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The vetting process and its aftermath towards an independent, professional and accountable judiciary in Albania

Policy Paper

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Policy Paper

"The Vetting Process and Its Aftermath Towards an Independent, Professional, and Accountable Judiciary in Albania"

Executive Summary

- Brief overview of the key points of the policy paper.
- Summary of the main findings, implications, and recommendations.

Executive Summary

The vetting process, in the context of its conclusion, has raised some questions regarding the measurement of effects that it has produced in the performance of the justice system. This policy paper provides an analysis of the cycle of the vetting process at the conclusion of the activity of the IQC, according to findings stemming from monitoring processes that AHC has conducted in terms of administrative investigation, the decision-making process by the vetting bodies, the manner in which the rights of the subjects of re-evaluation have been guaranteed, as well as prosecution of the cases of dismissed subjects. An added value in the analysis provided in this document is the round table organized by the Albanian Helsinki Committee, with the participants of the Ambassador of the Kingdom of the Netherlands, H.E. Mr. Reinout Vos, Ambassador of the European Delegation, H.E. Mr. Silvio Gonzato, as well as senior representatives of the justice institutions, Mr. Ilir Rusi, Chair of the HJC, Mr. Artur Metani, High Justice Inspector, Mr. Erion Fejzulla, member of the HPC, Ms. Evgjeni Bashari, Chair of HIDAACI, and Mr. Arjan Dyrmishi, Executive Director of the Center for the Study of Democracy and Governance, who rendered important contributions in approaching the issues of this process. Understanding the initiative to prepare this document as a first step for analyzing the process, AHC agrees ot the idea that a more complete analysis of the vetting process at a second phase may be realized through surveys and the measurement of the perceptions of citizens and magistrates vis-à-vis the performance of the vetting bodies. The document adheres to the effect that the vetting process has created in the creation of vacancies of magistrates, accompanied also by the impact produced by the implementation of the new judicial map, which led ot the merging of 22 first instance courts into 13. In the circumstances when 47% of magistrates left the system, there has been a dragging out of adjudications and an increase in the number of carryover cases that have had considerable impact on the distribution of burden in the courts. For this reason, it is perceived that the vetting process has created a new situation "sui generis" in the justice system, one that has eclipsed its primary value of preserving the integrity of the system of courts by irresponsible magistrates. In spite of side effects, the Albanian Helsinki Committee underscores how important is the preservation of institutional standards of the re-evaluation bodies, as an indispensable solution for the system of courts, for strengthening and promoting integrity and responsibility of magistrates, and for providing the proper addressing of the punishment of magistrates who abused their office. Therefore, it is important that aside from the side effects, the vetting of magistrates is perceived as significant for creating a lacking culture in the justice system, the culture of responsibility and accountability of magistrates. In this perception, the vetting process represents an axiom that

interconnects the right of citizens to an independent and impartial justice system and the responsibility of magistrates in the context of the values of accountability and professionalism. It is only in the context of this equation of values of high public interest that it is worth discussing the future of this process, whether it may be addressed as a temporary process until 2026 when the SAC mandate ends or whether it is worth preserving its legitimacy as a permanent process that could continue with the same constitutional standards, through the institutions of the HJC and HPC, or through another body such as the HIDAACI. Therefore, the justification of preserving the vetting process of magistrates, as a permanent demand of the justice institutions, to guarantee the increase of public trust in the courts and reduce the risk of the depoliticization of the decision-making of judges, requires an institutional culture of the responsible institutions, HJC and HPC, to create interagency cohesion for the management of a series of administrative links for the verification of subjects on all three criteria, assets, integrity, and professionalism. The latest report of the European Commission for Albania recommends that the Councils, HJI, and HIDAACI should continue further their efforts to conduct complete asset inspections and, where applicable, controls of the qualifications of magistrates and candidates for magistrates. With regard to this point, the Albanian Helsinki Committee encourages all relevant institutions to share information according to the requirements of the law in order to complete controls on all three criteria, in accordance with the high standards established during the vetting process to date, which should guarantee the necessary uniformity on the verification of integrity, assets, and professionalism for magistrates. These standards should be guaranteed as part of working procedures of the governing bodies of the justice system for the protection of integrity, independence, professionalism, and accountability of the judicial/prosecutorial system, respecting a careful balance so as not to create more damage (vacancies) in the court system. In the future, the goal is that the justice system is capable to provide necessary rehabilitation for that part of magistrates that continue to be vulnerable to inappropriate influences. At this phase, this document may create a good foundation for institutions involved in the vetting process to reflect upon the encountered challenges and difficulties and to reach clearer conclusions on the consolidation of best practices that may serve as guidelines in the future.

I. Introduction

In its progress report on Albania (2024), the European Commission has highlighted that the responsibility of the judiciary is mainly satisfactory and the legal framework on the accountability of judges are fully in accordance with European standards. It considers that the progress of the transitory re-evaluation process (vetting) of judges and prosecutors, combined with the satisfactory functioning of the HJC, have ensured good progress in the implementation of justice reforms, strengthening accountability throughout the justice system. Being close to completion, the vetting process is believed to have had an overall positive impact on the independence and accountability of the judiciary. Likewise, the final vetting process decisions have established important standards in the area of background checks, asset checks, and proficiency of magistrates. The challenge in the future is that the Appeals College increase the pace of the review of cases in the appeals level in order to fulfill the constitutional mandate as well as to adapt and preserve these standards in the performance of magistrates.[1]

[1] See Albania 2024 Report: https://enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf

At present, when the vetting process until its final conclusion passes on to the institutions such as the HJC, HPC, and the SAC,[2] it is important to guarantee its continuation with standards close to those created by the vetting institutions from 2018 to 2024. This objective is part of strategic documents such as the Cross-sector Justice Strategy (CJS 2024-2030) that aims at implementing a framework of laws and by-laws for the justice system in Albania, [3] ensuring a harmonization with other strategic instruments for European integration[4] and the Rule of Law Roadmap[5] adopted by the Ministry of Justice. Thus, in the context of recommendations in the European Commission Progress Report for Albania for 2023,[6] it is expected that the CJS will consolidate legal and institutional amendments to improve access to the justice system and, at the same time, to strengthen the trust of and transparency before the public. Pursuant to these, measures are expected to be undertaken to last from 2025 until 2030 for the successful conclusion of the vetting process, as a guarantee for the complete and professional functioning of institutions of governance of the justice system. In this context, the effects of the vetting process are particularly important for ensuring independence, efficiency, and accountability for strengthening the rule of law, the judicial system, and law enforcement. Thus, these effects may be of service for the fight against criminal activity in teneral, but particularly for the fight against corruption and organized crime. More concretely, until 2030, the necessary legal and institutional regulations regarding the following are expected to be consolidated:

- Finalization of the re-evaluation process within the constitutional deadlines by the Special Appeals College (SAC);
- Interagency engagement and strengthening of capacities for the HJC and HPC to guarantee the sustainability of the re-evaluation of magistrates until the complete conclusion of the process;
- Ensuring until the end of 2025 the qualified human resources and strengthening capacities until 2026 for the HIDAACI, DSCI, SPAK, GP, and MoJ for guaranteeing the standards of verification of integrity, assets, and professionalism for magistrates as well as for non-magistrate members of the Councils and the High Justice Inspector;
- **Making decisions until 2030 about the development of the career of magistrates, based on merit, professionalism, and the control of their assets and integrity;**
- **Review of internal regulations for the HJC, HPC, and SAC for the timely review of the performance of magistrates, as well as for the best possible public communication according to the principles of independence, impartiality, accountability, quality of justice, efficiency, integrity, and professionalism;**
- The periodical updating of asset disclosure statements by members of the judicial and prosecutorial systems, by the HJC and HPC through HIDAACI, and following investigations in the prosecution office for the referral of those cases that represent a criminal act according to the Criminal Code;

[2] With the constitutional amendments approved in the Assembly on February 10, 2022

[3] Law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania;" Law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania;" Law no. 98/2016 "On the organization of het judicial power in the Republic of Albania;" Law no. 115/2016 "On the governing bodies of the justice system;" Law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania;" Law no. 95/2016 "On the organization and functioning of institutions for fighting corruption and organized crime;" Law no. 111, dated 14.12.2017 "On legal aid guaranteed by the State"

[4] National strategy for development and European integration, National Action Plan for European Integration, Stabilization and Association Agreement, Sustainable Development Goals 2030

[5] Chapter 23: "Judiciary and fundamental rights/ Sub-chapter: Fundamental rights"

[6] Ibid, 3.

– Conduct of training courses by the School of Magistrates and the HJC for judges, prosecutors, and the court staff to avoid conflict of interest.

In this context, this policy paper on the vetting process contains an analysis of the vetting process from 2018 until 2022, referring to monitoring reports that AHC has carried out on the activity of the vetting bodies, the IQC and the SAC, in order to provide findings on guaranteeing the proper standards for the effects of the vetting process for strengthening the rule of law, the judicial system, and implementation of the law. In this regard, the goal is to highlight some concrete findings and recommendations on the standards that the re-evaluation institutions should guarantee on a permanent and coherent basis, regarding responsibility, accountability, and proficiency of judges and prosecutors.

2. Context of the institutional reform

The vetting process of judges and prosecutors bears special significance in terms of strengthening accountability and responsibility of the judicial and prosecutorial power. Although this process represents only one link of the chain of justice reform, and is of a transitory (temporary) nature, this constitutional instrument has sought to restore the trust of citizens in the justice system as a guarantee for democracy and the rule of law. AHC considers that the standards established by the practice to date with the decision-making of the IQC and the appeals process of the SAC guarantee coherence and good sustainability for the subjects that still await the vetting process. This aspect has also been underscored in the Venice Commission Opinion on the Constitutional Amendments, which supported the extension of the mandate of the vetting bodies (IQC and PC). Referring to the analysis of the selected decisions, we find it positive that in their majority, the vetting bodies respected the principle of proportionality, the principle of the equality of legal arms, the right of the subjects of re-evaluation to be heard and to defend themselves, as leading principles that should guide this process.

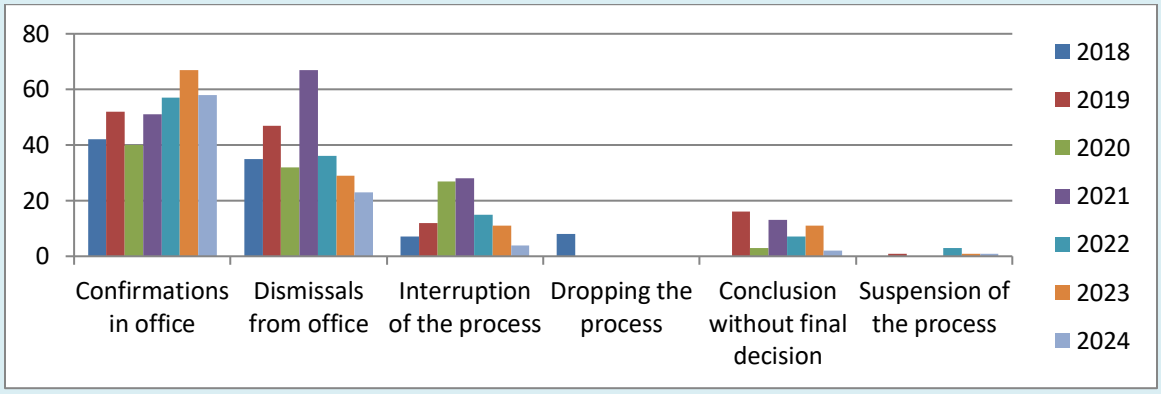
In respect of priorities due to the law, the first subjects that underwent the vetting process were the members of the Constitutional Court and the High Court, candidates for the High Judicial Council, the High Prosecutorial Council, the Judicial Appointments Council, and the High Justice Inspector.[7] The IQC drew a lottery for the first time on 01.12.2017 for the first 57 subjects and the first hearing session for the re-evaluation procedures began on March 21, 2018. The table below provides some statistical data obtained from the monitoring reports of AHC on the main indicators that determine the dynamics of the re-evaluation process from January 2018 until 2022.

Meanwhile, data obtained from the official website of the IQC indicate that the vetting process appears to proceed well; the IQC issued 805 decisions during the period from February 8, 2018, until November 30, 2024. Of these decisions:

- 373 decisions to confirm subjects in their offices[8]
- 268 decisions to dismiss from office[9]
- 105 decisions to interrupt the process[10]

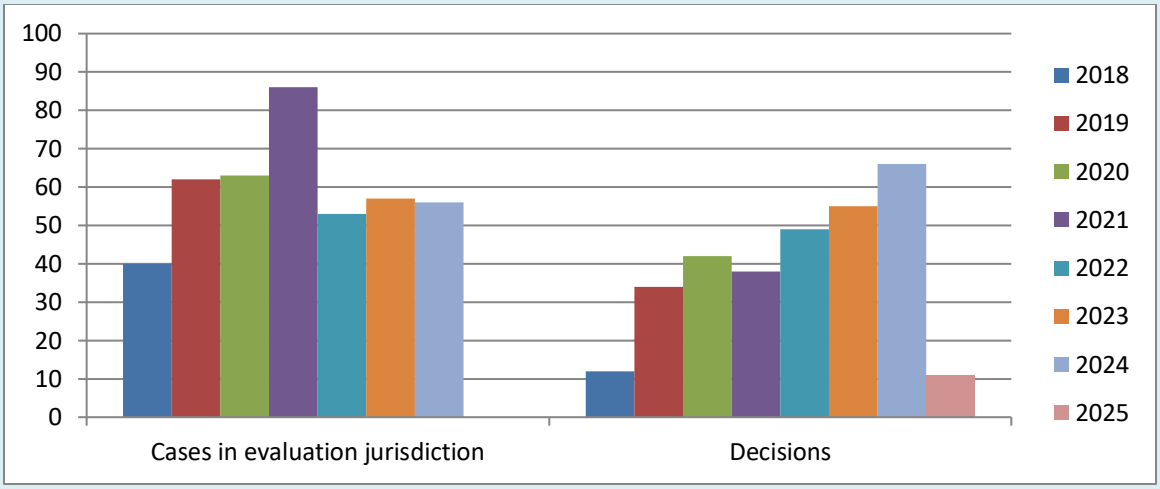
[7] http://kpk.al/2017/12/12/njoftim/
[8] For 165 judges, 167 prosecutors, 2 former HCJ inspectors, 2 inspectors at the HJC, and 37 legal aides/advisors
[9] For 146 judges, 1 former judge of the HC, 116 prosecutors, 1 inspector at the HJC, and four legal aides
[10] Article G of the Annex of the Constitution for 61 judges, 27 prosecutors, 1 former prosecutor, 14 legal aides, 1 former inspector at the HCJ

- 8 decisions to drop the process[11]
- 49 decisions for the conclusion of the process without a final decision[12]
- 2 decisions for suspension from office for 2 prosecutors.



Based on the graphic, one may find that the highest number of confirmations in office took place in 2023, followed by 2024, and then 2022. Meanwhile, the highest number of dismissals from office of the subjects of re-evaluation was in 2021, 2019, and 2022. Likewise, there has been a higher number of interruptions of the process for which article G of the Annex of the Constitutional applies, compared to the conclusions of the process without a final decision, for which article 95 of the APC and article 64 of law no. 96/2016 apply. Nevertheless, based on AHC monitoring on the number of hearing sessions,[13] it may be concluded that from February 8, 2018, when the first decision of the IQC dates, to December 2024, the pace of the vetting process has been relatively slow. According to data for 2018, the IQC held an average of two hearing sessions per week, for 2019 it had an average of up to 7 hearing sessions per week, for 2020, it had up to 4 hearing sessions per week, and for 2021, it had up to 8 hearing sessions per week. This pace of work was far from the expectations for the dynamics of the process vis-à-vis the total number of subjects that were drawn by lottery by the IQC, as this body had a number of members that ensured the formation of four panels of judges at the same time, and could have had higher productivity. Meanwhile, for the SAC, it results that from 2018 until 2025, there are 417 cases under evaluation jurisdiction and 307 decisions have been rendered. Until October 2024, there were only 7 cases pending review before the IQC and 123 cases pending review before the SAC.

[11] For 3 judges, 1 prosecutor, and 4 legal aides at the High Court (article 56 of law no. 84/2016)
[12] For 25 judges, 1 former judge, 17 prosecutors, one former chief inspector at the HCJ, and 2 former inspectors at the HCJ, and four legal aides (article 95 of the Administrative Procedure Code and article 64 of law no. 96/2016)
[13] See table above.



Based on the graphic, according to data obtained from the official website of the SAC, it results that more cases were registered in 2021, 2020, and 2019, and more decisions were issued during 2024, 2023, and 2022.

Likewise, AHC considers that this process fully meets its goal only when the decisions of the vetting bodies fully address in the context of their execution the holding criminally accountable those magistrates for whom serious facts were discovered regarding their assets and contacts with organized crime, which are criminally punishable. Therefore, the vetting process is deemed to provide the required standards of legal process and decision-making in keeping with the Constitution, law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania," only if it manages to accomplish not only the cleansing of the system from judges and prosecutors found to have problems in terms of their assets, integrity, and proficiency, but also guarantee their punishment as a requirement for their accountability.

3. Institutional context of the vetting process

The vetting institutions were established for the re-evaluation of judges and prosecutors through a transformative process that would be implemented for the first time in our country, as a measure to prevent corruption and protect the judicial system from a polarized political environment.[14] Initially, the vetting of magistrates was conceived as a transitory process of a temporary nature as, in the long term, this process, according to the Venice Commission might infringe upon the principle of immovability of judges and standards linked with their careers. Their creation was based on constitutional amendments for the in-depth reform of the justice system and on the approval of a special law on vetting.[15] At present, the vetting process has been passed on to the institutions of the HJC and HPC, with the expiration of the mandate of the IQC in December 2024, pursuant to article 179/b of the Constitution. Also according to this article, the head of the Special Prosecution Office assumes the role of the public commissioners while the Appeals College continues the review of cases until the full completion of its mandate in 2026.

[14] Law no. 84/2016 on the transitory re-evaluation of magistrates.
[15] Law no. 84/2016 on the transitory re-evaluation of magistrates.

The vetting institutions were created through difficulties and challenges from the very selection process of 20% of candidates, with the IMO playing an important role to fulfill the requirements of the law to avoid conflict of interest and failure to justify their assets. These institutions began to function about nine months late since they were mandated, only on March 21, 2018[16], after the Constitutional Court confirmed the constitutionality of Law no. 84/2016 "On vetting."[17] In terms of the organization of these institutions, there have been delays in the accommodation of members in the respective buildings, equipping them with support personnel,[18] classifying salaries for personnel, and the approval of their budget.[19] For the implementation of Law no. 84/2016, the activity of the IQC and SAC was influenced by the need to collaborate with other supporting bodies, including the High Council of Justice (HCJ), the General Prosecution Office (GPO), the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI), and the Directory for the Security of Classified Information (DSCI). All these factors taken together led to the vetting process in its beginnings to proceed relatively slowly, which was critical for obtaining the confirmation of candidates for members for the creation of the new institutions of the HJC and HPC, before they were voted by the Assembly.

The vetting process has been particularly significant for the confirmation of candidates for members of the Judicial Appointments Council (JAC)[20], whose functioning was a precondition for the ranking of candidates for the Constitutional Court and the High Justice Inspector,[21] but especially for the High Court. Due to the dismissal of judges by the vetting process in the highest courts, difficulties were created in completing the adjudicating bodies. For instance, the High Court in 2016 was left with only three members and had 32,000 carryover cases, while in 2020 it counted 36,000 cases while in 2024, the number of backlog cases has been reduced considerably to 18,000 carryover cases.

