legal provisions they will refer to, in order to make it possible for each party to defend their interests in the adjudication.
Article 20 The court should pursue and seek the implementation of the principle of contradictoriness. It bases its decision only on the means, explanations, documents, and other evidence shown or brought by the parties, when the latter have been able to deliberate according to the principle of contradictoriness. Failure to know the new evidence produced by the Court would deny the party (subject of re-evaluation) the right to counter the new financial analysis.
[36] The law envisages that the written decision of the Independent Qualification Commission is made known to the subject of re-evaluation, the Public Commissioner, and international observers, within 30 days from the end of the hearing session. The decision shall be published on the official internet website of the Commission.
[37] Hearing session for announcement of decision on subject of re-evaluation E.B.

hearing session.

For the SAC, given that law no. 49/2012 "On the organization and functioning of administrative courts and the adjudication of administrative disputes" applies, the reasoned decision should be published within ten days from the date of the announcement.[38] AHC observers have not reported delays regarding respect for this deadline.

3.2. Publicity of the hearing session

In order to successfully realize this research study on the monitoring of the activity of vetting bodies, through its official correspondence with the IQC and SAC, AHC agreed to follow the public judicial hearing sessions through the observers that it had engaged.

Hearing sessions in the IQC are public.[39] The IQC has secured full transparency for all hearing sessions, which have been open for the ordinary public, by not creating any obstacles of any kind. In the hall where the hearing sessions were held, journalists, family members of the subject of re-evaluation, and anyone else interested were allowed. Nobody was asked to leave the room in any of the hearing sessions.

Meanwhile, in the hearing sessions in the SAC, AHC observers were not allowed in the room, although in its official letter, the SAC said that it remains available for fulfilling the mission.[40]

The SAC announces its public hearing sessions through the official internet website and the announcements notify the date, time, location, and the panel of judges. For this, the subject of re-evaluation is also notified by special notice.[41] The public has not been allowed to access the judicial hall. At the moment of the public's entry into the building, following security checks, observers are informed that the public does not have access to the room, but the hearing session may be monitored through audiovisual equipment (television set). The television screen is located in the corridor (not in a special room or hall of the SAC), where people from the administration, guards, third persons conducting services for the SAC went through. There are noises in the corridor; the audiovisual equipment often has problems with the audio, due also to the microphone or the low volume of the individual who has the floor. The screen provides a view of the entire hall of the hearing session, when one of the members of the panel of judges speaks, or the desk where the subject is when this subject has the floor. Based on information requested from the coordinator for the right to information, it was clarified that the SAC continues to respect anti-Covid measures; although these measures have been annulled by the Ministry of Health, the regulations have not yet been annulled by the Ministry of Justice and; they have sent an official letter about this but have no response yet.[42] This approach is senseless now that all other courts in

[38] Article 64 of the law no. 49/2012, "On the organization and functioning of the administrative courts and the adjudication of administrative disputes."
[39] In keeping with article 55, paragraph 2, of the law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania" and article 20 of the law "On the organization and functioning of administrative courts and the adjudication of administrative disputes."
[40] Letter no. 3910/1 prot., dated 24.10.2022 of the Special Appeals College.
[41] Announcement on the internet website of the SAC, in red and with the note Public Hearing Session.
[42] This is about SAC regulation 12.06.2020 "On the establishment of measures to restrict the spread of the Covid-19 infection during the exercise of judicial and administrative activity of the Special Appeals College,'' a regulation that

Albania conduct public judicial hearings without any restrictions. It is noticed that of the anti-Covid measures, only the presence of the public in the hall is prohibited as other measures, such as wearing masks, sanitizers, maintaining a distance between those present in the room, are not respected. In the circumstances when the SAC still applies anti-Covid measures, if the rooms currently used do not ensure the presence of the interested public in the hall, the SAC should assess the possibility to hold these hearing sessions in appropriate premises to secure maximal publicity of the hearing session.

In closing, it is found that the lack of presence of the public in the conduct of the judicial hearing session is in complete breach of the principles for a public hearing sessions and the legal provisions that regulate procedures at the SAC.[43] AHC has addressed the SAC with an official letter to recommend a revision of the regulation, whose provisions create premises for the violation of the principle of publicity, an important element of the right to due process.[44] In AHC's assessment, the live broadcast of SAC public hearings for the interested people does not guarantee the same level of access and, therefore, the possibility to understand the conduct of the process and the observation of the conduct of each party in the hearing session, as well as in cases when the public is present physically in the room. Regarding this letter, AHC has not received a response from the SAC.

3.3. Announcement of hearing sessions in the IQC

During the period under monitoring, the hearing sessions held at the IQC were frequent, with at least one hearing session scheduled for each day. Nevertheless, based on the careful monitoring of AHC observers, it has been noticed that the date and other data of the public hearing sessions were not announced for all subjects of re-evaluation, according to the same standard. It has been noticed that there has been a problem with not publishing the dates of hearing sessions at a reasonable time, given that the official website of the Independent Qualification Commission did not always function properly. These technical issues, as a result, lead to very tight deadlines for the hearing sessions, making it impossible or difficult for interested people to follow them. in some cases, it has been highlighted that the hearing sessions were published on the official website even after working hours, leading to their publication at late evening hours for hearing sessions planned for the following day.

This situation does not lead to any problems for the subject of re-evaluation as this subject, according to the report in the judicial hearing session, has received notification by email and there have never been reservations about the announcement of the date for holding the hearing session. However, this is a practice that obstructs third interested parties from following the hearing session as they need to have at least adequate time to be notified about the hearing sessions and make appropriate plans for following it.

---

apparently is still in force.

[43] Article 9 of the Regulation "On the establishment of measures for restricting the spread of the Covid-19 infection during the exercise of judicial and administrative activity of the Special Appeals College," as well as article 65, paragraph 1, of law no. 84/2016 'On the transitory re-evaluation of judges and prosecutors in the Republic of Albania;" article 20 and 51 of the law no. 49/2012 'On administrative courts and the adjudication of administrative disputes."

[44] By letter no. 637, dated 25.11.2022, AHC addressed the SAC, with the subject – "It is recommended to review of SAC regulation of 20.06.2020 that creates premises for the violation of the principle of publicity, an important element of the right to due process."

Compared to this situation, the publication of hearing sessions at the SAC has not displayed any similar issues. The hearing sessions, those public and those in counseling chambers, are announced a long time before they are held, maintaining the same standard for all subjects of re-evaluation.

3.4 Respect of ethics during hearing sessions

With regard to this element, the panel of judges did not find any violations or pressure of any kind by the panel of judges before, during, or after the conclusion of the hearing session at the IQC toward the subject of re-evaluation. However, in some cases, it was found that members of the panel of judges or even the IMO representative were constantly using their mobile phones. Although at the start of every hearing session, an announcement is made that it is not allowed to use mobile phones with voice, effectively, in some hearing sessions, we found them to be used in a somewhat lengthy manner, by the panel of judges itself, which represents a violation of the norms of ethics and the preservation of the solemnity of the process. The excessive and continued use of the mobile phone, or the display of other types of conduct, such as lack of interest during the hearing session, lack of questions to the subject of re-evaluation may be perceived as a display of prejudice toward the case. That is why it is important to respect these rules of ethics so that the seriousness of the hearing sessions, but also the process, is maintained.

For instance, during the hearing session for the subject of re-evaluation E.Gj., the observers noticed a repeated and inappropriate use of the mobile phone and exchange of paper notes by the head of the panel of judges. Making a decision that is not consulted with the two other members of the panel and without reasoning, for a five-minute break, demonstrated yet another example of unethical conduct.

With regard to the hearing sessions at the SAC, due to the monitoring of the hearing session through an audiovisual screen, outside the room, it is not possible to monitor the conduct or activity of the panel of judges. The audiovisual screen, when the subject was speaking, did not focus on the panel of judges. Based solely on the audiovisual means, the panel of judges demonstrated professional conduct, ready to investigate and listen to the subject. There were no displays of any prejudice or bias.[45]

4. Conditions of the room

4.1. Conditions of the room for the hearing sessions conducted at the IQC

For the hearing sessions at the IQC, only one room was used.[46] In spite of the limited number of premises available, the process was well-organized as there were no clashes or postponements of hearing sessions that had been planned earlier.[47] The dimensions of the room were considered sufficient for securing good access of all those present and the public. The room was deemed to have good lighting with air conditioning, which provides comfort and adequate standard for the conduct of the process, taking into consideration its adequate dimensions. The large dimensions

[45] Referring to article 5, paragraph 5, of law no. 84/2016 or article 14 of the Civil Procedure Code.
[46] Palace of Congresses, room B, floor 0
[47] This excludes the case of the marathon hearing session for subject of re-evaluation A.Y. that lasted over ten hours.

of the hall respected the principle of confidentiality, whereby the panel of judges, the international observer, the subject of re-evaluation, and his defense lawyer, were accommodated at adequate distance from one-another, respecting solemnity, ethics, and non-intimidation of the subject of re-evaluation. The panel of judges, the international observer, and the subject of re-evaluation were equipped with microphones, audio system, and everything they said was clearly heard. It is worth mentioning that for the questions raised by the international observer, there was no translation equipment in the hall for the public and only the subject of re-evaluation had the necessary headset to listen to interpretation. Except for one case when the head of the panel of judges asked the present staff that the AHC observer be equipped with the necessary headset during the questioning by the international observer.

4.2. Conditions of the hall for the hearing sessions held at the SAC

At the SAC, it was not possible to evaluate the conditions of the room because, as mentioned earlier, AHC observers were not allowed access to the room.

5. Due legal process

The bodies for the process of transitory re-evaluation of judges and prosecutors, pursuant to the mission established by the constitution and the law, necessarily should guarantee the treatment of the subjects of re-evaluation according to the principle of equality, lawfulness, proportionality, and certainly their right to due legal process; not only as an individual guarantee, but also as a guarantee for the process as a whole, to preserve its integrity and sustainability.

Overall, referring to the jurisprudence of the European Court of Human Rights (ECtHR), except for some findings and conclusions issued by this court, the procedures established by the constitutional and legal framework, and the respect for them by the vetting bodies, have passed the test of this court for compliance with procedural guarantees of article 6 of the ECHR.[48]

Due legal process is a broad concept, actually, but with simple language and will be understood as the opportunity of the party in process to be adjudicated by an independent and impartial body, to become familiar with the results of the investigation, to defend themselves and present all evidence they deem appropriate for protecting their arguments, and the issuance of a reasoned decision that addresses almost all requests presented by the party.

In fact, one of the issues raised by the subjects of re-evaluation that presented a complaint with the ECtHR was the one linked with the burden of proof. According to the evaluation of the decision of the ECtHR, the subjects of re-evaluation as petitioners claimed an unreasonable burden of proof that the process placed upon them, as it was not typical that in such procedures, the burden of proof would fall on the subject of re-evaluation or, as is the claim for burden of proof that dates far back in time.[49] Nevertheless, in spite of these claims, the ECtHR ultimately considered "…it is not

[48] See Xhoxhaj vs. Albania (application no. 15227/19, 9.2.2021), p. 336.

[49] See *Xhoxhaj vs. Albania* (application no. 15227/19, 9.2.2021), p. 345. See also the case Sevdari vs. Albania (application no. 40662/19, 13.3.2023), p. 130, in which the ECtHR reaffirms the conclusion in the Xhoxhaj case and emphasizes that the burden of proof and the evaluation of evidence is a matter that remains within the domain of the national law, "…refers to its findings in this case of Xhoxhaj that, in general, the burden of proof in procedures, according to the Vetting law, including the lack of rigorous time restrictions for the evaluation of assets for the

inherently arbitrary, for the purpose of the "civil" branch of article 6 § 1 of the Convention, that the burden of proof passed to the petitioner in the verification procedures, as the IQC had made available the preliminary findings that resulted from the conclusion of investigations and had given access to evidence found in the case file."[50]

Based on information secured by AHC observers, it results that the subjects of re-evaluation confirm at the start of the hearing session that they have become familiar with the composition of the IQC panel of judges and that they do not have any conflict of interest with the panel. The subjects have been guaranteed the rights envisaged in article 47[51] of law 84/2016, as well as articles 35-40 and articles 45-47 of the Administrative Procedure Code.[52] The subjects are notified regarding the case file and are given 15 days to become familiar with it and obtain a copy thereof. The subjects of re-evaluation present complementary documents, submit evidence while passing the burden of proof. The subjects are summoned in accordance with article 55 of law 84/2016 in a plenary session to make their presentation, and are given the right to be heard and to defend themselves through a representative. As a result, based on these findings, it is noticed that the procedure has been carried out in an orderly manner and it may be said that the subject's standards and guarantees for a right to due process have been respected.

5.1. Independence and impartiality

According to consolidated jurisprudence of the ECtHR, impartiality means the lack of prejudice or bias toward the parties. The existence of bias may be evaluated in several ways: *(i) the subjective test, where attention should be paid to the conviction and personal conduct of a given judge, whether he/she reflects prejudice on a given case; and (ii) the objective test, which requires the evaluation whether the panel of judges in general, in some aspects, such as the composition thereof, provide adequate guarantees to exclude any legitimate doubt regarding its impartiality.*[53] In this context, even the appearance (which reflects the conduct of members of the panel of judges) is important, or in other words *"justice should not only be made but it may also appear to be made."* What is important is the trust that the courts in a democratic society should inspire in the public.[54]

Based on the standards of the ECtHR jurisprudence, it is important that in the circumstances of the analysis of the activity of the bodies of the vetting process, we evaluate impartiality as a fundamental component of due legal process in the series of the above tests. This part of the research report focuses on the evaluation of the subjective test, pointing out actions or conduct by members of the panels of judges, that create the perception in third parties about respect or lack

evaluation of wealth, do not represent a violation of article 6 from the standpoint of the principle of legal certainty, but the implication of these provisions for the security and rights of the petitioner according to article 6 § 1 should be considered on a case by case basis."

