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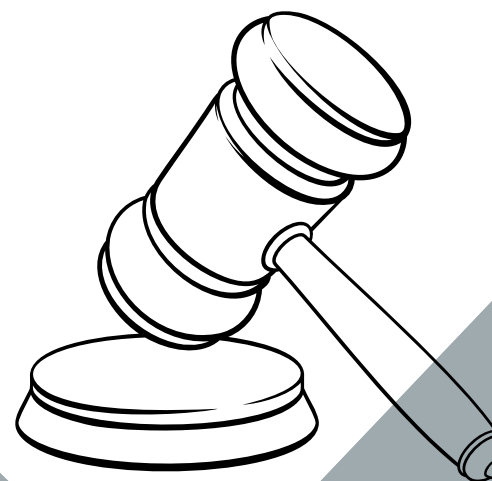


ALBANIAN HELSINKI COMMITTEE

# REPORT

## ON THE MONITORING OF THE HIGH JUDICIAL COUNCIL AND THE HIGH JUSTICE INSPECTORATE

FOR THE PERIOD JANUARY – DECEMBER 2023



FINALIZED IN:  
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REPORT  
ON THE MONITORING OF THE HIGH JUDICIAL COUNCIL  
AND THE HIGH JUSTICE INSPECTOR  
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**Finalized in March 2025**



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## **ABBREVIATIONS**

HJC	High Judicial Council
HC	High Court
HJI	High Justice Inspector
HPC	High Prosecutorial Council
AHC	Albanian Helsinki Committee
HIDAACI	High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest
COUNCILS	High Judicial Council and High Prosecutorial Council
Special Courts	First Instance Special Court for Corruption and Organized Crime /Appeals Special Court for Corruption and Organized Crime
SPAK	Special Structure Against Corruption
CDC	Career Development Commission
CCJE	Consultative Council of European Judges
Law no. 115/2016	Law no. 115/2016 “On the governing bodies of the justice system,” amended
Law no. 96/2016	Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended
Law no. 95/2016	Law no. 95/2016 “On the organization and functioning of institutions for fighting corruption and organized crime,” amended
Law no. 97/2016	Law no. 97/2016 “On the organization and functioning of the prosecution office in the Republic of Albania”

Law no. 98/2016

Law no. 98/2016 “On the organization of the judicial power in the Republic of Albania, amended

CC Decision no. 34/2017

Decision of the Constitutional Court no. 34/2017

CC Decision no. 41/2017

Decision of the Constitutional Court no. 41/2017



## INTRODUCTION

This monitoring report provides an analysis of the administrative acts issued in 2023 by the High Judicial Council with regard to the career development of magistrates, including disciplinary procedures started by the High Justice Inspector. Among continued efforts to strengthen the rule of law and increase the independence of the judiciary, the activity and decision-making of key governing institutions of the judiciary play a decisive role in shaping the career of judges and protecting their status.

Analysis through this report uses as a base the compliance of the HJC's administrative acts with the national and international legal standards aimed at promoting the values of career meritocracy and professional growth of magistrates. The goal is to highlight the standards that require further improvement in terms of the means used by the HJC in the development scheme for the careers of judges, to facilitate institutions in drafting concrete plans, both for legal regulation of legal procedures and for the manner of their effective management and organization. Thus, based on the detailed analysis of selected acts of the HJC for the career development scheme, it results that guaranteeing standards of predictability and clarity remains problematic, in terms of the drafting of individual and collective acts for appointments, promotions, and parallel appointments. Meanwhile, the standards of transparency and efficacy have been highlighted as problematic in the decision-making on temporary transfers and those with dedicated consent, as well as in decisions for the assignment of judges to special cases, due to the lack of detailed reasoning on the manner in which legal criteria are met by candidates. Furthermore, it is problematic especially in the procedures for appointments and promotions, the lack of effective management of factors that slow down the length of procedures, which require a coordination of structures within the HJC as well as between the HJC and other institutions. This issue appears to have high sensitivity for the disciplinary procedures on judges, for which a joint effort is required by both responsible institutions, the High Justice Inspector (HJI) and the High Judicial Council (HJC). With regard to these procedures, it is also noticed that continues to be disturbing that there is an archiving of disciplinary procedures carried over from previous justice institutions, something that violates the principle of juridical certainty, according to article 6 of the ECHR. Likewise, there is a lack of an integrated system for statistical data that would enable the consolidation of the administrative procedure for disciplinary proceedings, in the framework of greater transparency with the public, as well as for guaranteeing the procedural rights of magistrates, subjects of these proceedings.

AHC aims that through the findings and conclusions of this report, a career system of judges will be created where professionalism, integrity, meritocracy, and efficiency stand out. In this regard, AHC understands the influence of objective causes that make the activity of the justice system difficult, such as the vacancies created as a result of the vetting process, or the dissolution of courts in accordance with the new judicial map. Thus, it is admitted that the creation of numerous vacancies in the judicial staff during 2023, where only 247 judges exercised their duties out of the

408 judges that the staffing structure should contain, has had an impact on increasing caseload in the courts, as well as the need to complete panels of judges. Furthermore, the dissolution of courts according to the new judicial map has also had a direct impact, namely from the reorganization since May 2023 of the first instance courts of general jurisdiction from 22 to 13 courts, the reorganization since February 2023 of the appeals courts of general jurisdiction from 6 to only 1 appeals court in Tirana, as well as the reorganization since July 2023 of the administrative courts from six to only two such with territorial competences in Tirana and Lushnje.

In this situation, it is understandable that there is a use of tools of the judges' career development scheme by the HJC to resolve an evident crisis in the courts, with difficulties to complete the number of judges for panels of judges. AHC wishes to encourage institutions to use the tools of this scheme in a responsible manner so as to serve initially the development of judges' careers, guaranteeing the autonomy of judges during the use of any of them.

The analysis of problems and the proposal of recommendations comes in response to findings presented in the latest reports of the European Commission, on the need for further improvement of the rules and procedures for the appointment and career development of judges. For every finding in this report, data has been collected that have been available on the official websites of institutions, including normative by-laws, decisions, regulations, collective and individual administrative acts, written and audio process-verbals, announcements of plenary sessions of the Councils, the High Judicial Council and the High Justice Inspector.

Lastly, as a monitoring and independent institution, AHC hopes that the problems and constructive recommendations of this report, which do not have a binding nature, will be analyzed and reviewed with adequate care by the responsible institutions, thus contributing to encouraging and promoting accountability and independence first of the very governing bodies of the judicial system as well as the judicial power.

During the round table on November 25, 2024, AHC promoted constructive and impactful debate with stakeholders of the justice system and civil society, on further steps toward results demanded by the public with regard to the efficiency of justice reform, pausing among others on discussing this draft report. Furthermore, in the context of constructive cooperation, the institutions monitored in this report were given the opportunity to provide their feedback and suggestions, which, in respect of the principle of independence and transparency of the AHC, have become part of this report when deemed as just.

## EXECUTIVE SUMMARY

This executive summary reflects only some of the main conclusions from the monitoring of the activity of the High Judicial Council (HJC) and the High Justice Inspector (HJI), during the one-year period January – December 2023.

For 2023, the period that is the subject of this monitoring, the HJC has been affected in its administration of the judges' career system by several factors, such as: implementation of the new judicial map for the distribution of judges from the dissolved courts and the filling of vacancies created in the system as a result of the vetting process. It is worth emphasizing that the governing bodies of the judiciary themselves, such as the HJI, are faced with vacancies in the staffing structure that operates with a lack of inspectors.

In order to cope with the created overload, the HJC used the scheme for the development of judges' careers, including parallel movements, transfers (*especially in the first instance courts of general jurisdiction*), delegating, and assignment of judges to special cases. Besides this scheme, the HJC has also found *ad hoc* ways to manage the created vacancies, such as: securing candidates for judges<sup>1</sup> by increasing the quota for candidate magistrates, as well as the effective management of civil judicial employees.

### ► On appointments

The progress of the appointments system appears to be slow for periods that last approximately one year and a half. Likewise, the legal framework that applies to the appointment of magistrates from among candidates for judges graduated at the School of Magistrates creates an administrative burden for the justice institutions. It is so because the verification of the integrity and the ethical and professional evaluation of magistrates appears to be conducted twice within a period of time of three years: once for admission into the School of Magistrates and another time for the appointment upon graduation. As a result, the need arises for creating coordinating mechanisms for the most effective possible management of the appointment procedures as well as for the review of the legal framework on procedures for the verification of integrity, and ethical/professional evaluation for candidates graduating from the School of Magistrates (SM).

### ► On secondments

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<sup>1</sup> Especially for filling positions in the Court of Appeals of General Jurisdiction and the Special Court of First Instance

The scheme of secondments appears to have assisted mainly the High Court (HC) and the Constitutional Court (CC) to complete their ranks with legal counselors. The use of this scheme is positive especially for the HC, also based on the fact that this court is faced with the highest number of carryover cases. However, AHC reiterates that the secondment of magistrates to fill temporary vacancies in non-judge positions in the justice system is not justified in the circumstances when the system of courts has marked deficiencies for judges.

#### ► **On parallel movements**

According to a confirmation received from the HJC, it appears that in many cases, parallel movements were mainly drawn out due to the withdrawal of candidates from procedures. In this regard, AHC encourages the most rigorous application possible of procedures for the verification of candidates for the best possible synchronization of administrative procedures, in respect of article 53 of HJC decision no. 320, dated 17.09.2020 “On the criteria and procedures of parallel movements of judges,” aiming to minimize as much as possible the postponements that are created as a result of the withdrawal of candidates from races for a given position.

#### ► **On promotions**

Procedures for promotions during 2023 served to appoint judges of the High Court, the Appeals Court of General Jurisdiction, and the Administrative Court of Appeals. Based on an analysis of the researched acts, it resulted that the length of procedures varied from 6 months to two and a half years. The causes are linked with the dragging out of the period between the opening of the vacancies until the start of procedures for the verification of legal criteria, which in some of the cases varied from 9 months up to two years. The factors that influenced in such dragging out of procedures are mainly linked with the interconnection of procedures for: (1) the verification of the assets and integrity of the judge, (2) the ethical and professional evaluation, (3) the exhaustion of complaint remedies by candidates in respect of due legal process, and (4) the transitory re-evaluation when the candidates are subjects of the vetting process. In spite of these factors, in general, this long time is not deemed reasonable and efficient.

#### ► **On the delegation scheme**

The delegation scheme has created flexibility in the engagement of judges for temporary positions, thus serving the fulfillment of needs in the courts that have been faced with vacancies, especially

in the case of vacant positions in the Special Court, in which only the scheme of delegation may be applied to fill temporary vacant positions as the transfer of judges is not allowed.<sup>2</sup>

### ► **On transfers**

The HJC has made some decisions on temporary transfers, for repeated transfers, and transfers by choice of judges, aiming at balancing the caseload of judges as well as to assign judges after several courts were eliminated with the implementation of the new judicial map. Decisions on transfers at the courts that have absences of judges do not reflect the need for support to complete panels of judges in order to cope with the caseload for one year, based on concrete indicators of court caseload, vacancies, etc. Decisions on temporary transfers do not reflect how legal criteria are fulfilled, for instance: what was the number of requests for each vacant position in each of the courts, how were the criteria fulfilled by each of them, what is the effect created by the transfer to the courts of judges who are transferred, what will be the benefit to the receiving court.

The repetition of temporary transfers *with consent* in order to help courts to complete panels of judges is suggested to continue to be used in as moderate manner, balanced also with other manners of judges' mobility, because repeated transfers affect the violation of judicial autonomy and the credibility of the judges. Decisions on procedures for transfers *with dedicated consent* appear to have been taken within the same day as the announcement as the transfer procedure, which creates deficiencies in terms of quality, because it renders the process a strictly formal and predetermined character in terms of its results. Lastly, in decisions on procedures for transfers *with dedicated consent* it is unclear by what criteria the HJC was led in the selection of the courts of judicial districts that were proposed to the judges who have a permanent position in the court that underwent dissolution, as a result of the implementation of the new judicial map.

### ► **On disciplinary procedures**

AHC notes that for disciplinary procedures that were carried over from previous justice institutions (the *High Council of Justice* and the *Ministry of Justice*) the HJI pursued as a practice the archiving of requests or conclusion of proceedings, arguing that the statute of limitations had expired on the causes of the violations, according to the previous law. AHC considers that this practice is not fair as, in respect of the principle of institutional continuity, surpassing the reasonable time for the reasonable address of the complaint was a result of the responsibility of institutions and not due to those filing the complaints.<sup>3</sup> According to explanations by the HJI, it results that immediately after

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<sup>28</sup> According to paragraph 8 of article 42 of the Law on Status

<sup>3</sup> Article 283, paragraph 9 and paragraph 11 of Law no. 115/2016 “On the governing bodies of the justice system”

it began to function, the institution carried over about 2104 complaints from the HJC and HPC, which were assessed by following a chronological order, by their date of registration and their procedural status. However, according to findings of the HJI, it results that the complaints transferred for the disciplinary investigation of magistrates have all been unconcluded, in contravention of the requirements of the law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended, articles 160, 168, 170, which require that all bodies of disciplinary proceedings conclude already begun practices within six months from the law’s entry into force. Moreover, the institution of the HJI was not assisted by inspectors of the former High Council of Justice (HCJ), tasked with disciplinary investigations that, according to article 168, paragraph 3, of law no. 96/2016, should have been seconded to the HJI. This fact has impeded the normal progress for treating complaints inherited from the HCJ and the General Prosecutor, which would guarantee to ensure institutional continuity. Likewise, the HJI reported that from the unconcluded practices that were submitted to the HJC for the period 2020 – 2023, 26 investigations have been undertaken and for these, 11 requests for disciplinary proceedings have been proposed to the HJC. For these cases, there have been no appeals against decisions to archive and close the HJI investigation.

It is necessary to conduct the most effective inter-institutional coordination possible between the HJI and HJC for the management of the dragging out of plenary sessions for disciplinary proceedings, due to the repeated absence of the judge who is subject to this proceeding. Such coordination should have in its focus also the integration of data on disciplinary proceedings.<sup>4</sup> To that end, AHC considers that the HJC should publish the process-verbals and administrative acts on disciplinary proceedings in rubric dedicated solely to disciplinary proceedings, so that website users are as guided as possible in finding information. In order to ensure integrated management of data on disciplinary proceedings on judges, the HJI is encouraged to create on its website a register of data on addressing complaints and disciplinary administrative investigations.