At present, there are 268 magistrates who have been found with violations and, as a result, have been removed from the system, thus creating a high number of vacancies of judges and prosecutors. In 2023, the HJC reported that the court system functioned with 247 judges effectively on duty out of 408 judges that the organizational structure stipulates (the staffing pattern actually has 329 judges). Likewise, very problematic is also the number of judges' vacancies in the courts of judicial districts of general jurisdiction, which lacked 44% of the judges; at the Administrative Court of Appeals, there was a lack of judges of about 57% of the judicial staff; at the Appeals Court of General Jurisdiction, there was a lack of judges of about 31% of the judicial staff (24 of 78 judges); at the Special Court of First Instance as well, there was a lack of judges that represented 56% of the judicial staff. As a result of the creation of vacancies in the courts system, the vetting of magistrates brought about evident effects of the creation of a high number of carryover cases in the courts, of the dragging out of adjudications, in the manner of implementation of the career scheme for magistrates, which above all should serve to complete the adjudicating bodies. Aside from the vacancies created by the vetting process, another factor influencing the distribution of

[16] Independent Qualification Commission (IQC), Public Commissioners (PC), and the Special Appeals College (SAC)
[17] Decision no. 2, dated 18.01.2017, of the Constitutional Court of the Republic of Albania.
[18] The Assembly approved Decision "On the approval of the block list of candidates selected in the re-evaluation institutions according to law no. 84/2016"
[19] Decisions no. 92, 93, and 94/2017 of the Assembly.
[20] Article 49 of law no. 84/2016 that envisages *"Means for searching evidence"* envisages opportunities to request and obtain different evidence from the supporting bodies.
[21] Article 49 of law no. 84/2016 that envisages *"Means for searching evidence"* envisages opportunities to request and obtain different evidence from the supporting bodies.

workload in courts with high numbers of cases was the impact of the implementation of the new judicial map. As a result of the dissolution of nine courts, there was a merging of judicial and administrative staff in the first instance courts of Dibra, Durrës, Fier, Gjirokastra, Korça, Kukës, Lezha, Shkodra, Tirana, the appeals court of general jurisdiction (due to the dissolution of six courts of appeals), and the Administrative Court in Tirana and Lushnje. It results that aside from the Tirana judicial district court, which has 62% of judges in office, at present, all other courts have a very low percentage of judges in office. Meanwhile, the opening of vacancies for judges is high in all courts and very high in the Appeals Court of General Jurisdiction. For filling the vacancies that have been created in the system, the HJC has taken several measures, such as:

- Increasing quotas and the recruitment of magistrate candidates graduated from the School of Magistrates (*40 in academic year 2022-2023),*
- Efficient management of civil judicial employees,
- The conduct of transfers[22] and delegations, promotions,[23] parallel transfers for 11 judges, and the assignment of 208 judges to other cases.[24]

The HJC has set strategic objectives for the period between 2024 and 2027 to increase the number of judges respectively to 70 judges for the Tirana first instance court, to 60-78 judges for the Appeals Court of General Jurisdiction, and to 27 judges for the Administrative Court of First Instance in Tirana.[25] While for 2024, there have been about 32 judges, in 2025 expectations are to have 45 new judges, while in 2026 there will be 20 new judges. In these conditions, the vetting process, aside from the request for profound reform of the system in the context of the fight against corruption, is seen as a key factor that has led to the creation of an unprecedented *sui generis* situation in the justice system, due to the inability to fill the vacancies created in the courts with a high number of carryover cases.

On 10.02.2022, the Assembly approved the constitutional amendments that enable the extension by two and a half years of the mandate of the Public Commissioners (PC) and IQC members, respectively until December 31 of 2024. Based also on the high volume of verifications reported by HIDAACI – about 3,000 verifications for subjects of vetting and related persons – the need arises for the most efficient interaction and coordination possible between supporting bodies with the re-evaluation institutions. For the creation of this interagency coordination, this policy paper emphasizes the importance of interaction with supporting bodies such as HIDAACI, GPO, DSCI, HJI as important factors during the process of administrative investigation into all three criteria. Besides the need for a clear division of roles among these institutions, it is important also to realize the measurement of their performance on the basis of indicators of efficiency and productivity. Likewise, there needs to be interaction with the councils of the courts, or prosecution offices that transfer a high number of cases for magistrates who are in the vetting process at the HJC and HPC. Some positive steps toward coordination among institutions of the HJC and HPC include the creation of a technical working group that manages the coordination of the re-evaluation process,

[22] Article 49 of law no. 84/2016 that envisages *"Means for searching evidence"* envisages opportunities to request and obtain different evidence from the supporting bodies.
[23] Article 49 of law no. 84/2016 that envisages *"Means for searching evidence"* envisages opportunities to request and obtain different evidence from the supporting bodies.
[24] Article 49 of law no. 84/2016 that envisages *"Means for searching evidence"* envisages opportunities to request and obtain different evidence from the supporting bodies.
[25] Article 49 of law no. 84/2016 that envisages *"Means for searching evidence"* envisages opportunities to request and obtain different evidence from the supporting bodies.

while draft regulations have been compiled on the procedures to be followed hereinafter by these two institutions for concluding the vetting process.

II. Methodology

This policy paper presents an analysis on the appropriate standards that should be implemented in the future by the institutions of the HJC, HPC, and SAC with regard to the process of re-evaluation of magistrates until the full conclusion of this process. For this purpose, we shall refer to the reports of monitoring conducted by the Albanian Helsinki Committee (AHC) from 2017 until 2022 in order to comprehend the standards of the institutional practice of the previous vetting bodies, in order to empower them in the future. Besides these reports that will represent the essential basis for this policy paper, we will also make use of other existing documents to ensure an analysis of quantitative and qualitative data. The following will be at the center of the analysis:

- The administrative investigation for the confirmation or dismissal of magistrates, with a focus on the evaluation of the control on assets, integrity, and professionalism of the magistrates.
- The rights of the subjects of re-evaluation in their entirety, referring to protection guaranteed by law, especially the guarantees linked with the right to due legal process.
- The standards of transparency and accountability of the vetting process.

The main focus of the analysis of this paper will be on the findings on the evaluation of all three evaluation criteria of assets, integrity, and professionalism, and the progress of the execution of decisions by the re-evaluation bodies for the vetting of magistrates after they become final. Based on the practice to date, the goal is to provide some recommendations for the institutions that are responsible for the transitory re-evaluation of magistrates instead of the IQC, which are the HJC and HPC, and the supporting bodies in order to address as efficiently as possible in the future those cases when subjects have been found with violations regarding re-evaluation criteria, in the context fulfilling the strategic objectives of efficiency, transparency, accountability, and professionalism of magistrates.

V. Standards of the vetting process according to AHC findings for the period 2018-2022

In the context of findings emerging from the continued monitoring that AHC conducted, through the years 2017 until 2022, for the purposes of the analysis of this report, it is worth highlighting a few aspects, such as: (1) supporting bodies of the vetting process, (2) International Monitoring Operation (IMO), (3) the administrative investigation of the vetting bodies on the basis of the three criteria, (4) decision-making of the vetting bodies IQC and SAC, and (5) resignation of subjects of re-evaluation.

1. Supporting bodies of the vetting process

According to the vetting law no. 84/2016, the vetting bodies investigate, review, and evaluate the data obtained from the reports of the supporting bodies, compared to all evidence, facts, and

documents available during this investigation.[26] The vetting process has been affected by the activity of different supporting bodies, including the former HCJ, GPO, HIDAACI, and DSCI and further by the HJC and HPC. This occurred because the vetting bodies, as a function of the process of re-evaluation, investigate on the basis of reports by the supporting bodies to reach the provability of cases under review. It is worth emphasizing that the vetting bodies conducted an impartial and independent administrative investigation that has been extremely important for the administrative investigation of the criterion of assets, in order to verify the periodical disclosure statements submitted by the subjects in previous years,[27] to highlight cases when subjects have ownership over more and greater assets than can be legally justified. More concretely:

- **HIDAACI**: According to AHC findings, it results that a total of 794 subjects of re-evaluation[28] submitted their asset disclosure statements to HIDAACI. Based on the disclosure statements, the HIDAACI conducts a full inspection procedure in accordance with the law on vetting.[29] The General Inspector of the HIDAACI, for the purposes of the re-evaluation, may request through the General Directory for the Prevention of Money Laundering or the Ministry of Justice the documents on assets under the ownership of the subjects of re-evaluation and related persons, documents used abroad by the subjects of re-evaluation and related persons, or financial data on any financial transaction inside or outside the country.[30] These documents or information may be used as evidence before the IQC or the Appeals College. HIDAACI has enabled full access for international observers to seek information, consult, copy, and investigate the disclosure statements of assets presented by the subject of re-evaluation or the related person, as well as accompanying documents. The time that it took HIDAACI for full investigation is 180 days from the day the disclosure statement was submitted. At the end of the control, the General Inspector of HIDAACI sends the re-evaluation bodies a detailed report.[31] It should be emphasized that the control by this institution is preliminary and based only on documentation submitted by the subjects of vetting according to requirements of the law. As such, HIDAACI reports may not be considered exhaustive for evaluating the criterion of assets, but do bear the main weight in the decision-making of the re-evaluation institutions for this criterion, besides a series of other verifications that they carry out for an in-depth administrative investigation. During the investigation, the vetting bodies secure evidence and supporting data secured by IMO observers or the statements of the subjects during the hearing session, from declarations by witnesses and experts, etc. Likewise, they rely for their verification also on data secured by some institutions according to provisions of article 42 and 50 of the law on vetting.[32] Based on data administered

[26] Article 49 of law no. 84/2016 that envisages *"Means for searching evidence"* envisages opportunities to request and obtain different evidence from the supporting bodies.
[27] Pursuant to the Constitution, article Ç, paragraph 4 and article D of its Annex, as well as to law no. 84/2016, in articles 30, 32, and 33 thereof
[28] 7 members of the Constitutional Court and 9 legal advisors in that Court; 15 judges of the High Court and 20 legal aides at that Court; 373 are judges of judicial district and appeals courts; 27 are legal aides at administrative courts; 326 are prosecutors at the General Prosecution Office, Serious Crimes Prosecution Office, judicial district and appeals prosecution offices; 7 are legal aides; 10 are Chief inspectors and the inspectors of the High Council of Justice.
[29] And the law "On the declaration and audit of assets, financial obligations of elected persons, and certain public officials," the law "On the prevention of conflict of interest in the exercise of public functions" and the Administrative Procedure Code.
[30] Law "On the prevention of money laundering and terrorism financing" of the subjects of re-evaluation and related persons.
[31] Where he/she states: a) the declaration is accurate in accordance with the law, with lawful financial resources and not in a situation of conflict of interest; b) lacks lawful financial resources to justify assets; c) there is hiding assets; ç) there is false disclosure.
[32] At the Special Prosecution Office, according to article 148, paragraph 4, of the Constitution, and on data for the judicial status of the subjects of re-evaluation; in the personal files of the subjects of re-evaluation, statistical data, legal documents, case files selected for evaluation, self-evaluation, opinions of supervisors, data on training programs, on complaints for individuals subjected to evaluation and the results of verifications of complaints, as well as on decision for disciplinary measures for the evaluated subjects; on data on assets in the Immovable Property Registration Office, the Albanian notary register; bank accounts, tax information, databases on vehicles, data on entry – exits at border crossing points; on data on asset rights or interests of any kind on an asset, including loans, traveler's checks, bank checks, payment authorizations, all kinds of titles, invoices for payments and credit letters, as well as any interest, dividend, income or other value deriving from

at HIDAACI, it results that the High Inspectorate sent the vetting bodies about 57% reports for subjects with problems in the asset disclosure statement, of which in 45% of the cases the reports were upheld by IQC. It is worth emphasizing that for 25% of the cases reported by HIDAACI, the subjects interrupted the process. The IQC decided differently for about 30% of reports from HIDAACI on the criterion of assets for the subjects. Another role of this institution is linked with the referral of cases to the prosecution office. Initially, for the criterion of assets for the subjects of re-evaluation, this institution only referred the information to the IQC or SAC. In recent years, we notice cooperation of this institution with SPAK for the referral of cases for prosecution, when problems are encountered with the declaration of assets that represent a criminal offense. At this phase of the process, when the HJC and HPC have assumed the role of the vetting bodies, it is important to have HIDAACI cooperation both during the administrative investigation phase and after final decisions are made for the dismissal of subjects to refer cases for prosecution every time the conditions of the requirements of the criminal law are met.

- **Directory for the Security of Classified Information (DSCI):** According to AHC monitoring, it resulted that the number of subjects that filled out the Integrity Control Form is 801, with 3[33]% filling it out with deficiencies due to the resignation of some subjects of re-evaluation. This mismatch in the number of subjects that fill out the self-declaration forms is also due to the lack of clarity in the categorization of judges or prosecutors who requested temporary suspension and were assigned by supervisors as legal aides at the High Court, the HCJ Inspectorate, etc. Meanwhile, for the subjects controlled by the DSCI, there have been about 25% of cases reported by this institution that were later found to have irregularities with regard to their integrity by the IQC, mainly due to meetings, exchange of electronic correspondence, or any other form that, according to the law on vetting, is considered inappropriate. The DSCI has the right to assign additional personnel to conduct the control of the integrity for the purposes of this process. Thus, the DSCI, together with the State Information Service (SHISH) and the Internal Control and Complaints Service (SHKÇBA) at the Ministry of Interior, create a working group[34] to prepare reports for the purpose of the vetting process. Upon request of the working group or other re-evaluation institutions, the DSCI may communicate with other countries to obtain necessary information on individuals involved in organized crime or individuals suspected as such.

- **General Prosecution Office (GPO):** The General Prosecution Office reported that within the deadline of January 31, 2017,[35] the total number of subjects that submitted the self-declaration professional form was 336. AHC findings stated that the GPO did not issue in its reports preliminary conclusions or evaluations but only provided requested information without offering any in-depth analysis.

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them; on data on potential business relations, data proving the existence of physical money or other means or instruments of the money market, and data proving the existence of trusts or other similar agreements.

[33] DSCI has received the statement within the legal deadline from 7 judges of the Constitutional Court, 6 legal aides and 3 advisors at this Court, 17 judges of the High Court and 16 legal aides at this Court, 73 judges and 1 prosecutor at the Appeals Courts, 244 judges and 6 legal aides at the first instance courts, 39 judges, 1 ju advisor, and 21 legal aides at the administrative courts and the Administrative Appeals Court, 22 judges of Serious Crimes Courts, 1 judge and 10 inspectors at the HCJ, 331 prosecutors and 2 legal aides at the General Prosecution Office and judicial district prosecution offices, and 1 State Advocate.

[34] With duties for a) accurate verification of identity in the past and present, for every individual; b) verification whether the individual has criminal tendencies for involvement in organized crime; c) overall evaluation, whether the individual may be pressured by criminal structures; ç) control of whether the individual has been, is, or may be engaged secretly, alone, or in cooperation with others, in the makeup of a criminal organization.

[35] Of which, 326 prosecutors, 7 legal aides, and 3 former prosecutors who are currently in the position of inspector at the Directory of Inspection at the Ministry of Justice.

- **High Prosecutorial Council (HPC):** It collaborated with the vetting bodies to provide reports on the evaluation of the proficiency of prosecutors regarding their ability to investigate and bring public charges, organizational skills, ethics and engagement to professional values, as well as personal qualities based on the standards envisaged in the law. At present, with the end of the mandate of the IQC, the HPC serves as a body for transitory re-evaluation for vetting subjects from among prosecutors, based on article 179/b of the Constitution.

- **High Judicial Council (HJC):** Initially, the inspectorate of the former HCJ reported to the vetting bodies on the registration of 250 subjects for verification.[36] Further on, the High Judicial Council assumed this role for sending evaluation reports on the proficiency of judges, legal advisors and legal aides on the skills to adjudicate, organizational skills, ethics and commitment to judicial values, personal qualities and professional engagement, based on the standards envisaged in the law. At present, with the end of the mandate of the IQC, it is the HJC that serves as the body for transitory re-evaluation for subjects of vetting from among judges and legal aides, based on article 179/b of the Constitution.

- **School of Magistrates (SM):** The evaluation of skills for legal advisors or aides includes testing at the School of Magistrates and therefore the vetting bodies collaborated with this institution for the investigation of this category.

- **High Justice Inspector (HJI):** The subjects that successfully pass re-evaluation are subjected to the permanent system of accountability, according to the general rules stipulated in the Constitution and the law. Although the subject of re-evaluation is given a decision for confirmation in office, the re-evaluation bodies have the right to transfer the case to the HJI for inspection when it finds causes that represent disciplinary violations,[37] or when it highlights causes that should be taken into consideration during his/her periodical evaluation. As a rule, there can be no appeal against such a decision. In such cases, the HJI immediately begins the review of causes.[38] The High Justice Inspector highlights cases with evident elements of criminal offenses committed by the subjects of re-evaluation, which should be subjected to prosecution by the prosecution office. That is why more cooperation is required in the future between the re-evaluation institutions, HJC and HPC with HJI and the prosecution office in order to investigate and prosecute subjects of this category.

- Special Structure against Organized Crime and Corruption (SPAK): At present, with the end of the mandate of the IQC in December 2024, pursuant to article 179/b of the Constitution, the head of the Special Prosecution Office assumes the role of the public commissioners. Therefore, he reviews the declarations of the subject of re-evaluation about his past, interviews individuals mentioned in the declaration or other individuals, and collaborates with other state or foreign institutions to confirm the truthfulness and accuracy of statements. The head of SPAK may appeal decisions of the HJC and HPC on the subject of re-evaluation to the SAC. In this case, the SAC may not decide on a disciplinary measure that is more severe without giving the subject

[36] Copies of 198 judicial case files were submitted to the Inspectorate that are linked with the transitory re-evaluation of 40 subjects of re-evaluation; for 10 subjects of re-evaluation, the Inspectorate is awaiting the files; for 12 subjects of re-evaluation, all files have been submitted and work is underway to finalize reports according to the standard form, for the purpose of sending them as soon as possible to the IQC; for 28 subjects of re-evaluation, all files have been submitted and their analysis has been completed.
[37] According to the law on the status of judges or prosecutors.
[38] Article 59 of the law on vetting.

of re-evaluation sufficient time to prepare and be heard in a hearing session. Another important role of SPAK is that of continuing investigations of the subjects of re-evaluation dismissed by the vetting process, undertaking action upon its own initiative. In this regard, there has been a marked lack of cooperation of bodies with SPAK to file concrete criminal referrals with this body. In regard to this, the constitutional provisions or laws in force[39] need to be completed to envisage what actions are taken when the administrative investigation has produced evidence that meet the elements of criminal acts. Furthermore, these provisions should also determine which institution has the right to refer these cases to the prosecution office for further investigation. These legal deficiencies make the role of SPAK's head twice as difficult because of the fact that the official assumes the competences that the Constitution envisages for the Public Commissioner.

- **Courts and Prosecution Offices of General Jurisdiction** should demonstrate greater readiness to pursue whether through criminal referrals or their own initiative those cases when dismissal from office of the subjects of transitory re-evaluation has taken place for causes that contain reasonable doubts of committing a criminal act. The courts and prosecution offices of general jurisdiction carry out their activity on the basis of the Criminal Code and the Criminal Procedure Code for all those criminal offenses and subjects of re-evaluation that have been dismissed by the vetting bodies, which the Special Court does not act upon.[40] From 2018 until July 2022, it results that the courts and prosecution offices of general jurisdiction do not have statistical data on investigations, adjudications, or convictions for the subjects of the vetting process. It is disturbing that the statute of limitations expires on investigations or adjudication of criminal offenses of false declaration or hiding of financial resources due to delays in the denunciation for the subjects of transitory re-evaluation who have been dismissed, thus leaving subjects of vetting outside criminal responsibility.

2. International Monitoring Operation

The role of the IMO has been expressly restricted to the exercise of competences of a monitoring nature, without any decision-making role or any role linked with the administration of the vetting process. In spite of the IMO mandate, their observers have provided information only about what has been provided in the hearing session for the broad public opinion. While they played a role during the review process to check files, have access to information available, to recommend obtaining additional evidence or the exercise of the right to complain by the public commissioners, IMO suggestions on the case were not reflected in the decisions of the vetting bodies. In sporadic cases, the role and contribution of the IMO have surpassed the competences envisaged in article B, paragraph 3/b of the Annex of the Constitution, with regard to the evaluation of the integrity of the subjects of re-evaluation, where the findings of the international observer led to the reopening of the judicial review.[41] Likewise, there have been cases when the opinion and findings of the IMO observer relied on the denunciations of the public. Nevertheless, it was a positive guarantee in the process of overseeing the vetting process and guiding it toward the best standards of control and accountability that judges or prosecutors with no less than 15 years of experience in the justice system in the European Union and the United States were appointed to the IMO.

[39] Law on vetting.
[40] Article 135/2 of the Constitution of Albania, Special Courts adjudicate criminal acts of corruption and organized crime as well as criminal charges against a judge of the Constitutional Court and the High Court, the General Prosecutor, High Justice Inspector, member of the High Judicial Council and the High Prosecutorial Council.
[41] Independent Qualification Commission, Decision no. 117, dated 21.03.2019.