[50] Xhoxhaj v. Albania, application no. 15227/19, 9.2.2021, p. 352.

[51] "The rights of the subject of re-evaluation during the process of re-evaluation are regulated according to definitions of articles 35-40 and articles 45-47 of the Administrative Procedure Code."

[52] These rights, according to the Administrative Procedure Code, include generally the right of the party to representation, the right to become familiar with the case file, the right to present opinions or explanations, etc.

[53] *Xhoxhaj v. Albania*, p. 292. See also *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII, and *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009

[54] Xhoxhaj v. Albania, p. 293.

thereof toward the principle of impartiality.

In general, based on data collected from the monitored hearing sessions, it results that the hearing session respects the necessary procedural elements that guarantee the impartiality of the panel of judges, although in isolated cases, observers have noticed also diversions from the implementation of these procedural rules that create the perception of favoring approaches toward certain subjects of re-evaluation.

As has been pointed out by the monitoring of the hearing sessions that have been conducted at the SAC, we may conclude that the same standard is upheld for respecting the procedural rights and, therefore, for guaranteeing the principle of independence and impartiality, as they respect the right to defense (article 22-23 of the CPC), the right to be heard (article 24 of the CPC), the right to present evidence (article 11-13 of the CPC), acceptance of procedural requests for administering new evidence by reopening the judicial investigation.[55] For these reasons, we judge that in this phase of the vetting process as well, the principle of contradictoriness is respected and there is no evident appearance of the panels of judges for violating the principle of impartiality.

5.2 Preliminary requests

Preliminary requests are those requests, for which the law requires the presentation before or within a deadline established in the preliminary phase of the process. They have to do with the procedural preconditions for the regularity of the adjudication or other elements envisaged in the law, such as for instance exclusion of a judge, a request to obtain new evidence through the expansion of the judicial investigation, etc.

During hearing sessions at the IQC, the cases of preliminary requests are scarce. For instance, there was a preliminary request by the legal representative of a subject who demanded the interruption and postponement of the hearing session with the argument that the subject of re-evaluation submitted to the HJC a request to terminate the status of magistrate,[56] for the purpose of giving the HJC the opportunity to review the request of the subject. According to the rapporteur of the case, the subject of re-evaluation had not submitted as evidence the request filed with the HJC although it had been asked of the subject, at the time of announcement of the conduct of the hearing session. The panel of judges emphasized that the request submitted by the subject of re-evaluation was unclear as in some cases it was referred to as "early retirement" and in other cases as "interruption due to health condition." Given that the subject of re-evaluation was not present in the room, it was decided to postpone the hearing session.

Another preliminary request was presented by the subject of re-evaluation K.Sh., who at the start of the hearing session, requested that the investigation be opened on the other two criteria as well, taking into consideration that the hearing session was being conducted solely on the criterion of assets. The hearing session was conducted solely on this criterion, while the panel of judges said

[55] According to article F, paragraph 3 of the Annex of the Constitution and articles 45 and 49 of law no. 84/2016.
[56] With the opening of the hearing session, the legal representative of P.F. requested the interruption and postponement of the hearing session with the argument that the subject of re-evaluation, three days earlier, had submitted to the HJC the request for the termination of the status of magistrate by presenting her resignation, based on letter "a," paragraph 1, of article 64 of law no. 96/2016.

that the two other criteria would also be taken into consideration before a decision was issued. On the day set for issuing its decision, the panel of judges decided to reopen the judicial investigation also on the two other criteria. After this decision-making, a second hearing session was held for this subject.

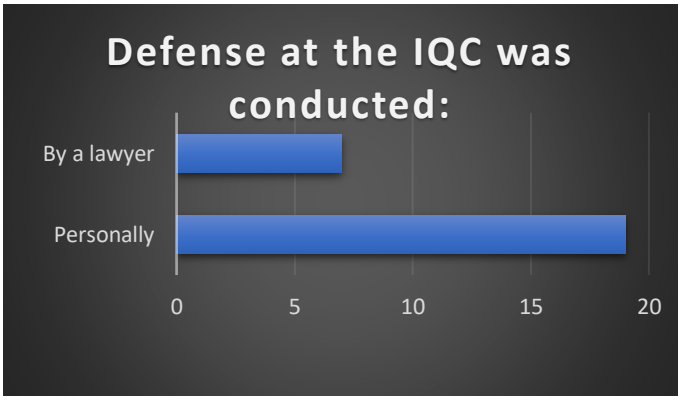
There were also preliminary requests before the IQC for excluding a member of the panel of judges. The subject of re-evaluation continuously requested the replacement of at least one judge in the panel of judges. He requested the replacement of the panel of judges several times saying that there was conflict of interest.[57] This conduct was reported by the observer as an attempt to continuously postpone the hearing session.

In judicial hearing sessions at the SAC, there was no request for excluding a judge, but the official website of the SAC does announce the replacement of one judge, upon request for exclusion by the subject of re-evaluation E.T., with the request being accepted unanimously; however, there was no reporting in the hearing session regarding this change.

5.3 Representation

Representation in a hearing session is one of the most important elements of due legal process, with the subject of re-evaluation, at the start of each hearing session, being asked by the head of the panel whether he/she exercised the right to appoint a legal representative.[58] In general, observers said that they found a tendency of the subjects of re-evaluation to defend themselves and only in seven hearing sessions, of the 26 monitored subjects, the subject of re-evaluation appeared with a representative that he/she had selected.

Referring to hearing sessions, the subjects were present themselves (together with the representative, when they had selected one such) throughout the duration of the hearing sessions. In only two instances, the subject of re-evaluation did not present him/herself in person. In one of these instances, the spouse of the subject of re-evaluation, a lawyer by profession, represented the subject of re-evaluation.



At the SAC, it was noticed that two of the monitored subjects opted to exercise defense personally, while one subject decided to exercise defense jointly with a legal representative of his choosing.

5.4 Interventions of the panel of judges

In the monitored subjects, the interventions of the panels of judges were considered minimal, allowing time for the subject of re-evaluation to present their defense, but without allowing them

[57] Subject of re-evaluation A.Y.
[58] In keeping with articles 33-35 of the law, they enjoy the right to a legal representative.

to repeat materials that had already been clarified through the presentations that he/she had deposited with the Commission.[59]

In one instance, based on the requests of the subject of re-evaluation to not interrupt his right to speak, the subject of re-evaluation reported his explanations in five hearing sessions.[60] Every intervention by the panel of judges to restrict the speech of the subject of re-evaluation was considered by the latter in contravention of article 6 of the ECHR. As noted by the observers, during the hearing session of this subject, in the first session, the rapporteur of the case was heard; in two following hearing sessions, the subject of re-evaluation was heard; in the fourth hearing session, the subject of re-evaluation requested the postponement of the session to present his final arguments, while he could have done so at the end of the third hearing session.[61]

In one case before the SAC, the head of the panel of judges asked that the subject of re-evaluation, in his remarks, only present new facts, different from those presented while passing the burden of proof (article 52, law no. 84/2016) in the phase of investigations, in the interest of administering time during the judicial hearing (article 55, law no. 84/2016). However, this request was deemed by the subject of re-evaluation as being in contravention of article six of the ECHR.

5.5 Standards of reasonable time (taking as reference the lottery of cases)

During the monitoring period, the subjects that faced their re-evaluation in the IQC were part of the drawing of lots carried out on December 16, 2019[62] and June 15, 2020.[63] As a result, the hearing sessions for them were conducted after more than 28 months. In accordance with the standards envisaged by the annex of the Constitution and law no. 84/2016, the length of time from the lottery to the hearing of the case, in the absence of any legal reasons for the length, is deemed to have surpassed the deadline for due legal process (article 3/1, law no. 49/2012). We emphasize that the reason for the dragging out of this investigation deadline beyond legal provisions has not been reasoned in any instance by the panel of judges. This would serve transparency before the public and better conclusions by the AHC observers.

A similar situation is noticed also at the SAC, whereby observers found that the monitored hearing sessions were held after 25 months since the drawing of lots. At the SAC, it is particularly important to review those cases for which the IQC has made a decision of dismissal from duty. In these cases, the unreasonable dragging out of the process leads to considerable financial effects. According to article 62 (1) of law no. 84/2016, *"The subject of re-evaluation, which exercised the right to complaint toward the Commission decision for the disciplinary measure of dismissal from office, is suspended ex lege from his/her office while awaiting the decision of the Appeals College. During the period of suspension, the subject of re-evaluation's right 75 percent of the salary, in keeping with article F, paragraph 5, of the Annex of the Constitution, is recognized."* Therefore, a faster pace of adjudications of cases is required by the

[59] Based on article 55/4 of law no. 84/2016
[60] Subject of re-evaluation A.Y.
[61] Hearing sessions for the subject of re-evaluation A.Y. were conducted on 12.12.2022, 13.12.2022. 14.12.2022, 16.12.2022 and 19.12.2022
[62] https://kpk.al/njoftim-per-shortin-e-dates-16-dhjetor-2019/19/
[63] https://kpk.al/njoftim-per-shortin-e-dates-15-qershor-2020/28/

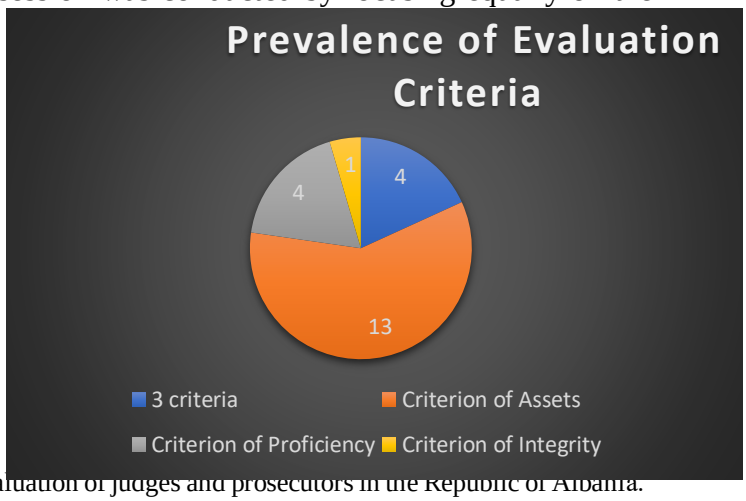
SAC, especially of those that have a financial impact. According to the law that regulates the activity of the SAC, namely law no. 84/2016, it is worth highlighting that for its organization and functioning, the norms of law no. 49/2012 "On administrative courts and the adjudication of administrative disputes," amended, apply. According to this law, adjudication at the SAC should conclude within a margin of 30 to 90 days from the day the appeal was filed with the SAC (referring to article 48(2) and 60(2), law no. 49/2012), depending on "equating" the standing of the SAC with the Administrative Court of Appeals or the High Court.

6. Criteria of Evaluation

According to law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania," the Commission and the Appeals College are the institutions that decide on the transitory evaluation of the subjects of re-evaluation. The decision is made based on one or several criteria, on the evaluation of all three criteria, or on the comprehensive evaluation of procedures.[64] Thus, according to law, even evaluation for only one criterion is considered sufficient for making a decision. In fact, in spite of earlier criticism by AHC in its monitoring reports, it is worth mentioning that this approach has been found to be appropriate also by ECtHR jurisprudence, which has confirmed, "*...is in accordance with the spirit of the process of vetting to have a limited degree of sanctions in case a subject fails to fulfill one or several of the criteria established in the vetting law."*[65]

In general, hearing sessions have been conducted based on all three criteria of the evaluation. An exception here is that of hearing sessions for two subjects of re-evaluation that were initially conducted only based on the criterion of assets due to the complexity of this component and then, when the session for announcing the decision was set, it was decided to reopen the investigation also on the two other criteria, that of the criterion of integrity and the criterion of proficiency.[66]

It should be kept in mind that in total, for all the conducted hearing sessions, the criterion of assets prevailed and took up most of the time due to the complexity it presents. Thirteen of the hearing sessions conducted in the IQC had a primary focus on the criterion of assets while in the other sessions, there were explanations also on the criterion of integrity as well as the proficiency criterion. For only four subjects, the hearing session was conducted by focusing equally on the three criteria.



As it pertains to the criterion of proficiency, during the hearing sessions, one case was pointed out, that of a subject of re-evaluation who was a judge, who was acquainted with a lawyer, where it was claimed that there were social relations of several years and that the judge adjudicated 122 decisions in which the lawyer was the representative of the parties in the process, evidently in conditions of

[64] Article 4(2), law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania."
[65] Nikëhasani v. Albania, p. 126.
[66] Hearing sessions for subjects of re-evaluation K.Sh. and T.H.

conflict of interest.[67] The subject of re-evaluation himself denied any contact aside from professional ones.

Cases have also been encountered in which the subject of re-evaluation possesses modest assets, and special significance is attached to the proficiency criterion. Meanwhile, when the subject does possess considerable assets, the criterion of proficiency takes less weight in the vetting process.

6.1. The criterion of assets

The criterion of assets generally takes up the biggest part of hearing sessions due to the inability of subjects of re-evaluation to justify certain assets or due to benefiting such assets while in conditions of conflict of interest. In some instances, it has been found that the estimation of the financial analysis by the IQC does not correspond with the results of reports presented by the supporting institutions (HIDAACI), thus often requesting that these reports be updated.