Lastly, the institution of the HJI, though faced with the administration of 2340 complaints, including those carried over from the previous year, the volume of work that this institution covers for 18 disciplinary proceedings, in AHC’s evaluation, does not meet the standards for accountability and responsibility of the judiciary. We base this conclusion also on the comparative fact of the average caseload of judges during one year, which according to HJC’s report for 2023, totals 841 cases per judge.<sup>5</sup>

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<sup>4</sup> Data respecting the criteria for disciplinary measures by category, such as remarks, suspensions, dismissals (articles 100 – 116 of the law on status)

<sup>5</sup> See annual report of the HJC, page 93.

## **I. PART ONE: Methodology of AHC’s monitoring and HJC priorities for 2023**

### **1. Methodology**

The subject of the monitoring of this report includes the normative acts and decision-makings of the High Judicial Council (HJC) for promotions and discipline for judges, for the period during January – December 2023. The purpose for monitoring these acts is to evaluate the manner of implementation of the Constitution, laws,<sup>6</sup> and by-laws on appointments, promotions, transfers, parallel movements, secondments, assignment of judges to other cases, and proceedings of a disciplinary nature.

According to data from 2023, reflected in the table below,<sup>7</sup> it appears that the HJC has approved in relation to the career of judges a total of 743 decisions (24% more than during the previous year), of which 27 by-laws, 506 individual acts, 162 collective acts, 47 internal regulatory acts, and 1 instruction, as well as held 80 plenary meetings.<sup>8</sup> Of the 503 acts evidenced through the official website of the HJC, generally it results that there is a trend for the approval of: 25% of acts for appointments; 21% of acts for parallel appointments in office; 19% of acts for promotions; 13% of acts for transfers of judges; 6% of acts for assignments to other cases; 5% of acts for secondments; 5% of acts for disciplinary proceedings; and 3% of acts for delegating.<sup>9</sup>

<b>Categories of acts to be researched</b>	<b>Collective acts</b>	<b>Individual acts</b>	<b>Percentage of acts against the total</b>	<b>Selection of acts to be analyzed</b>
Appointments (129)	3	126	25%	13
Parallel appointments (106)	29	77	21%	10
Promotions (96)	23	73	19 %	9
Transfers (68)	44	24	13%	7
Assignments to other cases (32)	32	0	6 %	3
Secondments (28)	21	7	5 %	3

<sup>6</sup> The constitutional amendments approved by law no. 76/2016; Law no. 115/2016 “On the governing bodies of the justice system;” Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania;” Law no. 95/2016 “On the organization and functioning of institutions to fight corruption and organized crime;” Law no. 97/2016 “On the organization and functioning of the prosecution office in the Republic of Albania;” Law no. 98/2016 “On the organization of the judicial power in the Republic of Albania;” Decision-making of the Constitutional Court, such as Decision of the Constitutional Court no. 34/2017 and Decision no. 41/2017 of the same court that invalidates some provisions of the law no. 96/2016 and 115/2016.

<sup>7</sup> Secured from the official website of the HJC

<sup>8</sup> Annual Report of the HJC for 2023.

<sup>9</sup> It is clarified that the evidencing of statistical data is not an essential object of the analysis of this report and, therefore, evidencing this trend has had a purely illustrating purpose.

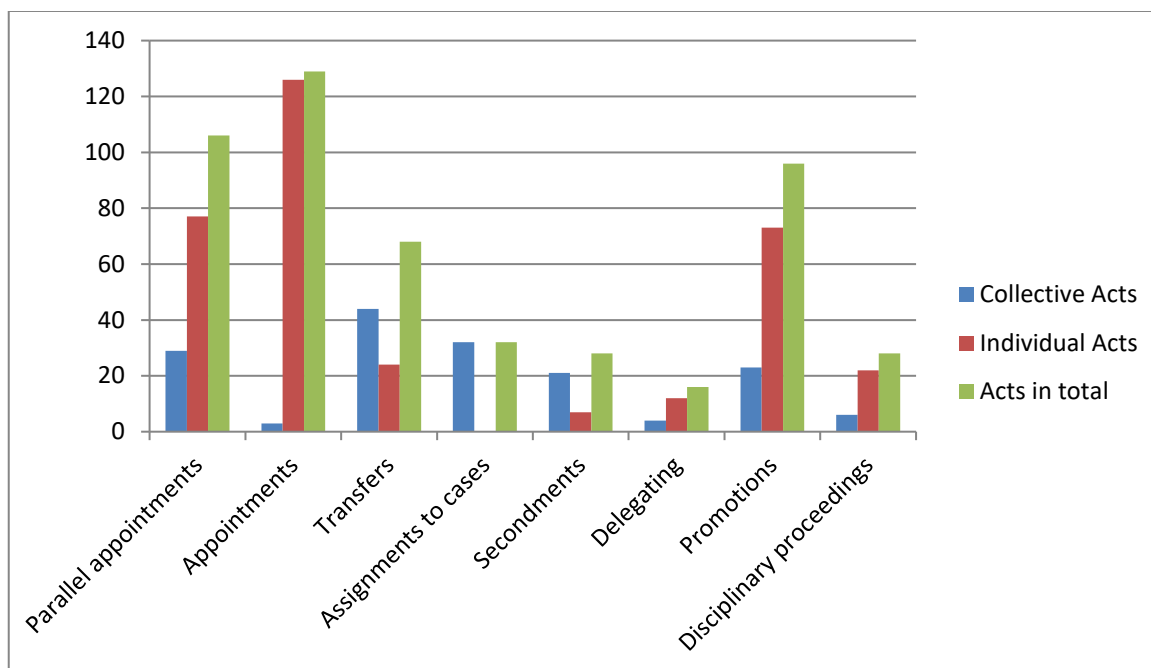
Disciplinary procedures (28)	6	22	5 %	3
Delegating (16)	4	12	3 %	1
<b>Total (503)</b>	<b>162</b>	<b>341</b>	<b>100%</b>	<b>50</b>

The trend reflected in the table above does not aim at evidencing accurate statistical data, but seeks to illustrate along general lines what the most effective tools were for managing the situation in the courts, especially in the larger ones, because of the need to complete panels of judges and the creation of vacancies among judges. With regard to this, the HJC has clarified that in every decision-making it made on applying the scheme for the development of the judges' careers, it responded to the emergency need of the courts and in maximal efforts to not infringe upon the functionality of the courts, which have already had vacancies as a result of the implementation of the new judicial map, and law no. 84/2016 "On the transitory re-evaluation of judges and prosecutors in the Republic of Albania."

AHC considers that referring to data about the low number of disciplinary proceedings for judges (*only 5 such*), it results that there has not been a proportional approach with regard to the accountability that begins through disciplinary proceedings that depend on requests by the HJI and concluded with decision-making by the Council. This joint inter-institutional responsibility should be seen in respect of the principle of good governance of the justice system, according to article 2 of the law no. 115/2016 "On the governing bodies of the justice system," which envisages that the justice system in the Republic of Albania is governed on the basis of the principles of independence, accountability, transparency, and efficiency.

For the period January – December 2023, the frequency of administrative decisions in total is 42 decisions per month, approximately 2 decisions per day (if we consider a total of 22 work days every month). Individual acts are on average 28 decisions per month, approximately less than one decision per day, while there were approximately 13 collective acts per month.





This monitoring report subjected to quality analysis a total of 50 acts, which represent 7% of the collective and individual acts approved by the HJC for 2023. The subject of analysis is the manner of implementation of the laws and by-laws, on the procedures for the career development of judges, elaborated further on in more concrete terms:

- a. **For the verification of procedures for parallel appointments, we selected 10 acts**, in order to evidence whether requirements have been respected for the announcement of the position, the deadline for running for that position, the procedure for running for the position, respect for the criteria of years of experience at work (at least 1 year in the previous five years), requests in cases of individuals running for several positions, etc. With regard to this procedure, the manner of ranking of candidates<sup>10</sup> also becomes important, especially when there are not sufficient candidates.
- b. **For the verification of procedures for promotions, we selected 8 acts**, in order to review how legal criteria and procedures were implemented,<sup>11</sup> such as:
  - Respect for the deadlines for application,
  - Publication of the announcement for the vacant positions by the Council,
  - Announcement of the opening of the procedure for promotions,

<sup>10</sup> Decision no. 320, dated 17.09.2020, envisages the criteria and procedures for the ranking of judges for parallel appointments on the basis of the two previous evaluations, specific professional experience, and seniority as a magistrate.

<sup>11</sup> Decision of the HJC no. 75, dated 23.05.2019 “On the procedure for the verification of the conditions and criteria for the recruitment of candidates for judges, for the development of judges’ careers, and for the appointment of judges of the High Court”

- Assigning the rapporteur for the verification procedure,
  - Beginning of the procedure for the verification of the legal conditions and criteria for running for the post,
  - Qualification and ranking of candidates,
  - Verification of the assets and integrity by the rapporteur and the Commission for Career Development (CCD),
  - Ethical/professional evaluation of candidates in order to determine the degree of evaluation for
  - Judges for the period 2013 – 2016,<sup>12</sup>
  - Accelerated ethical and professional evaluation of candidates by the CCD,
  - Qualification and approval of the ranking of candidates,
  - Decision for the promotion of the candidate.
- c. For the appointment procedures, 11 administrative acts were selected** in order to analyze how the principle of the standard of the judge's independence was respected and how the principles and procedures for individual evaluation, through the verification of criteria linked with their professional qualifications, ethics, integrity, and assets, are implemented. A special focus of the analysis is on respect for procedural justice, which is essential in all elements of individual evaluations, whereby the judges have the right to express their views and oppose evaluations.
- d. For the procedures for the secondment of judges, 2 administrative acts were selected** in order to verify aspects such as: whether for the secondment there was no limited mandate of the magistrate, whether the deadline of more than ten years has passed for the secondment period, whether there were irregularities in the measurement of seniority in the profession due to the period of secondment for magistrates at the first and second instances.
- e. For the scheme of delegation of judges, only one administrative act was verified** in order to analyze the formal aspects of requirements that are needed for the delegation scheme, such as: whether the magistrate signed a declaration to give consent to be appointed to any court and whether the period of no more than five years for service in the delegation scheme has been surpassed.
- f. For the transfer of judges, 7 administrative acts were selected** in order to analyze how the specific criteria are being implemented for transfer to a temporary vacant position (for at least 4 months) or permanent one, which differ depending on the court to which the transfer is done, the level of this court vis-à-vis the court where the magistrate is transferred, cases of

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<sup>12</sup> Referring to paragraph 5, article 171, of law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania"

environmental incompatibility, etc. Because of specifics, transfers in the parallel appointment and promotions have been addressed separately for each category in this report.

- g. For the assignment of judges to other cases, 8 administrative acts have been selected** in order to analyze whether procedural requirements have been respected, such as: drawing of lots, application of respective criteria depending on the actual needs of the courts, guaranteeing the judge's independence, accountability, and the need for the progress of work in the courts.<sup>13</sup>
- h. For the disciplinary procedures of judges, 3 administrative acts were selected** in order to evaluate separately whether the HJI and the HJC take into consideration the protection of the integrity and standing of the judge, whether legal procedures are respected, and whether accountability of the judiciary is guaranteed. Of importance in this analysis is also the manner in which informing the public is guaranteed with regard to disciplinary proceedings as a function of the administration of justice. In particular, the following were analyzed:
- Is the balancing of the principle of open justice with the principle of confidentiality and the right to privacy and personal data protection guaranteed?
  - Is the number of complaints for disciplinary proceedings that the HJI presents proportionate to its work, as the sole body responsible for starting disciplinary proceedings?
  - Is the reasonable deadline in disciplinary proceedings respected?
  - Is there a fair balance between independence and accountability of the judicial system by the HJC?

## **2. Priorities in the activity of the HJC**

Some of the key priorities that the HJC has established in its strategic documents, such as the annual reports for performance for 2023, the strategic plan for 2022-2024, and reports by standing commissions for 20023, which are in the focus of the monitoring of the AHC are as follows:

### *a) Promotion and disciplinary accountability of judges*

Although filling vacancies in the courts has been the main objective for the HJC through the promotion of judges through parallel appointments, promotions, or secondments, it appears that disciplinary proceedings have not seen the same trend. Thus, it has been found that the HJI and the HJC have not had adequate productivity in guaranteeing the accountability of judges as the total number of disciplinary proceedings administered by the HJI is considerably disproportionate compared to disciplinary proceedings concluded by a request for initiation with the HJC.

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<sup>13</sup> Opinion of the Consultative Council of European Judges, no. 17 (2014) "On the evaluation of work of judges, quality of justice and respect for independence of the judiciary;" Opinion no. 4 of the CCEJ on appropriate initial and continued training of judges at the national and European level.

### *b) Completing panels of judges in the courts*

During 2023, the HJC aimed to complete panels of judges in the courts with a high caseload, as a result of vacancies created as a result of the re-evaluation of judges by the vetting process, thus aiming at or enabling:

- Increasing quotas and recruitment of magistrate candidates graduating from the School of Magistrates (*40 in the academic year 2022-2023*),
- Effective management of civil judicial employees,
- Promotions to fill 4 remaining vacant positions in the High Court (enabling its completion with *19 members*),
- Conduct of transfers<sup>14</sup> and delegating, parallel appointments for 11 judges, and through the assignment of 208 judges to other cases.<sup>15</sup>

Although the tools for the development of judges' careers have been used, the fact is objectively justified that vacancies in our judicial system have not been addressed in 2023; the system functioned with 247 judges being effectively on duty, out of the 408 judges that the organizational structure stipulates (the structure in fact appears to be with 329 judges). Also very problematic is the number of vacancies for judges in the following courts: courts of the judicial districts with general jurisdiction, which were lacking 44% of judges; the Administrative Court of Appeals, which was lacking 57% of judges; the Court of Appeals of General Jurisdiction, which was lacking 31% of its judges; and the Special Court of First Instance, which was lacking 56% of its judges. Therefore, AHC reiterates its earlier position that the solution of the systemic problem of vacancies in the court system requires effective strategies for filling them in an adequate and qualitative manner, as well as solutions that require clear and attainable objectives and measures in the future.

### *c) Implementation of the reform for the civil judicial employee*

The most effective management possible of the division of roles of civil judicial employees has been of real significance in the judicial system, at a time when there was a need for judicial staff. In this regard, through the approval of standard rules for the roles of civil judicial employees and other employees in the courts and the increase of quotas for legal aides in the School of Magistrates, completing the number of legal aides at the courts of appeals, appointment of a legal advisor for legal service at the High Court, verification and admission into civil judicial service of four civil judicial employees, and the conclusion of procedures for the verification of seven chancellors in office have been priorities during the academic year 2023 – 2024. AHC considers that just like for the judges, for the civil judicial employees as well, it is important to guarantee a

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<sup>14</sup> 33 judges were transferred to the courts, according to the report of the CDC, 2023.