3. Administrative investigation of the vetting bodies

According to monitoring by AHC, the administrative investigation has not turned out to be inclusive, unified, and did not guarantee equality between the subjects based on the evaluation of all three criteria (assets, integrity, and professional abilities).[42] Initially, dictated by the need for a more dynamic pace in the decision-making of the IQC and SAC, the subjects were evaluated only on the basis of one criterion,[43] but later, progressively and with the passing of years, the subjects were evaluated for two criteria, until the evaluation for all three criteria.[44] This uneven standard has created room for differentiated treatment of similar cases of subjects, but also premises for delays of the process due to the exercise of the right to file a complaint by them.[45] The Constitution of the RA, as well as law no. 84/2016 on the vetting process, article 4, paragraph 2, have been clear in their provisions regarding the control of all three components by the vetting bodies. Likewise, in the aspect of the interpretation of the law, the vetting bodies, in the review of the first cases, have been subjective and incoherent, resulting in decision-making with different standards for the implementation of the law on vetting. For instance, as in the case when the IQC referred "in-depth and comprehensive investigation" as a fulfillment of article 45 of law no. 84/2016 on the evaluation solely of the criterion of assets. In fact, according to this article, evaluation of all necessary facts and circumstances is inferred, for the re-evaluation procedure based on all three criteria, not only on one criterion.[46] Meanwhile, the SAC in its decision 23/2019, stated that it is at the discretion of the vetting bodies IQC and SAC, as the responsible institutions, to determine the final evaluation of the subjects of re-evaluation, based on one, several, or the overall evaluation of all three criteria. This issue in the first reviews was addressed with hesitation and delays and, as a result, found regulation only in reviews of the later years by the IQC and the SAC. The table below highlights some of the most typical violations for the evaluation of all three criteria, according to AHC findings:

Typical violations for the criterion of assets	**Typical violations for the criterion of integrity**	**Typical violations for the criterion of professional capabilities**
Lack of declaration of a bank account by the related person is evaluated as deficiency in declaration[47]	Conflict of interest of the subject with citizens who have been charged for criminal offenses such as laundering of the proceeds of criminal offenses (article 287 of the CC), illegal construction (article 199/a of the CC), etc.	Deficiencies in legal knowledge, abilities to interpret and respect the law
Inaccuracy in the periodical declaration *at HIDAACI* that was later corrected (*before filling out the vetting declaration)*, because such correction was done upon the initiative of the subject of re-evaluation	Suspicions based on credible data for the involvement of the subject in the criminal offense o passive corruption	Deficiencies in legal reasoning

[42] According to Annex Ç of the Constitution
[43] See decisions no. 12, dated 23.03.2018, and no. 14, dated 13.04.2018, no. 15, dated 20.04.2018
[44] Supported by the vetting bodies, article 4, paragraph 2, of law no. 84/2016
[45] Decisions of the Constitutional Court no. 2/2017 and no. 78/2017, Annex of the Constitution and law no. 84/2016
[46] See table no. 18 in the Annex
[47] In the case of subject D.P.

Manner of filling out the vetting declaration on the source of creating wealth in those cases when a different source has been declared in the annual disclosure statements	Use of the vehicle of the citizen convicted of "trafficking of narcotic substances" in Greece, etc.	Deficiencies in ethical qualities, professional engagement, and organizational skills
Provability of the payment of financial obligations by the subjects of re-evaluation or inaccuracies in the declaration of obligations toward third parties in the case of the subject[48]		Dragging out or delays in following duties (functions)
Mismatches in the reporting of assets and the sources for their creation, through data reflected in periodical annual disclosure statements at the HIDAACI, and those reported by the subject in the vetting declaration		Unjust solution to different practices
Claims of double standards		Received disciplinary measure while exercising functions
Illegal source of income		Conflict of interest or premises for bias toward subjects in investigated/adjudicated cases
Hiding of incomes or expenses		
Failure to declare source of earning wealth, use of irregular documents to prove it, false declaration or failure to justify income or obtaining assets of the subject or related persons		
Failure to respect legislation for the registration of movable/immovable properties		
Price of purchase of apartment is lower than the market price or fictitious contract and purchase at fictitious price		
Income gained from emigration are insufficient to justify expenses		
Gaining the status of homeless individual in violation of the law or in an unjustified manner		
Failure to periodically declare loan		
Failure to deposit fully social security payments and personal income tax		
Lack of possession of liquidity		

- **Reopening of investigation**

The procedure for re-opening the administrative investigation during the review at the IQC is justified mainly by granting the subject of re-evaluation the ability to obtain evidence and acts that justify claims and findings of the IQC, in the case of the transfer of the burden of proof to the subject. This means ended up being particularly important for some subjects, which had a long

[48] See table 4 in the Annex

work experience and, as a result, had difficulties to secure within a short period of time, the documents dating from 20-30 years earlier.

a. Criterion of assets

Based on the findings, the criterion of assets served as a decisive criterion in the most part of investigations in decision-making by the IQC and SAC. The administrative investigation is based mainly on the truthfulness of annual disclosure statements of the subjects of re-evaluation, the vetting declaration, and the justifying documents supporting these declarations. These institutions verify how the subjects of re-evaluation and related persons fulfilled their obligations, whether the source of income was lawful, whether there had been hiding of assets, or conflict of interest, etc. Based on the practice of decision-making of the vetting bodies in supporting the confirmation or dismissal of the subjects of re-evaluation, a debate has arisen as to which legal source would have primary importance for supporting the assets of the subjects. On this matter, there was a SAC decision that argues that the constitutional provisions do not have as a goal to determine the order of importance of the declarations and, therefore, the argument on the primary value of asset statement (*vetting*) from the annual disclosure statement through the years does not represent a cause for interpretation from a formal standpoint.[49]

Regarding the legitimate source of assets and the standing of the vetting statement vis-à-vis the periodical asset disclosure statements through the years, the IQC has argued that "*the accuracy and the sufficiency of declarations by the subject of re-evaluation, as well as the convincing explanation of the legitimate sources of assets possessed or used by the subject of re-evaluation and the related persons are decisive elements for the complete control and fair evaluation of the criterion of assets, in fulfilling the requirements of special constitutional and legal norms for the transitory re-evaluation of judges and prosecutors.*"[50]

Based on the analysis provided by AHC in all its monitoring reports on the vetting process from 2018 until 2022, regarding the evaluation of the criterion of assets by the vetting bodies, the following have been highlighted as issues that have contributed to further improvement of standards:

- The IQC and the SAC have not maintained the same stance in their decision-making regarding the incomes that subjects have declared before starting their jobs, or regarding the fulfillment of tax obligations for periods when a long time has passed. For the legal reasoning for these causes, the IQC relied on legal provisions *(article 32, paragraph 2 of law no. 84/2016)* that envisage the objective inability of the subject to present documents that justify the lawfulness of the creation of assets. For instance, practice has highlighted as causes for deficiencies in documentation even testimonies for activities 20 years earlier, the inability to preserve invoices due to the amendments in fiscal and financial laws, difficulties in the certification of methods of obtaining assets, especially those secured before 2003.[51] Nevertheless, according to AHC, the decisions of the IQC could be more unified in the legal reasoning for these causes, stemming also from the obligation that the subjects have for verifying to the re-evaluation institution that the document has

[49] SAC, Decision no. 09, date 18.04.2019, page 24; *see para. 4, p. 17 of Decision no. 23/2019*
[50] Special Appeals College, Decision no. 19/2019
[51] Law no. 9049

disappeared, is lost, may not be produced again, or may not be obtained in any other manner.

- Looking at the practice, it results that cases have not been handled in the same manner when the cause for dismissal has been the lack of legitimate financial resources for the creation of the assets possessed by them.[52] For instance, when the subject of re-evaluation found it impossible to present documents that justify the financial action due to informal relations with family members with whom these cash actions were realized, it resulted that the IQC maintained different positions for different subjects, regarding insufficient declaration in accordance with articles 33 and 39 of law no. 84/2016.[53] Although AHC has pointed out avoiding different standards for this indicator, the IQC initially looked at it with hesitation and then correct the practice of decision-making on this indicator further.
- Another disputable element is when the subject of re-evaluation or the related person do not justify the incomes for which they did not pay an income tax,[54] such as for instance, income from emigration, which may have been created many years ago, but when they did not have the legal obligation to preserve documents. In this context, a legal and fiscal debate has been created for the subjects of re-evaluation on incomes obtained from their work in emigration,[55] because according to the doctrine, the payment of taxes does not legitimize wealth, or incomes, just as failure to pay taxes does not render wealth unlawful.[56] In this regard, the need has arisen for the unification of interpretation by the vetting bodies for the provisions that regulate the categories of lawful incomes according to article 3, paragraph 19, of law no. 84/2016, as well as the categories of sources of incomes envisaged in law no. 8438/1998 "On the income tax." More concretely, article 4 of this law, includes as lawful sources of income labor relations carried out inside the country, incomes from cultural and sports activities, other personal activities inside the country, as well as other incomes.
- AHC has recommended a clarification in legal provisions for a definition on the concepts of "hiding of assets"[57] and "inaccurate declaration of assets."[58] Both the Constitution in its Annex,[59] and the vetting law[60] do not manage to adequately highlight the subjective element, that is the purpose to not declare incomes when the discussion is about hiding of assets, an element that distinguishes it from the inaccurate declaration of assets.
- Adopting a methodology in order to unify the financial analysis accompanied by a summarizing table,[61] is a requirement of the Constitution in order to provide arguments for the incomes of the subjects but above all their assets. Based on IQC decisions, it results that in the financial analysis, there has been consideration of expenses for living, costs of travel, expenses surpassing 300,000 ALL, and cases when the subject of re-evaluation did

[52] See cases highlighted in Table 1 in the Annex
[53] See Table 12 in the Annex
[54] See Table 11 in the Annex
[55] See Table 10 in the Annex
[56] Commentary on the Constitutional Reform in the Justice System, published in 2019, page 532
[57] In these cases, the vetting bodies considered that the failure to fill out disclosure statements represents inaccuracy and for the subjects, they applied the measure of dismissal, according to article 61 of the law 84/2016
[58] Decision no. 112, dated 04.03.2019, page 15
[59] Article D of the Annex of the Constitution, paragraph 5, stipulates "If the subject of re-evaluation tries to hide or to inaccurately present assets under ownership, possession, or use by him, the principle of presumption in favor of the disciplinary measure of dismissal shall be applied, and the subject shall have the obligation to prove the opposite." Thus, the constitutional provision, "inaccurate declaration" represents a different or alternative concept of the concept "hiding of assets."
[60] Meanwhile, article 61, paragraph 3 of law no. 84/2016, when talking about the measure of dismissal because the subject provided insufficient declaration, the provision references article 33 of the same law, which envisages in paragraph 5 "hiding of assets" or "false declaration," but not "inaccurate declaration."
[61] See Table 2 with cases that reflect a lack of financial analysis in the Annex

not reflect these in the annual disclosure statements.[62] According to AHC, this financial analysis should include also the declaration of liquidities of the subject of re-evaluation and related persons,[63] or every declaration for the justification of amounts of money, such as loans taken from individuals in a special relationship.[64]

- Another issue that may find further regulation is the calculation of average living expenses,[65] for which the vetting bodies have applied the average index on the national scale and not the individual one for expenses, according to INSTAT. As a result, this has led to a failure of subjects to reflect real and effective expenses, as the calculation of this budget item is based on the sum of minimal and maximal salaries. In such cases, AHC has suggested cooperation with relevant banking institutions in order to obtain information on the state of accounts, in accordance with article 50, paragraph ç of law no. 84/2016.[66]
- Furthermore, based on the decisions of the SAC, there needs to be a more elaborate and standardized interpretation of the concept "assets in use" that is mainly linked with having an interest in assets or the existence of a conflict of interest between the subject of re-evaluation and the individual who owns the assets that they have used for different periods of time.[67]
- Another aspect that requires a standardized position is the establishment of the living minimum for which there is no legal provision.[68] This regulation is important as it has resulted in the application of different methods by the vetting institutions.
- In the majority of cases, IQC decision-making for the dismissal of subjects has come about due to failure to justify wealth. In regard to this, AHC has highlighted that there is a legal gap as to what extent the unjustified assets of the subjects may burden them with a negative evaluation in the criterion of assets.

b. Control of integrity

The constitutional Annex and Law no. 84/2016 mandates the DSCI for the control of the integrity of the judge/prosecutor through the verification of declarations and data to identify inappropriate contacts with organized crime. For this, the DSCI collaborates with vetting bodies for the investigation of these statements, although according to the previous practice, the IQC did not consider this criterion as a priority in its decision-making. Likewise, it has been noticed that the subjects have not been informed when the DSCI report underwent amendments (additions or reductions), and as a result, they were obstructed in effectively exercising the right to defense and complaint, in violation of the ECHR. With regard to this case, AHC has found that there is a legal gap in article 39 of the vetting law no. 84/2016, as the distinction between the drafting of a preliminary report and a revised report by the supporting bodies is not clear. According to this law,

[62] IQC, Decision no. 138, dated 09.04.2019, page 21; Decision no. 138, dated 09.04.2019

[63] The IQC considered in its decision-making that '*The subject of re-evaluation had the obligation to declare liquidities in every form, but could not declare liquidities that were under the administration of the parents and the family of the subject, in spite of the fact that the family could have created savings also due to the contribution of the subject with the incomes from their salary'* (*concretely, the father of the subject, at the amount of 1 000 000 ALL*).

[64] See Table 6 in the Annex

[65] Decision no. 138, dated 09.04.2019

[66] See Table 8 in the Annex

[67] See Table 9 in the Annex

[68] In one instance in the College, the subject of re-evaluation A.M., asked the panel of judges to conduct a new financial analysis by an independent accounting expert, in order to enable the conduct of a process in the conditions of impartiality, referring to article 65, of law 84/2016, articles 47, 48, paragraph 1; 49, 51, and 55 of law no. 49/2012 for administrative courts. The panel of judges of the SAC decided to reject his request, considering it unnecessary, based on article 49, paragraph 6, letter "a" of law 84/2016. Such decision-making may create the premises for interpretation, as a conduct for not investigating in a comprehensive manner the criterion of assets for the subject.

in order to verify the accuracy of information in the initial report, the working group of the vetting bodies, in collaboration with the DSCI, has 60 days, with the right to an extension by 30 days. According to article 39, paragraph 2, of the law, information in the reports of the working groups may not be made public when it jeopardizes the safety of the source or when it is established by the government of another country. Therefore, in all cases when the initial DSCI report is not classified a state secret, the vetting bodies have the legal obligation to make available to the subjects of re-evaluation not only the initial reports, but also the reports revised by the DSCI, in order to accomplishing the burden of proof as well as effective defense.[69] Furthermore, AHC has considered necessary the check on whether the subject had inappropriate contacts with individuals involved in organized crime.

c. Criterion of evaluation of proficiency

The evaluation of professional abilities seeks to identify the subjects that are not qualified to carry out their functions and those who have professional deficiencies that may be corrected through education in the School of Magistrates (SM). Because of the delayed creation of the HJC and the HPC, during the transitory period, the vetting bodies are based on the reports compiled by the supporting bodies at the time, such as the HCJ and the General Prosecution Office, regarding the criterion of professional capabilities, taking into account the results of the test at the SM. In general, it may be stated that the IQC reflected in a full manner the address of all indicators according to the reports of the HJC and HPC;[70] however, although formally the requirements of the law for the verification of this criterion have been exhausted, there could have been more in-depth investigation based on a more in-depth interpretation of the law, without infringing upon its essence. There was a positive development with Decision no. 21/2019 of the SAC, through which sub-indicators for the professional evaluation of subjects of re-evaluation have been highlighted.[71] Another step seen as positive and encouraged to be maintained as a standard in the future is that in the evaluation of professional capabilities, the decisions of the vetting bodies should also reflect the denunciations received from the public, in accordance with article 53 of law no. 84/2016, including anonymous ones. The IQC considered these denunciations and enabled further verification of data or indicia that have been addressed, realizing an independent investigation that is based on facts published also on investigative media platforms.

4. Decision-making of the vetting bodies IQC and SAC

AHC has highlighted that IQC decisions contain formal elements required by article 57 of law no. 84/2016. Meanwhile, the SAC decisions display a better standard, given that according to article 66, paragraph 2 of law no. 84/2016, the Appeals College, in the reasoning for its decision, has to guide the Commission for the resolution of similar cases. Thus, there is a higher quality in decisions of the College with regards to the summary of the facts, the highlighting in a structured manner for each criterion of the causes for the complaint, highlighting the claims of the subject of re-evaluation and the Commissioner, the evidence secured by them, evidence secured by the administrative investigation when this is conducted by the SAC, the constitutional-legal analysis, up to references to the jurisprudence of the European Court of Human Rights. In spite of these findings, AHC finds it of interest that in the decisions of the re-evaluation institutions, there be a

[69] See Table 15 in the Annex
[70] See: IQC Decision no. 404, dated 23.06.2021
[71] Based on the indicators established in articles 71, 72, 74, 75, 76 of Law no. 96/2016

more summarized presentation of some of the statistical data made available by the supporting bodies (DSCI, HIDAACI, HCJ, and GPO), although such data is not final. Likewise, AHC has appreciated and encourages the publication in decisions of the vetting bodies of the minority or parallel opinion of judges, according to article 55, paragraph 5 of law no. 84/2016,[72] as they are an indicator of the external and internal independence of the vetting institutions, which serves the healthy legal debate among their members, and contributes to the improvement of the quality of reasoning in a decision.

5. Resignation of subjects

Based on the provisions of the constitutional annex, paragraph G as well as article 56 of law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania," it results that categories of resignations are addressed at two different phases of the vetting process. Thus, according to article 56 of the law, the subject of re-evaluation has the right to resign from office no later than three months ahead of the entry into force of this law, submitting the written resignation to the President of the Republic and, in the case of resignation, the Commission makes a decision to drop the procedure of re-evaluation. Based on the practice of the vetting bodies, there have only been 8 cases of resignations according to this provision in 2018. After submitting their resignation, the subject of re-evaluation has the right to benefit a transitory payment, according to article 7, paragraph 1, of the law "On supplementary state pensions of individuals who carry out constitutional functions and state employees." For the calculation of the three-month deadline, the IQC also took into consideration the suspension of the implementation of the law no. 84/2016 by the Constitutional Court, and also accepted the possibility of resignation beyond the three-month deadline.[73] Meanwhile, the resignations of the subjects, according to the constitutional annex refer to cases when the subjects seek resignation from office during the vetting process. As a rule, in these cases, the re-evaluation process is interrupted and it concludes without a final decision.[74] As a result, the subject that resigns according to this provision may not be appointed 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. Until the creation of the Councils, resignations were submitted to the High Council of Justice and the General Prosecutor (article 160 of this law). Meanwhile, although providing a motivation on the reasons for the resignation is not a legal requirement for the subjects of re-evaluation, in some cases, the subjects made known the reasons for the requests for resignation upon their will.[75]

VI. Rights of the subjects of re-evaluation

In the context of the monitoring of the activity of the previous vetting bodies, AHC has highlighted some findings for some important aspects that are linked with the rights of the vetting subjects in their entirety, focusing particularly on the right to due legal process, according to article 42 of the Constitution and article 6 of the ECHR. In this regard, findings have been highlighted on the

[72] From the monitoring of the reasoned decisions, on the IQC website, it results that only one decision includes the minority opinion – namely Decision no. 18, dated 08.05.2018

[73] Based on article G of the Annex of the Constitution and the interpretation made in decision no. 78, dated 12.12.2017 of the Constitutional Court, for the provisions of law no. 84/2016 (article 56 thereof)

[74] Annex of the Constitution; Transitory re-evaluation of judges and prosecutors; Article G Resignation

[75] See Table 17 in the Annex

following: panels of judges, hearing sessions, their publicity, solemnity, the right to present evidence, length of the process, the right to defend and be heard, reasoning for decisions, and the execution of decisions after they become final.