In general, the IQC concluded on the following violations with regard to the criterion of assets: inaccurate declaration in accordance with the law; insufficient financial resources to justify assets; fake declaration of assets; benefiting assets with a value lower than that of the market; inaccurate declaration about 'related person;' transactions that do not reflect the real market value (such as the sale of a vehicle by the subject of re-evaluation two years later than the date of purchase with a value three times higher than the purchase price).[68] The main findings of the IQC based on reporting in the hearing session regarding the assets possessed by the related person include:[69] failure to justify the assets of the spouse;[70] purchase of a vehicle by the daughter of the subject of re-evaluation at a price lower than the market value;[71] the selling person was a friend of the subject of re-evaluation and a party in a judicial process adjudicated by the subject of re-evaluation.

One of the strangest inaccuracies highlighted on this criterion has to do with the completion of the Vetting Declaration by the father of the subject of re-evaluation.[72]

Meanwhile in the SAC, in one of the observed cases, it results that the Public Commissioner requested a new financial analysis because of the creation of wealth by the father of the subject of re-evaluation.

6.2 Integrity criterion

Checking the integrity is conducted for the purpose of identifying subjects that have undergone the re-evaluation who may have inappropriate contacts with individuals involved in organized crime.[73]

---

[67] Subject of re-evaluation A.Y.
[68] Subject of re-evaluation R.K.
[69] Individual related to the subject of re-evaluation (spouse, co-habitant, children in adult age and any individual mentioned in the family certificate), who bears the responsibility to declare assets at the High Inspectorate.
[70] Subject of re-evaluation V.C.
[71] M.D.
[72] Subject of re-evaluation A.Y. said that the Vetting Declaration was filled out by his father for years in a row because he has poor writing skills.[72]
[73] Article Dh of the Annex of the Constitution.

The report submitted by the supporting institution such as the DSCI, aside from the investigation conducted by the IQC, has been decisive for the conclusions reached for this criterion.

Typical violations for the criterion of integrity appear to be as follows:

- Conflict of interest of the subject of re-evaluation with citizens on whom criminal charges have been filed, such as laundering of the proceeds of criminal acts (article 287 of the CC).
- Suspicions of involvement of family members of the subject of re-evaluation in unlawful activity.
- Use of vehicles of related individuals who are suspected of committing criminal offenses envisaged in articles 245 and 287 of the CC (in collaboration with others).
- Involvement in the investigation of two proceedings against a shareholding company where the spouse appeared to be employed.

6.3 Proficiency Criterion

The subjects of re-evaluation are subjected to the evaluation of the ethical and professional activity in accordance with this law and with the legislation that regulates the status of judges and prosecutors.[74] It is worth emphasizing that for this criterion, the subjects of re-evaluation were generally evaluated positively. This evaluation of proficiency mainly relies on the report prepared by the High Judicial Council and the High Prosecutorial Council, as supporting bodies.

Typical violations encountered in the criterion of proficiency include:

- Reversal of the court ruling by the appeals court for failure to notify the parties;
- Wrong qualification of the criminal act;
- Adjudication of cases in the conditions of conflict of interest (for instance: with the individual who rented the apartment to the judge).

During the hearing session of the subject of re-evaluation A.H., there was a discussion about a decision issued by the judge in the absence of the sued party, a decision that was appealed to the Appeals Court. The Appeals Court decided that the decision of the First Instance Court should be reversed and the case should be sent for retrial with a different panel of judges. The subject stated that he had respected the legal procedure but the sued party had refused to receive notification; in fact, the summons was signed in the presence of a witness. The head of the panel of judges at the IQC said that the Appeals Court had issued a just verdict. This position bears elements of the violation of the principle of impartiality, by prejudicing the case before a final decision has been made.

The use of the phrase *"The subject provided explanations that will be assessed by the panel of judges before a final decision is made"* has been mentioned in the largest part of denunciations by the public, not referring even in a summarized manner the nature of the denunciations, which would contribute to supporting the principle of the publicity of the hearing session.

[74] Referring to article E of the annex of the Constitution and article 40 of the law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania."

7. International Monitoring Operation

The international observer has a key role in the entire vetting process. The Constitution and particularly law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania" recognizes a special standing for the International Monitoring Operation and international observers in order for them to make a just evaluation of the case that has been drawn by lots, by making an individual evaluation and investigation of all the facts. According to the above-mentioned law, the international observer has the right to investigate fully all the criteria of evaluation for the subjects of re-evaluation, ask questions of the subject of re-evaluation during the hearing session, etc.[75]

During the hearing sessions that AHC observers monitored, they highlighted cases when the international observer directed questions at the subject of re-evaluation[76] just as there have been instances when the international observer did not take an active part in the hearing session. For 15 hearing sessions of the subjects of re-evaluation, the international observer was not present in the hearing session, respecting an ethical approach. In three hearing sessions, it was found that the international observer was active during the sessions, presenting and collecting denunciations for the subject of re-evaluation with regard to the control of the subject's proficiency or in terms of the questions directed at the subject.[77]

8. Involvement of the public – Denunciations by the Public

During the monitoring of hearing sessions, it results that the public proactively filed complaints and denunciations with the IQC, which were evaluated before making a decision, with the subject of re-evaluation having the possibility to provide additional explanations during the hearing session. Nevertheless, observers report that the superficial reporting and in many instances failure to report them has been passed with the expression, "the subject of re-evaluation has passed the burden of proof and his explanations will be taken into consideration by the panel of judges before making a decision."

Among the few instances when denunciations were reported briefly, it was noticed that they have to do mainly with:

- Dragging out of cases.
- Lack of reasoning.[78]
- Reasoning of decisions in contravention of the law.
- Adjudication without notifying the parties in the process.

AHC, in respect of the principle of transparency, publicity of the hearing session, and the spirit and subject of the law no. 84/2016, for the purpose of restoring public trust in the justice system, considers that the received denunciations, their nature and contents, need to be reported in a concise and understandable manner for participants in the room.

[75] See articles 33 (3), 45(1), 49(10), 55(3) of law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania"
[76] In the hearing session for A.Y.
[77] Hearing session for the subject of re-evaluation E.Sh.
[78] Citizen B.K. for the subject of re-evaluation A.J.

PART II

STUDY OF THE DECISION MAKING OF THE VETTING BODIES[79]

[79] Data provided by the IQC and the SAC during the period January – November 2022

1. Decisions of the IQC and SAC on the interruption/ cessation of vetting

1.1 Subjects that resigned/went into early retirement

Based on the analysis of the reviewed decision-making, it is found that the IQC decided to interrupt/cease the transitory re-evaluation of two subjects, based on their will to resign, in keeping with article G of the Annex of the Constitution and article 64 of the law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania."[80] Both these subjects had served as judges at the Judicial District Courts of Tirana and Durrës. In both these cases, it results that the re-evaluated subjects exercised the right of representation of their legal interests personally to the IQC.

Due to the nature of requests submitted by the re-evaluated subjects, observers noticed a series of defining elements that distinguish the factual circumstances from one another. In one of the cases, the panel of judges at the IQC, after conducting the investigation procedure, decided to close it down on its initiative solely for the criterion of assets, while the subject was notified electronically about the results of the investigation and his rights. Upon becoming familiar with the results of the administrative investigation, it results that the subject filed with the IQC the request to cease the procedure of her re-evaluation, because she had filed with the HJC the request for resignation, based on articles 64 and 65 of the law no. 96/2016.[81] With regard to the length of the re-evaluation process, the AHC observer considered that the decision-making by the HJC about declaring the end of the status of magistrate was made nine days ahead of the maximal deadline envisaged in the law. In reference to article 65, paragraph 2 of the law no. 96/2016, it is envisaged that the status of a magistrate ends *ipso jure*, automatically at the end of the following month from the submission of the resignation and the HJC announces this through a decision. Referring to this legal norm, it is highlighted that the status of magistrate ended on 31.08.2022, while the HJC declared it earlier, through another clause that has not been explained clearly. Pursuant to the mentioned legal provision, the HJC has as a competence the announcement and not the determination when the end of the status of a magistrate goes into effect, as this element is established by the law and it is an unavoidable legal consequence that is defined in time. The implementation of the third paragraph of the above provision appears to not have been explained adequately by the HJC. On the other hand, the decision-making of the IQC to interrupt the re-evaluation process, which is dated 16.09.2022, has been judged as being in accordance with the Constitution and the law.

Meanwhile, in the other case that is the subject of review, it results that the IQC notified the subject of re-evaluation about the start of the in-depth and comprehensive re-evaluation process according to article 45 of law no. 84/2016, but this process was not concluded with a clear result as the subject of re-evaluation notified the IQC that he would submit a request for the approval of early retirement and the termination of the status of a magistrate at the HJC. The responsible HAC observer analyzed that the short-listing of the case is dated 16.12.2019, while the communication about the

[80] Decision no. 515, dated 03.03.2022: https://kpk.al/z-sokol-tona-gjyqtar-prane-gjykates-se-rrethit-gjyqesor-tirane/50/
Decision no. 561, dated 16.09.2022: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/09/Vendim-Flora-Hasimi.pdf

[81] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/wp-content/uploads/2022/09/Vendim-Flora-Hasimi.pdf , p.2

right to hold a hearing session for the announcement of the decision on the subject, pursuant to article 55 of law no. 84/2016, is dated 15.02.2022. As a result, it is found that the IQC took almost two years, a relatively long time, in spite of the complexity of evidence and administered information. The length of the investigation beyond reasonable deadlines harms due legal process as a whole as the subjects of re-evaluation have the right to be investigated within reasonable deadlines, as part of due legal process, as delays in rendering justice have been found by the ECtHR to be in violation of article 6 of the ECHR.[82] In the instance in question, this length of time harms also the interest of the public and citizens in general, because if the main subjective reason for this judge is the resignation as a result of problems resulting from the vetting process, this situation bears the risk that violations committed earlier may have been continued by the subject also during the vetting process.

Based on the analysis of decision-making by the SAC, it is found that in two cases, it upheld the decisions of the IQC, which had decided to interrupt the re-evaluation process for the subjects of re-evaluation and the application of the juridical consequence envisaged by paragraph 2 of article G of the Annex of the Constitution. In one of the cases, the subject had exercised the duties of a prosecutor at the Tirana Judicial District Prosecution Office while the other case was that of a legal aide at the High Court.[83] Regarding the analysis on the level of guaranteeing the principle of the publicity of the hearing session, it has been found that in the first reviewed case, the panel of judges by an intermediate decision, based on article F, paragraph 3 of the Annex of the Constitution, article 4, paragraph 5 of law no. 84/2016 and article 51, paragraph 1, letter "b" of law no. 49/2012 decided the review of the case in a public judicial hearing session, after considering that the decision issued by the Commission on the subject in question is based on serious procedural violations and the factual situation declared wrongly and not fully. Meanwhile, in the other instance analyzed on subject S. Z., if has been found that the judicial hearing session was conducted in counseling chambers, without the presence of the sides, and not in a judicial public hearing session, in keeping with article 65 of law no. 84/2016.

The panel of judges of the SAC, in the case of finding serious procedural violations during the IQC review, has appreciated the claims of the subject of re-evaluation and held the same position as him. It was found that the claim of the subject stands that in his request to the HPC, he did not request resignation according to article 65 of law no. 96/2016, amended, and that the reference of the IQC to paragraph 7, page 2 of the decision no. 506, dated 31.01.2022, does not match the contents of the decision no. {***}, dated 14.01.2022, of the HPC "On the approval of early retirement and declaration of the end of the status of the prosecutor magistrate." In the preamble of the latter, it does not appear that there is any reference to article 65 of law no. 96/2016. Furthermore, it has been found that the situation of "early retirement in pension" is not the same as that of "resignation from office," but it is evaluated that the end of the status of magistrate due to the retirement in pension, envisaged by article 64, paragraph 1, letter "c" of law no. 96/2016, is not only linked with the termination of effectively exercising the duty in the sense of law no.

[82] See Botazzi v. Italy [GC], 1999, p. 22.

[83] Decision no. 13/2022 (JR) dated 16.05.2022; including minority opinion: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpa.al/ëp-content/uploads/2022/08/VENDIMI_PETRIT-BICA-_perfshire_pakicen_anonimizuar.pdf
Decision no. 21/2022 (JR) dated 17.06.2022; including minority opinion: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpa.al/wp-content/uploads/2022/09/Vendim_Selami_Zalli_perfshire_pakicen_anonimizuar.pdf

96/2016, but at the same time and inevitably also affects the process of re-evaluation pursuant to the Constitution and law no. 84/2016, by causing, as a consequence, the loss of the status as a subject of re-evaluation *ex officio* and the termination of the process of re-evaluation.

With regard to the administration of new evidence, in the case of the first analyzed subject, it has been found that in the sense of article 47 of law no. 49/2012, and article 49, paragraph 6, of law no. 84/2016, on the basis of which the College found that the submitted evidence fulfilled the criteria envisaged for enjoying the status of the evidence that may be taken under adjudication of the case in the appeals level, it was decided to administer as evidence also the forwarded acts of the complaint by the subject of re-evaluation. Meanwhile, in the second instance, the College judged that, referring to the complaint of the subject, the criteria are not fulfilled for adjudicating the case in a public judicial hearing session in the sense of article 51 of law no. 49/2012, and as a result, it did not request the administration of new evidence, and did not find procedural claims on the conduct of the hearing session at the IQC.

Referring to the analysis of the length of time of the review of the case from the moment when the case was decided in the lottery to the conduct of the first public hearing session, it results that the SAC took 3-4 months to conclude the relevant review, a time judged as appropriate, compared to other instance and in accordance with article 3 of the law no. 49/2012.