<sup>15</sup> See annual report of the CDC, for 2023.

system of career promotion, with an emphasis on the fact that their meritocratic recruitment and promotion requires procedures that guarantee the requirements for a reasonable length of time.

*d) Transparency on the official website*

AHC considers that the HJC has some achievements when it comes to transparency for 2023. However, in this regard, a series of other measures may be undertaken in the future that aim at improving access to acts that are published on the official website of the HJC. In particular, acts about disciplinary procedures are accessed with difficulty through the publication of plenary meetings, which do not follow any order according to the subject of the agenda, but are published by date, without any concrete identification thereof. Furthermore, AHC brings back to attention the findings of its earlier reports that found that HJC acts are not adequately accompanied by their respective reasoning in order to make it easier for the public to comprehend the merit of the administrative process of promotions<sup>16</sup> and guarantee transparency of the process.

## **II. PART TWO – ANALYSIS OF DECISIONS BY CATEGORY**

### **1. Appointments**

Procedures for the appointment of judges should be sustainable in order to avoid subjectivism and should also fulfill procedural requirements for their promotion with transparency and high integrity. Furthermore, appointment procedures require guarantees for meritocracy, transparency, independence of the judiciary, elimination of the conflict of interest, respect for diversity, regular periodical ethical and professional evaluation, as well as guarantees for the function of a judge.

**Finding:** For the appointment of judges in office during the period January – December 2023, the HJC has approved three collective administrative acts and 126 individual administrative acts.

1. Individual acts are mainly for the following:

- qualification for appointment of candidates graduating from the School of Magistrates,
- qualification for appointment to the High Court and to the Administrative Court of Appeals,
- proposal for appointment of a judge to the High Court,
- qualification of candidates for legal aides,
- appointment of judges graduating from the School of Magistrates.

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<sup>16</sup> According to article 89, paragraph 2 of law no. 115/2016 “On the governing bodies of the justice system.”

2. Collective acts are mainly for the following:

- announcement of procedure for the verification of conditions and criteria for the recruitment of judges,
- announcement of vacant positions for legal aides in the courts of appeals,
- announcement of vacant positions for judges graduating at the completion of the three-year program of initial training.<sup>17</sup>

Based on the urgent need to fill four vacancies for judges in the High Court, opened since 2022, during the period under review, of importance is guaranteeing the reasonable length of procedures for the appointment of judges to this court. According to the analyzed acts, it results that in the High Court, procedures for the recruitment of judges are orderly in terms of notifying candidates about the deadlines for procedures, about their right to file a complaint within five days against its final decision, etc. Nevertheless, a problem is found with regard to the prolongation of the process from the day when the vacant position was announced until the day of the decision of the proposal, which has varied from one year and five months<sup>18</sup> to one year and eight months, or even one year and ten months.<sup>19</sup> According to clarifications from the HJC, it results that the length of time of these procedures is a result of the complaints filed by the candidates and of waiting for the final decision from the courts, which is a relatively long period of time until the arguments of the decision are published.<sup>20</sup> With regard to appointments to the High Court, AHC considers that the dragging out of the process may be managed better, taking into consideration the following:

- The number of candidates for judges is relatively low (only 6 applicants),
- The urgent need for filling the vacancies in this court has been high,
- The request for ensuring the standards of efficiency and quality of the judiciary,
- The procedures for this position are those that are applied for promotions, which on average take about six months,
- The candidates come from among the judges of the lower instance courts,
- The volume of verifications is not complex as no procedures, such as interviews, are involved.

According to clarifications of the HJC, with regard to the above, one factor that has an impact on the complexity of appointment procedures for members of the High Court is that for these cases,

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<sup>17</sup> Decision no. 582, dated 18.10.2023

<sup>18</sup> Decision of the Council no. 270/2023.

<sup>19</sup> According to decisions for the proposal of the candidate for judge to the High Court (respectively by Decision no. 474, dated 13.09.2023, and by Decision no. 458, dated 25.07.2023 of the Council)

<sup>20</sup> For instance, in the case A. Nasufi, on 11.07.2024 a complaint was reviewed against the decision of 27.03.2023 of the Administrative Court of Appeals by the High Court; the latter decided to uphold the decision of the Administrative Court of Appeals, which rejected the petition, which had requested the invalidation of the decision of the HJC no. 537, dated 14.12.2022.

procedures for promotions are applied, which, in themselves, intertwine administrative processes for the ethical and professional evaluation of candidates. More concretely, to this end, the Council sets into motion two of its commissions: (1) the Career Development Commission that determines on the ranking of candidates that fulfill the legal requirements for the number of evaluations, (2) Ethical and Professional Evaluation Commission, which continues with the procedure for ethical and professional evaluation.<sup>21</sup> This interconnection of procedures becomes difficult, for instance, when ensuring two evaluations for candidates is pending due to the verification of complaints by citizens toward the magistrate, as they are the subject of verifications and review by the HJI. For such cases, only after there is a decision by the HJI, may procedures for the ethical-professional evaluation of candidates continue.

AHC understands the difficulties resulting from the interconnection of administrative procedures; however, at the same time, it emphasizes how important it is to ensure means for the best possible management of the verification and evaluation of candidates for qualification, within a reasonable time and more dynamic of the promotion procedures. This requirement is particularly important in those courts that have a high number of judges and, at the same time, a high volume of backlog cases.

#### ► **Appointments of magistrates just graduating from the School of Magistrates**

The opening of vacant positions for judges graduating at the conclusion of the three-year program of initial training at the School of Magistrates for the years 2020-2023 and their qualification for appointment<sup>22</sup> with a right to choose in one of the courts with vacant positions<sup>23</sup> has had irregularities in terms of respect for the legal deadline of one month that is stipulated by law.<sup>24</sup> More concretely, for the 40 qualified candidates, a problem has been encountered with a delay of two months and a half for their appointment and assignment to office, beyond this legal deadline. The HJC has clarified that the delay has been a result of the opening of new positions for magistrates, which, pursuant to the law, are initially filled through parallel appointments (which are regularly announced every three months according to law), and then continue with the announcement of vacant positions in the courts. According to the findings, the Council has engaged that the procedure of parallel appointments moves in parallel with the conduct of ethical and professional evaluations, precisely to avoid the prolongation of procedures. In only 1 (one) case, a magistrate who had just graduated was assigned to a post 9 (nine) months after his graduation (case A. Keraj), due to the start of disciplinary proceedings on him. In any case, AHC

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<sup>21</sup> This evaluation is necessary for the procedure for ranking candidates (Article 48 of the Law on Status, decision no. 320, dated 17.09.2020, “On the criteria and procedures for the parallel appointments of judges,” Chapter VI, B1, paragraph 79)

<sup>22</sup> According to HJC Decision no. 582, dated 18.10.2023

<sup>23</sup> Such as in: Dibër, Elbasan, Fier, Gjirokastrë, Korçë, Kukës, Lezhë, Sarandë, Shkodër, Vlorë, Lushnjë and Berat.

<sup>24</sup> Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania”



emphasizes that in the future, more attention is needed by the HJC to carry out these procedures in a timely manner.<sup>25</sup>

Another fact that deserves attention for the category of 40 judges who graduated from the School of Magistrates is their verification twice for the criterion of assets and integrity within a time window of three years. More concretely, this category of subjects is verified once for admission into the initial three-year training program at the School of Magistrates and another time after graduation for the qualification for appointment as judges.<sup>26</sup> This fact shows that the procedure of verification is repeated within a short period of time, involving several institutions,<sup>27</sup> which overburdens them twice for the verification of legal documentation, such as: full form for the disclosure of assets, asset authorizations, financial resources, and declaration of assets and private interests. To that end, AHC considers that the process that is of primary significance is the first verification, before these citizens are admitted into the School of Magistrates; meanwhile, during their exercise of duties, they will be subjected to regular ethical-professional evaluation by the HJC and the control of assets by the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest. From this standpoint, it is considered that it would be appropriate to propose legal amendments to facilitate the administrative burden of the involved institutions, aiming at accelerating the process of appointment of judges who have graduated from the School of Magistrates.

#### ► **Appointment of legal aides**

With regard to the appointment procedures for legal aides, from the date of qualification of the candidate for training at the School of Magistrates and until the date of approval for the continuation of the procedure in the civil service, the period of time varied according to the cases taken under review from six months<sup>28</sup> up to 17 months.<sup>29</sup> The procedure of qualification of the candidate for training at the School of Magistrates is a procedure administered by the School of Magistrates, in an independent manner from the procedure for admission into the judicial civil service. AHC uses this occasion to emphasize the importance for the career development of judicial civil employees, especially for the position of legal aides, for whom it is important to guarantee efficient, rigorous, and uniform procedures, decisive for the management of the caseload of judges in these courts.

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<sup>25</sup> <https://www.reporter.al/2023/10/11/klgj-kujtohet-te-emeroje-40-magjistratet-e-rinj>

<sup>26</sup> According to article 32 and article 35 of the Law on the status of judges and prosecutors in the Republic of Albania. See HJC Decision no. 606, dated 04.12.2020

<sup>27</sup> School of Magistrates; HIDAACI; General Directory of Taxes; General Directory of Customs; National Bureau of Investigation (SPAK); Special Structure at the High Judicial Council; General Prosecution Office; Special Prosecution Office.

<sup>28</sup> According to Decision no. 504, dated 28.09.2023

<sup>29</sup> Decision no. 508, dated 05.10.2023 procedures for the admission of legal aides



## 2. Secondments of judges

International law does not envisage regulations on the secondment of magistrates in particular. For special regulation for secondment, mandatory standards regarding the status of magistrates are applied.<sup>30</sup> Judges in the secondment scheme, awaiting appointment to a court, serve in the administrative structures of justice institutions, and continuation of service in them is respected. Meanwhile, secondment for magistrates in the position of legal aides is done in the High Court and the Constitutional Court.

**Finding:** During 2023, the HJC approved for secondment of magistrates a total of 28 acts (*individual and collective*), about four times more than in 2022.<sup>31</sup> There were 19 individual acts and 7 collective acts for opening procedures for the secondment of judges,<sup>32</sup> for the conclusion of secondment or the secondment of judges. During 2023, a total of 10 judges were seconded, according to the following categorization:

- 4 judges as assistant magistrates to the High Court and 1 in the Constitutional Court;
- 1 judge at the High Justice Inspector;
- 1 judge in the units for evaluation at the HJC;
- 1 judge at the Ministry of Justice;
- 1 judge at the ECtHR;
- 1 judge at the School of Magistrates;

Based on the analysis of acts, it results that HJC decisions on secondments have been reasoned and reflect the transparency of procedures that have been pursued.<sup>33</sup> The secondment scheme for 2023 has mainly helped the High Court to fill vacancies with assistant magistrates, as well as the Constitutional Court for completing the number of assistant-judges. In the circumstances when the judicial system is faced with vacancies among judges and delays in the adjudication of cases and the backlog stock, for AHC, the secondment of judges outside the judicial system is questionable.<sup>34</sup>

## 3. Scheme for delegating judges

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<sup>30</sup> For positions as inspectors, it is the Office of the High Justice Inspector; for other positions, it is the Councils, Ministry of Justice, State Advocacy Office, School of Magistrates, or any other institution within the justice system and alignment of legislation.

<sup>31</sup> During 2022, there were a total of 6 secondments.

<sup>32</sup> 4 collective acts were approved for the opening of procedures for secondment of judges as assistant magistrates, as judges at the School of Magistrates, or as employees in the HJC

<sup>33</sup> Decision no. 226, dated 08.05.2023 on the exemption of candidate Ms. {...}, from secondment procedures as an internal lecturer at the School of Magistrates; Decision no. 730, dated 07.12.2023, On submitting the name of the candidate who applied to be seconded to the position of “assistant magistrate” at the Constitutional Court

<sup>34</sup> <https://ahc.org.al/wp-content/uploads/2023/02/Dritehijet-dhe-Efektet-e-Hartes-se-Re-Gjyqesore.pdf>

The delegation scheme<sup>35</sup> recognizes for judges who have at least one year of experience in their functions the right to be assigned to a position of the same level or another level, depending on the needs of a court, for a period no less than six months and not more than five years. Assignment to a delegation scheme is done upon request by the judges themselves.<sup>36</sup>

**Finding:** During 2023, according the CDC, there have been a total of 12 individual acts for delegation, which included five assignments of judges to the delegation scheme at the Administrative Court of Appeals, due to the numerous vacancies at this court and the need to maintain its functionality. Meanwhile, in 2023, due to the judicial map, judges at the appeals courts of general jurisdiction concluded their delegation scheme.

Based on the analysis of one of the acts, it results that the HJC decided to admit the request of a judge for placement on the delegation scheme, a procedure that lasted about three months.<sup>37</sup> This period includes all procedural steps, according to HJC decision no. 22, dated 7.02.2019 “On the delegation scheme,” which envisages that immediately after receipt of the judge’s request for placement on the delegation scheme, the CDC made a preliminary decision regarding the verification of the fulfilment of conditions, and sent the Council the proposal to accept or reject the request. It results that the Council conducted the lottery within three days upon receipt of the request from the chair of the administrative court of first instance in Tirana, according to the list of judges included in the delegation scheme. For this instance, the judge’s request for admission in the delegation scheme was accepted for a period of three years.<sup>38</sup> This scheme allows judges to enjoy the right to compensation during the three-year period, after assignment to another court.

AHC judges that this scheme is valid for use in particular to fill open vacancies in the special court for the adjudication of criminal offenses of corruption and organized crime, for which it is not possible to proceed with the transfer of judges to fill temporary vacancies.<sup>39</sup>

#### ***4. Transfers of judges***

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<sup>35</sup> According to paragraphs 6 and 7 of article 45 of the Law “On status.”

<sup>36</sup> According to article 47 of the Law “On status.”

<sup>37</sup> By means of decision no. 538, dated 12.10.2023.

<sup>38</sup> Vendim nr. 538, dated 12.10.2023 “On the assignment in the delegation scheme of judge Ms. {...}”

<sup>39</sup> According to paragraph 8, article 42 of the Law “On status.”

**International standards**<sup>40</sup>: a judge who exercises their functions in a court, in principle, may not be assigned to another court, without freely giving his consent.<sup>41</sup> An exemption to this rule is allowed only when the transfer is envisaged and has been expressed as a disciplinary sanction, in cases of a lawful change in the judicial system, and in cases of temporary assignment of the judge, to strengthen a neighboring court, with a maximal length of time rigorously stipulated by law.