1. Panels of judges

Based on the monitoring of hearing sessions at the IQC during 2019, we found that the panels of judges respect the ethics of conduct toward the subjects of re-evaluation or the defense lawyers. In certain cases, there were claims by some subjects that the panels of judges were influenced by prejudice expressed publicly in the media. For instance, there were instances when the subjects asked for the removal of a member of the panel of judges, but were not informed about the composition of the panel of judges that reviewed the request and made the decision to reject the request for removing a member. There have also been cases when the review of the request for removal from a panel of judges was done with the participation of the member for whom removal was requested, in clear contravention of article Ç, annex 1 of the Constitution, and articles 4, 49, 55, 57/1, 66/2 of law no. 84/2016.[76]

2. Hearing sessions

AHC observers monitored over 100 public hearing sessions conducted by the IQC and SAC, during which they did not find a tendency to obstruct the participation of interested members of the public. The calendars accessed on the official websites of these institutions regularly publish the guiding information regarding the case (subject and panel of judges), location where the hearing sessions will be held, and the composition of the panel of judges. Nevertheless, in many cases, the IQC had a tendency to publish announcements of hearing sessions about 24 hours ahead of their schedule, mainly during June and July 2019. Meanwhile, the SAC publishes the sessions at least one week ahead of the scheduled date. The transparency of the panels of judges during the hearing sessions with the subjects of vetting has not been adequate as the conditions have not been created for them to become familiar with the facts regarding all three criteria of the vetting process.[77]

3. Publicity of hearing sessions

In general, AHC finds the publicity of hearing sessions, the conduct of staff responsible for accommodating and arranging the public in the hall, preparatory actions for the public session before the hearing session, to be positive. According to findings from AHC monitoring, it results that the processes conducted by the IQC have had broad participation of the media, domestic and international observers, as well as the public. Hearing sessions of the IQC were public and journalists had access to the sessions, were allowed to send text messages from their phones while the hearing session was being conducted, and to take photos before the hearing session was conducted. Nevertheless, due to limitations in the space of the hearing session halls, at both the IQC and SAC that allow for a limited number of television crews, there have been cases when observers and the media have not been allowed to participate in the hearing sessions. At the SAC, the distance for the parties violates the confidentiality and privacy of communication between the

[76] Research study on the holding of public hearing sessions of the vetting process for judges and prosecutors, page 5.
[77] Ibid, page 9

subject of re-evaluation and the legal representative. In some instances, this infrastructure (due to limited capacities) has not enabled every interested individual to follow it from among the public. The IQC and SAC have approved, in the context of their activity, special by-laws for the access and participation of the media in public hearings,[78] which envisage also restricting measures when they envision that: *"The head of the IQC panel may decide to allow entry into the hearing session hall of only a limited number of television crews; it is not permitted to register by audio or video the subject of re-evaluation, his/her legal representative"* etc. Meanwhile, the SAC operates on the basis of the regulations "On relations with the media" approved by the meeting of judges, by decision no. 11/1, dated 13.04.2018, which in article 3 affirms the public character of the process but, in paragraph 9, envisages restrictions on registration by the media. Restrictive measures in these regulations are disputable with regard to respect for freedom of the media, transparency, and the public character of the process. Such restrictions, envisaged in both mentioned regulations are not to be found in the laws that regulate the activity of these institutions, which have been approved by a qualified majority and rank at a higher hierarchical level compared to these regulatory by-laws of a normative nature.[79]

5. Right to present evidence

The re-evaluation bodies, in the issued conclusions and decision-making, consolidated and unified their practice in terms of guaranteeing the principle of independence,[80] equality of the parties, obtaining and evaluating evidence, and the principle of proportionality. During the monitoring, it results that the IQC recognized the right of the parties to present new evidence or additional evidence as well as presentations and comments, and they were generally accepted in its decision-making. One aspect that AHC suggests could be corrected in this regard is the arguments in the decisions of the IQC on the different length of deadline for presenting evidence. According to the findings, the time for familiarization with the case file o the IQC's administrative investigation varied from 5 to 10 days,[81] which is deemed insufficient for bringing new evidence during the process.[82] According to AHC, the subjects of re-evaluation should have available at least 10 days for the presentation of additional or complementary documents, in order to guarantee the standard for full equality of arms and for an effective administrative investigation process.[83]

6. Length of the process

Law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors" does not envisage in a clear manner deadlines for the vetting process in both of its instances, and that is why the vetting bodies referred to the Administrative Procedure Code or the law "On the organization and functioning of administrative courts and the adjudication of administrative disputes." Based on

[78] Decision of the IQC no. 18, dated 13.03.2018 "On the approval of the document 'Regulations for the media' and the SAC approved the regulations 'On relations with the media,' approved by the meeting of judges by decision no. 11/1, dated 13.04.2018.
[79] Provisions of the Law on Administrative Courts and the Civil Procedure Code, which do not run counter to but are in harmony with the provisions of Law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania" represent the basic legal framework that sanctions the procedure for conducting public hearing sessions and other procedural aspects during the process.
[80] Case Xhoxhaj v. Albania, found by the ECtHR to be in keeping with the obligations deriving from article 6/1 of the ECHR
[81] In the judicial session of June 28, 2018, it resulted that at the end of the administrative investigation conducted by the IQC, the right of the subject of re-evaluation was recognized to have access to the judicial file for a deadline of five days
[82] See Table 23 in the Annex
[83] Based on article 47 of the Administrative Procedure Code 'Right to present opinions and explanations'

AHC findings, the reasons for the extension or over-dragging of the process have varied widely, such as:

- When the investigation was conducted for more than one criterion,
- Subjects requested the removal of the panel of judges,
- When cases were complex due to the length of the stay in office of the subjects and the complexity of the evidence,
- When evidence from other institutions were needed,
- When assets of individuals related to the subject needed to be investigated,
- When the subjects needed to exercise their right to defense pursuant to the law, and as a result, the postponement of hearing sessions was requested,
- When the subjects requested extension of the deadlines,
- Due to the effects of the Covid-19 pandemic.

AHC has recommended to the vetting institutions to guarantee the exercise of the subjects or their defense lawyers' rights to present their claims pursuant to the principle of judicial economy. Likewise, it is suggested to the SAC to argue in its decisions the causes for the excessive length of special procedures within the process that are dragged out beyond accepted norms to the detriment of the interest of the parties, thus obstructing the review of the cases in their entirety, within reasonable deadlines. For this, AHC has encouraged the institutions for higher transparency of the process as well as the best possible management of delays.

7. Right to defend oneself/ be heard

The panels of judges of the IQC and the SAC make the subjects aware of the procedural rights that these subjects of re-evaluation enjoy.[84] In general, these institutions guaranteed the rights of the subjects of re-evaluation, such as the right to defend oneself or through a lawyer,[85] which enables the subjects effective and not just formal defense, such as complete access to materials in the investigative file compiled by the vetting bodies and the supporting bodies, communication of results of the administrative investigation, granting a reasonable deadline for preparation of defense, etc. Furthermore, the subjects, independently from whether they are present in the hearing session or not, have been able to exercise through a lawyer the right to present evidence and rebuttals, as well as the right to be heard regarding their requests and claims in the hearing session.[86] There have been sporadic cases when the IQC has not presented the subjects with the proving acts of the investigation and the conclusions for the transfer of the burden of proof in a public hearing session. In some specific cases,[87] panels of judges limited the subjects in their presentations to avoid repetitions and to concentrate solely on the arguments.[88] Likewise, in some cases, the DSCI reports classified as state secrets were not made available to the subjects, except for the cases when the information is declassified fully or partially.

8. Reasoning in IQC decisions

[84] See Table 22 in the Annex
[85] Article 6 of the ECHR, and Article 42 of the Constitution
[86] Transferring the case for review in a public judicial hearing, in order to give the subject of re-evaluation the opportunity to be heard and defend him/herself before the panel of judges (Decision of the SAC no. 14/2021 (JR), dated 15.06.2021), according to provisions of article 55 of law no. 84/2016
[87] See Table 23 in the Annex
[88] See Table 23 in the Annex

The re-evaluation bodies, especially the IQC, did not follow the same structure in their decisions. A review of published decisions of the IQC and the SAC shows that the majority of them end up repeating facts and the analysis in the course of the decision. In some cases, subjects raised as a cause for appeals to the SAC the lack of clarity, understanding, and logic in the reasoning of the decisions. Likewise, an essential deficiency in the decisions of the vetting bodies has been the partial reasoning solely for one criterion of the evaluation, being limited solely to the criterion of assets. In this regard, AHC suggested to the re-evaluation bodies[89] to make as clear, concise, logically reasoned decisions as possible, so that they are understandable not only for the subjects undergoing the re-evaluation process, but also for the broader public.[90]

9. References or criminal referrals to the prosecution office

The European Commission has recommended to the vetting institutions to refer cases to the prosecution office when there are indicators of criminal offenses by the subjects of re-evaluation. Although the vetting process is a *sui generis* one of an administrative nature, whose primary purpose is not to criminally punish judges and prosecutors who are subjected to it, with regard to accountability of magistrates, the institutions of re-evaluation have the obligation to file a criminal referral with the prosecution office, according to article 281, paragraph 3 of the Criminal Procedure Code, if during the administrative process or after the issuance of a decision to dismiss the subjects, they discover data, facts, or evidence that represent a criminal offense that is to be prosecuted upon the prosecution's initiative. The Special Prosecution Office, which exercises prosecution independently from the General Prosecutor and represents prosecution before the special courts for cases envisaged in article 135, paragraph 2, is competent for reviewing, investigating, and prosecuting every criminal offense against:

- Judge of the Constitutional Court
- Judge of the High Court
- General Prosecutor
- High Justice Inspector
- Member of the High Judicial Council
- Member of the High Prosecutorial Council
- Former mentioned functionaries.

Likewise, the Special Prosecution Office, in exercising prosecution, implements the provisions of the legislation in force for the prevention of and strike against organized crime, trafficking, and corruption through preventive measures against assets.[91] Meanwhile, prosecution offices of general jurisdiction exercise prosecution against judges and prosecutors who are not special subjects according to article 75/a letter "c" of the Criminal Procedure Code, and only for criminal offenses that are not in the field of corruption and organized crime.

[89] As mentioned above, until the end of the year, Article 55 of the law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania," which envisages that the rapporteur of the case presents in writing the reasoning for the decision of the Commission, which should contain three main parts: the introductory part, the descriptive – reasoning part, and the ordering part. According to this same article, this part contains: a) circumstances of the case; b) evidence and reasons on which the decision is based; c) the report and recommendation of the case rapporteur; ç) the legal provisions the decision is based on

[90] See Table 25 in the Annex

[91] Article 9, paragraph 1 and 1, of law no. 95/2016, dated 06.10.2016 "On the organization and functioning of the institutions for fighting corruption and organized crime."

a. Period 2021-2022

For the period 2021 – 2022, AHC conducted an analysis of 21 cases[92] of prosecutions for subjects of vetting who were referred or prosecuted, among whom 13 prosecutors,[93] 8 judges, of which 6 judges in the Judicial District Courts, 1 judge in the Appeals Court, and 1 judge in the High Court. Of these subjects, 12 of them appear to have resigned and 5 to have been dismissed, while 4 are in the vetting process. The criminal offenses for which they have been referred to the prosecution office or for which prosecution began are:

- 11 cases are for article 257/a/2 of the Criminal Code (Hiding or false declaration of assets), referred/prosecuted separately or together with other criminal offenses 128).
- 3 cases for article 319/ç of the Criminal Code (Passive Corruption).
- 1 case refers to article 248 of the Criminal Code (Abuse of office).
- In the other cases, reference is made to articles 143 "Deceit," 143/a/6 "Hiding of assets," 180 "Hiding of income," 181 "Failure to pay taxes," 248 "Abuse of office."

For these 21 cases, the subjects that referred or filed criminal referrals to the prosecution office are the IQC in four cases, the Sector for the Fight against Narcotics at the State Police in two cases, citizens in 8 cases (in four of these, SPAK referred the cases to the ordinary jurisdiction prosecution offices). According to the analysis of the cases by AHC, we bring to attention some findings as follows:

- For this period, the prosecution offices of general jurisdiction began prosecution against the subjects of vetting in 9 cases, while SPAK began 8 prosecutions.[94] Regarding these prosecutions, 1 of them is under investigation and 7 of them have been sent to court, where some of them ended up with guilty verdicts.
- Prosecution offices of general jurisdiction make decisions of not starting criminal proceedings within a few days from receipt of the referral, which appear to be unfounded.[95]
- In cases of transfers of criminal proceedings for competence by SPAK to prosecution offices of general jurisdiction, it has resulted that the proceedings end with decisions of not starting criminal proceedings and the subject ends up not being criminally investigated, neither by SPAK according to article 319/ç of the CC for "Passive corruption of judges, prosecutors, and other functionaries of the justice bodies" nor by the respective prosecution offices according to article 257/a/2 of the CC for "Hiding or false declaration of assets." According to articles 83 and 84/1 of the Criminal Procedure Code in such cases, investigation should begin and then decide to not start criminal proceedings in order to avoid a failure of the prosecution office to fulfill investigative responsibilities, according to article 280 of the Criminal Procedure Code.
- The practice of prosecution should be harmonized with proceedings into assets in accordance with the anti-mafia law, for the confiscation of assets or the establishment of preventive

[92] Policy paper on "The vetting process in the context of EU integration," 2024.
[93] 3 appeals prosecutors, 7 prosecutors of district prosecution offices, 2 prosecutors at the General Prosecution Office, one of whom former General Prosecutor, and 1 prosecutor at the Serious Crimes Prosecution Office.
[94] Of which, five for 2021 and 3 for 2022.
[95] Based on the fact that the IQC decision on the subject of re-evaluation has not been published yet with arguments and it is not a final decision as it is appealable.

sequestration measures on subjects of vetting that have an unjustified economic level, as a result of suspected criminal activity.

- For the investigation of criminal offenses in the field of corruption according to articles 222 and onward in the Criminal Procedure Code, it is recommended to apply special techniques such as wiretaps on telecommunications and environmental wiretaps,[96] surveillance of private premises (offices of judges and prosecutors), especially for criminal proceedings for the criminal offense of taking bribes by judges and prosecutors.
- For the purposes of investigations, prosecution offices should rely on data or documents from the process of administrative investigation conducted by the vetting bodies, supporting bodies such as HIDAACI, DSCI, and data from cooperation with specialized law enforcement agencies, justice authorities of neighboring or other countries.
- For criminal proceedings for the criminal offense envisaged by article 257/a/2 of the Criminal Code, reflect data on the investigation of monetary corruption for assets of considerable value that appear to be hidden/undeclared, and prove how these assets are interconnected with suspected but uninvestigated activity, potential ties of the defendant with segments of crime or organized crime, etc.
- Preserve the practice of assigning an evaluating technical expert and/or accounting experts for verifying assets, incomes, and expenses, as well as the resources for creating the assets of the defendant and related persons.
- The surpassing of the deadlines for the statute of limitations for investigation envisaged in article 66 of the Criminal Code has obstructed prosecution for the criminal offense envisaged by article 257/a/2 of the Criminal Code,[97] as the date of submission of the vetting declaration by the subject in January 2017 serves as the last deadline for the calculation of the statute of limitations for this category of criminal offenses. As a result, for subjects that have not been indicted until January 2022, prosecution is obstructed by the five-year deadline for the expiry of the statute of limitations on this offense.
- Meanwhile, there appear to be no investigations on facts discovered by the vetting process regarding criminal offenses in the field of corruption, the deadline for the expiry of the statute of limitations on which is ten years, as their maximal punishment is ten years (interpretation of article 66/c with article 319/ç of the Criminal Code).
- Criminal proceedings by the prosecution offices encounter delays of 2-3 years, taking as reference the date from the reference or referral to the general jurisdiction prosecution offices.[98] This deadline is not accurately highlighted in registers in the prosecution office as notes are logged in even one year from the date of referral or reference. Factors affecting the dragging out of investigations are the transfers of cases by SPAK to prosecution offices of ordinary jurisdiction, but also among the latter, thus creating a ping-pong effect.
- In some instances, the judge of the preliminary session surpasses competences for evaluating evidence regarding the existence or not of the criminal fact assigned to the defendant, an attribute that only belongs to the decision-making of the substance court.
- Likewise, it is recommended that the judge of the preliminary hearing decide the sending back of acts to the prosecution office when he/she finds that facts are not fully investigated in the

[96] In terms of provability for the prosecution office to bring criminal charges and conviction by the court of defendants in three cases, specifically for article 319/ç of the Criminal Code (passive corruption)

[97] That envisages punishment by a fine or up to three years of imprisonment

[98] As a rule, the deadline for preliminary investigations, according to articles 323 onward of the Criminal Procedure Code is calculated form the date when the name of the individual is attributed the criminal act logged in the register for the announcement of criminal offenses.

context of investigations, linked with criminal offenses in the field of corruption, organized crime, or money laundering on the basis of obligations deriving from articles 332/ç and 332/dh of the Criminal Procedure Code.

During this period, it results that the First Instance SCCOC issued four guilty verdicts for four defendants (subjects of the vetting process), 2 of whom convicted for the criminal offense envisaged by article 257/a/2 of the Criminal Code that sanctions the hiding and false declaration of assets, and the other 2 convicted for the criminal offense envisaged by article 319/ç of the Criminal Code that sanctions the passive corruption of judges, prosecutors, and justice system functionaries. The Appeals SCCOC issued final verdicts for only three of these subjects.[99]

- In terms of the arguments provided by the special court, of interest is the distinction of the objective aspect of "hiding" and "false declaration" of assets for adjudications linked with criminal charges for article 257/a/2. However, it results that the courts not always clarified in what cases there was hiding and when false declaration in the aspect of concretizing the elements of the objective aspect of the criminal offense.
- The arguments for the studied decisions, there is no response to an adequate extent to all claims raised by defendants and their attorneys regarding the type and level of punishment.[100]
- In all guilty and conviction verdicts, the court also issued the complementary punishment of exemption from the right to exercise public functions for five years, which has been reasoned vis-à-vis the qualities of the individual that has been entrusted with the exercise of public functions and the criminal offenses that individual is declared guilty of. It is positive that in some cases, it is mentioned that the final goal of the punishment is re-education and re-integration of the perpetrator of the criminal offense in society after serving the sentence.
- There is a need for harmonizing the evaluating standard of the court on the social threat and alleviating circumstances, as well as the application of alternatives to imprisonment sentences in certain cases.[101]
- The arguments used by the Appeals SCCOC often are more expanded and present special elements and features that individualize their reasoning line, compared to the First Instance SCCOC.
- It is positive for both courts that they refer in their decision to standards established by the European Court of Human Rights and, in some cases, also to conventions ratified by the Albanian state in the fight against corruption, in the context of adherence to the Council of Europe and the United Nations.

All state bodies have the obligation to provide information within 24 hours and collaborate with the Special Prosecution Office and the National Bureau of Investigation for the investigation of criminal cases or the referral of circumstances for criminal offenses envisaged in article 75/a of the Criminal Procedure Code.[102] In this regard, the obligation for filing a criminal referral also arises for the process of transitory re-evaluation of judges and prosecutors, which has a *quasi-*

[99] The court agreed to proceed with abbreviated adjudication rules, arguing its decision in accordance with articles 332/c and 403/1 of the Criminal Procedure Code and the jurisprudence (decision no. 4/2012) of the Constitutional Court and unifying decision no. 2/2003 of the High Court, which are analyzed further.

[100] The Courts mainly based their decision-making on articles 47, 48, and 49 of the Criminal Code.

[101] Such as that of defendant E.H.

[102] Article 28 of law no. 95/2016, dated 06.10.2016 "On the organization and functioning of institutions for fighting corruption and organized crime."

judicial nature. According to AHC findings, from March 2018 until October 2022, it results that the IQC only referred 13 cases to the Special Prosecution Office, while there was no referral by the SAC. Likewise, we notice that the vetting bodies, although they registered a high number of denunciations from citizens, they did not serve the prosecution office for further verifications.

b. Period 2022 – 2025

Keeping in mind the number of resignations and cases of decisions of dismissal due to the criterion of assets, AHC has sent a request for detailed information to the Elbasan Prosecution Office, the Durrës Prosecution Office, the Special Prosecution Office, and the Tirana Prosecution Office, which provided information with data up to 2025,[103] regarding cases that they received references or criminal referrals for, according to the table below:

Although the vetting process is *sui generis* with an administrative nature, whose primary purpose is not to penally punish judges and prosecutors who are subjected to it, with regard to the accountability of magistrates, the re-evaluation institutions have the obligation to file referrals to the prosecution office when, during the administrative process or after the issuance of a decision for the dismissal of the subject, they discover data, facts, or evidence that represent a criminal offense that is prosecuted upon initiative. Taking into consideration the number of resignations and the cases of decisions for dismissal due to the criterion of assets, AHC has submitted a request to the Serious Crimes Prosecution Office and the Prosecution Offices of Judicial Districts, regarding the cases referred by the vetting bodies or the investigated cases that have concluded with a judicial decision, for the subjects that received a dismissal decision and those whose process was interrupted as a result of resignation. The majority of the prosecution offices that were contacted responded to the official request for information of the AHC. Based on information received until 2022, there was only one case of criminal referral, no. 3671, against the resigned former judge of the Constitutional Court initials B.I.) at the Tirana Judicial District Prosecution Office; a decision was made on this on 03.04.2018 to not start investigations. For the purposes of drafting this document, AHC sought updated information from the Prosecution Offices of the Elbasan District, Durrës Prosecution Office, Special Prosecution Office, and the Tirana Prosecution Office, which provided information with data until 2025,[104] according to the table below:

Period 2022-2025	Tirana judicial district prosecution office	Durrës judicial district prosecution office	Elbasan judicial district prosecution office	Special prosecution office	Total
Criminal referrals	12		2	24	38

[103] Response no. 98, dated 28.01.2025 of the Durrës judicial district court; Response no. 317, dated 17.01.2025 of the Elbasan prosecution office; Response no. 660/1, dated 31.01.2025 of the Tirana prosecution office; and response obtained by email from the Special Prosecution Office.