AHC observers appreciate the comprehensive and detailed analysis conducted by the College, but in the context of transparency, we point out the lack of the publication on the official website of the institution of the date when the reasoned decision-making was published.

In the analyzed decision-making, AHC observers did not find any publication of differing/parallel views of the IMO international observers, a legal right recognized by the lawmakers pursuant to article 55, paragraph 5, of the law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania." The publication of the reasoned intermediate decision-making in the case of the review of the subject P.B., which coincides in the methodology pursued by the College for the verification of acts administered by the Commission, besides guaranteeing the procedural right of transparency toward the subject of re-evaluation, is considered positive also in terms of unifying the practice on the termination of the status of the magistrate due to early retirement to pension.

Both decisions that were the subject of analysis were accompanied by the minority opinion, in respect of article 55, paragraph 5 of the law no. 84/2016, which address important matters that need to be considered. Respectively, in the case of the subject P.B., unlike the majority of the panel of judges, the minority member argued among other things, *"The institute of 'resignation' and the institute of 'retirement,' as rights of the magistrate that are regulated by different public basis and lead to different personal and financial consequences, may not be applied as analogous to one another, for the continuation or termination of the process of transitory re-evaluation. Both of these institutes cause the interruption of labor relations, but clearly differ from one another because "early retirement" is linked necessarily with two legal conditions: with the age, whereby the magistrate must have turned 60, and the exercise of the function of the magistrate for at least 30 years, which from the review of the acts in the case file, appear to be met by the subject of re-evaluation. Meanwhile, 'resignation' as an expression of only the subjective will of the magistrate,*

when still in labor relations, is not conditioned by special legal requirements. These two institutes, when not envisaged expressly in the Constitution or in the law, may not replace one another. The reading of article G of the Annex of the Constitution and the application as a legal basis of 'resignation' in cases of 'retirement,' when not clearly stipulated by the lawmakers, besides violating the principle of lawfulness envisaged by article 4 of the Administrative Procedure Code, thus leading to the subject of re-evaluation to be penalized without a law, runs counter to the Constitution, the laws in force, and the European Convention of Human Rights."[84]

The minority member in the case of subject S.Z. also held a differing opinion from the majority of the panel of judges. Due to the interruption of the functional duties of the subject of re-evaluation, upon entry into effect of law no. 84/2016, the minority member judges that the subject should not have been sanctioned according to article G of the Annex of the Constitution, because he asked the bodies responsible for vetting to be subjected to the process of re-evaluation for all three criteria. In order to open the process of re-evaluation, the minority member says that the IQC decision should have been reversed, according to article 66/1/c of the law no. 84/2016, because the Constitution, in article 179/b paragraph 4, gives the right to re-evaluation upon request, among others, also to former legal aides of the High Court.

1.2 Deadline of resignation and submission of resignation to the responsible body

One of the early problems of the vetting process had to do with resignation and the repercussions that this process would bring about vis-à-vis the transitory re-evaluation and if presented beyond the three-month deadline established by law no. 84/2016. According to the meaning of the law, resignations submitted within the deadline mentioned above exclude the subject of re-evaluation from the obligation to be subjected to the process of transitory re-evaluation. Restricting the resignation within the above-mentioned three-month deadline, has been found by the Constitutional Court in its decision no. 2/2017 to be in accordance with the Constitution and rejected the claims of the petitioner as being unfounded.[85] This means that these subjects do not fulfill and submit the documentation necessary for starting the re-evaluation process for them. meanwhile, resignations beyond this deadline, will be handled by the competent bodies according to the relevant regulating laws, but the IQC will continue with the procedure of investigating the criteria for which the subject in question submitted documentation according to the requirements of the law. The IQC, in the cases of resignations beyond the above-mentioned deadline, made the decision to interrupt the re-evaluation process. Meanwhile, it seems that a somewhat contradictory legal situation is being created as the spirit of the above provision is such that it seeks to subject to the process of re-evaluation all the judges and prosecutors who did not resign within the deadline of 31.3.2017. On the other hand, even the argument that the process makes sense toward individuals who hold the status of a judge or a prosecutor is not unfounded and the resignation, during the realization of this process, leaves the activity of the Commission for this concrete case without a subject. Nevertheless, the purpose for which this entire reform was undertaken was to verify all justice functionaries, with regard to the three criteria and their resignation, upon entry into effect of the law, and the expiry of the deadline that article 56 of law no. 84/2016 should not need to affect the process of verification of subjects who had the status of a judge/prosecutor.

[84] https://kpa.al/wp-content/uploads/2022/08/VENDIMI_PETRIT-BICA-_perfshire_pakicen_anonimizuar.pdf
[85] Decision of the Constitutional Court 2/2017, p. 69-70.

In any case, the above discussion is only of a theoretical nature as the jurisprudence of the SAC has upheld the position taken by the IQC.

The seven subjects of re-evaluation who were part of the decisions studied during the period that is subject of research study submitted the request to resign from the status of magistrate beyond the above-mentioned deadline. In keeping with methodology pursued for the study of these decisions, it is found that the subjects of re-evaluation submitted the respective requests for resignation with the relevant Councils (whether HJC or HPC). Based on the analysis of these decisions, the majority of them do not describe the causes for which the requests for resignation are based, but only in the case of the subject of re-evaluation B.Q., it is highlighted that the reasons for the resignation from the status of magistrate result to be the growing of workload, completion of seniority at work for over 35 years, and poor health conditions.[86]

Based on an analysis of article 65 of law no. 96/2016, it results that the lawmaker envisaged two situations for the submission of resignation by magistrates: (i) unmotivated resignation, and (ii) motivated resignation. In the first instance, the magistrate presents the resignation and does not notify or justify the submitted resignation. In this case, the resignation yields its effects at the end of the following month, from the day when the Council receives the written declaration of the resignation. The termination of the status of magistrate is declared by decision of the Council no later than two weeks from the termination of the status. So, in this situation, the relevant Council simply states the end of the status, according to the deadline established by the law itself. Meanwhile, in the second case, that of the motivated resignation, the magistrate needs to bring before the relevant Council the reasons for the resignation and, if this is approved by the Council, then the deadline for the end of the status is not the above-mentioned one, but according to the request of the magistrate (if approved by the HJC) may be before this moment.

Furthermore, beyond the above-mentioned legal deadline (31.03.2017) it is found that the request for resignation was submitted by one of the subjects whose process of re-evaluation, due to the appeal, has been reviewed by the SAC. In this case, it has been found that the subject of re-evaluation, upon his own will, has lost the status due to the resignation from the post he held and, therefore, the procedure that was going to be held on him *ex officio*, would need to be interrupted and accompanied with the application of the consequences (prohibitions) of article G of the Annex of the Constitution.

In all of the analyzed decisions, the bodies responsible for the vetting process were careful in determining in the summary of the decision the sanction envisaged in paragraph 2 of article G of the Annex of the Constitution, which envisages the prohibition of the appointment of the resigned subject for a 15-year period as a judge or prosecutor of any level, member of the High Judicial Council or High Prosecutorial Council, High Justice Inspector, or General Prosecutor.

1.3 Analysis of the contents of the decisions to interrupt the process of vetting and that of suspension from office

Decisions of the IQC and the SAC that have been the subject of the study that have been analyzed

[86] Paragraph 6, Decision no. 562, dated 16.09.2022, link: https://kpk.al/ëp-content/uploads/2022/09/Vendim-Bedri-Qori.pdf

by AHC experts contain the formal elements required by article 57 of law no. 84/2016. Furthermore, the bodies responsible for the vetting process are deemed to have reflected in the decision the detailed arguments for the procedure followed by the HJC or the HPC in reviewing the request for resignation from the status of a magistrate. Meanwhile, it has been found that pursuant to article 55 of law no. 84/2016, the subjects of re-evaluation that have exercised this right have been guaranteed the possibility to be heard in a hearing session if they are to exercise the right to a complaint against the decision issued by the HJC or HPC. In parallel, the bodies responsible for the vetting process have sought information from the Administrative Court of Appeals about the possibility of filing a complaint against the confirming decision-making of the new governing bodies of the justice system.

Regarding the sole intermediate decision-making through which the IQC has decided in accordance with article 58, paragraph 1, letter "b" of law no. 84/2016, for the prosecutor at the Shkodra Judicial District Prosecution Office M.F., AHC observers encountered difficulties for concluding with evaluations regarding the conduct of the panel of judges, due to the lack of access to the relevant case file. In this concrete instance, it is highlighted that the argument for the decision-making of the panel of judges is generally based on the evaluation of solely the proficiency criterion, without arguing in any case whether the reach of the administrative investigation also extended on the other two criteria envisaged in articles 4, paragraph 1, 30 and onward and 34 onward of law no. 84/2016. Besides, in the argued decision-making, the Commission in a generalizing manner refers that the re-evaluation concluded on all three criteria,[87] but in fact no data is reflected on the analysis of the above-mentioned criteria, as lacking. In this conclusion, the experts keep in mind the analogous case of the subject of re-evaluation E.G., whereby in spite of the IQC decision based on article 60 of law no. 84/2016 due to the findings encountered in the re-evaluation of proficiency, the panel of judges argued also for the other two re-evaluation criteria.[88] Furthermore, the SAC, through its decision-making on the latter case, did not find the practice of the IQC as wrong or unfounded in the law, with regard to the extension of the investigation and the reflection in the decision-making also of the findings on the two other criteria of re-evaluation.[89]

We judge that the lack of unification of the practice that continues to exist, in sporadic cases, by the bodies responsible for the vetting process, creates premises for violation of principles of equality before the law for the subjects of re-evaluation, and of guaranteeing due legal process.

2. Detailed analysis of decision-making of the IQC and SAC

2.1 Guaranteeing the principle of transparency through the publication of decisions on the official internet websites of the Vetting Institutions

In article 55 of law no. 84/2016, the lawmaker envisaged the obligation of the bodies responsible for the vetting process to publish decisions on their official internet websites. An analysis of the

[87] Paragraph 15, Decision no. 6, dated 13.05.2022, link: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/05/Vendim-M.Frasheri.pdf

[88] Decision no. 187, dated 24.07.2019, link: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2019/10/Vendim-Elvin-Gokaj.pdf

[89] Decision no. 31, dated 18.11.2020, link: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpa.al/ëp-content/uploads/2021/02/Vendimi_Elvin_Gokaj.pdf

decisions selected as a sample indicates that the responsible bodies in every case respected the process of publication of such decision-making, and in the cases of the SAC, also accompanied by the opinion of the relevant minority members.

However, in terms of transparency, it is worth highlighting that the official website of the IQC is better structured regarding the manner of publication of decision-making, reflecting the number, date, name of the subject, and his/her post. Meanwhile, the website of the College classifies decision-making under the general category of 're-evaluation jurisdiction' or 'disciplinary jurisdiction,' then grouped by year of announcement of the decision and identifying the respective subject of re-evaluation.

Also, observers notice from the monitoring of decision-making on the official website of the SAC that it is not possible to find the exact date of when the reasoned decision was published in a public manner.

In general, the published decisions do not reflect intermediate decisions made by the panels of judges during the administrative process. And even in those cases when intermediate decisions have been cited in the final decisions, data about them are scarce.[90]
Meanwhile, there have also been sporadic cases when the bodies responsible for the vetting process have cited in a general manner intermediate decisions in their decision making, regarding conflict of interest or lack thereof of members of the panel of judges; of the administration of evidence; etc.[91]

2.2 Respect for the principles of legal arms and that of contradictoriness

The constitutional jurisprudence regarding the principle of the equality of legal arms, it has been emphasized that every party in the judicial process should have equal means to present their case, through arguments and evidence in defense of its own interests. If there was no equality of legal arms in the adjudication, then the arguments of one side would prevail over the arguments of the other party and, as a result, the right to participate in the adjudication would be stripped of its constitutional function of guaranteeing due legal process.[92]

In their analysis of the level of guarantee for this principle, AHC observers have found that in the majority of the published reasoned decision-making, it has been elaborated whether the subjects of re-evaluation have been guaranteed access to documentation by the bodies responsible for the vetting process, but there have been some sporadic cases when it has not been possible for the observers to find out on how the followed procedure was conducted.[93]

---

[90] Decision no. 552, dated 14.07.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/09/Vendim-Riselda-Fishta.pdf
Concretely, during the re-evaluation of the subject, the IQC refers to the intermediate decision no. 3, dated 8.7.2021 and 14.7.2021, both of which refer to the evaluation of the criterion of proficiency, but provide no further information about it.
[91] Decision no. 576, dated 20.10.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/11/Enerjeta-Shehaj-Vendim.pdf
[92] See decisions no. 8, dated 23.02.2021; no. 34, dated 29.05.2015 of the Constitutional Court.
[93] Decision no. 511, dated 18.02.2022, link: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/02/Vendim-Roland-Hysi-.pdf

Meanwhile, in another case reviewed by the SAC, the panel of judges made known to the subject of re-evaluation F.I. the opinion issued by the international observer, although this opinion was presented in the procedural phase in which the panel of judges had withdrawn in the counseling chambers to make a final decision. The panel of judges, based on article 315 of the Civil Procedure Code, decided to revoke the intermediate decision for concluding the judicial investigation and its reopening, in order to take under review in the adjudication of the case the written opinion of the international observer and to make it available to the subject of re-evaluation.[94]

The decision-making of the IQC during the re-evaluation of the subject E.C. is considered the optimal standard by the AHC observers due to the evaluating analysis that the panel of judges conducted with regard to the principle of "effective participation" and the principle of "equality of legal arms," as part of a fair adjudication and due legal process, based on article 5 of the ECHR, as the subject of re-evaluation was not granted access to the evidence and the facts identified by the DSCI regarding the criterion of "integrity."[95]

After analyzing the studied decision-making, the observers did not highlight in any instance an evaluation by the bodies responsible for the vetting process on the public nature of the decisions, guaranteed among others through the inclusivity of the interested subjects, or the existence of obstacles or difficulties that get in the way of the public's participation in the planned hearing session.