Based on the special requirements that the regime for temporary transfers requires in terms of respect for the independence of judge, the HJC should adequately justify every decision on the transfer of judges, explaining the manner in which the conditions have been met, when the needs may not be fulfilled through the scheme for the magistrates' career development, and "when?" and "why?" the transfer is judged as the most appropriate tool for this purpose.<sup>42</sup> In this regard, every decision for the transfer of the judge should respond to the requirements of the law to guarantee the right of the judge to not be moved from office, in order for his/her independence and impartiality as well as judicial efficiency to be guaranteed.<sup>43</sup> According to the findings made by the HJC through this report, the cases when the consent of the judge is not obtained are expressly stipulated in the law, such as: legal reorganization of the system of courts for the closing down of a court or when needed to assist the work of another court (*Article 44 of the law on status*). This requirement of the law has been fulfilled in every transfer procedure, whereby besides transfers without consent that are issued as disciplinary procedures, or due to the closing down of the position, the consent of the judge is always obtained in cases of transfers by consent.

**Finding:** For 2023, it results that the HJC has approved a total of 68 administrative acts on transfers (24 *individual* acts and 44 *collective* acts), of which it decided on a total of 57 transfers for judges and chancellors. Compared to 2022, there are about six times more transfers for 2023,<sup>44</sup> from which the following acts of the HJC have been analyzed:

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<sup>40</sup> Council of Europe, European Charter "On the status of the judge and explanatory memorandum," Strasbourg, 8-10 July 1998, paragraph

3.4, [https://wcd.coe.int/VieëDoc.jsp?p=&Ref=DAJ/DOC\(98\)23&Language=lanAlbanian&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet](https://wcd.coe.int/VieëDoc.jsp?p=&Ref=DAJ/DOC(98)23&Language=lanAlbanian&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet)

<sup>41</sup> International Association of Judges (IAJ), Universal Charter of the Judge, 1999, Article 8; <https://www.icj.org/wp-content/uploads/2014/03/IAJ-Universal-Charter-of-the-Judge-instruments-1989-eng.pdf>; Recommendation of the Committee of Ministers of the Member States on the Independence, Efficiency, and Responsibility of Judges, Council of Europe, *RCM/Rec(2010)12, 2010*, Chapter IV, Paragraph 52, Chapter VI "Status of the judge" [https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2010\)12E\\_%20judges.pdf](https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)12E_%20judges.pdf)

<sup>42</sup> Decision no. 23, dated 07.02.2019 "On the approval of the regulations on the criteria and procedure of the temporary transfer of the judge"

<sup>43</sup> Law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania"

<sup>44</sup> During 2022, the HJC decided on the temporary transfer of one judge and repeated the temporary transfer for 8 (eight) judges for another one-year period.

- Collective acts for the announcement of the opening of procedures to exercise the right to selection for temporary transfer to a vacant position in the *courts in Tirana, Durrës, Elbasan, Vlorë and Gjirokastra*.
- Individual acts for the transfer of judges by choice, for the temporary transfer by consent, and the permanent transfer of chancellors, especially for the transfer of judges, the start of the procedure for the transfer due to the dissolution of the court, for the permanent transfer of chancellors, for temporary transfer by consent, and for the repetition of transfer.

Further on, we have analyzed 15 selected acts on transfers:<sup>45</sup>

- 1 act for the announcement of the opening of the procedure for transfers by consent,
- 2 acts for temporary transfer,
- 3 acts for transfer by repetition,
- 4 acts for the termination of the transfer ahead of the deadline;
- 5 acts for transfer by choice.

#### **a. Temporary transfers with consent**

Due to vacancies, the HJC has announced the temporary transfer of judges to the courts of the judicial district court in Tirana (7 *positions*), Durrës (3), Gjirokastrë (1), Elbasan (1), administrative court of first instance in Vlorë and the administrative court of the district of Tirana (1 *position respectively*). The HJC decided for two cases to repeat the transfer for another one-year period, and for two cases the termination of temporary transfer before the deadline. It results that the acts for announcing the procedure for the transfer of judges do not present arguments in the contents on what the concrete circumstances are on the basis of indicators for the court's caseload, or the number of vacancies that led to the need for temporary transfers of judges for one year. The only explanations are provided in the CDC report, which justifies these circumstances with the need to not obstruct justice.<sup>46</sup> According to clarifications by the HJC, with regard to this finding of AHC, every decision-making of the HJC is accompanied by the respective report that analyzes in detail the data, facts, and findings that lead to such decision-making. The report is a subject of discussion at the Commission or at the Plenary Meeting of the Council. Nevertheless, these reports are not accessible for the public on the official website of the Council.

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<sup>45</sup> Decision no. 98, dated 06.03.2023 on the temporary transfer with consent to the judicial district court of Durrës of judge Mr. {...}; Decision no. 97, dated 06.03.2023 on the temporary transfer with consent to the judicial district court of Tirana of judge Ms. {...}; Decision no. 220, dated 28.04.23 for the transfer of the judge {...}, to the first instance court of general jurisdiction in Lezha; Decision no. 219, dated 28.04.2023 on the transfer of judge Ms. {...}, to the first instance court of general jurisdiction in Elbasan; Decision no. 110, dated 13.03.2023 for the transfer of judge Mr. {...}, to the judicial district court of Tirana, in a vacant position in the field of criminal law; Decision no. 80, dated 16.02.2023 for the transfer of legal aide Mr. {...}, to the legal service unit at the appeals court of general jurisdiction in Tirana; Decision no. 530, dated 11.10.2023 for the temporary transfer with consent of the judge

<sup>46</sup> Referring to decisions no. 25 – 30, dated 18.01.2023, for the announcement of the procedure, respective decisions for the transfer, and the CDC report, in relation to temporary transfers by consent.

Meanwhile, the acts on temporary transfers fail to argue some important aspects of the decision-making, such as the legal criteria that should be fulfilled for the selection of judges who request to be transferred, as: (1) what was the number of requests for each vacant position in each of the courts, (2) how did each of them meet the criteria, (3) what is the effect produced by the transfer to the courts of the judges being transferred, (4) what will be the benefits for the receiving court, etc. The lack of an individual analysis on each act, which should be reasoned, creates premises for elements of corporatism in the transfer process, which should be as transparent and as credible for the public as possible. Such analysis is also lacking in the CDC report,<sup>47</sup> which only provides some quantitative data on these decisions, but does not provide any element of qualitative data in order to understand further the progress of these procedures. With regard to this matter, the HJC clarifies that the progress of the transfer procedure and all findings are reflected in the accompanying report, for which AHC reiterates the position that it is inaccessible for the public on the Council's official website.<sup>48</sup>

#### **b. Repetition of temporary transfers with consent**

For the two cases of repeated transfers, procedures were carried out in accordance with the regulations and fulfill the condition of obtaining the judge's consent for extending the period by one year. On this matter, AHC encourages the continuation of implementation in the most moderate manner possible for temporary transfers "*with consent*," which should be balanced with other ways of developing the judges' careers given that repeated transfers have an impact on the infringement of judicial autonomy and the credibility of the judge's standing.

#### **c. Permanent transfers by choice of judges<sup>49</sup>**

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<sup>47</sup> See CDC report for 2023, page 22.

<sup>48</sup> <https://klgj.al/wp-content/uploads/2023/02/NJOFTIM-I-DAT%C3%8BS-06.02.2023-MBI-KANDIDATURAT-E-PARAQITURA-N%C3%8B-PROCEDURAT-E-TRANSFERIMIT-T%C3%8B-P%C3%8BRKOHSH%C3%8BM-1.pdf>

<sup>49</sup> Decision no. 57, dated 31.01.2023 "On the transfer of judge Gilda Hoxha to the Tirana Judicial District Court, in a vacant position in the field of criminal law;" Decision no. 58, dated 31.01.2023 "On the transfer of judge Lorena Çabej, to the Tirana Judicial District Court, to a vacant position in the field of criminal law;" Decision no. 59, dated 31.01.2023 "On the transfer of judge Marçela Shehu, to the Tirana Judicial District Court, to a vacant position in the field of criminal law;" Decision no. 110, dated 13.03.2023 "On the transfer of judge Mr. Ardit Mustafaj, to the Tirana Judicial District Court, to a vacant position in the field of criminal law;" Decision no. 218, dated 28.04.2023 "On the transfer of judge Diamela Goxha, to the First Instance Court of General Jurisdiction in Tirana, to a vacant position in the field of civil law;" Decision no. 219, dated 28.04.2023 "On the transfer of judge Yrfet Shkreli, to the First Instance Court of General Jurisdiction in Elbasan;" Decision no. 220, dated 28.04.2023 "On the transfer of judge Gentian Marku, to the First Instance Court of General Jurisdiction in Lezha;" Decision no. 221, dated 28.04.2023 "On the transfer of judge Flutura Hoxha, to the First Instance Court of General Jurisdiction in Lezha."

According to the CDC report, the permanent transfers of judges by choice respond to the demands to balance citizens' interests with regard to access to justice, managing at the same time also the vacancies in the system, referring to forecasts for the transfers of judges.<sup>50</sup> More concretely:

- implementation of the new judicial map, for the distribution of judges from the dissolved courts;
- the need to fill vacant positions created in the courts as a result of the vetting process;
- guaranteeing the judges' careers.

From HJC acts, it results that there are some decisions in the form of individual acts for the start of the procedure for the transfer of judges in a permanent manner, which make the judges familiar with the alternatives of the courts where they may be transferred and the right to express their selection. While these decisions evidence respect for the judges' choices and envisage the right of the judges to appeal decisions within 15 days from the day the decision is made, based on the verification of acts selected for analysis by AHC, it results that in all cases, the procedure for the transfers by choice has been conducted within the same day as the announcement of the procedure for the transfers. AHC considers that the conclusion of the procedure within the same day as the announcement of the decision gives the process a strictly formal character and one that is predetermined in its result. Likewise, it is unclear how the courts of the judicial districts for which the proposal for transfer is made have been selected, in respect of the criteria that the HJC proposes for each judge that has a permanent position in the court that is being dissolved. The lack of such arguments is to the detriment of transparency before the public and any interested party within the judicial system. It is worth mentioning in this analysis also the previous findings of AHC in its first report on the new judicial map, according to which the individual administrative acts of the HJC regarding the status of judges or civil judicial employees are made public on the official internet website of the Council, accompanied by the respective reasoning, in accordance with article 98, paragraph 2, of law no. 115/2016 "*On the governing bodies of the justice system.*" In the assessment of AHC, this reasoning is still absent.

## **5. Assignment of judges to special cases in other courts**

Regarding this instrument, special regulations apply, in accordance with Decision no. 30/2019 of the HJC for the assignment of a judge for the adjudication of a special judicial case in another court.

**Finding:** For 2023, the HJC approved 32 collective acts for the assignment of judges to special cases in another court. Based on the verification of acts, it results that there have been numerous

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<sup>50</sup> Articles 135 and 147 of the Constitution of the Republic of Albania, as well as articles 44, 162 of the law no. 96/2016 "On the status of judges...", amended.

requests by courts for the assignment of judges to adjudicate special cases, in other courts.<sup>51</sup> Decisions<sup>52</sup> are made with immediate effect, evidencing the fulfillment of the conditions, when the delegation scheme and the temporary transfer are insufficient for responding to the courts' current needs.<sup>53</sup>

During 2023, the implementation of the new judicial map has had an impact on the number of requests for the assignment of judges, as a tool to replace transfers of judges with the purpose of reducing the courts' caseload.<sup>54</sup> The CDC has reviewed 169 requests for assignment of judges by the respective chairs of the courts, with the argument that they are unable to review the cases; of these:

- 139 requests received from the courts of the judicial districts (*including the special court of first instance*),
- 25 requests received from the administrative courts (*including the administrative court of appeals*),
- 5 requests received from the courts of appeals (*including here the special court of appeals*).

Based on a verification of the acts that were selected for the assignments in this report,<sup>55</sup> it results that in spite of the formal reference to the legal criteria,<sup>56</sup> these acts do not provide data about the

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<sup>51</sup> Decision of the HJC no. 269, dated 24.05.2023 "On the declaration as concluded, without a final decision, of the review of requests of the judicial district courts of Kavajë, Lushnjë, Pogradec, Përmet, Gjirokastrë, Kukës, Pukë, Kurbin, Lezhë, Krujë"

<sup>52</sup> Decision no. 662, dated 02.11.2023 "On the assignment of the following judges to the position of the Judge for the Media in General Jurisdiction of Appeals; Decision no. 524, dated 05.10.2023 "On the assignment of the judges to the district court of Lezhë, Berat, and Gjirokastrë for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner; Decision no. 484, dated 13.09.2023 "On the assignment of judges for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner; Decision no. 471, dated 26.07.2023 "On the assignment of judges for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner; Decision no. 469, dated 25.07.2023 "On the assignment of judges for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner."

<sup>53</sup> Decision of the HJC no. 269, dated 24.05.2023 "On the declaration as completed, without a final decision, of the review of the requests of courts of the judicial districts of Kavajë, Lushnjë, Pogradec, Përmet, Gjirokastrë, Kukës, Pukë, Kurbin, Lezhë, Krujë".

<sup>54</sup> Report of the CDC for 2023, page 29.

<sup>55</sup> Decision no. 662, dated 02.11.2023 on the assignment of the following judges in the position of the Judge for the Media in the General Jurisdiction of Appeals; Decision no. 524, dated 05.10.2023, for the assignment of judges for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner; the High Judicial Council decided to assign to the judicial district court of Lezhë, Berat, and Gjirokastrë; Decision no. 484, dated 13.09.2023 on the assignment of judges for the adjudication of special judicial cases in other courts, different from the ones where they exercise their duties in a permanent manner; Decision no. 471, dated 26.07.2023 for the assignment of judges for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner; Decision no. 469, dated 25.07.2023 the assignment of judges for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner.