[104] Response no. 98, dated 28.01.2025 of the Durrës judicial district prosecution office; Response no. 317, dated 17.01.2025 of the Elbasan prosecution office; Response no. 660/1, dated 31.01.2025 of the Tirana prosecution office, and the response secured by email from the Special Prosecution Office.

Criminal Proceedings	16	11	2	5	34
Criminal offenses per CC	15 cases for CO per article 257/a of the CC 1 case per article 186, 180, 287 of CC	11 cases for CO per article 257/a of the CC	2 cases per article 257/a of the CC	4 cases for CO per article 257/a 1 case for CO per articles 180 and 257/a	33 cases per article 257/a 1 case per article 180, 186, 287 of CC
Referring body	1 case GPO 9 cases HIDAACI 2 cases IQC		1 case SPAK 1 case IQC	24 cases IQC	27 cases IQC 71% of referred cases 9 cases HIDAACI 23% of referred cases 19 cases of transfers from SPAK – 50% of referred cases 1 case GPO
Decisions to not start investigations	10	2			12 cases – 31% of referred cases
Transfers for competence			3	19	22 cases – 57% of referred cases
Ongoing investigations	13		3		16 cases – 47% of GPO
Referrals for adjudication		1	1		2 cases – 5% of GPO
Request to drop case	5				5 cases – 14% of GPO

According to these data, it results that for the period from 2022 until 2025, a total of 38 criminal referrals were registered in all prosecution offices, and it appears that criminal proceedings began for 34 cases. Of the 34 criminal proceedings for all prosecution offices, it results that in 97% of the cases, the subjects are prosecuted for the criminal offense according to article 257/a of the CC[105] and only in one case for the criminal offense according to articles 186, 180, and 287 of the CC (see the respective qualifications in the table above). Of these criminal proceedings, it results that 47% of the cases are still under investigation while only two cases are in the process of adjudication (one case pursued by the Durrës Prosecution office and one case by the Elbasan prosecution office). It appears that for 12 cases, or 31% of the referred cases, the prosecutor decided to not start criminal proceedings. It is worth emphasizing that only in one case in the Special Prosecution Office, criminal proceedings were initiated upon its own initiative, while there were no such cases in the other selected prosecution offices. In the meantime, of the 7 cases referred for adjudication, it results that 5 cases concluded with a decision by the prosecutor to drop the case and two other cases are still being adjudicated.

The analysis of data on the number of criminal proceedings pursued in court during the period 2019-2025 requires statistical data from all prosecution offices of general jurisdiction. From the sampled data for only four integrated prosecution offices for the period 2019-2025, it results that there are 9 cases that were criminally prosecuted and sent to court, which represent 3% of the total number of subjects that were issued a dismissal decision. Meanwhile, 23 cases were prosecuted during 2019-2022 and 34 cases during 2022-2025, which in total represent 21% of the subjects dismissed by the vetting process. This fact highlights the need for prosecution bodies to strengthen further the efforts to pursue criminal cases of irresponsible judges with full effectiveness.

10. Cases addressed by the subjects of re-evaluation to the European Court of Human Rights

In the context of exercising the right of the subjects to appeal the decision of the Special Appeals College to the EctHR, according to law and the Constitution, but also according to the ECHR, to guarantee rights, data have been secured through the General State Advocate office, as follows:

Cases communicated by EctHR in total	Cases with a decision	Violations of the Convention found	Cases under monitoring in the Committee of Ministers	Execution of individual measures	Execution of general measures
18	1.Request no. 15227/19 "Xhoxhaj v. Albania," dated 9.02.2021	None			Translated and published by the COP

[105] Refusal to declare, failure to declare, hiding, or false declaration of assets, for elected individuals or public officials, or individuals who have a legal obligation to declare.

	2. Request no. 37474/20 "Cani v. Albania," dated 4.10.2022	Article 6/1 right to due legal process	"Cani v. Albania	ECtHR guided applicant to seek review at the SAC for unfair process, but this applicant did not file any request to SAC to date.	Translated and published on the COP, disseminated to vetting institutions, justice, and SM
	3. Request no. 58997/18 "Nikëhasani v. Albania," dated 22.05.2023	None			Translated and published by COP
	4. Request no. 40662/19 "Sevdari v. Albania," dated 13.12.2022	Article 8, right to respect for privacy	"Sevdari v. Albania"	Reopening of case by Special Appeals College and reinstatement to office. Closing of monitoring by decision of the SM on October 9, 2024.	Payment of due remuneration, Translated and published by COP, disseminated to vetting institutions, justice institutions, SM.
	5. Request no. 41047/19 "Thanza v. Albania," dated 4.07.2023	Article 6/1 right to due process	"Thanza v. Albania"	ECtHR did not guide applicant to reopen process, but applicant Thanza sought review at Special Appeals College. Case is currently awaiting decision.	Payment of due remuneration, Translated and published by COP, distributed to vetting institutions, justice institutions, SM
	6. Request no. 21141/20 "Bala v. Albania," dated 2.05.2024	None			Translated and published by the COP
	7. Request no. 32489/19 "Dedja v. Albania," dated 14.11.2024	None			Translated and published by the COP
	8. Request no. 16701/19 "Hoxha v. Albania," dated 14.11.2024	None			Translated and published by the COP

It results from the table that of 18 communicated cases, the ECtHR only came out with a decision for eight applications. Of these eight decisions, only three of them are in the process of standard monitoring for their execution by the Committee of Ministers of the Council of Europe. In the three decisions, the court recommended a reopening of the process only in two cases, Cani and Sevdari. Nevertheless, it results that only applicant Sevdari and applicant Thanza have requested a reopening of the process (although the ECtHR had not recommended such a thing in its decision). Based on data obtained from the State Advocacy Office,[106] it results that applicant Cani did not

[106] Response no. 131/1, dated 04.02.2025.

file a request for reopening the process with the Special Appeals College. Likewise, it is worth emphasizing that ECtHR decision does not call into question in any of the cases the legitimacy of the vetting bodies. The encountered violations, more concretely in the Sevdari case are mainly linked with violations of human rights according to article 8 of the ECHR, linked with her private life, while in the two other cases, Cani and Thanza, the violations are linked with article 6 of the ECHR, due legal process. For the cases Sevdari and Cani, where the ECtHR recommended the reopening of the process, the causes only have to do with the disproportionate nature of the violation of the rights of subjects vis-à-vis the legitimate purpose that the re-evaluation process should pursue.

Based on the data, it results that of 268 cases of decisions by the vetting bodies for the dismissal of subjects of re-evaluation, only 18 subjects successfully exercised the right to file a complaint with the ECtHR, of which only three addressed practices for which the ECtHR found violations. This fact shows that only 7% of the dismissed subjects addressed irregularities of the vetting process to the ECtHR, among which only 1% of the subjects managed to find violations of the Convention through the European Court. These figures confirm the lawfulness of the activity of the vetting bodies regarding the standard of rights for due legal process.

11. Infrastructure in IQC premises

AHC observers report that the technical conditions of the hall where IQC public hearing sessions are held were optimal with regard to the infrastructure, visual and audio access during the process, and therefore, are easily accessible by the public, monitors, and the media. The space and distances established for the stay of the parties and the assistance with microphones has enabled respect for confidentiality and the privacy of communication between the subject of re-evaluation and his/her legal representative. Likewise, this distance has offered international representatives a full view and monitoring of the process. Upon their request, participants were equipped with headphones for the translation of interventions by IMO representatives. Meanwhile, the SAC did not offer the same standards due to the infrastructure of the hall that is inadequate to enable the participation of a considerable number of subjects, the public, and media. Furthermore, the distance for where the parties stay in this institution violates confidentiality and the privacy of communication between the subject of re-evaluation and his/her legal representative. AHC considers that in the future, the standards of infrastructure should be improved to guarantee as best possible the rights of the subjects as well as in terms of transparency before the public and the media.

IV. Denunciations of the public

The vetting process had high public attention and, as a result, has had an active participation of citizens for the denunciation of facts or circumstances that may represent evidence regarding the criteria of re-evaluations (article 53 of the law). From the aspect of accountability, the involvement of the public through denunciations on the subjects of vetting has been of fundamental significance for holding them accountable. A problem has been not giving access to the public present in the hearing session to become familiar with the essence of these complaints. As a rule, the IQC makes the subject and the defense lawyer aware of the denounced cases before holding the first hearing session, passing on them the burden of proof to prove the opposite (present counter-arguments, new evidence, etc.). Likewise, it results that the contents of the decisions do not clearly indicate

whether there have been complaints by citizens about the subjects.[107] Based on monitoring conducted during 2019, according to the table below, it may be concluded that denunciations before the IQC were mainly for (1) abuse of office by the subjects of re-evaluation, (2) poor professional capabilities, (3) violations of procedural rules sanctioned in the Codes of Procedure.

It is worth highlighting that besides the denunciations of citizens, there have also been cases of denunciations by judge colleagues themselves, for contacts of the subject with an individual involved in trafficking of narcotics and fiscal evasion. Furthermore, citizens addressed violations of ethical rules or situations of unlawfulness outside relations of the judge functions. In general, it may be concluded that the denunciations were investigated administratively, were communicated to the subjects of re-evaluation, and brought about the finding of violations or dismissal of the subjects of re-evaluation.[108]

VII. Findings and recommendations on improving the standards of the vetting process

AHC recommendations regarding the vetting process in general have been considered and taken into account by the vetting bodies IQC and SAC, although at the start of the process, there was some hesitation on their part. AHC mainly recommended the avoidance of different standards on the manner in which financial analysis is conducted for the criterion of assets, but also the application of updated methods for evaluating the integrity or professional capability. Guaranteeing unified standards of verification of integrity, assets, and capability for the magistrates is important and represents an essential objective to achieve the equality of subjects, but also avoid dragging out the process due to the exercise of their right to appeal.

The positive practices that the vetting bodies have created in terms of verifications of integrity, assets, and professional integrity of magistrates are worth adapting and becoming part of the work practice of the HJC, HPC, and HIDAACI.

Regarding the implementation of criteria for the professional evaluation of subjects, AHC emphasizes as a successful standard the adoption of a methodology through Decision no. 21/2019 of the SAC that envisages the application of some additional sub-indicators. This decision may serve as a basis for adopting instructions from the two bodies of the HJC and HPC in order have the most exhaustive and comprehensive possible evaluation of the subjects for this criterion.

In the context of the objective for the best possible functioning of the re-evaluation institutions according to the principles of independence, impartiality, accountability, quality of justice efficiency, integrity, and professionalism, AHC highlights that overall, there has been a fulfillment of the standards, with the exception of some aspects that may find further regulation. Positive progress is noticed especially with regard to cooperation of the vetting institutions and HIDAACI for the referral of cases to the prosecution office, when subjects have been found with violations regarding the criterion of assets. This fact is highlighted by a high number of criminal referral materials and criminal proceedings registered after 2022, which we encourage to develop further in the future in terms of fulfilling the standard of accountability of the subjects of re-evaluation.

[107] See Decision no. 19, dated14.05.2018 on the subject M. Xh.

[108] See Table 21 in the Annex.

Nevertheless, the low number of cases that conclude with a judicial decision is still far from expectations for the punishment of subjects that were found with violations.

Among the positive practices that AHC identified in the context of the vetting process, which may be incorporated by making amendments in legislation and in the work practice of institutions governing the justice system, are:

1. Cooperation with IMO observers, who represented prosecutors and judges with 15 years of experience in the EU/USA. Information that these observers secured, especially for criteria such as assets and integrity, made particular contributions to the administrative investigation. International observers may be attached further to the governing institutions of the justice system to share their positive work experiences and to provide suggestions/contributions that help the maturity of experience of these institutions.
2. Cooperation with supporting bodies – Upon conclusion of the vetting process, for the governing bodies of the justice system, pursuant to the competences that they have, supporting bodies may be the HIDAACI, General Prosecutor, Court Councils, General Meetings of Judges, DSCI for integrity. Inappropriate contacts with organized crime have resulted recently from Sky-ECC case files, whereby prosecutors and judges facilitated/favored segments of organized crime. As a result, it is necessary that the filters for checking integrity to be conceived in an appropriate manner as preventive tools.
3. The cooperation of citizens with the vetting bodies – there appeared to be thousands of denunciations that assisted the administrative process of the verification of all three criteria. Citizens (using the courts) should continue to make an important contribution in order to keep the judicial system accountable, independent, and professional, by creating forms of immediate access to denunciations that help the governing bodies of the justice system in the exercise of their competences. The complaints of citizens may help also in the process of the periodical ethical-professional evaluation that is carried out by the Councils.
4. The transparency of the vetting process turns into a positive practice also for the activity of the Councils. Thus, decisions for the promotion of judges/prosecutors should be published on the websites of the Councils with accompanying reports, to demonstrate the merits of the process.
5. Criminal proceedings against judges and prosecutors removed by the vetting process, success cases from SPAK only for criminal investigations and adjudications for hiding and failure to declare assets or false declaration against former judges of the High Court and Constitutional Court, the former General Prosecutor. These investigative practices need to be shared as positive models with the prosecution offices of general jurisdiction whereby investigations either drag out without results or are closed/ there is a need for investigations into assets by the prosecution offices of general jurisdiction and SPAK by coordinating information that HIDAACI may provide for judges and prosecutors who do not justify their assets.
6. Subjects that faced their re-evaluation before the Independent Qualification Commission were part of the lottery drawn on December 16, 2019, and June 15, 2020. After more than 28 months, their hearing sessions were held. Based on the fact that from January 2025, the IQC rests, AHC recommends to SAC a review of complaints at a more dynamic pace, especially for those cases (subjects dismissed at the first instance) that have considerable financial effects.
7. In AHC's assessment, the live broadcast of public hearing sessions held by the SAC does not guarantee the same level of access and therefore of understanding of the conduct of the process and observation of the conduct of each party in the hearing session, as well as in cases when the public is present physically. Given that all courts in the country are functioning normally

and allowing the presence of the public, it is recommended that the SAC as well allow the participation of the public in the hall where the hearing session is held.

8. We recommend added attention to the principle of transparency on SAC decisions; the official website of the Council does not confirm the accurate date of the publication of the reasoned decision; also, the deadline of publication in accordance with the deadline for the reasoning for the decision should be respected. Furthermore, it is necessary to unify the practice regarding the publication of differing or parallel opinions prepared by international observers of the IMO.
9. AHC recommends to the College that substantial denunciations by the public be clearly reflected in its decisions, addressing also the position or assessment of the subject on these denunciations. Based on different positions inside the College regarding the interpretation of the 'related person' or 'other related persons,' it is necessary that the College itself make an interpretation in the spirit of the law in order to accurately identify the circle and category of subjects that may be considered such in order to extend asset investigation on these individuals as well. In this context, it is necessary to keep in mind the provision of article 3, paragraph 14, which provides a more expanded definition of the related person and, therefore, better serves the purpose of the law.
10. In order to enable the conduct of more complete and substantial research studies and reports, it is mandatory that public bodies respect the right to information envisaged in article 23 of the Constitution and 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 addressed particularly to the prosecution offices of general jurisdiction.
11. With the conclusion of the IQC mandate at the end of this year (2024), we recommend to the College to be proactive in implementing the obligations arising from article 281 of the Criminal Procedure Code, by filing immediate referrals/references to the prosecution office, for all those cases when the results of the vetting investigation/proceedings point to the discovery of facts that represent elements of criminal offenses.
12. AHC suggests to the Special Prosecution Office and the prosecution offices of general jurisdiction to devote proper attention to facts made public in the media during the re-evaluation process, in order to start investigations on their own (ex officio) in all those cases when there are public indicia of the commission of a criminal offense.
13. We recommend to the prosecution offices of general jurisdiction that decisions to not start criminal proceedings be argued and fully relying on articles 290 and 291 of the Criminal Procedure Code.
14. It is recommended to the Special Prosecution Office to conduct asset proceedings according to the anti-mafia law (independently from whether there is a criminal proceeding or not) when finding assets on which it has been concluded that there is false declaration or they are hidden, or for which there is no lawful resource, or when they are not considerably justified with lawful incomes, in possession of the subjects of vetting, for which at least the IQC, as the body conducting vetting in the first instance has issued a decision to dismiss or to interrupt the process due to resignation.
15. In keeping with their material scope of competence, prosecution offices should make serious efforts (prosecution offices of general jurisdiction) and further efforts (SPAK0 to conduct complete, efficient, and comprehensive investigations into the subjects of vetting, for whom the process points to data or facts about considerable assets or for ties of subjects with organized crime. In particular, AHC considers that their investigation should extend over

criminal offenses in the field of corruption, abuse of office, facilitating the activity or ties and engagement in activity of organized crime and with criminal organizations.

16. It is recommended to SPAK that in investigating the corruption of judges and prosecutors, it evaluate and seek authorization of the court for the use of special techniques of investigation, 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 issued based on specific data reflected in the decisions that are the subject of this study, from which it results that the evidence for taking bribes by judges/prosecutors are not direct but are proven indirectly from the transcripts of conversations of other defendants.
17. AHC recommends to the prosecution offices of general jurisdiction and to SPAK to demonstrate adequate care in respecting the deadlines of preliminary investigations, motivating decisions to extend the deadlines for investigations, and the timely announcement of decisions to extend the deadlines for the defendants and their defense lawyers, in accordance with articles 323 onwards of the Criminal Procedure Code. Furthermore, we consider that the practice should be unified, at least for cases of criminal referrals or references by public institutions, as to when criminal proceedings should begin and the name of the person the criminal offense is attributed to be logged in the register, so that there are no delays that weaken the efficiency of investigations and overextend the real (not formal) deadlines of investigations.