With regard to the principle of contradictoriness, AHC observers note that it had been possible en masse to respect this principle by the panels of judges of the vetting bodies, in the cases of subjects of re-evaluation, whose cases have been reviewed in a hearing session. Evaluating the substantial interconnection between this principle and the institute of the burden of evidence, observers find that both the Commission and the College guaranteed for the subjects of re-evaluation their right to present requests, including those whose subject is to obtain new evidence.

The analysis of the sample of decisions identified different cases, such as that of subject E.C., in which the IQC appears to have reflected in the decision-making, in an unprocessed manner, the requests and claims of the subject, while the analysis conducted by the responsible body for the re-evaluation appears more detailed and reasoned from a legal standpoint. Compared to this approach, observers found a supporting spirit by the IQC panel of judges, as in the case of the analysis of the decision-making for the subject A.B.[96] In the observer's perception, it was notable how the arguments presented by the subject were cited, being edited in a positive manner and formulated clearly and fully by the IQC.

Meanwhile, there have also been cases such as the instance of the subject E.B., where several requests submitted by the subject of re-evaluation were rejected both for obtaining new evidence

[94] Decision no. 10/2022 (JR), dated 14.04.2022; including minority opinions, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpa.al/wp-content/uploads/2022/06/Vendim-dhe-mendimet-pakice_Fatri_Islamaj_anonimizuar.pdf

[95] Decision no. 509, dated 17.02.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/05/Vendim-Edlira-Cufi.pdf

[96] Decision no. 536, dated 02.06.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/07/Vendim-Alma-Bramo.pdf

or for summoning witnesses in the review, the conduct of a new financial analysis, and the finding of a credible level for the criterion of assets and the start of administrative investigation for all three criteria of the re-evaluation.[97] The decision-making of the Commission is characterized by the lack of a legal basis or of reasons where the rejection of intermediate requests submitted by the subject during the process against him is based.

2.4 Impact of public's denunciations in the decision-making of the vetting bodies

Based on the analysis of the decisions that are the subject of the study, AHC observers find that they reflect en masse the number of denunciations presented by the public, the approach of the panels of judges reviewing them, and the evaluation of the bodies responsible for the vetting process of the claims of the subject of re-evaluation. In general, citizens claimed violation of elements of due legal process by the subjects of re-evaluation. Furthermore, there were also cases when the decision does not refer to denunciations by the public, or when the subject of these denunciations has been touched upon superficially solely in the opinion of the minority published as part of the decision.

Concretely, in the case of the subject of re-evaluation F.I.[98] the minority member of the panel of judges of the College makes it known that a minimum of 25 denunciations were received for the subject of re-evaluation, some of which also public. It was found that the subject of re-evaluation adjudicated in (at least) three cases while in conditions of conflict of interest. It is worth emphasizing that the panel of judges of the College evaluated these issues as without weight in the re-evaluation of the subject, although in one of them, the subject was aware of the judicial conflict of his brother with the state institution that was one of the parties in the case. According to the panel of judges, since the "parties did not seek his exclusion" or since the subject could not have been aware of the interest relations between his brother and a legal person, the adjudications in conditions of conflict of interest do not represent cause of dismissal. In spite of the weight that these denunciations have, in the context of transparency, of increasing public's trust in the justice system, and legitimizing this process in the eyes of the public, it is our opinion that the denunciations received from the public for the subject of re-evaluation should be analyzed in the decision, while maintaining the anonymity of the denouncers.

In the re-valuation process for the subject E.B., AHC observers found a complete analysis by the IQC during the review of two denunciations submitted by the public, which claim violation of procedural and material legal rules. Concretely, the first case addresses the lack of timely communication of the decision-making of the prosecution office to not start criminal proceedings, while the second case has to do with the claim that the subject of re-evaluation decided to drop the criminal case, in spite of decision-making by the courts about the continuation of the investigation.[99]

In the case of subject A.A., the IQC faced a high number of 18 denunciations submitted by the

[97] Decision no. 516, dated 03.03.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/wp-content/uploads/2022/04/Vendimi-E.-Beqiri-.pdf
[98] Decision no. 10/2022 (JR) dated 14.04.2022; including the minority opinion
[99] Decision no. 524, dated 08.04.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/wp-content/uploads/2022/05/Vendim-Elfrida-Bregova.pdf

public, of different natures, such as claims of corrupt actions and dragging out the judicial process by the subject or procedural violations.[100] These denunciations have not been taken into consideration en masse by the IQC, which has argued that they have to do with the phase of execution of the decision and not directly with the subject, for lack of evidence or facts on how founded the denunciation is. In the cases of some denunciations that target the dragging out of judicial processes, the IQC appears to have demonstrated flexibility in its arguments; in one instance, although according to the HCJ evaluation system the review of the case should have taken four months, in fact had taken nine months and 16 days due to the postponement of hearing sessions upon request of the denouncer/defense lawyer and the caseload of the subject of re-evaluation during that period. Meanwhile, in the other case focusing on the review of a request for the verification of fact, it results that the process lasted two years and five months, while according to the HCJ evaluation system, it should have been reviewed in six months. In spite of this great disproportionality in time, this dragging out has been considered objectively justified by the Commission due to the caseload of the subject of re-evaluation during that period of time.

In this regard, the report points out the lack of a unified standard on the evaluation and reflection of denunciations submitted by the public on the subjects of re-evaluation. From the above findings, it results that the practice varies, thus creating the perception of differentiated treatment among the subjects of re-evaluation.

2.5 The proactive role of the IMO and the handling of denunciations presented by their representatives

Based on the nature of recognized constitutional competences, the scope of work of the IMO extends on the monitoring and oversight of the entire process, while addressing the written findings and recommendations for the bodies responsible for the vetting process aims at guaranteeing international standards toward the subjects of re-evaluation and preserving the integrity and inviolability of the process as a whole.

In the contents of the studied decisions, AHC observers have identified the reflection of identifying data of IMO representatives, while concrete information on the contributions of the international observer have not always been reflected in the transcript of the decision.

The decision of the IQC on the subject of re-evaluation E.Sh. reflects findings and guidance by the international observer, in the sense of article 49, paragraph 11 of law no. 84/2016. More concretely, *"The International Monitoring Operation, by its letter no. *** prot., dated 22.9.2021, based on article B, paragraph 3 of the Annex of the Constitution of the Republic of Albania, on article 49, paragraph 11 of the special law no. 84/2016, has submitted to the Commission the opinion on the subject, requesting that it verify or check the files of decisions by the subject that have to do with the denunciations by SH.Ç, February 2019; N.M, June 2019; N.Sh., November 2019; V.A, September 2020. The analysis of these case files, the opinion notes, is important, for evaluating the professional capabilities of the subject of re-evaluation"*[101]

[100] Decision no. 522, dated 01.04.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/p-content/uploads/2022/04/Vendim-Arapi.pdf

[101] Paragraph 16.1, p. 23 of decision no. 567, dated 20.10.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/11/Enerjeta-Shehaj-

Furthermore, based on the study of the decision on subject E.I., there are references to data where a proactive role by the international observer is noticed, in addressing recommendations and findings for all three criteria of re-evaluation, referring to article B of the Annex of the Constitution and article 45 of law no. 84/2016, reflected by addressing the seven findings and six opinions regarding all three criteria of re-evaluation.[102] In this decision, it is noticed that the denunciations by the public are not reflected in a separate section, but because they are channeled or brought by the international observer, they have been handled as part of the findings of the IMO with regard to the evaluation of the criterion of integrity of the subject of re-evaluation.

Also, in the decision on subject E.C., the IQC reflected in its decision the opinion of the international observer, which presents the criminal offenses for which citizen A.H. and N.H. had been convicted in Italy, and which are part of the list of criminal offenses envisaged in paragraphs 8 and 15 of article 3 of the law no. 84/2016, according to which the individual is considered a person involved in organized crime.[103] This decision does not reflect the final recommendation provided by the IMO.

Keeping in mind the independence of the opinions of the IMO international observers, we bring to attention the case of subject Zh.P., who held the position of inspector at the HCJ, for which the IMO concluded that the subject should not have been subjected to the re-evaluation process. Furthermore, the IMO international observer states that pursuant to articles 165, paragraph 4 of law no. 96/2016 and 42, paragraph 4 of law no. 84/2016, the subject of re-evaluation should have been subjected also to testing at the School of Magistrates, given that he did not have the status of a magistrate. Even the Commission, in its analysis, reaches the same conclusion, but later ultimately judged that, considering the subjective side of the good faith of the subject to preserve the status of magistrate confirmed also by a decision of the HJC in 2019, did not consider the fact that a test was not conducted at the School of Magistrates as a cause for insufficiency of her professional evaluation.

2.6 Respect for the principle of proportionality

Regarding the principle of proportionality, the ECtHR emphasizes that this principle, in essence, is an '*alter ego'* or a variant of the principle of effective defense and has had comprehensive impact on its practice regarding the implementation of the ECHR, in cases when it had to determine the relationship between different concepts, norms, interests, and rights that the Convention envisages.[104]

Vendim.pdf

[102] Decision no. 11/2022, (JR) dated 27.04.2022 link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpa.al/wp-content/uploads/2022/06/Vendim_Elizabeta_Imeraj_anonimizuar.pdf

[103] P. 25 of decision no. 509, dated 17.02.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/05/Vendim-Edlira-Cufi.pdf

[104] M.A. Eissen, "The Principle of Proportionality in the Case-Law of the European Court of Human Rights" in R.St.J. Macdonald *et al.* (eds.), *op. cit.*, pp.125-146; J. McBride, "Proportionality and the European Convention on Human Rights" in E. Ellis (ed.), *The Principle of Proportionality in the Laws of Europe* (Oxford: Hart Publishing, 1999) 23-35.

Mainly in the analysis of the evaluation of assets, AHC observers concluded that, referring to the reporting in the hearing session, given that some of the subjects of re-evaluation possess modest assets, the Commission devoted special significance to the evaluation of the criterion of proficiency.

Seen from a comparative standpoint to previous instances, when the subjects had considerable assets, the perception is created that the criterion of proficiency or of integrity, which are treated more superficially, are not devoted adequate attention. Time after time, it is noticed that the analysis of the Commission during the evaluation of different criteria reflects a different approach toward the test of proportionality, based on the relevant volumes of the pertinent criterion that is the subject being evaluated.[105]

A lack of proportionality between the decision-making of the Commission and the findings referred through the reports of supporting bodies, such as the DSCI and HIDAACI, has been encountered as in the case of re-evaluation of the subject T.B. In spite of the results of these reports, the Commission, based on the right granted to it by article 4(2), chapter VII of law no. 84/2016, as well as the decision of the Constitutional Court, carried out a real process of control that is not based on nor is necessitated by the conclusions presented by the supporting bodies. Nevertheless, in this case, when the Commission takes upon itself a real control, it should have analyzed meticulously all of the data and reach a real analysis that does not appear to have been such if we refer to the citation from the decision, *"In any way, it is worth emphasizing that this is an analysis with reservation, as long as it does not result that for these two years, the profit tax was prepaid and moreover, there may not be an accurate and objective estimate of the incomes and expenses made by the commercial subject until the dates when the payments were made, by installments, for paying off the entire price of the asset that is the subject of evaluation."*[106] The situation would be on the boundaries of what is acceptable if we had to do with disputable results in the case of one criterion of evaluation. The fact that the Commission and the supporting bodies, for all three criteria, came to opposite investigation results raises question marks in the eyes of an external and impartial observer.

The principle of proportionality has been handled also in the case of the parallel opinion drafted by the head of the panel of judges of the IQC, in the decision-making for the subject of re-evaluation A.L., at the conclusion of which, it was decided to dismiss him from office. In the parallel opinion, it is argued that the use of article four, paragraph two of law no. 84/2016 is not proportional, in the sense of decision-making according to article 61, paragraph three and five of law no. 84/2016. More concretely, *"If the same facts were to be reused for a second requalification, this time, in support also of application of paragraph five of this provision, then we would be in front of unfair and double penalization of the subject, based on the same factual circumstances. This would be counter to the principle of proportionality as it deforms the balance that should be maintained and be always present in a just rapport between the cause and effect, and thus, we would have a doubling of the effect for the same cause or violation. Furthermore, this approach would not be in accordance with the jurisprudence of the Special Appeals College*

[105] Decision no. 577, dated 21.10.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/11/Vendim-L.-Kole-1.pdf
[106] Decision no. 520, dated 30.03.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/04/Vendim-Taulant-Banushi.pdf

either, which has clarified the inability for a double qualification on the findings and facts proven along the administrative investigation."[107]

In fact, the issue of the application of the principle of proportionality has been raised also in front of the ECtHR and more concretely the latter has spoken on proportionality in the case *Sevdari v. Albania.* In this case, the ECtHR admits that, "*...dismissal from duty of judges and prosecutors who have been appointed for life is a serious sanction, if not the most severe disciplinary measure that may be assigned to an individual. Assigning such a measure that has a negative impact on the private life of an individual requires the evaluation of clear evidence that is linked the individua's ethics, integrity, and proficiency."*[108] At the same time, the ECtHR emphasizes that although fiscal evasion is a serious matter, for the purpose of the vetting procedures of the petitioner, it is important that the amount of spousal incomes, for which the payment of respective tax was not proven, represented a very small percentage of the total of spousal incomes during the period of evaluation and it was also important that no problems were found with the spouse's incomes secured inside the country for several years in a row.[109] Therefore, the ECtHR concludes that based mainly on the fact that the petitioner was unable to prove that her husband had paid the tax on some of his income from legitimate activity conducted two decades earlier and in the absence of any indicator of mistrust or intentional violation of norms by the petitioner, the measure issued against her was not proportional to the purpose pursued by the vetting process.[110]

This decision-making by the ECtHR points to the standard of contextualization of every violation or inaccuracy and of carefully evaluating it also compared to the other criteria, paying attention to the relevant evidence that the subject of re-evaluation has presented in defense of their claim.