<sup>56</sup> Decision no. 30, dated 14.02.2019 "On the approval of the decision on the rules and procedure on the assignment of the judge for the adjudication of special judicial cases in other courts, different from the one where they exercise their duties in a permanent manner"

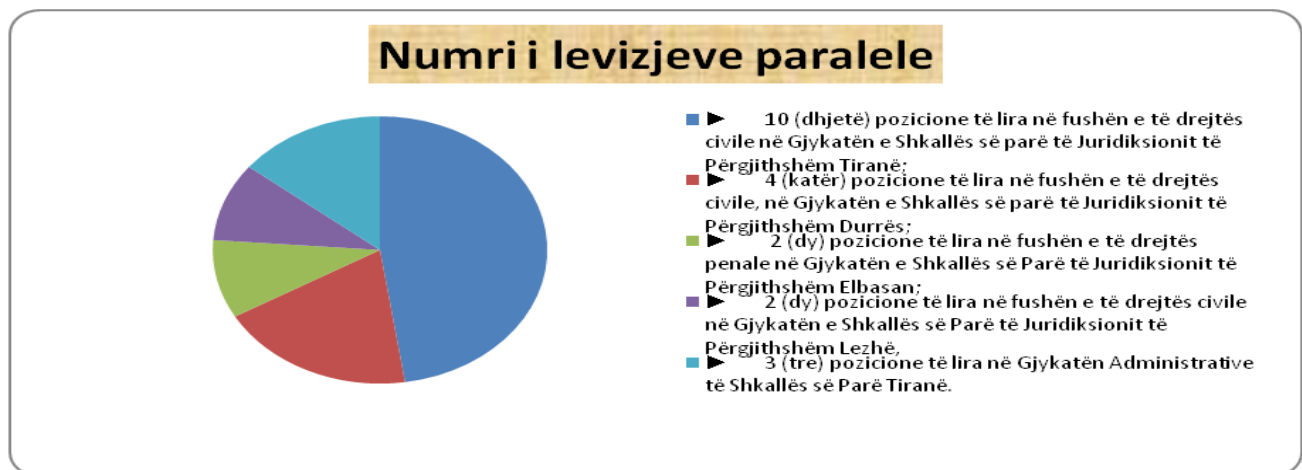


way in which several criteria are respected, including those of geographical proximity, the caseload of the judges being assigned, whether the judge has been assigned to more than one court, or to judge more than one case in the same court. This lack of reasoning remains a problem also in acts of the HJC for this category of decisions, which should respect the standard of lawfulness.

## 6. Parallel movements

During 2023, the CDC used parallel movements as one of the forms for transferring judges to address the needs of the justice system, but also to guarantee their right to progress in their careers.

**Finding:** Regarding acts for parallel movements, there appear to be a total of 104 collective and individual acts; during the first half of the year, there were 2-3 times more acts compared to the second half of the year. Collective acts are mainly for the ranking of candidates, for the verification of criteria for candidates, and the start of parallel movements. Meanwhile, individual acts have to do with the qualification of candidates for the parallel movement and the conclusion of these procedures. More concretely, procedures for parallel movements have been opened for the positions reflected in the graphic below:



### Number of parallel movements

10 (ten) vacant positions in the field of civil law at the First Instance Court of General Jurisdiction in Tirana;

4 (four) vacant positions in the field of civil law at the First Instance Court of General Jurisdiction in Durrës;

2 (two) vacant positions in the field of criminal law at the First Instance Court of General Jurisdiction in Elbasan;

2 (two) vacant positions in the field of civil law at the First Instance Court of General Jurisdiction in Lezha;

3 (three) vacant positions in the Administrative Court of First Instance in Tirana.



From the entirety of selected acts, it appears that procedures in general fulfill the legal criteria for the announcement of the position, the deadline for applying, verification<sup>57</sup> and qualification of candidates.<sup>58</sup> Decisions also reflect the listing of candidates according to the number of ethical and professional evaluations, the verification of the three criteria, the qualification of candidates, etc. Likewise, it appears that candidates are guaranteed the right to exclude the rapporteur if they have a reason, as well as the right to file an appeal against the decision within 15 days.

On the other hand, it is noticed that procedures for parallel movements are interdependent and do not take into consideration deadlines that are clearly established for their length, except for deadlines that are envisaged for the start of the procedure of verification, which is 7 days from the date of the close of applications, as well as the deadline for making a decision to assign the candidate for movement in office, which is 7 days from the date when the ranking of candidates is approved. The procedures are interconnected in three phases that have different subjects and timelines.

From the acts selected to be analyzed in this report, it results that the entirety of such procedures varies from six months for candidates who have not applied for another position up to 10 months for those who have applied for several positions. Aware of the fact that for 2023, there have been applications for 25 vacant positions, of which 15 withdrew from running for parallel appointments out of the 40 candidates who applied, such a situation creates premises that such procedures will get complicated and move at a slower pace. As a result, AHC notes that also for procedures for parallel movements, mechanisms may be created that aim at synchronizing the three interdependent phases of administrative procedures, in order to manage the overall smooth conduct of the process, avoiding as much as possible the causes that slow the process down. Furthermore, the contents of HJC decisions on such procedures may be improved so that they are more transparent and reasoned for the public. Aware of the fact that such procedures have an evident impact on the management of opening vacancies for the permanent appointment of magistrates to courts, maybe new provisions may be considered in HJC acts<sup>59</sup> for the regulation of legal deadlines on the progress of the 3 (three) procedural phases so as to also create the premises for their most effective possible management. This request is evidently higher especially for the career courts, where the number of candidates has been very high and for which the needs for the judges' career development is also more evident.

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<sup>57</sup> Decision no. 11 – no. 24, dated 18.01.2013, the HJC decided to open fourteen procedures for parallel movements in courts of first instance whereby, Decision no. 11 up to Decision no. 20, dated 18.01.2023, are for the procedure of parallel movement at the Tirana Judicial District Court, for a vacant position in the field of civil law.

<sup>58</sup> Decision no. 521/2023 “On the qualification of candidate {...} and the continuation of the procedure of parallel movement to the First Instance Court of General Jurisdiction in Tirana, for the vacant position in the field of civil law;” Decision no. 517, dated 05.10.2023 “On the procedure of parallel movement at the Judicial District Court of Tirana, for a vacant position in the field of civil law and for the procedure of parallel movement at the Judicial District Court of Durrës for a vacant position in the field of civil law.”

<sup>59</sup> Decision no. 320, dated 17.09.2020 on the criteria and procedures for parallel movements of judges

## 7. Promotions

According to the legal framework in force, the procedure for promotions aims at creating some standards of clarity and predictability of procedures and is based on periodical evaluations of professional performance.<sup>60</sup> For this scheme, special regulations are applied at the Special Court for Corruption and Organized Crime and the time of secondment is included in the period of seniority.

**International standards:** the processes of the scheme for the judges' career development, especially for the recruitment, selection, and appointment of judges require procedures that are fair, open, and transparent, with terms of reference published at all phases. In the selection of candidates, diversity is encouraged to avoid discrimination, but not necessarily in order to establish quotas. The entire process should be open to public opinion, with candidates being informed about the reasons for not being selected by a decision.<sup>61</sup>

**Finding:** For 2023, the HJC approved a total of 96 administrative acts for the promotion of magistrates to office, of which 73 were individual acts and 23 were collective acts. The collective acts are those for the opening of procedures for promotions in office, for the ranking of candidates, for the start of the procedure for the beginning and verification of criteria. The individual administrative acts are those for the verification of criteria for promotions, for the conclusion of the procedure for promotion due to the withdrawal of candidates (1 at the appeals court of general jurisdiction and 1 at the special court of first instance), as well as for the qualification of candidates for promotions.

For 2023, the HJC made decisions for the promotions in office of judges for the positions opened during the years 2020-2021, 2022, and 2023 to the High Court, the Special Court of First Instance, the Appeals Court of General Jurisdiction, and the Administrative Court of Appeals, as follows:

- During the period 2020 – 2021, four positions were announced at the Appeals Court of General Jurisdiction<sup>62</sup> and the Administrative Court of Appeals,<sup>63</sup> 12 vacant positions at

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<sup>60</sup> Refers to legal provisions in the constitution (article 147/a, 149a), law on status (article 48-52)

<sup>61</sup> Development of minimal judicial standards ii 2011 – 2012 European Network of Judicial Councils (indicators related to minimal standards with regard to recruitment, selection, appointment, and promotion of members of the judiciary) [https://www.encj.eu/images/stories/pdf/ga/dublin/final\\_report\\_standards\\_ii.pdf](https://www.encj.eu/images/stories/pdf/ga/dublin/final_report_standards_ii.pdf)

<sup>62</sup> Decision of the HJC no. 183, 184, 185 dated 28.05.2020.

<sup>63</sup> Decision of the HJC no. 290, dated 6.07.2021; Decision of the HJC no. 129, dated 1.04.2021; Decision of the HJC no. 571, dated 7.12.2021.

the Special Court,<sup>64</sup> (for which there was no candidate), and three vacant positions at the High Court.<sup>65</sup>

- During 2022, three vacant positions were opened at the Appeals Court of General Jurisdiction,<sup>66</sup> for which there were 22 candidates; three vacant positions were opened at the Special Court,<sup>67</sup> for which there were 14 candidates, and one vacant position was opened at the High Court.<sup>68</sup>
- During 2023, nine vacant positions were opened at the Appeals Court of General Jurisdiction,<sup>69</sup> for which there were 30 candidates, and four vacant positions were opened at the Administrative Court of Appeals, for which there were 11 candidates.<sup>70</sup>

Based on the analysis of 7 acts that were selected for analysis in this report,<sup>71</sup> it results that the administrative procedures for making decisions for qualification for promotion in office last generally six months, but it has varied in some cases from eight months<sup>72</sup> up to two years and five months.<sup>73</sup> According to HJC decision no. 585, dated 18.10.2023, the procedure for the verification of the legal criteria has to do with the opening of three vacant positions in criminal law at the Appeals Court (*in 2020*), which were not the same for all 11 candidates and their conclusion varies in terms of time between April and November 2021. Further on, upon verification of the criteria in 2021 until the issuance of the decision in 2023, the progress of the process included the ethical and professional evaluation and the evaluation of assets and integrity. With regard to this procedure, the HJC has clarified that the prolongation in this case was as a result of the need for two ethical and professional evaluations. In the circumstances when the promoted judge has been seconded in the HJC, it was necessary to wait for the approval of the by-law “On the approval of regulations for ethical and professional evaluation of judges at the HJC” (Decision no. 159,

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<sup>64</sup> Decision of the HJC no. 128, dated 01.04.2021 for vacant position, Decision of the HJC no. 123, dated 01.04.2021 and Decision of the HJC no. 287 dated 06.07.2021 “For vacant position”

<sup>65</sup> Decisions of the HJC no. 535, no. 536, no. 537, dated 17.11.2021

<sup>66</sup> Decisions of the HJC no. 502, 503, 504, dated 21.11.2022.

<sup>67</sup> Decision of the HJC no. 499, no. 500 and no. 501, dated 21.11.2022,

<sup>68</sup> Decision of the HJC no. 178 dated 11.05.2022

<sup>69</sup> Decision of the HJC no. 239-247, dated 21.05.2023

<sup>70</sup> Decision of the HJC no. 235-238, dated 24.05.2023.

<sup>71</sup> Decision of the HJC no. 57, dated 07.02.2024 “On the start of the procedure for the verification of legal criteria; Decision of the HJC no. 122, dated 15. 03.2023 “On the conclusion of the procedure for promotion in office; Decision of the HJC no. 293, dated 30.05.2023, “On the verification of the fulfillment by the candidate;” Decision of the HJC no. 516/dated 05.10.2023 “On the ranking of candidates for promotion in office at the Appeals Court of General Jurisdiction in Tirana; Decision of the HJC no. 357, dated 06.07.2023 “On the qualification of the candidate;” Decision of the HJC no. 492, dated 21.09.2023 “On the conclusion of the procedure for promotion in office;” Decision of the HJC no. 585, dated 18.10.2023 for promotion in office.

<sup>72</sup> Decision of the HJC no.357, dated 06.07.2023; Decision of the HJC no. 492, dated 21.09.2023

<sup>73</sup> Decision of the HJC no. 516, dated 05.10.2023; Decision no. 585, dated 18.10.2023

05.04.2023).

AHC judges that any prolongation in the promotion of the judge above the normal period of six months deserves to be assessed carefully, in order to avoid unnecessary bureaucracies and premises for corporatism as well as inappropriate influences in the system. On this matter, as admitted also by the HJC, the procedures for promotions in office are complex in their entirety as they are interconnected with administrative procedures that require interaction with other institutions for the verification of assets, the verification of data on the judge's integrity, and even for following and awaiting the results of complaints, submitted by the judges to guarantee their rights in respect of the evaluation procedures. Likewise, it is understandable that there is an impact on the length of time required for promotions when the candidates are judges, which means subjects awaiting decision-making of the vetting process. According to the HJC, there have been several cases of dragging out of procedures due to this cause, for which legal regulations do not guarantee coherence as they have been drafted for normal situations and not situations of this type.

Meanwhile, based on the analysis of some of the selected acts, we notice that the dragging out of these processes is influenced in an unjustified manner by the opening of positions and until the date of the start of procedures for the verification of legal criteria. Some highlighted cases are as follows:

- About two years later, for the verification of candidates for the vacant position announced by Decision of the HJC no. 287, dated 06.07.2021 at the First Instance Special Court Against Corruption, the procedure for which began on 13.07.2023.<sup>74</sup>
- After nine months for the verification of candidates for positions opened on 24.05.2023 at the Administrative Court of Appeals, for which selection began on 7.04.2024.<sup>75</sup>
- After six months for the verification of candidates for the positions announced on 21.11.2022 at the Appeals Court of General Jurisdiction, for whom the selection began on 6.07. in 2023.<sup>76</sup>
- After three months for the verification of candidates for another position that was opened on 21.11.2022 at the Appeals Court of General Jurisdiction, for which the selection began on 9.02.2023.<sup>77</sup>
- After six months for the verification of candidates for the position opened on 17.11.2021 at the High Court, for which the selection began on 27.05.2022.<sup>78</sup>

As a rule, for promotion in office at the High Court, the procedures for the verification of legal

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<sup>74</sup> Decision of the HJC no. 372, dated 13.07.2023

<sup>75</sup> Decision of the HJC no. 57, dated 07.02.2024

<sup>76</sup> Decision of the HJC no.357, dated 06.07.2023

<sup>77</sup> Decision of the HJC no. 66, dated 09.02.2023

<sup>78</sup> Decision of the HJC no. 193, dated 27.05.2022

criteria should start no later than seven days from the deadline for running for the position,<sup>79</sup> which is announced no later than two weeks from the date when the decision for the opening of the vacant positions was published. Meanwhile, in the other courts, this deadline for the start of the verification of legal criteria for the promotion in office of judges does not find any regulation in the decision of the HJC no. 70, dated 07.02.2020, “*On the criteria and procedures for the promotion of judges in office,*” which creates premises for the lack of the standard of lawfulness and juridical uncertainty, according to the requirements for due legal process, pursuant to article 6 of the European Convention (ECHR). Furthermore, based on the fact that magistrates may run for a maximum of three vacant positions, dragging out the process may be also created as a result of the candidate’s withdrawal for a position.