	Criminal Proceedings (CP)	Criminal Referral (CR)	Criminal Offense per the Criminal Code (CC)	Qualification of the offense	Initiating body	Subject of re-evaluation	Current status
Tirana Judicial District Prosecution Office	CP no. 6965, dated 30.09.2022		257/a of CC	Refusal to declare, failure to declare, hiding, or false declaration of assets for elected persons or public officials, or persons with legal obligation to disclose			Request to drop the case
	CC no. 8035, 30.11.2022		257/a, 186,180,287 of the CC	186- falsification of documents 180- hiding of income 287- laundering of the proceeds of the criminal act or criminal activity	Durrës Judicial District Prosecution Office		Request to drop case
	CC no. 439, 17.01.2023		257/a of the CC			F.H	Under investigation
	CC no.1804, 16.04.2023		257/a of the CC				Under investigation
	CC no.8236, 6.12.2024		257/a of the CC		Fier JDPO		Under investigation
	CC no.1355, 5.12.2024		257/a of the CC			E.K	Under investigation
	CC no.8810, 31.12.2024		257/a of the CC			S.M	Request to drop the case
	CC no.1950, 18.03.2024		257/a of the CC		HIDAACI	H.S	Under investigation
	CC no.2983, 2.05.2024		257/a of the CC			P.C	Request to drop the case
	CC no. 12295, 23.09.2024		257/a of the CC		HIDAACI	K.H	Request to drop the case
	CC no.8238, 6.12.2024		257/a of the CC		HIDAACI	O.XH	Under investigation
	CC no.8237, 6.12.2024		257/a of the CC		HIDAACI	A.M	Under investigation

	CC no.8234, 6.12.2024		257/a of the CC		IQC	Nj.S	Under investigation
	CC no.8340, 12.10.2024		257/a of the CC		IQC	B.M	Under investigation
	CC no.8235, 6.12.2024		257/a of the CC		IQC	S.K	Under investigation
Total 16 CC	CC no.8339, 12.12.2024		257/a of the CC		IQC	O.V	Under investigation
		CR no.13140, 7.10.2024	257/a of the CC		IQC	P.F	Under investigation
		CR no. 13143/2024	257/a of the CC		IQC	E.T	Decision to not start
		CR no. 13254/12.10.2023	257/a of the CC		General Prosecution Office	F.D + E.B, Transfer Competence Durrës JDPO	Under investigation
		CR no.16666, dt 26.12.2023	257/a of the CC		HIDAACI	A.D	Decision to not start CP
		CR no.16668, dt 26.12.2023	257/a of the CC		HIDAACI	T.K	Decision to not start CP
		CR no.16670, dt 26.12.2023	257/a of the CC		HIDAACI	A.K	Decision to not start CP
		CR no.16671, dt 26.12.2023	257/a of the CC		HIDAACI	F.P	Decision to not start CP
		CR no.16673, dt 26.12.2023	257/a of the CC		HIDAACI	E.H	Decision to not start CP
		CR no.16673, dt 26.12.2023	257/a of the CC		HIDAACI	A.C	Decision to not start CP
		CR no.16674, dt 26.12.2023	257/a of the CC		HIDAACI	B.Ll	Decision to not start CP
		CR no.16675, dt 26.12.2023	257/a of the CC		HIDAACI	A.Q	Decision to not start CP
Total 12 CC		CR no.1718, dt 26.12.2023	257/a of the CC		HIDAACI	R.T	Decision to not start CP

	Cases upon initiative	Registration of CP	Criminal Referral	Criminal offense per CC	Initiated	Subject	Request for trial
Durrës judicial district prosecution office	0	11	2 to not start CP	257/a of CC			1
Elbasan judicial district court prosecution office	0	CP no. 606, 29.05.2023	257/a of CC	Referral by Korça Judicial District Prosecution Office	Former judge	Declaration of non-competence; sending to Tirana prosecution office	On trial
Total 2 CP		CP 1335/2024	257/a of CC	Criminal referral by SPAK and IQC	I.A, ex-prosecutor		Under investigation
		CR no.1735, 8.10.2024	257/a of CC	Criminal referral by SPAK	Former judge	Declaration of non-competence; sending to Tirana prosecution office	Under investigation
Total 2 CR		CR no. 1737, dated 8.10.2024	257/a of CC	Criminal referral by SPAK and IQC	Former prosecutor, Korça judicial district prosecution office	Declaration of non-competence; sending to Tirana prosecution office	Under investigation
Special Prosecution Office		CP	Articles319/ç and 248	Started upon initiative	Subject of re-evaluation, no name registered under investigation		In preliminary investigation phase

For the period 01.01.2022 - 31.12.2024	24 criminal referral materials	5 criminal proceedings, where 4 with decisions of non-competence, 1 merged with other CP	4 CP for act per article 257/a, and 1 CP for act per articles 180 and 257/a	IQC	No name registered under investigation.	19 cases of declaration of non-competence	19 sent for competence to judicial district prosecution office

Statistics

The table below reflects data on the activity of SPAK on the investigation of the subjects of re-evaluatoin during the years 2019-2022.[109]

Reporting from SPAK	Criminal Referrals	Criminal Proceedings	Referring to the Special Court
2019	6	No start of criminal proceedings	
2020	39	10 cases with started criminal proceedings	1 criminal proceeding with 1 judge, with request to drop case, for CO according to article 319/ç of the Criminal Code 2 criminal proceedings with 1 judge and 1 prosecutor, with request for adjudication, for CO according to articles 186/1, 319/ç, 179/a, 257/a and 287 of the Criminal Code
2021	63	47 no start of criminal proceedings	1 criminal proceeding with 1 judge, with request to drop case, for CO according to articles 246 and 248 of the Criminal Code 2 criminal proceedings with 2 judges, as defendants, accused of the criminal offenses envisaged by articles 319/ç and 25 of the Criminal Code
2022	26		Criminal case file dated 31.07.2021, with defendant former judge F.L. for the CO according to article 257/a of the

[109] Analysis "Evaluation of the decisions of the vetting bodies for judges and prosecutors from the standpoint of prosecution," 2022, prepared by experts of the ALTRI Center.

			Criminal Code for “Refusal to declare, failure to declare, hiding, or false declaration”

Annex
Legal Framework in the Field of the Justice System

Law no. 84/2016 "On the Transitional Re-Evaluation of Judges and Prosecutors in the Republic of Albania", as amended, establishes general rules regarding the transitional re-evaluation of all re-evaluation subjects. It defines the principles for organizing the re-evaluation process for all judges and prosecutors, the methodology, procedures, and standards of re-evaluation. This law sets rules concerning the organization and functioning of re-evaluation institutions, as well as the role of the International Monitoring Operation, other state bodies, and the public in the re-evaluation process.
Law no. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania", as amended, establishes rules regarding the status of magistrates, their rights and obligations, admission and appointment, career development, and the termination of their mandate. It also regulates their ethical and professional evaluation, disciplinary, criminal, and civil liability. Furthermore, the law outlines standards of ethics and conduct, salary and other financial and social benefits, as well as rules on transfer, promotion, or secondment of magistrates.
Law no. 98/2016 "On the Organization of the Judicial Power in the Republic of Albania", as amended, establishes rules regarding the organization and functioning of the court system in Albania, the jurisdiction and size of courts, their internal organization, the functioning of court administration, and the status of judicial civil servants.
Law no. 115/2016 "On the Governance Bodies of the Justice System", as amended, defines principles and rules regarding the organization and functioning of the High Judicial Council, the High Prosecutorial Council, the High Inspector of Justice, the Justice Appointments Council, and the School of Magistrates.
Law no. 97/2016 "On the Organization and Functioning of the Prosecutor's Office in the Republic of Albania", as amended, sets rules concerning the organization and operation of the Prosecutor's Office, the conditions, criteria, and procedures for appointing the General Prosecutor, the relationships between the general jurisdiction prosecution office and other state institutions, other public or private entities, and the public, as well as the functioning of the prosecution administration and the status of prosecution civil servants.
Law no. 95/2016 "On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime", as amended, defines rules regarding the organization and functioning of the Special Prosecutor's Office against corruption and organized crime and the Independent Investigative Unit as constitutional bodies under Article 148(4) of the Constitution, as amended. This law also sets conditions and procedures for appointing the Head of the Special Prosecutor's Office, the primary and additional competencies of the special courts against corruption and organized crime, and the Special Prosecutor's Office. It establishes additional conditions and criteria for citizens to be appointed, transferred, or promoted as judges or employees at the courts against corruption and organized crime, as prosecutors and employees at the Special Prosecutor's Office, and as staff at the Independent Investigative Unit. Furthermore, it regulates the organization and operation of the process for integrity checks, financial data monitoring, and telecommunications surveillance of judges, prosecutors, and officials in these institutions.
Law no. 111, dated 14.12.2017, "On State-Guaranteed Legal Aid", aims to establish a system for organizing and providing free legal aid to ensure equal access for all individuals to the justice

system. It ensures the proper organization, administration, and functioning of state institutions responsible for managing legal aid and guarantees the provision of legal aid services in a professional, high-quality, efficient, and effective manner.

2. Supporting Legal Framework:

- ***Law No. 7850, dated 29.07.1994*** *– "Civil Code of the Republic of Albania," as amended;*
- ***Law No. 8116, dated 29.03.1996*** *– "Code of Civil Procedure of the Republic of Albania," as amended;*
- ***Law No. 7895, dated 27.01.1995*** *– "Criminal Code of the Republic of Albania," as amended;*
- ***Law No. 7905, dated 21.03.1995*** *– "Code of Criminal Procedure of the Republic of Albania," as amended;*
- ***Law No. 44/2015*** *– "Code of Administrative Procedures of the Republic of Albania," as amended;*
- ***Law No. 9000, dated 30.01.2003*** *– "On the Organization and Functioning of the Council of Ministers";*
- ***Law No. 90/2012*** *– "On the Organization and Functioning of the State Administration," as amended;*
- ***Law No. 8678, dated 14.05.2001*** *– "On the Organization and Functioning of the Ministry of Justice," as amended;*
- ***Law No. 146/2014, dated 30.10.2014*** *– "On Notification and Public Consultation";*
- ***Law No. 8454, dated 04.02.1999*** *– "On the People's Advocate," as amended;*
- ***Law No. 9049, dated 10.04.2003*** *– "On the Declaration and Control of Assets, Financial Obligations of Elected Officials and Certain Public Employees," as amended;*
- ***Law No. 9887, dated 10.03.2008*** *– "On the Protection of Personal Data," as amended;*
- ***Law No. 119, dated 18.09.2014*** *– "On the Right to Information";*
- ***Law No. 55/2018, dated 23.07.2018*** *– "On the Legal Profession in the Republic of Albania";*
- ***Law No. 10 093, dated 09.03.2009*** *– "On the Organization and Functioning of the Agency for the Support of Civil Society";*
- ***Law No. 9917, dated 19.05.2008*** *– "On the Prevention of Money Laundering and Financing of Terrorism," as amended;*
- ***Law No. 9367, dated 07.04.2005*** *– "On the Prevention of Conflict of Interest in the Exercise of Public Functions," as amended;*
- ***Law No. 10 221, dated 04.02.2010*** *– "On Protection from Discrimination," as amended.*

4. Supporting Regulatory/Strategic Framework:

- ***Prime Minister's Order No. 20, dated 31.01.2024*** *– "On the Establishment of the Interinstitutional Working Group for the Drafting of the Intersectoral Justice Strategy 2024-2030, the Action Plan, and the Indicator Passport";*

- ***Prime Minister's Order No. 90, dated 01.08.2023*** *– "On Taking Measures for the Implementation of the Broad Sectoral/Intersectoral Approach, as well as the Establishment and Reorganization of the Integrated Sectoral/Intersectoral Mechanism";*
- ***Government Program of the Council of Ministers 2021-2025****;*
- ***Council of Ministers Decision No. 88, dated 22.02.2023*** *– "On the Approval of the National Strategy for Development and European Integration 2022-2030";*
- ***Council of Ministers Decision No. 606, dated 20.10.2021*** *– "On Defining the Scope of State Responsibility of the Ministry of Justice," as amended;*
- ***Policy Document*** *– "Intersectoral Justice Strategy, Action Plan (AP), and Indicator Passport 2024-2030";*
- ***Council of Ministers Decision No. 736, dated 13.12.2023*** *– "On the Approval of the Rule of Law Roadmap";*
- ***Council of Ministers Decision No. 16, dated 11.01.2024*** *– "On the Approval of the National Plan for European Integration 2024-2026";*
- ***Council of Ministers Decision No. 290, dated 11.04.2020*** *– "On the Establishment of the State Database for the Integrated Planning Information System (SIPI/IPSIS)," as amended.*

Identified Cases for the Evaluation of Wealth Criteria – Table 1

- **In the case of subject G.H.,** the Commission stated that: *"The subject has made all efforts to obtain the required information but is in a real impossibility to prove the payment of withholding tax on these incomes, as it was not his obligation to pay it, nor was he in a position to be cautious in verifying and preserving this information."* **(See: KPK Decision No. 393, dated 03.06.2021).**
- **In the case of subject I.M.,** the College reasoned that: *"...the notarial declaration made during the re-evaluation process has limited probative value regarding the real value of expenses incurred by his daughter, as it appears to be an attempt to justify expenses in relation to the burden of proof."* **(See: KPA Decision No. 8/2021 (JR), dated 09.08.2021).**
- **Specifically, in the decision regarding subject I.P.,** the KPK assessed that the **absence of legal sources for a small financial balance is not considered grounds for dismissal. (See: KPK Decision No. 404, dated 23.06.2021, and KPK Decision No. 358, dated 19.03.2021).**

Table No. 2 on Financial Analysis

- For the subject **A.Gj**, the **KPK (Independent Qualification Commission)** assesses that he secretly owns an apartment in the city of Durrës, cases that contain elements of a criminal offense related to the creation and use of these documents, for which the vetting bodies should have filed a report with the prosecution. More specifically, Article 281/3 of the **Criminal Procedure Code** stipulates:
- *"When, during a civil or administrative proceeding, a fact is discovered that constitutes a criminal offense subject to prosecution, the relevant authority must file a report with the prosecutor."*
- In such cases, the vetting bodies were required to conduct an accurate analysis of the legality of the sources of income used to justify the assets of these subjects. In a case where the subject had used a source of income—a **bank loan** obtained after purchasing the apartment—the **KPK** had to argue the illegality of this source in a way that renders the asset legally unjustified.
- More specifically, in the case of the reassessment subject **L.H**, it was concluded that he made an **insufficient declaration** in the **2006 periodic declaration** and in the **"Vetting" declaration**, by stating as the source of this property income generated after the date of signing the **sale contract**. For this subject, the **failure to include the bank loan** as a source for the creation of the apartment asset in 2006 creates a situation where the subject lacks legitimate income to cover the acquired property and the expenses incurred.
- Given that the **Commission was not convinced** about the lawful origin of the income derived from the loan, the analysis could have been extended to **2007**, the year in which the loan was actually taken, to examine why this loan—applied for a year later—could not have been used for the apartment purchase, also considering the banking institution's **rules on loan approval and disbursement**.

Table 3 on Cases of Deficiencies in Declaration Forms

In the case of the subject **R.P**, the **KPK (Independent Qualification Commission)** has argued that the legal document on which the investigation and the **transitional reassessment** process are based is precisely the **Vetting declaration**. Previous declarations may serve as **evidence** for the Commission during the process, but they **cannot** be grounds for the dismissal of the subject. Regarding discrepancies between the **Vetting declaration** and the **2003 declaration**, in this specific case, it was determined that there was **no intent or deliberate action** to provide inaccurate information, conceal assets, or make a false declaration by the reassessment subject, as long as the amount paid is proven through **legally justified documents**.[1]
In the case of the reassessment subject E.T., the failure to declare the sale of the vehicle in 2012 in the periodic declaration and Vetting process was argued by the subject as human error. Additionally, the subject stated that the sale had no financial impact in terms of acquiring further assets. This statement by the reassessment subject was consistent with the findings of the

[1]Independent Qualification Commission, Decision No. 169, dated 26.06.2019

administrative investigation conducted by the KPK, as the proceeds from the sale of the vehicle were not used as a source for purchasing any assets.[2]

Regarding the subject A.B,[3] the KPK justified the non-declaration of cash balances in the periodic declarations for the years 2003 and 2004, arguing that this should not be taken into consideration during the final decision-making process.

The same standard does not appear to have been applied to the reassessment subject A. K[4], for whom the Commission determined that the failure to declare real property rights in the periodic declarations for the years 2009, 2010, 2011, 2012, and 2013, concerning eight assets acquired from the company "***" sh.p.k., constitutes an inaccuracy resulting in an insufficient declaration of assets by the subject. Consequently, this should be taken into account during the final assessment process of the case. [39]

Table 4 on Cases of Deficiencies in Asset Declaration

In the case of the subject D.P., this finding cannot be considered concealment according to the KPK, as it concerns a bank deposit from 2003, which was later withdrawn and declared, and is verifiable.[5]

The KPA has considered the incorrect (inaccurate) declaration to ILDKPKI as an "inaccuracy," even though it was later corrected (before completing the vetting declaration), on the grounds that this correction was made on the initiative of the reassessment subject. Thus, the KPA has assessed that "the failure of the reassessment subject to declare the purchase of the vehicle in 2005 constitutes an inaccuracy in the periodic declaration of that year, which was corrected in 2009 through the will and initiative of the reassessment subject" (see point 67 of Decision 20/2019 of the KPA).

Furthermore, regarding the method of completing the vetting declaration concerning the source of asset creation, in cases where different sources were indicated in annual declarations, the College holds the position that the reassessment subject's claim—that at the time of completing the asset declaration (vetting) in 2017, the loan in question had been repaid over the years with family income and, therefore, did not need to be detailed—does not hold.

The College reasons, in response to claims of double standards, that every decision of the Commission is assessed individually, based on the specifics of the proven factual situation established through the proceedings and the proper application of the law to the concrete factual circumstances, rather than by how other subjects may have been reassessed by the Commission.[6]

[2]Independent Qualification Commission, Decision No. 105 dated 12.02.2012 and Decision No. 116 dated 21.03.2019
[3]See Decision No. 135, dated 05.04.2019, page 14
[4] Independent Qualification Commission, Decision No. 113 dated 08.03.2019
[5]Independent Qualification Commission, Decision No. 112, dated March 4, 2019, page 15
[6]KPA, Decision No. 07/2019 Jr, dated April 5, 2019, pages 16, 17

The verifiability of the payment of financial obligations by the reassessment subjects, or inaccuracies in the declarations of obligations to third parties in the case of the subject G.O., led to the following interpretation by the College:
"The lack of legal documentary evidence that would convincingly prove the value and timing of the payment of the amount of €47,680 during 2009 will be considered as evidence within the context of this process. The declarations made by the reassessment subject in the periodic declaration for 2009 will be applied, thus implementing the provision of Article 32, paragraph 5 of Law No. 84/2016, according to which: Declarations of private and property interests, previously submitted to ILDKPKI, may be used as evidence by the Commission and the Appeal College. Continuing with this reasoning, the College accepts that the payment of the amount of €47,680, made in 2009, is considered to have been completed during that year, up to December 31, 2009, as declared by the reassessment subject.".[7]

Table No. 5 Regarding Asset Concealment

Thus, in KPK Decision No. 14, dated April 13, 2018, for the subject B.T., the panel assessed that the subject concealed net income from his daughter's salary, employed in a public institution, in the amount of 148,226 Lek. This decision highlights that the subject and connected persons are obligated to declare net income as legitimate sources and bank account balances up to the declaration period, regardless of whether these earnings were generated from legitimate sources. Regarding this issue, it is difficult to reach a conclusion without knowledge of the administrative investigation. The subject's failure to declare this amount may also be considered an inaccuracy in the declaration. It is hard to qualify this amount as concealment, not only because of its relatively low value but also because it is a salary account, and moreover, the subject's daughter's employer is a state institution.

In Decision No. 17, dated June 4, 2018, the KPK panel (page 15 of the decision) noted that "regarding the income from 'illegal work,' the employee could not engage in an unlawful relationship to generate large savings, as they could only cover daily needs. In these circumstances, the Commission concludes that the income claimed from the scholarship and illegal work are not convincing sources for justifying this wealth." This finding regarding 'illegal work' and engaging in it to earn money solely to cover daily needs is unclear in terms of evaluating the wealth of the reassessment subject or connected subjects, as individuals can be involved in illegal relationships or 'black work' for large amounts of money.

The assessment of the insufficiency of the declaration requires a discretionary evaluation by the reassessment body,[8] and requires, as a cause, the existence of a motive or attempt to conceal the assets by the reassessment subject. For other subjects in similar situations, the stance of the KPK or KPA is different, as it has been reasoned that the financial assessment should be carried out not

[7] Special Appeals College, Decision No. 20/2019 (JR), dated July 31, 2019, pages 13-14
[8] Independent Qualification Commission, Decision No. 40, dated July 17, 2018

only through a critical analysis but should also be comprehensive and in accordance with the principle of proportionality (decisions for the subjects A.F[9], D.S[10], A.K[11]).

Table 6 on the Obligation to Declare Liquidity for Family Members

See point 24/2 of Decision 18/2019 of the KPA, where the Public Commissioner, in his appeal to the KPA, stated that "the reassessment subject and the person connected/other person connected to them [the father] have not fully and accurately declared liquidity in the form of joint bank accounts in their private and property interest declarations, until the moment when the reassessment subject, both physically and legally, is considered separated from the family unit, or they declared these assets with deficiencies noted during the investigation of the case in the KPK, whether in the annual periodic declarations or in the vetting declaration (same as above continuing)."
The KPA changed the standard set by the KPK (for the same subject) based on the evidence presented by the reassessment subject and the financial analysis carried out by its Unit, assessing that "the reassessment subject had inaccuracies in their declarations, but these inaccuracies were explained within the framework of the special family relationship and confirmed by the financial analysis, showing that the subject's family, through the father, who is considered by the judicial panel as another connected person, 'gifted' the amount of 1,000,000 lek, used by the subject to purchase the apartment. The KPA decided to assess this factual situation as sufficient for evaluating the wealth criterion, considering the wealth in the form of liquidity, as joint family income of the subject, created from legitimate sources.".[12]
See point 24 of Decision 20/2019, where the KPA reasoned that "the financial assistance (20,000 Euros for the purchase of the house) consisted of a loan and not a gift. Therefore, the other connected person did not relinquish ownership of the money given to the subject but only loaned it in the form of assistance, with the intention of reclaiming it within the stipulated timeframes in the contract. The other connected person is found to have income derived from employment, which ensures a modest living, circumstances that could have been treated differently had it been a gift of property. Additionally, the fact that the other connected person was active during the process, providing documentation proving their income, which is considered as documentation/acts containing personal data, is assessed to fulfill, along with the written contract, the confirmation criterion of this relationship according to the provisions of Article 32, paragraph 4 of Law 84/2016."