2.7 Standard pursued regarding the harmonious evaluation of all three criteria and the analysis of cases based on the evaluation of only one criterion

Based on the evaluation of the decision that are the subject of this study, we find that the bodies responsible for the vetting process extended their process of re-evaluation on all three criteria, as required by article Ç of the Annex of the Constitution and article 4 of law no. 84/2016.

In the case of SAC's decision on subject L.D., the AHC observer has found that the College analyzed especially the criterion of assets and that of proficiency (concretely, professional ethics). The decision analyzes over 95% of the decision-making on the criterion of assets, compared to the criterion of proficiency. However, it is worth emphasizing that the complaint based on the findings on the criteria of proficiency has been raised by the Public Commissioner only on one moment that raises suspicions on potential conflict of interest of the subject of re-evaluation. The decision-making of the SAC has as its main focus the analysis and evaluation of the financial capabilities of the subject L.D., for the creation of assets and covering living expenses.[111]

During the process of re-evaluation of the subject M.F., the IQC argues in its decision that it

[107] Parallel opinion on the decision no. 497, dated 13.01.2022, link chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kpk.al/ëp-content/uploads/2022/02/Mendimi-Paralel.pdf
[108] Sevdari v. Albania, application no. 40662/19, 13.3.2023, p. 86. See also Xhoxhaj v. Albania, p. 403
[109] Sevdari v. Albania, application no. 40662/19, 13.3.2023, p. 93.
[110] Ibid., p. 96.
[111] Decision no. 28/2022 (JR) dated 14.07.2022; including the parallel opinion and the minority opinion;

extended the investigative process on all three criteria of re-evaluation, but in this decision, it would only address the criterion of proficiency. In the opinion of the AHC observer, the lack of reasoning for the two other criteria of re-evaluation does not positively serve to guaranteeing proportionality and transparency before the public.[112]

2.8 Analysis of the evaluation of the criterion of assets

As highlighted above, although some decisions analyze all three criteria of the evaluation, a considerable part of the decision is devoted to the criterion of assets. The bodies responsible for the vetting process have focused the analysis of their decision-making on the truthfulness of declarations regarding the situation of assets of the subject and related persons, the verification of the sources of the creation of incomes and expenses, and the highlighting or not of hiding of assets, false declaration of assets, or conflict of interest.

Because the findings on the criterion of assets have been the reason for complaints with the SAC, it is noticed that the College has not passed the burden of proof on the subject of re-evaluation during adjudication in the SAC, but has analyzed several moments in the decision of how the IQC has passed the burden of proof to this subject. Namely, the College argues, *"…Pursuant to article 32, paragraph four of law no. 84/2016, the IQC has passed to the subject of re-evaluation the burden to prove legitimate incomes of the other related person, the father, for giving him the amount of 5,000 euro."*[113]

In the parallel opinion given during the review of the subject of re-evaluation D.B., the member of the panel of judges of the College argued regarding the concept of the 'other related person' referring to law no. 84/2016 and article D, paragraph one, three and five of the Annex of the Constitution. This decision argues that the father of the subject of re-evaluation should be qualified as another related person due to the relationship of use (by the subject) of an immovable property owned by the father.[114] Furthermore, regarding the definition of 'related persons' according to law no. 84/2016, the decision of the SAC on the subject of re-evaluation R.S.[115] argues that this definition does not include persons in the close family circle of the subject of re-evaluation who may practically serve to hide their unlawful assets, such as the father-in-law, mother-in-law, sisters, brothers, in-laws, etc., if they are not part of their family certificate. In the evaluation of the College, this creates an obstacle for the re-evaluation bodies to implement article 32, paragraph one, by classifying these people as "other related persons," as it is not possible to implement article 32, paragraph four, if they have not been gift-givers or loan-givers or loan-takers with the subject of re-evaluation, while they may have really been a 'tool' for hiding the assets of the subject of re-evaluation. This decision-making is accompanied among other things with two parallel opinions by two members of the voting majority. Although the majority of the panel of judges did not consider the father-in-law of the subject as another related person, the two members of the panel of judges, in their minority opinions, argued the opposite.

Some of the key elements that the AHC observer identified from this decision-making of the

[112] Intermediate decision dated 13.05.2022, link kpk.al/wp-content/uploads/2022/05/Vendim-M.Frasheri.pdf
[113] Decision no. 20/2022 (JR) dated 14.06.2022; including parallel opinions
[114] Decision no. 18/2022 (JR) dated 08.06.2022, including parallel opinions
[115] Decision no. 22/2022 (JR) dated 22.06.2022; including parallel opinions

College results that the assets created by related people before they were related are not the subject of declaration and control of the lawfulness of their resources.

Meanwhile, during the procedure of re-evaluation of the subject A.J., the SAC based the subject of the asset control on the statements made by the subject of re-evaluation in the vetting declaration, while the declarations made in the periodical disclosure statements were classified as evidence to support the statements made in the vetting declaration. Based on the analysis that the College appears to have made in this case, it is found that the IQC made a wrong reading and estimation of the statements of cash balance at the end of each year, calculating the additions in savings that were called "annual savings" as cash balance at the end of the year. This decision-making is accompanied by two minority opinions by members of the panel of judges of the College, with one of the members arguing that regarding the inaccurate declarations in the vetting declaration that represent hiding of assets according to law, the subject of re-evaluation had the obligation to declare accurately in the periodical disclosure statement and in the vetting declaration the factual situation of the use and exchange of an apartment and giving up on another apartment, initially ordered by the spouse of the subject. Regarding the criterion of evaluation of assets, in his appeal based on the recommendation of three international observers, the Public Commissioner argued that the failure of the subject to declare the use of the apartment he owns and where he lives at present since 2011, seen together with the lack of legitimate resources for making the payment of the first installment of the apartment, represent inaccurate declaration that lead to a failure to reach a credible level in the evaluation of the criterion of assets.[116]

2.9 Analysis of the evaluation of the integrity criterion

Regarding this criterion as well, not every decision-making of the bodies responsible for the vetting process reflected the same line of arguments with the findings referred by the DSCI, based also on the extension of the in-depth investigation by the vetting bodies themselves.

In the case of the subject of re-evaluation L.K.,[117] the IQC administered one judicial case file from the Korça District Court that the subject of re-evaluation had reviewed. It is notable in the decision-making that there is no reporting on the indicia that led the responsible vetting body to not only rely on the DSCI positive report but to also update information with other data from law enforcement bodies. Nevertheless, in the end, the IQC concluded that the subject of re-evaluation had reached a credible level on the integrity level.

The IQC maintained a different position from the DSCI also during the review of the case on the subject of re-evaluation T.B. More concretely, initial data from the DSCI reflected in the report drafted by this institution created a conviction of appropriateness of the subject to continue his job. After this information was updated, this same institution makes known that there is data about involvement in corruptive activity, during some criminal and civil judicial processes in the Fier Judicial District Court. At the end of the investigation conducted by the IQC, it is concluded that information conveyed by the verification institution, on the basis of which the DSCI report was updated/changed, do not present concrete cases on which it could be proven beyond any reasonable doubt that there had been inappropriate contacts of the subject of re-evaluation with individuals

[116] Decision No. 2/2022 (JR) dated 15.02.2022, including minority opinions
[117] Decision no., 577, dated 21.10.2022, link Vendim-L.-Kole-1.pdf (kpk.al)

involved in organized crime and/or his involvement in unlawful activity. At the end of the analysis, the IQC concluded that the subject of re-evaluation reached a credible level in the check for integrity.[118]

2.10 Findings from the evaluation of the criterion of proficiency

The re-evaluation of the proficiency level, conducted pursuant to article E of the Annex of the Constitution and articles 40 and onwards of law no. 84/2016, aims at identifying those subjects of re-evaluation who are or not qualified to carry out their functions.

Overall, based on the analysis of the sample decision-making, it results that the criterion of proficiency has been in direct focus of the panels of judges of the vetting bodies in some sporadic cases, while in the majority of cases, when evaluated in parallel with the other two criteria of re-evaluation, it appears to have wane off in the face of the criterion of assets.

The HPC and the HJC, in their capacity as supporting bodies for the professional evaluation conducted by the institutions of transitory re-evaluation, based on law no. 84/2016 and on law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania," convey to the bodies responsible for vetting the report on the evaluation of the professional capabilities of the subject of re-evaluation.

In the case of subject L.D., based on the complained submitted by the Public Commissioner, it resulted that there was a need for the College, among others, to review the decision-making of the IQC, regarding the evaluation of the professional ethics of the subject. While this cause is one of the reasons for the complaint, during the administrative investigation by the College and the review of evidence in relevant documentation, the Public Commissioner changes his position and concludes in parallel with the College, that the subject of re-evaluation had not reviewed the claimed case in conditions of conflict of interest.[119] The subject was dismissed by the College, but not because of this criterion.

The criterion of professionalism has been a direct subject of investigation conducted by the IQC in the case of re-evaluated subject M.F.,[120] at the conclusion of which it was decided to suspend the subject from office, for a one-year period and the obligation to pursue the training program, according to the curricula approved by the School of Magistrates. Based on the verification of archival data of the HPC and the General Prosecution Office, it results that the disciplinary measure of "transfer to a lower-level job within the justice system" was issued on the prosecutor as a result of unjustified negligence in fulfilling her duties and the unjustified out-dragging of preliminary investigations. These findings have been reversed by the subject of re-evaluation, among others also due to the difficulty and the workload she was facing at work, factors that had served as a cause for some of her requests to be transferred. The Commission argues in a summarized manner, *"the encountered deficiencies are mainly those of an organizational and efficient action character, which have led in a repeated manner to failure to fulfill her duties as a prosecutor, concluding that she is not effective."*

[118] Decision no. 520, dated 30.03.2022, link Vendim-Taulant-Banushi.pdf (kpk.al)
[119] Decision no. 28/2022 (JR) dated 14.07.2022; including parallel opinion and minority opinions
[120] Intermediate decision dated 13.05.2022, link Vendim-M.Frasheri.pdf (kpk.al)

The same decision-making appears to have been delivered earlier by the Commission also in the case of the subject of re-evaluation R.F., which, upon conclusion of training at the School of Magistrates, was subjected to the testing process, which concluded with good results and thus overcoming the presented deficiencies.[121]

In the case of subject of re-evaluation E.I., the IMO observer recommended to the College to review the criterion of proficiency, taking into consideration the unprofessional conduct of the subject of re-evaluation in the hearing session of 24.03.2021. In the opinion of the panel of judges of the SAC, it results that "communication with a procedural subject, whether an observer, a member of one of the re-evaluation bodies, may not be perceived differently, except as a direct interference with the independence of these individuals to carry out their duties."[122]

[121] Decision no. 552, dated 14.07.2022, link Vendim-Riselda-Fishta.pdf (kpk.al)
[122] Decision no. 11/2022 (JR) dated 27.04.2022

PART III

ON THE INVESTIGATION, CRIMINAL PROCEEDINGS, AND CRIMINAL ADJUDICATION OF JUDGES AND PROSECUTORS WHO RESIGNED OR WERE DISMISSED IN THE CONTEXT OF THE VETTING PROCESS[123]

[123] For the period 2021-2022.

1. Recommendations of the EC and the first challenges in terms of the criminal proceedings on subjects of re-evaluation who were dismissed/resigned

In its annual report for Albania for 2021, the European Commission underscored that it was expected from the vetting bodies to refer to the prosecution offices all instances when there was information about the commission of criminal offenses.[124] In the latest *Screening* report, of July 2023, the EC underscored that Albania should ensure the systematic start of criminal proceedings on judges and prosecutors for whom the vetting process discovered criminal elements. The vetting institutions are expected to systematically refer to the prosecution office those cases where there are indicators of criminal offenses, while in parallel, the prosecution office is encouraged to proactively begin criminal proceedings against them.[125]

In February 2022, AHC published the first research study[126] that has to do with the criminal referrals to the prosecution office for judges and prosecutors who underwent vetting, whether there were instances when the prosecution office began criminal cases on its own initiative, whether it was decided to start criminal proceedings on the subjects or not, what resulted at the end of the proceedings, whether preliminary measures were undertaken to sequester unjustified or illegal assets, whether charges were filed in court, and as a result, whether there was criminal punishment of these subjects by a court decision. To secure such data, AHC requested officially information from the Special Prosecution Office and the General Prosecution Office.

From this first research study, it resulted that in the first five years of the activity of the vetting institutions, compared to tasks assigned by the EU, a low number of resigned or dismissed judges and prosecutors who were found to have problems with the criteria of re-evaluation, or only 8.5% appear to have been criminally prosecuted. For the most part, the criminal proceedings began as a result of criminal referrals by the public, while there are very scarce cases that were initiated upon initiative of the prosecution office (with SPAK being the only one taking this initiative) or cases referred by the vetting bodies (one such case). Half of the cases criminally prosecuted by SPAK belong mostly to the special subjects (senior functionaries of the justice system), while the other half of the cases were transferred by SPAK, due to the lack of material competence, to prosecution offices of general jurisdiction.