Another finding in the analysis of these acts has to do with the fact that the motivation for the candidate’s withdrawal from a certain position is argued only in the decision for the conclusion of the procedure for the promotion for that judge, but is not highlighted in all other intermediate decisions for the procedural steps. With regard to this, the HJC has clarified that the motivation for the candidate’s withdrawal is not indispensable during the reasoning of the decision-making of the Council, given that it is an expression of the will of the subject him/herself who simply gives up on running for the position without a specified reason, a right that is recognized by law, article 64, paragraph 2, of the Administrative Procedure Code.<sup>80</sup> In spite of this, AHC reiterates the need for the most detailed possible reasoning of individual acts of the HJC in order to help toward transparency before the public. Furthermore, it is considered that a more synthesized and concise summary of decisions for this process would increase clarity and avoid frequent repetitions, thus increasing readability and understanding of the public on them. At the same time, it also improves alignment with international standards, which aim at increasing transparency and predictability of the processes that are linked with the appointments of judges.

## **8. Disciplinary procedures toward judges**

Disciplinary procedures on judges are regulated as a need for increasing alignment with the standards of the Constitution and the law in order to create as many guarantees as possible for magistrates against accusations of unfounded disciplinary violations. The High Justice Inspector is the first link in these procedures for administrative investigation while the HJC dismisses judges when it concludes that there were grave professional/ethical violations or convictions for crimes. Based on the weight that disciplinary proceedings have on the status of the magistrate, the

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<sup>79</sup>Decision of the HJC no. 75, dated 23.05.2019 “On the procedure for the verification of conditions and legal criteria for the recruitment of candidates for judges, for the development of the judges’ career, and for the appointment of judges of the High Court” (updated by decision no. 528, dated 10.11.2021); Decision of the HJC no. 70, dated 07.02.2020, “On the criteria and procedures for the promotion in office of judges.”

<sup>80</sup> “...One party, by means of a written request, may withdraw fully or partially from the administrative procedure and give up on his/her legal rights and interests, as long as the public body has not made a final decision. Upon withdrawal of one party, the public body decided on the conclusion of the administrative procedure.”

responsible institutions, HJI and HJC, are obliged to respect important principles of the rule of law and human rights and freedoms for the execution and logging of disciplinary measures, suspension and criminal and civil liability, as well as disciplinary actions and appeals.<sup>81</sup>

**Finding:** During 2023, it results that there were 16 individual acts regarding disciplinary proceedings, such as the acts for assigning a rapporteur, for the suspension of the procedure, for the invalidation of the decision of the former HCJ or HJC, for closing down the disciplinary proceeding, and for scheduling the hearing session.

On the basis of plenary meetings published on the official website of the HJC, it results that for the start of disciplinary proceedings upon a request by the HJI, there was a postponement 5 times<sup>82</sup> for objective reasons that are linked with inability as a result of illness of the magistrate, as certified by a medical report. For this instance, the HJC asked the HJI to continue the process in the absence of the magistrate, thus deciding on adjudication in absentia and the assignment on its own initiative of a legal representative for the magistrate. In this regard, AHC deems it necessary to highlight the need for the coordination of measures between the two institutions, to avoid postponements of the disciplinary process in similar instances in the future. Furthermore, it is worth emphasizing that the improvement of transparency and access to plenary sessions of the HJC is of great importance from the standpoint of respect for due legal process.

During 2023, it is a notable fact that there has been no decision by the HJC, neither to issue a disciplinary measure nor to conclude the disciplinary proceeding. The HJC has published some decisions of previous years that become public immediately upon assuming final form,<sup>83</sup> which respect anonymity and appear to be reasoned in a detailed manner. The reasoning of decisions of the HJC as well as of the institution of the HJI, in cases of rejections of requests for disciplinary proceedings, or decisions to issue a disciplinary measure, is necessary for the sake of transparency before the public. To that end, it is recommended to create on the official website of the HJC a dedicated section only on disciplinary proceedings, where it is easy to identify hearing sessions and process-verbals of plenary meetings of the HJC, for the discussion of disciplinary proceedings on judges as well as the respective decision-making on them. AHC lauds the fact that the HJC has

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<sup>81</sup> The right to legal due process, the principle of lawfulness, the principle of charges, the principle of equality before the law, Presumption of innocence, the Principle of doubt in favor of the magistrate, subject of the disciplinary proceedings, the Principle of proportionality, the Principle of the independence and impartiality of disciplinary institutions, the Principle of respecting the independence of the magistrate, the Principle of open justice, the Principle of confidentiality and a private life, the Principle of protecting personal data.

<sup>82</sup> Disciplinary proceedings registered as no. 3/2022, for the review of which, five plenary meetings of the dates 22.12.2022, 19.01.2023, 13.02.2023, 06.03.2023, 5.04.2023 were postponed for objective reasons that have to do with inability due to illness, certified by a medical report; Meeting of the High judicial Council on 05.04.2023 (Items 1, 2, 3).

<sup>83</sup> Decisions that went through all instances of adjudication up to review in the Constitutional Court (CC)

assessed such a recommendation as just for fulfillment in the future.

Based on the analysis of selected acts, AHC notes with concern a consolidated practice of the HJC and the HJI for the closing down of disciplinary proceedings due to the expiry of the statute of limitations, when the case is initiated by the Ministry of Justice (MoJ), in reference to the previous law. Thus, according to one instance<sup>84</sup> for the disciplinary proceeding toward a magistrate, in 2012 the Ministry of Justice had proposed the disciplinary measure of “Dismissal from office” before the former High Council of Justice;<sup>85</sup> it results that this case was concluded in 2023, after eleven years, because the statute of limitations on the disciplinary violations had expired.<sup>86</sup> During this period of time of eleven years, the following actions were undertaken to address this case:

- Suspension of the review of the request by the Minister of Justice, until the conclusion of the review;<sup>87</sup>
- Forwarding the case for competence to the HJI;<sup>88</sup>
- Forwarding the case for competence to the HJC to verify the decline of the cause of the suspension;<sup>89</sup>
- Decision of the HJC on the fulfilment of conditions for the decline of the causes of the suspension;<sup>90</sup>
- Assignment of the rapporteur and a hearing session by the HJC;
- Request by the HJI to conclude the disciplinary proceedings due to the expiry of the statute of limitations.

Based on this case, it is worth highlighting that the HJI has now established a consolidated practice of analogue cases, thus deciding to archive requests or close down the proceedings. AHC considers that this practice is not just, referring to the cases for the conclusion of carryover disciplinary proceedings from the previous justice institutions (*High Judicial Council and the Ministry of Justice*). According to HJI, this practice is justified due to the expiry of the statute of limitations

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<sup>84</sup> HJC decisions no. 723, dated 07.12.2023, “On the conclusion of the disciplinary proceedings initiated toward magistrate {...}, serving as a judge, at the first instance court of general jurisdiction in Durrës.”

<sup>85</sup> By letters no. 4281/3 prot., dated 01.10.2012 and no. 6127/17, dated 26.10.2012

<sup>86</sup> Relying on articles 147,147/a, of the Constitution of the Republic of Albania, articles 117, 139 and 172 of the Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended, articles 86, letter “e”, articles 97, 98 and 100 of the Law no. 115/2016 “On the governing bodies of the justice system,” amended, as well as on article 104 of the Administrative Procedure Code of the Republic of Albania.

<sup>87</sup> By request of the MoJ no. 486 prot., dated 23.01.2013, and by request no. 486/1 prot., dated 10.07.2013

<sup>88</sup> By request no. 3696/1 prot., dated 30.06.2023

<sup>89</sup> By letter no. 2170/1 prot., dated 28.07.2023, protocolled in the Council with no. 3696/2 prot., dated 31.07.2023,

<sup>90</sup> The High Judicial Council, by decision no. 702 dated 30.11.2023 decided: “1. Invalidation of decisions no. 304 dated 14.02.2013 and no. 354 19.07.2013 of the High Council of Justice “On the suspension of the disciplinary proceedings until the conclusion of the judicial review in the higher instance courts.”

on the causes for the violations, which occurred at the time when law no. 9877, dated 18.02.2008 “On the organization of the judicial power in the Republic of Albania,”<sup>91</sup> was in effect.

AHC has highlighted this practice also in other reports and considers that complaints administered within the legal deadline at the former Inspectorate of the High Council of Justice, the former High Council of Justice, the General Prosecutor, and the Ministry of Justice, should have continued to be addressed by the HJI because, based on the principle of institutional continuity, the surpassing of reasonable time for addressing the complaint has come as a consequence of the responsibility of institutions (Article 283, *paragraph 9 and paragraph 11 of law no. 115/2016*). In AHC’s assessment, in respect of the principle of the continuity of the jurisdiction of the new justice institutions, it is the responsibility of HJI and the HJC to conduct disciplinary proceedings toward magistrates also to resolve carryover cases, according to article 117 of the law no. 115/2016. As a result, AHC has suggested to the HJC to review through “*The transitory commission for the review of archived HJI complaints*” every HJI practice for the conclusion of disciplinary proceedings for carryover cases, which were on the waiting list due to the reformation of the institutions.<sup>92</sup>

## **9. High Justice Inspector**

The High Justice Inspector is the institution responsible for the verification of complaints, investigation by initiative of legal institutions or upon its own initiative of the violations, and the start of disciplinary proceedings on judges and prosecutors of all levels, HJC members, members of the High Prosecutorial Council, and the General Prosecutor.<sup>93</sup>

**Finding:** During 2023, the HJI appears to have addressed 2340 complaints, of which 1268 were complaints that were submitted to the HJI and 1072 were complaints of the “backlog” stock (*carried over from before the HJI was established*). Following the review of complaints, the HJI approved 1631 decisions, of which:

- 1061 decisions were made for archiving following preliminary review of 1616 complaints;
- 552 decisions were made for archiving following verification of 707 complaints;

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<sup>91</sup> At the time when the claimed violations took place, for disciplinary violations committed by magistrates, Law no. 9877, dated 18.2.2008 “On the organization of the judicial power in the Republic of Albania” was in force; article 34, paragraph 2 of that law envisaged that: “The start of the disciplinary proceeding may be done no later than one year from the day when the violation was found by the body that has the right to initiate this proceeding, but no later than 5 years from the date when the violation was committed.”

<sup>92</sup> Decision of the HJC no.717, dated 06.12.2023 on the assignment of a rapporteur and the hearing session for the disciplinary proceedings on the magistrate; Decision of the HJC no. 702/2023, “On the invalidation of decisions no. 304 dated 14.02.2013 and no. 354 dated 19.07.2013 of the former High Council of Justice.”

<sup>93</sup> The High Inspector investigates the suspected violations also upon initiative, based on a motivated request in writing of the High Judicial Council, the High Prosecutorial Council, the Minister of Justice, the General Prosecutor, and in the annual plan of inspections.



- 16 decisions were made for disciplinary investigations following the review of 17 complaints;
- 2 decisions were made for disciplinary proceedings initiated upon the initiative of the HJI.

In the context of the consultative process on this report, the HJI submitted further explanations regarding the causes for the archiving of 552 cases, on which:

- The raised claims do not represent disciplinary violations;
- The raised claims represent action/inaction that are the subject of control from higher instances of the judicial system;
- The raised claims are for subjects that do not fall within the scope of competence of the HJI;<sup>94</sup>
- The raised claims have to do with magistrates dismissed by the vetting process and, therefore, there is no subject for the review of the claims;
- The raised claims have to do with magistrates who have retired or resigned.

During 2023, the HJI sought the start of the disciplinary proceedings toward six magistrates, whereby five processes are for five judges at the HJC, and one process is for one prosecutor at the HJC. The proceedings have to do with disciplinary violations during the exercise of their duties, such as:

- Delays that are repeated or that bring about grave consequences or unjustified out dragging of actions and/or procedural acts,
- The action, inaction, or conduct of the magistrate, which brings about unjust benefits or damages for the litigating parties in a judicial process, or investigative procedure in contravention with the law,
- The actions, inaction, or conduct for which the magistrate has been convicted by a final decision for the commission of a criminal violation,
- For the cases when the judge has been convicted by a final decision for the commission of a crime.

During this year, all the submitted requests were at the phase of review by the Council. According to the report for the strategic plan, the cause of the slow pace of addressing complaints is the lack of a staff of 11 inspectors in this institution. In any case, AHC considers that besides the fact that this institution currently exercises its activity with limited human resources, on the other hand, it pursues a modest number of procedures that are finalized with the start of investigations of disciplinary measures, namely 18 such for the year 2023. Although the institution administers 2340 complaints, including those carried over from previous years, the volume of work that the HJI covers for 18 disciplinary proceedings is far from expectations, when comparing for instance the

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<sup>94</sup> Chancellor/ judicial secretary/ judicial police officers/ lawyers/ bailiffs/ experts, etc.

volume or average caseload of judges during one year; for 2023, this caseload was 841 cases per judge.

Based on verifications, it results that the HJI has an integrated transparency program that functions both for the achievement of some objectives linked with transparency and informing of citizens or their access to submit their requests/complaints whether physically, by phone, by mail, and through online platforms or social networks. Citizens may obtain data on their requests through a register of request/responses that is published on the HJI's official website. Citizens may obtain information on the official website also through rubrics such as "complaints accepted?" or questions on the complaint process. Moreover, the HJI has conducted about 25 times surveys that are integrated into the transparency program and online surveys on the activity of the HJI for the year 2023.

In spite of the above, AHC considers that the official website of the HJI does not ensure access with adequate statistical data on its activity, with regard to disciplinary investigations, which could improve the institution's transparency. The only documents that do provide information are the annual performance reports and monthly bulletins, which do not ensure sufficient statistical data for this purpose. The official website of the HJI for 2023 features the publication of annual performance reports and the strategic plan for 2023-2025 and eight official acts are also made public. A positive step for 2023 is that the HJI approved the methodology for the registration of statistics, the analysis and reporting of statistical information on complaints/cases addressed to the HJI. This step enables the classification of information by use, as information that should be input in the system for each case that is investigated,<sup>95</sup> information that is reflected in the investigative case file that is forwarded to the Council, accessible information only for the magistrate being investigated, information that may be accessed by the public.