Table No. 7 for Financial Analysis

[9] Special Appeals College, Decision No. 09, dated April 18, 2019
[10] Independent Qualification Commission, Decision No. 114, dated March 11, 2019
[11] Independent Qualification Commission, Decision No. 113, dated March 8, 2019
[12] The KPA was initiated by the Public Commissioner, who appealed the decision of the KPK solely regarding the criterion of assessing the wealth of the reassessment subject and related persons. The Public Commissioner requested the conduct of an investigation and assessment of the legal source, accuracy, and sufficiency of the wealth/liquidity declaration. According to the appeal, the Commission's investigation was not comprehensive and thorough enough to establish confidence that the reassessment subject achieves a credible level of wealth assessment, as per Article 59, point 1 of Law No. 84/2016 (see point 7 of KPA Decision 18/2019).

Specifically, for the subjects H.D and P.Gj, in the financial analysis presented in the KPK decision 47[13], the calculation of income before the start of the duty is missing. Additionally, the method for calculating savings over the years is not clear. The KPK has only analyzed the real possibility of the subject to create wealth for the period during which it was created, without considering the savings accumulated over the years. This practice has also been followed in the case of decision-making for reassessment subjects. Xh. Z[14], B.T[15].

In decision no. 224 dated 20.12.2019, the experts of the High Court of Justice highlight ambiguities regarding the methodology followed for the assessment of the wealth criterion for the subject. The decision states: "In detail, according to the years, all the data on income, expenses, savings, and obligations have been considered and calculated. Based on these, the sufficiency of financial sources has been evaluated for each year, in order to cover investments, expenses, or declared and/or identified savings by the commission, with income from lawful sources, according to Annex D of the Constitution." However, the decision does not include a summary table of the analysis, nor does it clarify the method used to calculate expenses, savings, or the rates applied in their calculation.

Table No. 8 for Data Used by INSTAT

Në vendimin nr. 224 datë 20.12.2019 thuhet se “shpenzimet jetike nga data 1.1.2010 deri më 31.3.2010, të përllogaritura në mënyrë proporcionale, sipas metodologjisë standard, kanë rezultuar në vlerën 153.697 lekë (referuar vendimit nr. 2224)” por nuk jepen shpjegime të mëtejshmë çfarë nënkupton metodologjia standard apo te jepet ndonjë indeks i përdorur në llogaritje. Në këto kushte vlerësojmë së vendimi i publikuar nga KPK duhet të ishte më i plotë, më i qartë, i mirëorganizuar dhe i kuptueshëm, duke siguruar në këtë mënyrë, një nivel më të lartë transparencë për publikun.

However, for subject P.Gj, there is a lack of a thorough analysis of the declared expenses over the years and the possibility of having income justified by lawful sources. Regarding the value of expenses exceeding 300,000 Lek and their declaration method, the KPK has found that whether or not the threshold, which brings the legal obligation for their declaration, is met should be calculated based on the total of the respective expenditure incurred during the year for which the subject's declaration refers. The method of analyzing each expense or purchase separately within the declared year, even when they belong to the same expense category, is not correct.[16]

In the case of the subject of re-evaluation A.F., the KPA carried out a financial analysis regarding the possibility that this subject had to create savings, as there were inconsistencies in the asset declarations for the years 2004 and 2005. The same approach was maintained for the subject A.C. and the re-evaluation body requested the recalculation of income for the periods 15.10.1992-14.07.1994 and 10.09.1995-31.08.1997. The KPA's position that the financial report prepared by the economic advisor is an advisory act of the body does not fully align with the positions in other

[13] See the decision for subject H.D, No. 108, dated February 15, 2019
[14] Independent Qualification Commission, Decision No. 46 dated 24.07.2018.
[15] Independent Qualification Commission, Decision No. 14 dated 13.04.2018.
[16] Independent Qualification Commission, Decision No. 116 dated 21.03.2019.

decisions, where private reports prepared by experts regarding the evaluation of the financial situation were assessed, but priority was given to the report prepared by the body's own advisors.[17]

Thus, in Decision 22/2018 (p. 8), the KPK states that "the living expenses for the subject of re-evaluation for the period 1992-2000 were calculated approximately, taking into account the wage levels during this period, the family composition of the subject, and as a monthly expense, an approximate value that accounts for around 26% of the total income."

In another case, in Decision 62/2018 of the KPK, regarding the financial analysis of deposits and withdrawals from savings banks, it refers to the subject of re-evaluation and related persons for the source of their creation, based on the banking data (statements) from second-tier banks from which they requested information, in relation to their declarations to ILDKPKI and Vetting Declarations (see KPK analysis, p. 16-22). The observed issue in this regard relates to the fact that each of these accounts is analyzed separately throughout the entire declaration period, whereas these analyses could also be conducted in an integrated manner. Thus, for each re-evaluated subject or related persons, the source of their creation could be assessed from all banks in an aggregated manner for all the years of declaration, with the aim of more clearly analyzing whether the subjects had legitimate sources for generating income, how expenses proceeded within the same year, i.e., how accounts were credited or debited in total, and whether the subject had the ability to make large payments.

Table no. 9, Evaluation of the concept of 'assets in use' of the re-evaluated subjects, as an obligation to be declared as financial interest.

In the KPK decision for the re-evaluated subject L.H., it is concluded that the legal source of income for the other connected person, B.H., for the purchase of this vehicle by the connected person, A.H., was not proven with legal documentation. The investigation into the legal source of the asset of the connected person carries the discussion of whether it exceeds or is within the limits set by the competencies that the law assigns to the vetting institutions in conducting the administrative investigation.

The KPA assessed that "since at the time of submitting the asset declaration (vetting), it was not proven by the case file that the subject had used the mentioned vehicle, nor does it appear that there was a valid TPL insurance policy at this time, the judicial panel concludes that the re-evaluated subject did not violate the declaration obligation under Article D, paragraph 1 of the Annex to the Constitution and Article 31, paragraph 1 of Law No. 84/2016, concerning assets in use, and that any inaccuracy in the periodic declarations of previous years, regarding the non-declaration of the financial interest in the form of the use of the vehicle owned by the company "{"***}" LLC, as long as no data was found during the administrative investigation by the Commission and the judicial investigation by the Panel regarding a potential conflict of interest between the subject and the company, such inaccuracies cannot be considered as insufficient

[17]See Decision No. 08, dated 16.04.2019 of the Special Appeal Panel, Decision No. 09, dated 18.04.2019 of the Special Appeal Panel.

declaration within the meaning of Article 33, paragraph 5 of Law No. 84/2016 and thus do not affect the validity of the Commission's decision in this regard" (see point 24.3 of the KPA Decision No. 11/2019).

Table no. 10 on the justification of income before the start of the duty.

In one of the decisions of the KPA,[18] it is argued that the assets acquired by the subject of the re-evaluation, especially by connected persons, prior to the re-evaluation period, may fulfill and meet the discretionary threshold for "adequately justifying the legality of the source of wealth creation" even with a lower level of evidence.

In the case of the subject of the re-evaluation, D.P., the KPK assesses that the non-payment of taxes for a portion of the income was the responsibility of the employer and that these taxes could not have been paid by the subject themselves. According to the KPK, the employment relationship of the subject is legal, and the income obtained was from a legitimate employment relationship.[19]

Meanwhile, for the subject E.S., the KPK has taken a different stance, noting that in the 2009 periodic declaration, the subject declared a higher income for his spouse than what her employer had reported to the relevant tax authorities.[20] In this specific case, the subject claimed the income that they actually received, rather than the income that the employer had declared to the tax authorities.[21]

For the same subject, the KPA, like the KPK, maintained the same position, deciding to uphold the decision to dismiss him from his position. However, in a similar case, the KPA concluded differently, reasoning that "for the income generated by the subject's spouse from their services in the Kingdom of Saudi Arabia in 2006, it was not proven that the relevant tax obligations were fulfilled. Therefore, these do not meet the criteria of Article D, point 3 of the Annex to the Constitution and Article 30 of Law No. 84/2016 to be considered legal income within the scope of this process.".[22]

In the case of the subject R.P., the KPK argued regarding the income generated from emigration that "the income was realized long before the approval and entry into force of the Constitutional Reform Package in Justice, including Law No. 84/2016, which set specific rules regarding the proof of the source of income generated by the subjects of the review process, for the purpose of controlling and verifying their assets. This source of income was declared by the subject of the review process as early as the first declaration in 2003. Furthermore, this income had been deposited in the banking system since 1998, eliminating any doubts about abuse by the subject

[18] Special Appeal Panel, Decision No. 6, dated 28.02.2019, page 36.
[19] Independent Qualification Commission, Decision No. 103, dated 05.02.2019, page 9, see also pages 11-12 of.
[20] Special Appeal Panel, Decision No. 7, dated 05.04.2019, page 11.
[21] Special Appeal Panel, Decision No. 7, dated 08.04.2019.
[22] Special Appeal Panel, Decision No. 6, dated 28.02.2019, page 23.

with the source of income solely for the purpose of the 'Vetting' declaration."[23] Furthermore, the reasoning continues that the subject was not obligated to retain documentation, considering that their role as a judge began in 2000, and taking into account the fact that such a long period of time had passed. The request for the exclusion of the subject from the obligation to present documents justifying the legality of the creation of assets, according to Article 32, paragraph 2 of Law No. 84/2016, was accepted, while also evaluating all of their efforts to prove the declarations made.[24]

For the justification of the legal source of wealth in another practice, the Commission argues: "From the content of this certificate, it is noted that the subject is objectively unable to prove the net profit of Ms. A. B. S.'s business at the time the loan was given. ... Therefore, based on the fact that for the period 2003-2006, this commercial subject had a total turnover for which a simplified profit tax was paid, and based on the fact that the loan was granted for a one-month period only, the Commission became convinced that Ms. A. B. S. had sufficient legal income to grant the loan on July 29, 2006, thus considering the claim of the subject of the review as substantiated.".[25]

Table no. 11 for tax declarations at the source.

Regarding the legal source of wealth creation and the payment of taxes (fiscal obligations) for its creation, the KPA has taken a completely different stance from the KPK, reasoning that "not every asset for which the fiscal obligation has not been paid should be automatically qualified as illegal, as the subject of the evaluation may convincingly explain and provide evidence to prove the contrary"... and continues "...although the fiscal obligation for an asset may not have been paid, the source of its creation may stem from work or a legal action that the law does not prohibit or expressly permits. For the KPK, 'failure to pay fiscal obligations may be considered a violation of the ethics of the magistrate or an administrative violation, but it cannot serve as grounds for imposing disciplinary measures based on Article D of the Constitution and the legal provisions derived from its implementation' (see Decision 46/2018 of KPK, p. 27/1). For the same subject under evaluation, the KPA has taken a contrary stance, evaluating that "in the context of the reevaluation process, the correct and complete declaration of the source of wealth creation and income, as well as the legality of this source, is an essential condition to pass the asset evaluation criterion. For this purpose, subjects must provide documentary evidence of fulfilling their tax obligations; otherwise, the source, income, and created asset will be considered illegal, and thus the conditions of insufficiency for the asset control criterion will arise" (see points 22.12 and 22.13 of Decision 19/2019).

Table 12 on cases where declarations are insufficient.

[23] Independent Qualification Commission, Decision No. 169, dated 26.06.2019.
[24] Independent Qualification Commission, Decision No. 169, page 90.
[25] Independent Qualification Commission, Decision No. 151, page 10.

In the decision of the KPK regarding the subject D.P, it is concluded that; when a financial analysis covering a period of approximately two decades shows a minimal financial discrepancy, spread over the years, it may be tolerated, not only due to the possibility of some inaccuracies in the parameters used during the calculation process, but also in function of the principles of objectivity and proportionality, considering that there are insufficient elements to apply the measure provided for in point 1/c of Article 58.[26]

Additionally, for the subject E.T, it is noted that although the subject did not declare the cash balance for the period 2012-2016, the Commission considered this fact alone insufficient to apply the legal grounds for dismissal provided by Article 61 of Law No. 84/2016. The inaccuracies in the declaration by the subject were not considered to undermine the assessment of his assets. Furthermore, in justifying the inaccuracies in the declaration, it is concluded that, based on the principle of proportionality, balancing the value of these inaccuracies against other evidence administered by the Commission through its investigation, the Commission concludes that the subject has managed to argue the lawful source of his assets and income, which is his primary constitutional obligation.

The same argument was not followed in the decision for the subject A.K, for whom the KPK panel concluded that the failure to declare real property rights in the periodic declarations for the years 2009, 2010, 2011, 2012, and 2013, for the eight assets acquired from the company "***" LLC, constitutes an inaccuracy leading to an insufficient declaration of assets by the subject, and should be considered during the final assessment of the case.[27]

In addition, the subject H. D[28] The KPK panel maintains the position that the subject has made an incorrect and insufficient declaration regarding the assessment of the asset criterion, emphasizing that there was no financial capacity to repay the loan installments over the years.[29] Meanwhile, the KPA, differing from the position held by the KPK, has established the standard that "the lack of legitimate sources to justify the expenses and savings (only) for the years 2011 and 2013 classifies the subject of re-evaluation in the situation provided by Article D, points 1 and 3 of the Annex to the Constitution and Article 61, paragraph 3 of Law 84/2016, according to which the subject of re-evaluation has made an insufficient declaration, a criterion justifying the application of disciplinary measures, dismissal from duty" (see point 79 of KPA Decision 20/2019).

Additionally, in another case, the KPA concluded that "since it was not proven that the source of the declared income during the judicial review served as the source for the creation of three real estate assets... the subject of re-evaluation and the person connected to them (their cohabitant) made an incomplete declaration of the three properties in the asset declaration (vetting) and their annual periodic declaration for the year 2005, regarding the source of creation, an inaccurate declaration in the asset declaration (vetting) of income from work, and they are in the situation of

[26] Independent Qualification Commission, Decision No. 112, dated 04.03.2019, page 31.
[27] Independent Qualification Commission, Decision No. 113, dated 08.03.2019.
[28] Independent Qualification Commission, Decision No. 108, dated 15.02.2019, page 29.
[29] The Independent Qualification Commission, Decision No. 108, dated 15.02.2019, page 29.

insufficient legitimate sources to justify these three real estate assets, within the meaning of Article D, points 1 and 3 of the Annex to the Constitution and Law 84/2016" (see point 20.13 of KPA Decision 11/2019).

In another case, the KPA argued that "the judicial panel concludes that 'the subject of re-evaluation has made an incomplete and inaccurate declaration of their assets in the asset declaration (vetting) within the meaning of Article D, points 1 and 5 of the Annex to the Constitution, with the aim of evading control within the re-evaluation process.'"

In the case of the subject R.H., confirmed by a majority vote in the KPK, the decision also presents the dissenting opinion of the commissioner. Member L.H. argues: "I do not agree with the decision made by the majority colleagues... because, in my view, the subject of re-evaluation did not reach a reliable level in the re-evaluation of their assets."

Taable 13 on the reopening of the investigation

Thus, in the case of the subject D.M, it appears that on November 22, 2019, the subject addressed the KPK with the request for the reopening of the administrative investigation regarding the figure criterion. With decision no. 3, dated November 22, 2019, the judicial panel, after reviewing the three requests presented by the subject of re-evaluation, decided to reject them.

The refusal of the request to reopen the administrative investigation was also noted in the decision regarding the subject B.M, for whom, after analyzing all three criteria, the commission decided to dismiss them. Meanwhile, in the case of A.V33, due to the identification and administration of new evidence by the Commission, after closing the investigation related to the wealth evaluation criterion, the judicial panel decided to reopen the administrative investigation primarily and notified the subject about this decision. The subject of re-evaluation submitted a request to the Commission via email for the reopening of the investigation and evaluation of the other two re-evaluation criteria, namely the figure and professional evaluation criteria, as well as to be informed about all the documentation collected by the Commission for these two criteria. The KPK, after reviewing this request, determined that up until this stage of the investigation, the collected evidence met the evidentiary standard as stipulated in point 2 of article 52 of law 84/2016 and decided: to reject the request, notifying the subject of re-evaluation about this decision.

In the case of the subject A.XH., the KPK decided to conclude the re-evaluation process based on the wealth criterion, dismissing the subject and basing the decision, among other things, on article 61, paragraph 3 of law no. 84/2016, which stipulates that: 'When it is found that there has been insufficient declaration regarding the figure and wealth control criteria, according to the provisions of articles 39 and 33 of this law.' From the literal reading of this article, it is observed that the legislator has reflected a cumulative approach through the use of the conjunction 'and,' meaning that the subject must make an insufficient declaration for both evaluation criteria in order for the disciplinary action imposed on them to be justified by the application of this legal provision.

Although the Commission concluded the re-evaluation process based solely on the wealth criterion, it is evident that the insufficient declaration regarding the figure criterion influenced this decision.

The request submitted by the subject M.B. for the reopening of the administrative investigation for the other two criteria was found not to have been accepted by the judicial panel of the KPK. The final decision does not reflect the reasons/arguments for the refusal, although the new evidence submitted by the subject was administered by the judicial panel. The standard in the decision-making of the KPK regarding the determination of the reasons/arguments for the refusal of the request to reopen the investigation for the other two criteria, submitted by the subject A.XH., appears different. In this case, the KPK reflected them in the final decision, where it states that 'the subject did not present evidence and written documents to prove the contrary of the burden of proof regarding the results of the investigation for the wealth criterion, such that would make it necessary to reopen the investigation for the other two criteria.".

Table no. 14 on the figure control.

In one case, the KPK found the subject unsuitable to continue in the position after the subject of re-evaluation had inappropriate contacts with individuals involved in organized crime.[30] In several other decisions of the KPK, the vetting bodies conducted an independent investigation regarding the figure and integrity control of the subjects of re-evaluation, including the verification of information recently sent by law enforcement agencies.

Thus, for the subject A.M, it appears that the KPK requested the DSIK to update the initial report, which included new information that was not included in the figure control report. In this case, although the DSIK confirmed the initial assessment of suitability for continuing the exercise of the duty, the High Council of Justice (KSHH) noted that the decision did not mention the data or indications that led the KPK to request the update of the initial report.

In another decision, the DSIK also found the suitability for continuing the position. In this decision regarding the subject D.B, the way in which the reasoning was articulated to argue that the DSIK had not changed its initial finding, even after the administrative investigation, constitutes a lack of clarity and transparency standards to the public. Since the statement 'In conclusion, the DSIK, despite the data obtained from the verifying authorities, did not change its initial finding regarding the subject of re-evaluation for suitability in continuing the position' creates a space for interpretation that, despite the verifying authorities having secured data that could have been compromising for the subject, the DSIK did not change its position. In this case, the KPK should have clarified more for the public opinion what new data was secured for this subject, or at least what nature these data had.

[30] Subject P.M

In another occassion,[31] the KPA has found flaws in the decision-making of the KPK regarding the way the figure control was evaluated. In this decision, the subject expressed the view that state secrets had violated their right to be informed about the acts that directly affect them in this process. This request of the subject was rejected as unfounded by the KPA, based on the declassification criteria and exceptions from this process as provided in Law no. 8457, dated 11.02.1999, 'On classified information "state secret",' as amended.[32]

Table no.15 on the evaluation of professional skills.

Specifically, the vetting process for the prosecutor subject A.M. began after the establishment of the KLP (December 2018), but no report was administered by the KLP for this subject, only by the working group established at the General Prosecutor's Office. Meanwhile, in the analysis of the professional ability criterion for subjects in the judiciary, D.B. and M.M., the KPK's decision-making was based on reports prepared by the KLD and KLGJ. From previous study reports by the High Council of Justice (KShH), it has been observed that citizen complaints have generally not carried significant weight in the decisions of the vetting bodies.