Based on the analysis of some of these cases, compared to the decision-making of the vetting bodies or the sequestered assets, AHC noticed that the Special Prosecution Office began criminal proceedings by limiting investigation only in relation to article 257/a/2 of the Criminal Code, which has to do with the hiding or false declaration of assets or private interests. Also, it was noticed that the deadlines for investigation for the special subjects are approximately two years, considerable compared not only to the deadlines envisaged in the Criminal Procedure Code, but also the criminal offense for which the criminal proceedings were begun. During this period, it resulted that the criminal process only concluded for one subject, for which the Special Court of Appeals (SCCOC) issued a final decision, upholding the decision

[124] https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Albania-Report-2021.pdf
[125] https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-07/AL%20Cluster_1%20Draft%20screening%20report_external%20version.pdf
[126] https://ahc.org.al/wp-content/uploads/2022/05/Final_Policy-Paper-1-_-Vetting-Process.pdf

to convict to two years of imprisonment and the complementary punishment of banning from holding public office for five years (the former Prosecutor General).

Given that the findings and conclusions in this first research report were partial, as the public hearing sessions of the relevant criminal judicial processes or the decision-making of every case (whether the prosecution office or the court) were not monitored, AHC conducted a second research study, more in-depth in terms of the researched documentation (as will be analyzed hereinafter).

2. Main findings and conclusions of the analysis of criminal proceedings

During the years 2021 – 2022, there were 140 subjects, the overwhelming majority judges and prosecutors, who resigned or were dismissed in the context of the vetting process, for which the IQC decided to interrupt the process or to dismiss from duty. From March 2018, when the first IQC decisions date from, until October 2022, it results that the IQC referred only 14 cases to the Special Prosecution Office, relying on the results of the administrative investigation (based on article 281/3 of the Criminal Procedure Code).

The SAC informed AHC that neither this institution nor any of the judges individually filed a criminal referral with SPAK on issues linked with the subjects of the vetting process, analyzing that this is not an obligation according to the relevant constitutional provisions (articles 179/b, paragraph 5 of the Constitution and article F of the Annex of the Constitution). According to AHC, the obligation for a criminal referral envisaged in article 281/3 of the Criminal Code arises without exception for every civil or administrative proceeding, including here also the process of transitory re-evaluation of judges and prosecutors, which is of a judicial nature with an administrative character, especially when carried out in the SAC. As a result of this wrong interpretation, the possibility may not be excluded that judges or prosecutors were not denounced according to the requirements of article 281/3 of the Criminal Code. It is also worth-emphasizing that the European Commission recommended to the vetting institutions, without exception, that they systematically refer cases to the prosecution office when these cases include indicators of criminal offenses by the subjects of the vetting process.

Although all three vetting bodies had a very good level of cooperation with citizens, as a result of addressing a large number of complaints that assisted them in the process of the administrative investigation, these data did not serve the prosecution office for conducting further verifications with investigative actions envisaged in the Criminal Procedure Code. in our opinion, they could have contributed to the dynamics of investigations and the resolution of criminal responsibilities for the subjects of the vetting process, taken as indicted individuals.

With regard to the prosecution offices of general jurisdiction, it results that only the prosecution offices of Tirana, Elbasan, and Durrës confirmed cases when they started or did not start criminal investigations. The material competence of these prosecution offices may only be exercised on prosecutors and judges who are not special subjects, according to article 75/a, letter "c" of the Criminal Procedure Code[127] and only for criminal offenses that are not within

[127] Such as the members of former members of the Constitutional Court, High Court, and the Prosecutor General, when the offense is committed during the exercise of their duties.

the field of corruption and organized crime. On the other hand, the material competence of the Special Prosecution Office is limited and is exercised on special subjects mentioned above, for every criminal offense that they are suspected of having committed, as well as on prosecutors and judges of any level, only if they are suspected that they committed the criminal offenses in the field of corruption and organized crime, envisaged in article 75/a, letters "a" and "b" of the Criminal Procedure Code.

Based on information obtained from these prosecution offices, AHC analyzed in this research study, in keeping with the established methodology, 21 cases that belong to the subjects of the vetting process, referred to the prosecution offices of general jurisdiction, SPAK, or that have been passed on due to lack of competence from SPAK to the general jurisdiction prosecution offices. Namely, for the period 2021 – 2022, quantitative data and summarized conclusions of this research study appear as follows.

a. Data on the subjects referred/prosecuted and the criminal offenses assigned to them

With regard to the status that the referred or prosecuted subjects had, it results that we have to do with 13 prosecutors, including cases of former heads of offices, namely three appeals prosecutors, seven prosecutors of the judicial district prosecution offices, two prosecutors in the General Prosecution Office, one of whom a former Prosecutor General, and one prosecutor in the Serious Crimes Prosecution Office. meanwhile, in the judicial system (courts of all three levels), it results that the following were referred or prosecuted: eight judges, including here former heads of courts, of which six judges in the Judicial District Courts, one judge in the Appeals Court, and one judge in the High Court. A former member of the Constitutional Court is among the prosecuted subjects.

In total, there appear to be 22 judges, prosecutors, or senior functionaries of the justice system, who were referred or prosecuted.

Regarding the rapport of these subjects with the decision-making of the vetting process, 12 of them appear to have resigned and, therefore, the vetting process was interrupted for them; five were dismissed and four are in the ongoing vetting process (i.e. the vetting process is not yet concluded). Regarding the resigned subjects, for whom the criminal proceedings began or not, it is interesting that their resignation came after they became familiar with the conclusions of the administrative investigation by the IQC.

Regarding criminal offenses for which the referral was filed with the prosecution office, or criminal proceedings began, the overwhelming majority of cases, 11 cases have to do with article 257/a/2 of the Criminal Code (hiding or false declaration of assets), referred/prosecuted separately or together with other criminal offenses),[128] only in three cases there were criminal proceedings, specifically for article 319/ç of the Criminal Code (Passive Corruption), one case referred to article 248 of the Criminal Code (Abuse of office), and for the other cases, there is no specific information from the prosecution offices of general jurisdiction.

[128] Such as the articles of the Criminal Code, namely 143 "Fraud," 143/a/6 "Hiding of assets," 180 "Hiding of income," 181 "Failure to pay taxes," 248 "Abuse of office."

As it pertains to the application of security measures, it results that for only three indicted individuals (subjects of the vetting process), who were prosecuted for offenses in article 319/ ç of the Criminal Procedure Code (Passive Corruption), upon request of the Special Prosecution Office, the court decided that they be investigated and/or adjudicated while under the measure of "arrest in prison."

b. Data regarding the referring subject

Regarding data related to the referring subjects of cases to the prosecution office, based on materials provided, it has been noticed that in four cases, the referring subject was the public body, IQC, in two cases it was the Sector for the Fight Against Narcotics in the State Police, in eight cases, it was a citizen (but in four of these cases SPAK referred the case to the general jurisdiction prosecution office), while for the remainder of the cases, this information is not possible to identify.

c. Limited data for the public on the start of criminal proceedings

It is noticed that IQC decisions about the interruption of the vetting process due to resignation, in many cases, have not reflected the results of the administrative investigation that has been concluded, before the subject submitted his resignation. This practice leads to important facts about these subjects not being public, which does not serve not only transparency, but at the same time the proactiveness of citizens in their denunciations to prosecution bodies, as well as the initiative that these bodies may undertake upon their own initiative on them. As highlighted in the data, citizens are the main denouncers of the resigned or dismissed subjects.

d. Decisions to not start criminal proceedings

In four instances, the General Jurisdiction Prosecution Offices decided to not start criminal proceedings, thus not implementing in a correct manner (according to AHC), the provisions of the Criminal Procedure Code. This practice has had a negative impact in terms of the impunity of these subjects.

In concluding to not start criminal proceedings, in certain cases, the prosecution office has relied on the fact that the IQC decision on the subject had not yet been published with its arguments and is not a final decision because it is appealable. In AHC's opinion, it is not justifiable to not start a criminal case with the argument that the decision of the vetting bodies has not been transcribed, published fully, or that it is appealable. There is no provision in the Criminal Procedure Code that could support this reasoning by the prosecution offices of general jurisdiction.[129]

[129] Only the court, according to article 343 of the Criminal Procedure Code, has the right to suspend judicial review, when the conclusion of the criminal case depends on the resolution of a civil or administrative dispute, for which there is an adjudication, the court may decide to suspend judicial review until the case has been resolved by final decision.

It is disturbing that the prosecution offices of general jurisdiction, in certain cases, have made decisions to not start criminal proceedings within the time window of a few days upon receipt of the referring material, even in cases when the subjects have been dismissed by final decision of the SAC, which has declared inaccurate and insufficient declaration of their assets and of related persons, lack of legitimate resources to justify some of their assets, or a passive role in terms of the investigation activity toward resolving the case, which is perceived by an ordinary observer of the public, as influence for weakening the striking force of the justice institutions toward the activity of organized crime that has an international character.

In such cases, the prosecution offices did not administer the relevant case files of the vetting institutions and have concluded on the criminal offenses on which the referral was filed, by relying on the conclusions of decisions by the vetting institutions, such as for instance that there is no hiding or inaccuracies. This position contains contradictory elements as the prosecution office itself, in the reasoning portion of these decisions, states that the vetting process is an administrative and not criminal process.

AHC judges that in one of the cases, the decision of the Prosecution Office of the Elbasan Judicial District to not start criminal proceedings is the right one. The referral by a family member of a citizen under investigation toward the case prosecutor who was not yet subjected to the vetting process decision-making, even in the first instance, appears as a form of pressure and retaliation in the eyes of an impartial observer. This is the case as the referred prosecutor is investigating the criminal case involving the brother of the referred individual, a former judge who has been dismissed in the context of the vetting process.

e. Transfers

A part of these cases appears to have been transferred by SPAK, which informs AHC with an official letter of 12.02.2024, that for six of the vetting subjects for which criminal referrals were submitted to SPAK, the Special Prosecution Office decided it lacked material competence and therefore those cases have been transferred to the prosecution offices of general jurisdiction. Based on data from the vetting process on these subjects, AHC judges that SPAK's lack of competence would have been evaluated better if preliminary investigations would have begun. This position is based on the systematic and harmonious interpretation of articles 83 and 84/1 of the Criminal Procedure Code.

AHC notices that for these subjects, when there was also a decision to not start criminal proceedings by the prosecution offices where they were transferred, the subject has not been criminally investigated by SPAK, even upon its own initiative, for suspicions related to the criminal offense envisaged by article 319/ç "Passive corruption of judges, prosecutors, and other functionaries of the justice system" nor by the respective prosecution offices for the criminal offense envisaged by article 257/a/2 of the Criminal Code (hiding or false declaration of assets). In such cases, these decisions deter the fulfillment of investigative responsibilities by the prosecution body, even based on the criminal referral of a citizen, but also upon their own initiative, according to article 280 of the Criminal Procedure Code.

f. Start of criminal proceedings and evaluations regarding the investigative activity

In nine cases, the prosecution offices of general jurisdiction report that they began criminal proceedings even when the case was under investigation, but the investigation deadlines, considering the time when the vetting bodies issued decisions regarding these subjects, are very long and weaken the quality and efficiency of investigations into these subjects.

Unlike the practice of the prosecution offices of general jurisdiction, SPAK carried out eight criminal proceedings on the subjects of vetting, of which five for 2021 and three for 2022. Regarding these criminal proceedings, one of them is under investigation (until December 2, 2022, when the response by SPAK was provided) and seven of them have been sent to court, with some of them resulting in guilty verdicts. SPAK refers that there have been no decisions of dropping criminal proceedings.

SPAK's activity for the criminal proceedings against prosecutors and judges who have been dismissed in the vetting process appears more effective. Nevertheless, AHC judges that there is a need for harmonizing practices, because not in all the prosecuted cases were there criminal proceedings into assets in accordance with the anti-mafia law, which would be very necessary for the purpose of preventing and striking organized crime, trafficking, and corruption, through the confiscation of the assets of the subjects of vetting, which have an unjustified economic level as a result of their suspected criminal activity. The same conclusion applies also to the measures of preventive sequestration and confiscation, which may be requested and determined in the context of the criminal process, according to the provisions of the Criminal Procedure Code.

Based on data provided by the decisions that were researched for this study, it is noticed that special investigation techniques into criminal offenses in the field of corruption were only partially applied by SPAK. It is a positive fact that wiretapping of tele-communications and of surroundings have yielded positive results for evidence to bring criminal charges by the prosecution and a conviction by the court of defendants in three cases, specifically for article 319/ç of the Criminal Code (passive corruption). However, even for these instances, to help with the burden of proof for the charges that the prosecution office has brought, the investigations could have been more productive if a request had been made for wiretappings of private surroundings (offices of judges and prosecutors), given the specific circumstances of the criminal cases, and in accordance with articles 222 and onwards of the Criminal Procedure Code. We say this as in these cases, the evidence for the taking of bribes by judges and/or prosecutors are not direct but are proven indirectly from the transcription of conversations of other indicted individuals.

In general, the circumstances of some of the cases and the investigative actions carried out by SPAK reflect a complex and difficult nature of investigations. In particular, this is noticed in three of the criminal proceedings, which began earlier by the serious crimes' prosecution office, where judges and prosecutors were indicted together with other citizens, accused of criminal offenses in the field of organized crime, corruption, exercise of unlawful influence, on individuals exercising public functions. Regarding these cases, for which depending on the specifics and circumstances thereof there have also been decisions to separate them, we notice that there has been cooperation with justice authorities of neighboring countries or of other

countries. Nevertheless, AHC notes that not in all cases does it result that data or documents were obtained by the vetting bodies, HIDAACI, DSCI (as supporting bodies of the vetting process) or data from specialized law enforcement agencies, which would help the progress of investigations and the most correct possible attribution of the criminal fact and the bringing of criminal charges. These data were obtained upon initiative only in criminal proceedings for the criminal offense envisaged by article 257/a/2 of the Criminal Code, while they could contribute to other criminal proceedings for corruption or abuse of office.