As a function of transparency for the public, AHC lauds the efforts and measures taken in this direction and also encourages the HJI to create on its official website as soon as possible a register that is periodically updated with data regarding the progress of addressing complaints and disciplinary administrative investigations, from the date of receipt to the date when the HJC comes out with a decision (*if there is one such*). The creation of this register improves transparency, serves as a database for every researcher, the media, and the public, and also serves transparency on the magistrate being investigated.<sup>96</sup>

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<sup>95</sup> Thus, for every case, it should be reflected in the system: a) generalities and address of the magistrate; b) data of the complainer whether the investigation began on the basis of the complaint, c) subject of the investigation, c) progress of the investigation, d) data on whether the investigation has been archived, closed, or whether it has been sent for disciplinary proceedings in the Council, dh) decision-making of the Council, and e) other information

<sup>96</sup> Order of the HJI, no. 107, dated 06.10.2023, "On the approval of the methodology for the analysis and reporting of statistical information regarding complaints/cases sent to the office of the High Justice Inspector;" order no. 106, dated 05.10.2023, "On the approval of statistical forms and the methodology for the collection and processing of statistical information regarding complaints/cases sent to the office of the High Justice Inspector;" Order no. 105, dated

Furthermore, due to interconnected inter-institutional procedures, it is considered that there needs to be as effective coordination as possible between the institutions of the HJI and the HJC for the integrated management of data on disciplinary proceedings.<sup>97</sup> With regard to this, the HJI has clarified that it has the legal obligation to notify the parties in the process, according to each decision-making within its competence, in the context of the review of complaints, the disciplinary investigation and disciplinary proceedings, thus guaranteeing the principles of due process. The progress of the disciplinary investigation is of a confidential character and is exercised in an appropriate, balanced, and proportionate manner, guaranteeing the protection of the integrity and standing of the magistrate from unfounded accusations. Nevertheless, in the as a function of continued improvement, the creation of a register will be kept in mind in the future.

## 10. Recommendations

- ▶ As a function of guaranteeing independence, impartiality, professionalism, and accountability in the judicial system, AHC considers that the HJC and HJI, with the human resources they have available, should respond to the needs of the system in a more efficient manner and within reasonable deadlines, in accordance with the competences that each of these two institutions enjoys according to the Constitution and the legislation in force.
- ▶ AHC judges that procedures for the appointment, promotion, and parallel appointments have a significant impact toward the functionality of the judicial system as a whole, as it pertains to guaranteeing the standards of efficiency and quality, but above all, the essential impact on strengthening the status of the judge. Based on the fact that such procedures do not have legal deadlines stipulated in the by-laws, AHC considers that their effective management is a condition for guaranteeing the standards of due legal process, pursuant to the Constitution (*Article 42*) and ECHR (*Article 6*). These processes, as admitted by the institution of the HJC, are complex as they intertwine the activity of two commissions within the Council, but also involve other institutions that interact for verifications that pursue different goals (assets, integrity, ethical-professional evaluation of the judge, etc.).

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05.10.2023, "On the registration of statistical information regarding complaints addressed to the office of the High Justice Inspector, in the form of the Office 365 platform – application list, for 2023;" Order no. 101, dated 02.10.2023, "On the approval of the complaint form, reworked and the instructions for filling it out;" Order no. 100, dated 02.10.2023, "On the approval of the form for the registration and collection of statistical information regarding complaints addressed to the office of the HJI in the database through the Office 365 platform – application list;" Order no. 94, dated 12.09.2023, "On obtaining periodical information from the chairs of courts and heads of prosecution offices regarding judicial activity and prosecutorial activity."

<sup>97</sup> For the management of some procedural aspects that have to do with the disciplinary violations (by category), reservations, suspensions, dismissals, respecting the criteria for disciplinary measures by category and respecting maximally the timeline of procedures according to the requirements of due legal process (articles 100-116 of the law on status)

Based on the need for procedures that guarantee the most normal possible timelines for this specific category of decision-making, AHC encourages the creation of coordinating mechanisms for the coordination and harmonization of administrative steps that are interconnected in these procedures. In particular, there is a need for further regulation of deadlines for procedures that are divided into several phases, in order to facilitate their management and predictability.

- ▶ AHC considers that it is necessary to consult the need for legal amendments to article 32 and article 35 of the Law “On the status of judges and prosecutors in the Republic of Albania,” in order to avoid the repetition twice of procedures for the verification of the integrity and assets of graduate candidates within a time window of three years, once for admission to the training program and another time after graduation as a magistrate and the appointment.
- ▶ AHC considers that in the context of guarantees for the standard of lawfulness and transparency according to article 6 of the ECHR, the decisions of the HJC for the appointment, promotion, and parallel appointments require more concise, clearer and more understandable content for the public, by improving the reasoning part that highlights the meritocracy of the process. As a function of the principle of public trust in the process of the judiciary career, it is worth reflecting in these decisions the reasons for withdrawals of candidates from their positions, when there are such withdrawals.
- ▶ AHC considers that the decisions to transfer magistrates require detailed reasoning, based on the rigorous requirements according to article 44 and 42 of the law “On status.” Although the decision-making of the HJC for this purpose are accompanied by relevant reports, which provide detailed reasoning on how the candidates meet the legal criteria for transfers, AHC reiterates that HJC decisions need to reflect in a more synthesized manner how the candidate judges fulfill the legal criteria. More concretely, for the temporary transfer of the judge, there needs to be arguments in the decision as to how many requests there were for the positions announced for transfers, how each candidate who applied met the criteria, what is the effect that the transfer creates in the courts of the judges being transferred, what is the benefit for the receiving court, etc.
- ▶ AHC considers that, in the context of guaranteeing the principle of the lawfulness of the procedure of transfers by choice, it is important to avoid decision-making on the same day as the announcement of the decision; from the aspect of quality, it gives the process a strictly formal and predetermined character. Also, it is considered that the HJC should provide reasoning in its decisions on transfers by choice of judges as to how the courts proposed to the judges for transfers are selected.

- ▶ AHC considers that in respect of the principle of legal certainty and the principle of institutional continuity, the HJC should avoid the precedent created by the HJI about the closing down of disciplinary proceedings on carryover cases, initiated by previous justice institutions (the HCJ and the MoJ). In this sense, we suggest to the HJC that, with its own initiative, it review and decide to annul, change, complete HJI decisions according to article 99 of the law 115/96 “*On the governance of the justice governance institutions,*” on closing disciplinary proceedings according to the requests that have been on a waiting list due to the reforming of the institutions.
  
- ▶ In the context of guaranteeing transparency to the public according to article 2 of law no. 115/96 “*On the governing bodies of the justice institutions*” and guarantees for due legal process according to the standards of article 6 of the ECHR, AHC recommends to the HJC the creation of a rubric dedicated only to disciplinary proceedings on its official website, where it is possible to easily identify hearing sessions of plenary meetings of the Council with the process-verbals of the plenary meetings that had on their agenda discussions on disciplinary proceedings of magistrates.
  
- ▶ In the context of guaranteeing transparency to the public according to article 2 of law no. 115/96 “*On the governing bodies of the justice institutions,*” AHC encourages the HJI to create a register on the progress of addressing requests/complaints for the disciplinary proceedings of magistrates on the official website of the HJI, in the service of the judge being investigated, the HJC, and the broad public to obtain data on the progress of the investigative process.<sup>98</sup>
  
- ▶ AHC considers that the management of the most reasonable timeline of plenary meetings for disciplinary proceedings requires an institutional agreement between the HJC and the HJI, on the way in which the administrative practice may be improved for situations that may lead to a dragging out of the process and, therefore, a violation of article 6 of the ECHR.

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<sup>98</sup> More concretely, the HJI has approved the following orders for the purpose of establishing the case management system. Order no. 107, dated 06.10.2023, “On the approval of the methodology for the analysis and reporting of statistical information regarding complaints/cases addressed to the office of the High Justice Inspector;” Order no. 106, dated 05.10.2023, “On the approval of statistical forms and the methodology for the collection and processing of statistical information regarding complaints/cases mainly addressed to the office of the High Justice Inspector;” Order no. 105, dated 05.10.2023, “On the registration of statistical information regarding complaints addressed to the office of the High Justice Inspector, in the form of the Office 365 platform – application list, for 2023;” Order no. 101, dated 02.10.2023, “On the approval of the complaint form, reworked, and the instructions for filling it out;” Order no. 100, dated 02.10.2023, “On the approval of the form for the registration and collection of statistical information regarding complaints addressed to the office of the HJI in the database through the Office 365 platform – application list;” Order no. 94, dated 12.09.2023, “On obtaining periodical information from the chairpersons of the courts and heads of prosecution offices regarding judicial activity and the activity of prosecution offices.”

Annex: Comments/suggestions highlighted separately from the report

## A. Regarding the findings on the activity of the HJC

### 1. Findings in the draft report of AHC

Decisions on procedures for transfers *by dedicated consent* appear to have been made within the same day as the announcement of the transfer procedure, which creates deficiencies from a quality aspect, given that it grants the process a strictly formal and predetermined character in the sense of its result.

#### *1.1 Comments by HJC:*

The HJC brings to attention the fact that referring to article 46 of the Law on Status, in its temporary transfers, the Council addresses judges from courts with the lowest caseload to grant their consent for a transfer for a given period of time. In this case, the Council takes in advance the view of the chairperson of the court where the judge exercises his/her duties. Further on, the Council addresses the winning candidate who meets the legal criteria regarding the expression of interest.

#### *1.2. Comments of AHC:*

The announcement of the procedure of transfer requires respect for a series of intermediate procedural steps, until a decision has been made for the transfer of the judge. In this regard, it is requested that the standard of lawfulness and transparency of procedures are guaranteed, with regard to reflecting adequately the by-laws on the manner in which the criteria for the transfer of the judge are fulfilled. Avoiding these procedures may create causes for the infringement of legal certainty as they lead to formally predetermined decision-making.

### 2. Findings in the draft report of AHC

In the decisions on procedures for transfers *by dedicated consent*, it is unclear what criteria led the HJC in its selection of judicial districts that it proposed to judges who have a permanent position in the court being dissolved as a result of the implementation of the new judicial map.

#### *2.1. Comments by the HJC:*

With regard to this point, it is worth emphasizing that the HJC, in cases of a lack of magistrates in the delegation scheme, decides regarding temporary transfers and, for the procedure of transfers, it keeps in mind the courts with the highest number of vacancies, the highest number of cases

awaiting adjudication, courts where there is a lack of panels of judges for the review of criminal, civil cases, but always taking into consideration the caseload of the court in which that judge exercises his/her functions. This legal provision is based on article 46 of the Law on Status. The Council has decided to repeat the transfer when it has been necessary, referring to the caseload of courts to which they were transferred. The transfer procedure is based on the legal provisions of the Law on Status, concretely articles 42, 43, 44-46 and on Decision no. 23, dated 7.02.2019, of the HJC “On the approval of the regulations on the criteria and procedure for the temporary transfer of the judge,” on which the decision-making of the CDC relies upon, while rigorously respecting the requirements of the law regarding the criteria and principles for implementation. This kind of procedure of filling vacancies has been as a result of the implementation of the new judicial map because by dissolving positions where they were previously and the restructuring of some courts, pursuant to this new map, has made it necessary to fill the created vacancies.

It is worth emphasizing that these procedures have been conducted for the purpose of pre-empting the process of parallel movements, as well as to improve the situation in these courts. The Council has judged that, as a function of parallel movements and to create within the shortest possible time, the freeing of positions of candidates competing in these procedures, for the courts under analysis, to use the procedures of temporary transfers envisaged by article 46 of Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended (below referred to as the Law on Status), and the by-law approved pursuant to it, (Regulations for the Temporary Transfer), as one of the fastest instruments that could stabilize the functionality of the First Instance Court of General Jurisdiction in Tirana. **Naturally, the purpose of carrying out these procedures of temporary transfer will be that, by combining this scheme with the expectation of the scheme of parallel movements, where candidates compete alone, new positions for new magistrates may be created. In the Council’s assessment, the application as soon as possible of this combination creates the permanent positions for the assignment of judges graduating from the School of Magistrates.** Naturally, the used scheme respects the purpose established in article 42 of the Law on Status of guaranteeing that the process of temporary or permanent transfer of a magistrate, to different positions of the same level or equal to it, is done not only according to the needs of the justice system, but also in respect of the functions and development of the magistrate’s career.

## *2.2. AHC Comments:*

AHC reiterates that these procedures are formally predetermined, thus leading to the circumvention of some aspects that require a more transparent reflection in the acts for the transfers of judges. Thus, as highlighted by the analysis of these acts, the decisions on transfers do not adequately reflect what criteria were used for the selection of the respective court that was proposed to the judge being transferred. This aspect is important in terms of decision-making that

guarantees the highest interest of the judge to empower his/her status in harmony with the principle of proportionality.

### 3. Findings in the AHC draft report:

- AHC considers that referring to data on the low number of disciplinary proceedings for judges (*only 5 such*), it results that there has not been a proportional approach regarding the accountability materialized through disciplinary proceedings, which depend on requests that are made by the HJI and concluded by the Council. This shared inter-institutional responsibility should be seen in respect of the principle of good governance of the justice system, according to article 2 of law no. 115/2016 “On the governing bodies of the justice system,” which envisages that the justice system in the Republic of Albania is governed based on the principles of independence, accountability, transparency, and efficiency.
- Although filling vacancies in the courts has been the primary objective of the HJC through the promotion of judges by means of parallel appointments, promotions, or secondments, it results that disciplinary proceedings have not seen the same trend. Thus, it appears that the HJI and HJC had not had sufficient productivity in terms of the materialization of the shared institutional responsibility for guaranteeing the accountability of judges as the total number of complaints for disciplinary procedures administered by the HJI is not proportionate vis-à-vis disciplinary proceedings concluded by a request for initiation at the HJC by this institution.

#### 3.1. Comments by the HJC:

We consider that there is no reason for numerically measuring the disciplinary proceedings that are conducted in the Council on the basis of HJI requests. The fact that five requests have been submitted for disciplinary proceedings means that the HJI, after conducting disciplinary investigations, did not find the serious infringements for which disciplinary proceedings may be initiated.

For 2023, the High Judicial Council passed for review four disciplinary procedures that were initiated recently during this year and two procedures carried over from previous years were set into motion. The HJC has proceeded with issuing a non-final decision, concretely: suspending disciplinary proceedings regarding two procedures initiated for magistrates B.M., R.A. and K.Dh., until decisions of the Independent Qualification Commission became final, which had issued the disciplinary measure of “Dismissal from office;” suspending disciplinary proceedings for a one-year period regarding three disciplinary procedures initiated toward magistrate S.U., in the conditions when, for this magistrate, the Council had decided earlier the start of the verification



procedure on physical and mental inability to exercise the functions of the judge. This is a circumstance that represents a cause for the suspension of the review of these disciplinary procedures initiated by the HJI. Regarding the two disciplinary procedures suspended earlier because the cause for the suspension had fallen, it was decided to invalidate the suspension decisions and address the essence of the cases.

Proceedings submitted by the HJI have been suspended in some cases to wait for the decision-making of the vetting bodies and therefore there may not be a proportional approach. The fact whether requests will be submitted to the HJI are at HJI's discretion after it has conducted the disciplinary investigation. If the results of the investigation lead toward the conclusion that there are reasonable suspicions that the magistrate committed disciplinary violations, only then the disciplinary proceedings begin at the council, given that the vetting bodies issue disciplinary measures of dismissal from office or sending back to school and the conclusion of the related procedure is expected.