Thus, in the case of subject A.J, for whom 10 complaints were filed, the judicial panel concluded that she had applied the law within her competencies as a leader and that her inactions in two cases could not constitute grounds for evaluating her professionalism as deficient or unsuitable.[33] In this decision, which confirms the subject in office, it appears that the opinion of the international observer (which is, in fact, not mandatory) was not considered. After the decision was given by the KPK, ONM recommended the re-evaluation of the subject at the second level. Regarding this subject, the Public Commissioner later filed an appeal with the KPA.

For example, in the case of the subject A.K., the Commission reviewed 14 complaints from citizens without making their contents or handling public and focused on several circumstances and event dynamics published by an investigative television program. The subject of re-evaluation, after the media content was studied, was informed and invited to provide their explanations. The Commission, regarding the issue at hand and the facts described by the subject, found violations of the rights of the accused, but based on paragraph 4 of Article 59 of Law no. 84/2016, forwarded the relevant file to the KLGJ for inspection of potential causes of violations.

For one of the complaints filed against this subject, the international observer of ONM presented an opinion with protocol number *** dated 14.11.2019, according to which the involvement of three different prosecutors in the initial stages of the investigation, although it occurred in August, did not indicate proper management of the institution's resources and the readiness system. Such modalities, as occurred in the aforementioned case, could ultimately lead to damage to the

[31] Regarding the case of subject A.B

[32] This decision is also based on the standard set by the case law of the Grand Chamber of the European Court of Human Rights (ECtHR), specifically the case Regner v. Czech Republic, 2017 (Grand Chamber).

[33] Decision No. 221, dated 10.12.2019

disciplinary investigation itself. Despite the violations, the KPK assessed that the issues that had arisen could not be classified as violations or serious professional deficiencies.

In the case of subject A.M., a complaint filed a day after the hearing session forced the judicial panel to reopen the administrative investigation for the subject of re-evaluation. However, in conclusion, the KPK panel decided to treat this complaint with lesser weight, arguing that it related to the evaluation of the subject's leadership qualities and not their ethical-professional abilities or integrity and reputation as a prosecutor. This conclusion is disputable in our opinion, as the KPA has elaborated the methodology and sub-indicators for evaluating professional abilities.

In the case of the subject G.M. (analyzed in KPA decision no. 21/2019), special attention was paid to the evaluation of leadership abilities, arguing that 'the evaluation of leadership abilities as a chairperson with at least "very good" has priority over the evaluation as a magistrate, which is carried out after the evaluation as a chairperson."

The citizen's complaint, which served as a triggering element for the KPK to reopen the administrative investigation, was the subject of analysis by a member of the judicial panel of this body, who expressed her opinion in dissent. According to this opinion, it is highlighted that the subject of re-evaluation has not convincingly explained the failure to carry out certain procedural actions, such as failure to notify the parties in the process, shortcomings in conducting investigations, failure to notify the parties about deadline extensions, failure to assign a case to a prosecutor as a head of prosecution, etc. These are elements that create the premise for undermining public trust in the justice system.

In the case of the subject of re-evaluation V.M., however, alongside this decision, it is worth emphasizing a general observation that the KPK decisions dictate the need to more uniformly and completely reflect the implementation of the methodology (and its indicators) for evaluating the professional abilities criterion, elaborated in decision no. 21/2019 of the College (KPA).

For example, in KPK decision no. 218 dated 10.12.2019, it is noted that while the Commission extensively analyzed the asset control of the subject K.K., the professional evaluation criterion was analyzed in broad terms.

In the initial report for subject N.P., the DSIK confirmed the suitability for continuing the position. Later, following a request from the KPK, an updated report on the background check was submitted, which indicated that the information received from the verifying authorities during the re-evaluation period showed that data was available concerning the subject's involvement in illegal activities, particularly abuse of office. On the other hand, the KShH pointed out that in one case, the DSIK itself updated the initial report, specifying that at that stage, the response from one of the law enforcement agencies was still pending. In the case of subject E.B., the College argued that: '...his failure to disclose the visa refusal, as required by the declaration form, constitutes inaccuracy and untruthfulness in completing the form for the background check, an action that leads to the lack of trust in this subject, as well as his unsuitability for continuing the position.'

In cases where subjects were explicitly dismissed due to professional suitability issues, in accordance with point 5 of Article 61 of Law No. 84/2016, unified in the KPA decision, or where the evaluation indicators for this criterion are reflected in most decisions in the form of a general treatment in the report of the assisting bodies.

Table no.17 in relation to the resignation of the subjects

The subjects S.K. and N.S. submitted their resignation requests based on health reasons, which made it impossible to continue performing their duties. The subject J.Q. supported her request based on the reason of being engaged in a position outside the judicial system, while the subject O.A. submitted her resignation to the High Council of Justice (KLGJ) due to reaching the age of 65.

Despite the fact that KLGJ did not express its opinion in accordance with Article 70/3, paragraph 3 of the Code of Administrative Procedures, this does not constitute a circumstance that would influence the decision to suspend the reevaluation process, as argued by the Constitutional Court (KPA) in decision no. 17/2019 (JR). This is the case of the subject E.K., who held the position of legal advisor at the High Court and submitted her resignation request while attending the two-year training at the School of Magistrates. KLGJ did not approve the submitted resignation, arguing that "in the circumstances where Ms. E.K. terminated her legal employment relationship as a legal assistant/legal advisor (non-magistrate) at the High Court on October 1, 2018, i.e., before the establishment of the High Judicial Council (December 12, 2018), and when the public authority responsible for this category of employees continued to exercise its competencies until the establishment of the Council, it is not obligated nor allowed to express an opinion on this matter, which has already been legally addressed/closed."

Regarding this issue, KPK argued in its decision that the first year of theoretical education and the practice/internship in the second year at the School of Magistrates were activities performed ex officio due to the status of legal advisor that the subject held. Consequently, the judicial panel considered that as long as the subject continued to hold the status of legal advisor and since the reevaluation process had not yet been completed, it was considered a withdrawal from the status of legal advisor, withdrawal from the duty, and renouncement of the reevaluation process.".

Table no.18 regarding the decision-making based on a criterion

Based on this legal provision, the KPK initiated the administrative investigation for all three evaluation criteria, and after determining that it had fully investigated the property criterion, based on the evidence gathered and their probative value, it concluded that the evaluation of the subject could be done solely for the property criterion, without the need to complete the full investigation of the other two criteria (see paragraph 21 of decision 23/2019 of KPA).

This terminology has also been used in the decision regarding subject S.K. (quote). "The rapporteur of the case conducted a complete and comprehensive investigation." In the reasoning of this decision, there is a contradiction in the logical analysis used, as while paragraph 9 states that the judicial body decided to notify the subject that it bears the burden of proof to prove the contrary of the investigation's results (including annexes DH and E of the Constitution, which refer to the figure control and evaluation of professional abilities), in fact, the subject was notified of the burden of proof being transferred only for the property criterion (paragraph 10).

Table no.19 regarding the role of ONM

Thus, in a monitored case, the ONM observer provided the subject with some advice on the efficient management of resources in the courts in the future, to avoid delays in judgment. The role and duties assigned to the ONM observers by the Constitution and Law no. 84/2016 are limited only to the vetting process and its proper conduct, but not to other aspects of the governance of the justice system, such as the management of human resources in the future, which is under the competence of the new governing bodies of the judiciary. Article 55, paragraph 3 of Law no. 84/2016 "On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania," provides the right of the international observer to ask the subject questions during the hearing. In this way, the international observer has exceeded their competencies.

In another case, there was an exchange between the subject and the representative of ONM regarding the loan of 5 million lek, taken from an acquaintance of the family, as well as the 1997 event in the Court of Gjirokastra. The ONM observer raised questions about this event, reminding that it is not the judge's duty to act like a "cowboy." These expressions are considered unethical given the seriousness and solemnity this process carries to the public.

Thus, in the case of subject D.P., the ONM observer presented an opinion and findings regarding a complaint filed with ONM, which served the KPK when it decided to transfer it to the competent authority for inspecting potential disciplinary violations. A controversial aspect of the ONM's contribution to the vetting process is the different opinion of ONM observers regarding the decisions of the vetting bodies. In the assessment of the High Judicial Council (KShH), the parallel/different opinion presented by the ONM observer on the KPA decision is debatable as it exceeds the attributes defined in Annex "B" of the Constitution.

Table no.20 regarding the transparency of the hearings

Thus, in the hearing session of June 25, 2018, with the subject V.S., it was found that the first report of ILDKPKI did not match the second report from the same institution, which had been contacted again by KPK during the administrative investigation. While in the first report, ILDKPKI referred to the fact that the vetting subject had no violations regarding the declaration of assets and the sources of their creation, in the second report ILDKPKI referred to the fact that the asset declaration was not made in accordance with the law. During the hearing session, it was

not explained why KPK asked ILDKPKI to prepare a second report and why KPK considered the second report of ILDKPKI as not based on evidence.

In the session of June 28, 2018, this was also highlighted by the defense lawyer of the subject A.L, who stated that the assessment should be made for all three criteria and not just for the asset one. Monitoring of the Vetting Process for Judges and Prosecutors during the period January 2017 – June 2018.

Table no.21 regarding public denunciations

Thus, for the subject D.S., public denunciations related to professional skills were considered by the KPK, and in the final evaluation, it was determined that the subject possessed a minimal level of professional knowledge.
For the subjects H.D. and A.Ç., the denunciations presented by the public contributed to the KPK's decision to dismiss them, citing, among other reasons, the undermining of public trust.
On the other hand, there have also been hearings where the rapporteurs of the body were satisfied only with making the number of denunciations public, without presenting any data, even in a summarized form, regarding their subject matter or the reasons for not making a decision.
It is worth highlighting the case of the subject R.P., who, despite having 11 public denunciations, was assessed as having no credible facts found that could undermine the work and professional abilities of the subject in the context of Article 43, paragraph 4, of Law No. 84/2016 "On the Transitional Revaluation of Judges and Prosecutors in the Republic of Albania."

Table no.22 regarding the publicity of the hearings

It is not allowed to record either with sound or visually. Subject I.M. stated that two days before the hearing session, they had submitted evidence with a voluminous material, and for KPK, it was impossible to assess them in less than 72 hours from receipt. This claim was reinforced by the subject's defense attorney. The restrictive measures in this regulation are debatable concerning the respect for media freedom, transparency, and the public nature of the process.

After the opening of the public hearing, according to Article 55 of Law no. 84/2016, the composition of the judicial panel is communicated, and the subject of the re-evaluation is given the opportunity to publicly refer to their general information and relevant function for identification. The president of the judicial panel confirms during the preparatory actions the procedural rights of the subject of re-evaluation that were applied during the administrative investigation, such as: the right to be informed of the final results of the administrative investigation and the documents filed in the case, the right to challenge the findings of the KPK, to present evidence, to present explanations in an official form, to refuse to provide answers, etc. The media are allowed to make (visual) recordings of the entry of the judicial panel into the room and the opening of the hearing by the presiding judge. Afterward, the cameras and microphones are turned off and taken out of the courtroom where the hearing is taking place.”

Table no.23 in relation to the fair process.

Some subjects have claimed that they did not have time to familiarize themselves with the investigation results. In some cases, questions could not be presented by either the judicial body or the ONM. a) During the hearing session on March 21, 2018, the judicial body expressed that it could not present questions to the subject of reassessment, despite the presence of the subject's lawyer at this session, because the subject was not personally present. According to the assessment of the KShH observers, based on Article 55, point 3 of Law 84/2016 and the principles of due process, the judicial body is not denied the right to present questions even if the subject of reassessment is not physically present but is represented through a lawyer. The latter always reserves the right not to answer the questions. b) During the hearing session on April 11, 2018, the defense lawyer of the subject of reassessment was denied the request to call an independent audit expert. According to the assessment of the KShH observers, the refusal of this request is questionable and may violate the principles of due legal process. The vetting law gives the KPK the possibility and the right to call an expert, and the expert report can be considered as evidence (Article 49/1, clause "b", Article 49/2).

Table no.24 regarding the right to be heard

Despite this, during the hearing session on March 21, 2018, the judicial body expressed that it could not present questions (neither could the ONM observers) to the subject of reassessment, despite the presence of the subject's lawyer at this session, because the subject was not personally present. Based on Article 55, point 3 of Law 84/2016 and the principles of due process, the judicial body is recognized as having the right to present questions even if the subject of reassessment is not physically present but is represented through a lawyer, who always reserves the right not to answer the questions. In one of the hearing sessions, the defense lawyer of the subject requested the presentation of new evidence, arguing that the results of the KPK at the conclusion of the administrative investigation had necessitated the presentation of new evidence, and that this evidence could not be presented within the timeframe provided by the KPK, which was deemed unreasonable. The request was not accepted by the judicial body, with the reasoning that during the previous administrative investigation, the subject of reassessment had been informed of every piece of evidence resulting from this investigation. In another case, it was found that the new evidence presented by the subject in the session conflicted with the evidence presented by the judicial body of the KPK. Therefore, the defense lawyer requested the summoning of an independent expert to determine the truth of the conflicting evidence. The KPK decided not to accept this request, arguing that the KPK possesses evidence

(the private audit report and financial analyses provided by official authorities), making the expert's report unnecessary. The refusal of this request is questionable and may violate the principles of due legal process.

In some cases, subjects have claimed that not all case materials were made available to them, such as financial analyses or DSIK reports, or they have objected to the timeframe provided by the judicial body of the KPK to prepare their defense, which, according to monitoring by the KShH, varies from 5 to 15 days.

In another case, the subject claimed that a part of the documents was provided to them only after they had submitted their claims in writing. Subjects have also raised complaints, such as the refusal of a request to administer evidence of a testimony as proof, only one day before the hearing session.

From the monitoring conducted, subjects have freely expressed their claims during the hearing session and have not been denied the right to remain silent, in accordance with point 3 of Article 55 of Law 84/2016. However, although the reassessing institutions have the legal discretion to limit the time for the subject of reassessment to speak, in accordance with point 4 of Article 55 of Law 84/2016, in every session, the subject of reassessment has been given the opportunity to present their position.

Nevertheless, although rare, there have been cases where the subject's time was limited, or the session leader requested that they present only new facts and omit those previously submitted in writing to the KPK.

Table no.25 in relation to the justification of decisions

Thus, in Decision No. 19, dated May 14, 2018, for the subject M.Xh, it is unclear why the KPK requested a review of the final act of the property declaration audit and the DSIK report for the subject. For the DSIK report, the lack of information may be related to the declassification of information. In this regard, a more comprehensive analysis of this aspect could have been conducted to reach a justified conclusion.

In another decision (No. 17, dated June 4, 2018), the KPK requests a legal opinion from the ILDKPKI, but it is not clarified or explained in the decision for which issues this opinion was sought. In Decision No. 14, dated April 13, 2018, the KPK justifies that '... by Decision No. 4, dated April 11, 2018, the judicial body refused the subject's request to appoint experts' but does not summarize the basis for this decision, creating ambiguity for the reader regarding the foundation of this decision. The lack of justification for this decision was also noted during its communication to the subject in the hearing session observed by KShH monitors.

In another case, KPK Decision No. 16, dated May 3, 2018, contains inappropriate terminology, as it states that 'The explanations given by the subject of reassessment appear credible and sufficient' (page 7 of the Decision), but it is unclear to the reader what specific evidence led to this conclusion.

Table No. 22 regarding the exercise of the right to information against vetting support bodies

The denial of information by support bodies within the specified timeframes and in a complete manner led the KShH to address the Commissioner for the Right to Information and Protection of Personal Data to ensure the constitutional right to information was upheld. The Commissioner evaluated the KShH's request as legally based for two of these bodies, namely the Directorate of Security of Classified Information (DSIK) and the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (ILDKPKI). The Commissioner ordered these bodies to provide the missing information requested by the KShH in the official "Return Response" documents. However, the Commissioner did not accept the KShH's complaint against the General Prosecutor's Office, a decision which the KShH appealed to the Administrative Court of First Instance in Tirana. Meanwhile, on February 5, 2018, the KShH withdrew from the administrative appeal process filed with the Commissioner against the Inspectorate of the High Council of Justice. During the review of this issue by the Commissioner, the Inspectorate sent us two official letters indicating that the information provided met our request from a formal-legal perspective. Even after the Commissioner's decision, the DSIK and ILDKPKI continued to withhold information regarding some of the questions posed by the KShH. The KShH exercised its right to sue these two institutions in the administrative court, as the right to information was violated by their non-compliance following the Commissioner's decision. We would like to emphasize that the law on the right to information does not provide effective legal mechanisms to enforce the Commissioner's decisions when the right to information is violated or not respected. The arguments used by the support bodies for withholding information of greater public interest vary from one body to another, demonstrating a lack of consistency in the application of the law. Moreover, these arguments are not supported or justified by the constitutional and legal provisions of the vetting process. The Constitution does not specifically designate the body responsible for the preliminary control of the declarations of professional competence submitted by judges and prosecutors. Meanwhile, the Constitutional Court, in its decision No. 2 (2017), argued that according to Article 10/3 of the law, the bodies responsible for evaluating professional competence are the Inspectorate of the High Council of Justice and the relevant structure of the General Prosecutor's Office. In the case of the DSIK and ILDKPKI, although the provision of information was refused, it is implicitly acknowledged that these institutions had data on preliminary conclusions (assessments) related to the two components for which they assist the constitutional vetting bodies. In the case of the Inspectorate of the HJC and the General Prosecutor's Office, it is directly or indirectly stated that these bodies do not possess conclusions regarding the professional competence of judges and prosecutors, respectively. However, it is unclear whether, in the case of the support bodies for professional assessment, the detailed and justified report that these bodies prepare for each subject includes or does not include preliminary conclusions or opinions related to professional competence. The KShH has publicly reacted to the lack of transparency from these support bodies towards our organization and the public regarding the failure to fully disclose statistical data resulting from their control of the integrity, wealth, and professional competence of vetting subjects. On February 5, 2018, the Commissioner for the Right to Information and Protection of Personal Data (the Commissioner) accepted the KShH's complaints regarding the violation of the right to information and ordered the

DSIK and ILDKPKI to provide full statistical information on the integrity of the figure and the legality of income and property within 10 days of the decision. These institutions did not immediately comply with the Commissioner's decisions. Under these circumstances, the KShH initiated or became part of judicial processes at the Administrative Court of First Instance in Tirana for the non-enforcement or appeal of the Commissioner's decisions. Firstly DSIK[34] appealed the Commissioner's decision in the Administrative Court of First Instance in Tirana, while for the inaction of the ILDKPKI, it was the KShH that filed a lawsuit in the administrative court. The denial of information by these bodies, we assess, temporarily violated the public's right to information guaranteed under Article 23 of the Constitution. An appeal was lodged against the Commissioner's Decision No. 06, dated February 5, 2018, regarding the refusal of the KShH's appeal. So far, the Administrative Court of First Instance in Tirana, with Decision No. 1966, dated May 22, 2018, has upheld the Commissioner's decision regarding the dismissal of the KShH's appeal against the General Prosecutor's Office. With Decision No. 2320, dated June 18, 2018, the Court dismissed the DSIK's lawsuit to annul the Commissioner's Decision No. 04, dated February 5, 2018. Meanwhile, with Decision No. 2234, dated June 11, 2018, the Court dismissed the KShH's lawsuit for the enforcement of the Commissioner's Decision No. 05, dated February 5, 2018, in the case against the ILDKPKI. The KShH appealed Decision No. 2234 to the Administrative Court of Appeals in Tirana, while for Decision No. 2320, we are not aware of any possible appeal to the Administrative Court of Appeals in Tirana by the parties in the process, DSIK, or the Commissioner.

Under Article 10 of the European Convention on Human Rights (ECHR), the KShH's pursuit of legal avenues to ensure the transparency of these bodies positively aided in this direction. On June 18, 2018, the Administrative Court of First Instance in Tirana dismissed the DSIK's lawsuit, upholding the Commissioner's decision that paved the way for transparency regarding the requested information. Following this decision, it is positive that the DSIK addressed the KShH with a letter for the provision of information, agreeing to comply with the decisions of the Commissioner and the Administrative Court.

[34]DSIK has exercised the right to appeal to the Administrative Court of First Instance in Tirana against Decision No. 04, dated 05.02.2018, of the Commissioner, where the High Council of Justice (KShH) intervened as a Third Party in the administrative process. For ILDKPKI, the High Council of Justice (KShH) has exercised the right to appeal in court for non-compliance with Decision No. 05, dated 05.02.2018, of the Commissioner.