In the majority of cases, when SPAK investigated and brought cases to court, only for the criminal offense envisaged by article 257/a of the Criminal Code, we notice that there could have been more in-depth investigations, in terms of the way in which the hidden assets were built or created that is not justified with legitimate financial sources of the indicted individuals and his family members. Referring to the contents for sending the case to court, AHC notes that no data is reflected on the investigation of monetary corruption for the assets in considerable amounts that appears to have been hidden/undeclared, how these assets are interlinked with the suspected but not investigated activities, as may be in at least three cases, potential ties of the indicted individual with segments of crime or organized crime.

It is a positive fact that the prosecution body, in the majority of prosecuted cases, assigned a technical evaluating expert and/or accounting experts, with the purpose of verifying assets, incomes, and expenses, as well as the sources for the creation of assets of the indicted individuals and persons related to them.

g. Expiry of the statute of limitations

The institute of the expiry of the statute of limitations on criminal prosecution or as is otherwise known, the inability to exercise criminal prosecution because some deadlines have passed, is envisaged in article 66 of the Criminal Code, where these deadlines are categorized in accordance with the measure of punishment. Regarding this institute, as it pertains to the criminal offense envisaged by article 257/a/2 of the Criminal Code – which envisages a lower punishment (fine up to three years of imprisonment) vis-à-vis convictions for criminal offenses in the field of corruption or organized crime – the expiry of the statute of limitations occurs in narrower deadlines, exactly five years from the commission of the offense.

Based on the research into the indicted individuals and their defense lawyers, of interest in this research study is the interpretation in some of the SCCOC decisions of the deadline when the expiry of the statute of limitations begins to apply. Depending also on the circumstances of the event, as a last moment for the calculation of the deadline for the expiry of the statute of limitations for the criminal offense envisaged by article 257/a/2 is precisely the date of the submission by the subject of re-evaluation of the vetting declaration in January 2017. Starting from this interpretation of the Special Court, it is concluded that all subjects who were not indicted until January 2022 (independently from whether they were found to have problems in the context of the vetting process), may not be prosecuted for article 257/a/2 of the Criminal Code, as their statute of limitations has expired. This finding is very disturbing in terms of the impunity of at least about 90% of the judges and prosecutors dismissed by the vetting process, who do not appear to have been prosecuted. Meanwhile, for criminal offenses in the field of

corruption, which result to be entirely uninvestigated, with regard to the facts that the vetting process has discovered, the deadline for the expiry of the statute of limitations is ten years, as their maximal punishment is ten years (interpretation of article 66/c with article 319/ç of the Criminal Code).

e. Deadlines of investigation

As it pertains to the deadlines of investigation, in the systematic absence of information as to when the referral was filed with the prosecution office, we may conclude in two different directions. First, regarding the deadlines for the criminal proceedings by the prosecution offices of general jurisdiction, there are noticed at least five cases with considerable delays of up to 2-3 years. Regarding data obtained from SPAK, it is also noticed that there is more or less the same time taken, taking as a reference the date from the time of the referral filed with the prosecution office.

In AHC's opinion, these are very long periods of time, as evaluated against the not-so-high level of complexity in investigations, for as long as in the majority of cases, there has not been any investigation into corruption or involvement of the indicted individual in the activity of organized crime. Nevertheless, as highlighted earlier, the deadlines for preliminary investigations, according to articles 323 and onwards of the Criminal Procedure Code are calculated from the date in which the name of the person, to whom the criminal offense is attributed, is logged in the logbook of announcement of criminal offenses. In some of the studied cases, AHC notices that the note is realized a long time afterwards (up to even one year) from the day when the referral was filed. It is a positive fact that for some of the criminal proceedings, there is an immediate registration also of the name of the person in the logbook, unlike other practices studied in this report, where we notice considerable delays that drag out in an "artificial" manner the deadliness of investigations.

In general, the overextended deadlines of criminal proceedings, as well as the transfers of cases from SPAK to the general jurisdiction prosecution offices, and further, in certain cases, even between the latter, creating the 'ping-pong' effect that, in AHC's evaluation, lead to a weakening of the efficiency of the investigative process and the burden of proof that the prosecution body has for proving the accusations that it has brought forward in court.

f. Completion of investigations based on instructions by the judge of the preliminary hearing session

Cases when the judge of the preliminary hearing session has ordered completion of investigations by the Special Prosecution Office are scarce. In the researched decisions, AHC judges that the requests by the preliminary hearing session judge to complete investigations should not violate the constitutional principle of independence of the prosecutor. Furthermore, the judge of the preliminary hearing, not only in theory, but also in the concrete case, should avoid the examination and evaluation of evidence at this phase as it pertains to the existence or not of a criminal fact assigned to the indicted individual, as this is an attribute of the decision-making of the court looking at the merits of the charges. Also, AHC judges that the preliminary hearing session judge should take a more proactive role as the studied cases highlight that there

has been no decision-making for sending the acts back to the prosecution office, because it has not fully investigated other criminal facts resulting from the context of the investigations, linked with the criminal offenses in the field of corruption, organized crime, or money laundering. We base this conclusion on a harmonized and systematic interpretations of article 332/ç and 332/dh of the Criminal Procedure Code.

g. Decisions of the SCCOC

During this period, it results that the SCCOC of first instance has issued four guilty verdicts for four indicted individuals (subjects of the vetting process), two of which convicted for the criminal offense envisaged in article 257/a/2 of the Criminal Code that sanctions the hiding and false declaration of assets, and two other defendants convicted for the criminal offense envisaged in article 319/ç of the Criminal Code that sanctions passive corruption of judges, prosecutors, and functionaries of the justice system. For three of these subjects, the SCCOC of Appeals issued final verdicts, which upheld the conviction or amended the decision by issuing a slightly harsher measure of punishment.

Unlike the phase of investigations, adjudication of the essence of the case has been conducted within fast and reasonable deadlines. Contributing in this regard has been the fact that upon request of the indicted individual, the court has agreed to proceed with the rules of an abbreviated adjudication, arguing its decision in accordance with articles 332/c and 403/1 of the Criminal Procedure Code and jurisprudence (decision no. 4/2012 of the Constitutional Court and unifying decision no. 2/2003 of the High Court, which are analyzed further).

From a reasoning standpoint, we notice that the decisions of both courts present in a chronological manner the facts of the case, the requests and claims of the parties, including the summary of their closing arguments, as well as the court's evaluation thereof. In general, the arguments used are clear and convincing and they transparently provide responses to the requests and counterarguments of the defense of the indicted individuals. Furthermore, we do not notice contradictory elements between the descriptive and reasoning part of the summary of the decision.

Of interest is the reasoning that the special court has provided, by distinguishing between the elements of the objective side of the "hiding" and "false declaration" of assets, for adjudications related to criminal charges for article 257/a/2. However, in terms of the concrete elements of the objective side of the criminal offense that the indicted individual was declared guilty of, the Courts not always clarified in what cases had there been hiding and when there had been false declaration. However, in the eyes of a public observer, in certain cases, the standard used in the arguments for the studied decisions, does not adequately reflect the independence and impartiality of the panel of judges, is not complete, and does not provide answers to the proper extent, in the function of transparency before the parties and the public, to all claims raised by the defendants and their defense lawyers.

Regarding the type and level of punishment, the Courts generally based their decision-making on articles 47, 48 and 49 of the Criminal Code. It is a positive fact that in some cases, it is mentioned that the final purpose of the punishment is re-education and reintegration of the

perpetrator of the criminal offense in society after serving the sentence. Furthermore, in all decisions for innocence and conviction, the court has also issued the complementary punishment of banning the right to exercise public functions for five years, which has been reasoned vis-à-vis the capacities of the person who has been entrusted the exercise of public functions and the criminal offenses that person is declared guilty of. However, AHC considers that there needs to be a better harmonization of the evaluating standard of the court on the social threat and alleviating circumstances, as well as the application of alternatives of punishment by imprisonment in certain cases, such as the case against defendant E.H.

The arguments used by the SCCOC of Appeals often are more expanded and present special elements and features that individualize its reasoning line, compared to the first instance SCCOC.

It is positive for both courts that in their decision-making, they refer to the standards established by the European Court of Human Rights, and in some instances on conventions ratified by the Albanian state in the field against corruption, in the context of accession to the Council of Europe and the United Nations. However, overall, with regard to the contents of the researched decisions, AHC considers that it is necessary to have a more synthetized and clearer summary of the facts of the case, avoiding mechanical paraphrasing of the data that result from the phase of preliminary investigations.

RECOMMENDATIONS

1) The subjects that have undergone their re-evaluation before the Independent Qualification Commission have been part of the drawing of lots conducted on December 16, 2019 and June 15, 2020. After more than 28 months, the hearing sessions were held for those subjects. Based on the fact that since January 2025, the mandate of the IQC ceases, AHC recommends to the SAC the review of complaints at a dynamic pace, especially for those cases (subjects dismissed in the first instance) that have a considerable financial impact.

2) In AHC's evaluation, the live broadcast of public hearing sessions of the SAC for interested persons does not guarantee the same level of access and, therefore, of understanding of the conduct of the process and the observation of conduct of each party in the room, as well as in the cases when the public is physically present. Given that all courts in the country are functioning normally and, allowing the public to be present, it is recommended that the SAC allow the participation of the public, in the hall where the hearing session is held.

3) We recommend increased attention to the principle of transparency on the decisions of the SAC as the official website of the College does not provide the exact date of the publication of the reasoned decision and we also recommend respecting the deadline for publications in accordance with the deadline for providing the arguments for the decision. Furthermore, it is necessary to unify the practice with regard to the publication of different or parallel opinions that are prepared by the international observers of the IMO.

4) AHC recommends to the College that substantial denunciations of the public are reflected clearly in its decisions, by addressing also the position or evaluation of the subject him/herself toward these denunciations.

5) Based on different positions within the College regarding the interpretation of the concept of 'related person' or 'other related persons,' it is necessary that the College make an interpretation in the spirit of the law in order to identify accurately the circle and category of subjects that may be considered such, in order to extend the investigation into the assets also over these individuals. In this context, it is necessary to keep under consideration also the provision of article three, paragraph 14, which provides a broader definition of the related person and, therefore, is of better service to the purpose of the law.

6) In order to enable the conduct of more complete research studies and reports, it is essential and mandatory that public bodies respect the right to information that is envisaged in article 23 of the Constitution and in the law no. 119/2014 "On the right to information," amended, within the established legal deadlines, as a function of guaranteeing transparency and the principle of good governance. Referring to the findings of this research study, this recommendation is particularly directed at the prosecution offices of general jurisdiction.

7) With the end of the mandate of the IQC at the end of this year (2024), we recommend to the College to be proactive in implementing the obligations that derive from article 281 of the Criminal Procedure Code, by filing immediate referrals to the prosecution office, for all those cases when the results of the investigation/proceedings during the vetting process, facts are discovered that represent elements of criminal offenses.

8) AHC suggests to the Special Prosecution Office and the prosecution offices of general jurisdiction to devote appropriate attention to facts made public in the media during the re-evaluation process, in order to start investigations with their own initiative (ex officio) in all those instances when there are public indicia about the commission of a criminal offense.

9) We recommend to the prosecution offices of general jurisdiction that their decisions for not starting criminal proceedings are well argued and fully relying on articles 290 and 291 of the Criminal Procedure Code.

10) It is recommended to the Special Prosecution Office to conduct proceedings into assets according to the anti-mafia law (independently from whether there are criminal proceedings or not), when assets are noticed for which there is a conclusion that there are false declarations on, or they are hidden or for which there is no legitimate resource, or when they may not be justified considerably with legitimate incomes, in possession of the subjects of the vetting process, for which at least the IQC, as the body carrying out the vetting process in the first instance, has issued a decision to dismiss or to interrupt the process due to resignation.

11) The prosecution offices, in keeping with their material competence, should make serious efforts (general jurisdiction prosecution offices) and further efforts (the Special Prosecution Office) to conduct full, effective, and comprehensive investigations into the subjects of the vetting process, for which this process has led to data or facts about

considerable assets or for ties of these subjects with organized crime. in particular, AHC considers that their investigation should extend also into the criminal offenses in the field of corruption, abuse of office, facilitating the activity or ties and engagement in activities of organized crime and with criminal organizations.

12) It is recommended to SPAK that, in investigating the corruption of judges and prosecutors, it evaluates and seeks authorization from the court to use special investigation techniques, in accordance with articles 221 onwards of the Criminal Procedure Code, such as the wiretapping of private premises (offices of judges and prosecutors). This recommendation is put forth based on the specific data reflected in the decisions that were studied, from which it resulted that the evidence for taking bribes by judges/ prosecutors are not direct but are proven indirectly from the transcripts of conversations of other defendants.

13) AHC recommends to prosecution offices of general jurisdiction and to SPAK to show appropriate care in respecting the deadline of preliminary investigations, the motivation of decisions to extend the deadlines for investigations, and the timely notification about the extension of the deadlines of investigations of the defendants and their defense lawyers, in accordance with articles 323 onwards of the Criminal Procedure Code. We also judge that there needs to be a unification of practice, at least for the cases of criminal referrals by public institutions, as to when criminal proceedings should begin and the name of the individual that the criminal offense is attributed to should be written on the logbook, so that there may be no delays that weaken the effectiveness of investigations and drag out the real (non-formal) deadlines of investigations.