### *3.2. Comments by AHC:*

The finding of AHC has to do with the insufficiency of the materialization of institutional responsibility, primarily the HJI, based on the high number of complaints logged against magistrates, over 2340 such during 2023. Of these complaints, only 1631 were concluded through decisions, among which there were only 16 decisions by the HJI to initiate disciplinary proceedings. Of these 16 decisions for the investigation of magistrates, it results that only 6 disciplinary proceedings were requested at the HJC for 5 judges and 1 prosecutor. This statistical information helps responsible institutions understand how the process of following up complaints, from the moment of their registration with the HJI to the taking of a decision for disciplinary proceedings toward magistrates at the HJC, has evolved. The stark contrast between the high number of complaints and the very insignificant number of investigations and decisions for disciplinary proceedings, points to the gap between the high need for accountability of magistrates and the very low number of disciplinary proceedings that conclude with a concrete decision. For AHC, the accountability of the system does not mean the dismissal of judges from office, but the application also of lighter disciplinary measures that correct the magistrate's conduct when it infringes upon his/her duties. It is worth emphasizing that such a statistic has been almost the same in the period of the functioning of the old justice institutions; therefore, in principle, it does not justify the profound institutional reform of the justice system, which had at its essence as a main objective the guaranteeing of accountability of magistrates.

## **4. Findings in the AHC draft report**

In particular, the acts on disciplinary procedures are accessed with difficulty through the publication of plenary meetings, which do not follow any listing by the subject of the agenda

dedicated specifically to disciplinary proceedings but are published by date, without any concrete identification thereof. This situation does not guarantee the standard of transparency as for these procedures, it is difficult to consolidate the administrative practice and irregularities of the process are circumvented regarding reasonable timelines, which could lead to an infringement of article 6 of the ECHR.

#### *4.1. Comments by the HJC:*

We consider that publication on the official website of the HJC is done in accordance with article 69 of law no. 115/2016, amended, through the documentation in the process-verbal of the meeting and the audio recording and is easily found through the announcement of the relevant meeting.

#### *4.2. Comments by AHC:*

With regard to this finding, AHC lauds the fact that there is a will on the part of the institution of the HJC to improve in the future the publication of process-verbals of plenary meetings in a special rubric, only for those meetings where disciplinary proceedings of magistrates have been reviewed. The purpose for creating this special rubric on the official website of the HJC is to rank in a chronological order all the plenary meetings of the HJC, by session for each disciplinary proceeding, so that the progress of proceedings from the first hearing session to the coming out of the HJC with a final decision (including decision-making due to the exercise of the right of the magistrate to file a complaint), is clearly evidenced. This initiative is important as it improves access regarding decision-making for disciplinary proceedings, but it also guarantees the predictability of the timeline of such proceedings, in accordance with the standards of transparency and due legal process.

### **5. Findings in the draft report of AHC**

From an analysis of the acts, it results that HJC decisions on secondments are reasoned and reflect the transparency of the procedures that were pursued.<sup>99</sup> The secondment scheme for 2023 helped mainly the High court to fill vacancies with assistant magistrates as well as the Constitutional Court for completing its numbers with assistant judges. In the circumstances when the judicial system is faced with vacancies in the judges' ranks, AHC continues to view as problematic the secondment of judges outside the judicial system.<sup>100</sup>

#### *5.1. Comments by HJC:*

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<sup>99</sup> Decision no. 226, dated 08.05.2023 on the removal of candidate Ms. {...}, from the secondment procedures as an internal lecturer at the School of Magistrates; Decision no. 730, dated 07.12.2023, On submitting the name of the candidate who applied to be seconded to the position "assistant magistrate" at the Constitutional Court

<sup>100</sup> <https://ahc.org.al/wp-content/uploads/2023/02/Dritehijet-dhe-Efektet-e-Hartes-se-Re-Gjyqesore.pdf>

In every case of the secondment of magistrates, the HJC has taken care to keep in mind the preservation of the functionality of the courts that the seconded judges come from. Seconded magistrates come mainly from courts with complete staffing. The secondments in the justice institutions are a lower number compared to judges who exercise their duties within the system (at the HJI, MoJ, School of Magistrates, ECtHR), and their contribution to the justice institutions is added value. Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended, has assigned the High Judicial Council as the highest body responsible for the appointment, assignment to posts, transfers, promotions, secondment and reappointment, evaluation of ethical and professional conduct, determination of disciplinary measures and suspension, and in particular, has envisaged special procedures when it encounters vacant posts, after every quarterly check that it carries out for this purpose of finding them. Moreover, article 89, paragraph b states that the Council has the obligation to monitor the caseload of judges and the courts, the length of cases for the purpose of improving their productivity so that the principle of “*adjudication within a reasonable deadline*” is not converted into “*delayed justice is denied justice.*”

## 5.2. AHC Comments:

In 2023, the judicial system functioned with 247 judges out of 408 approved in total in the staffing structure. In such a *sui generis* situation, AHC does not recommend the secondment of judges to other justice institutions, based on the very high need of the courts to complete panels of judges, due to the created caseload, whether from the implementation of the new judicial map and the vacancies created in the staff of judges as a result of the vetting process. The presence of judges in the system is a need that guarantees access to justice and the adjudication of cases within a reasonable time, as important elements of due legal process.

## 6. Findings in AHC’s draft report

It is worth mentioning in this analysis also the findings from earlier reports of AHC, as in its first report on the new judicial map, according to which the individual administrative acts of the HJC regarding the status of judges or judicial civil employees are made public on the official internet website of the Council, accompanied by the relevant reasoning according to article 98, paragraph 2, of law no. 115/2016 “*On the governing bodies of the justice system.*”

### 6.1. Comments by HJC:

Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended, has established the High Judicial Council as the highest body responsible for the appointment, assignment to posts, transfer, promotions, secondment, etc., and has envisaged special procedures

when it finds vacant positions, **after every three-month check conducted for the purpose of finding these vacancies**, that every three months, it opens procedures for transfers through parallel assignments. This is due to the taking of measures for the appropriate administration of the movements of judges toward courts that are considered career courts and to open vacant posts for positions that are expected to graduate. This process is subjected to procedures for the verification of the fulfillment of formal criteria, assets and integrity as well as ethical and professional evaluation.

## 6.2. Comments by AHC:

AHC considers that the decisions for the transfer of magistrates require detailed reasoning, based also on the rigorous requirements according to article 44 and 42 of the Law “On status.” Although decision-making by HJC for this purpose are accompanied by the relevant reports, AHC reiterates that HJC decisions need to reflect in a synthesized manner how the legal criteria are met by the candidates for transfers. More concretely, for the temporary transfer of the judge, it needs to be argued in the decision what the number of requests was for the posts announced for transfers, how the criteria are fulfilled by each candidate who applied, what effect is created by the transfer on the courts of the judges being transferred and what is the benefit to the receiving court, etc. Meanwhile, for the transfer of judges by *dedicated consent*, it is highlighted that there is a need for the reasoning of the decision for the announcement of procedures, which should reason the need of the receiving courts for the transfer of magistrates according to indicators of efficiency and productivity. Furthermore, the decision to transfer the judge should reflect the criteria for the selection of the court that is proposed to the judge for transfer.

## 7. Findings in the AHC draft report

Based on the verification of acts on the assignments selected for the analysis in this report,<sup>101</sup> it results that in spite of the formal referral to legal criteria,<sup>102</sup> these acts do not provide data on the manner in which the criteria of geographical proximity are respected, what is the caseload of the

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<sup>101</sup> Decision no. 662, dated 02.11.2023 for the assignment of the following judges, to the position of the Judge for Media in the General Jurisdiction of Appeals; Decision no. 524, dated 05.10.2023, on the assignment of judges for the adjudication of special cases in other courts, different from the one where they exercise their functions in a permanent manner. The High Judicial Council decided assignment to the court of the district of Lezha, Berat, and Gjirokastra; Decision no. 484, dated 13.09.2023 on the assignment of judges for the adjudication of special cases in other courts, different from the ones where they exercise their functions in a permanent manner; Decision no. 471, dated 26.07.2023 on the assignment of judges for the adjudication of special cases in other courts, different from the one where they exercise their functions in a permanent manner; Decision no. 469, dated 25.07.2023 on the assignment of judges for the adjudication of special cases in other courts, different from the one where they exercise their functions in a permanent manner.

<sup>102</sup> Decision no. 30, dated 14.02.2019 “On the approval of the decision about the rules and procedure of the assignment of a judge for the adjudication of a special case in another court, different from the one where they exercise their functions in a permanent manner”

judges being assigned, whether the judge has been assigned to more than one court, or to judge more than one case in the same court. This lack of reasoning continues to remain a problem also in AHC acts for this category of decisions, which should provide the standard of lawfulness according the law and the Constitution.

#### *7.1. Comments by HJC:*

Findings such as those in the above paragraph, which are the report proposed by the relevant Commission and approved by the Council, has analyzed in an exhaustive manner all the legal criteria for the announcement of courts in need, to the conclusion of the procedure with the transfer of the relevant judges.

#### *7.2. Comments by AHC:*

AHC considers that the legal requirements for making decisions for the assignment of judges are escalated with an increase, compared to legal requirements on decision-making for the transfer of judges. This is the case as the assignment may be used as a scheme only when temporary transfer and delegating have not been sufficient for completing panels of judges in the courts with high numbers of cases. Therefore, although HJC decision-making for this purpose are accompanied by the relevant report, which reason in a detailed manner how the legal criteria are met by the candidates for assignment to special cases in another court, AHC reiterates that HJC decision-making should reflect in a synthesized manner the manner in which the legal criteria for assigning them are fulfilled. This reasoning is important also in terms of the effect that this scheme creates toward the career and status of the judge, in respect of the need for guaranteeing the autonomy and independence of judges.

### 8. Findings in the AHC draft report

In the second phase for parallel movements, a decision is made on ranking the candidates, which should be based on the quality of the preservation of decisions for each candidate. For the cases when candidates applied for more than one position, it is the rapporteur assigned to the lowest position that takes over the process to move it to the third phase of decision-making to assign the candidate for parallel movement. Based on the selected acts, it results that the entirety of such procedures varies from six months for candidates who did not apply for any other position up to ten months for those who applied for several positions. Aware of the fact that for 2023, there were applications for 25 vacant positions, of which there were 15 withdrawals from running for parallel movements from the 40 candidates who applied, such a situation creates premises for these procedures to be complicated and progress more slowly.

#### *8.1. Comments by HJC:*

The finding that withdrawals from running for the posts create delays in the procedure of parallel movements does not stand because, based on the practice to date, it does not appear that withdrawals from running have caused any delays. Decision no. 320, dated 17.09.2020 of the HJC “On the criteria and procedures for parallel movements of judges” aims at establishing detailed rules for the criteria and procedure of parallel movements of judges, according to law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania.”

## *8.2. Comments by AHC:*

With regard to this point, AHC highlights that in the case of procedures for parallel movements, for which legal regulations do not envisage any deadlines, we are not talking about delays, but simply highlights the withdrawal of candidates from the competition, as a factor that slows down the procedures. For instance, according to the HJC finding, the same factor affected the dragging out of procedures for the appointment of judges through promotions in office. Along the same lines, it is considered that also for procedures for parallel movements, mechanisms may be created that seek to harmonize the three interdependent phases of administrative procedures, in order to ensure a better management of the entire process of parallel movements, avoiding as much as possible the causes that slow down the process.

## 9. Findings in the AHC draft report

As a rule, for promotion to the High Court, procedures for the verification of legal criteria should begin no later than 7 days from the deadline for running,<sup>103</sup> which is announced no later than two weeks from the date of publication of the decision announcing the opening of the vacant positions. Meanwhile, in the other courts, this deadline for starting the verification of the legal criteria for promotion in office of judges does not find regulation in the decision of the HJC no. 70, dated 07.02.2020, “*On the criteria and procedures for the promotion of judges*,” which creates premises for a lack of the standard of lawfulness and legal uncertainty, according to the requirements for due legal process, pursuant to article 6 of the European Convention (ECHR). AHC considers that this prolongation of the start of the verification of the legal criteria for the open positions should be analyzed with proper care, in order for it to be avoided in the future.

### *9.1. Comments by the HJC:*

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<sup>103</sup> Decision of the HJC no. 75, dated 23.05.2019 “On the procedure of verification of conditions and legal criteria for the recruitment of candidates for judges, for the development of the judges’ careers, and the appointment of members of the High Court” (updated by decision no. 528, dated 10.11.2021); Decision of the HJC no. 70, dated 07.02.2020, “On the criteria and procedures for promotions of judges.”

With regard to this finding, we need to emphasize that the procedure of verification is based on legal grounds in the law on status and the decisions of the HJC for the approval of regulations followed with regard to procedures, for which the law envisages deadlines for carrying out actions as well as deadlines for complaints in court on the decision-making of the HJC. As a whole, all of these contribute to the timeline of this procedure, which does not depend on the Council and is inevitable as it is a function of due and transparent legal process, pursuant to article 6 of the European Convention (ECHR). Only in 1 (one) case, the process of verification began 9 (nine) months late for positions for which the deadline for applications concluded in May 2023 (appeals for general and administrative jurisdiction). In this case, the priorities of the HJC were in the appointment and assignment to posts of newly graduated magistrates as well as the conclusion of some procedures for parallel movements. The candidate for promotion undergoes a procedure of ethical and professional evaluation. The evaluation serves as the basis for the development of the judge's career. In these circumstances, based on the principle of due legal process, the candidate is notified about the results of the evaluation and has the right to file an appeal with the Administrative Court of Appeals on the decision about his/her evaluation. The judicial review of the case suspends the progress of the procedure for the promotion. That is why the timeline referring to the case that is mentioned in the report is conditioned by the progress of the judicial review.

## *9.2. Comments by AHC:*

AHC emphasizes that administrative processes for promotions of judges include interdependent administrative procedures that, according to the analysis of specific cases, results that they last from six months up to over two years. That is why AHC considers that there needs to be more in-depth analysis of the factors that lead to the encountered difficulties for a normal progress of these procedures for about six months, with the goal of creating the proper mechanisms for management, minimizing as much as possible any dragging out in this process. Thus, it is considered that factors that lead to slowing down in such procedures are the following: inter-connection with administrative procedures that require interaction with other institutions for: (1) verification of assets, (2) verification of data on the judge's integrity, (3) following up and awaiting results of complaints filed by the judges for guaranteeing their rights in respect of the evaluation procedures, (4) awaiting the results of the vetting process for candidates who are subjects of this process, etc.

## 10. Findings in the draft report of AHC

AHC has highlighted that the complaints administered within the legal deadline at the Inspectorate of the High Judicial Council, High Judicial Council, the General Prosecutor, and the Ministry of Justice, should continue to be addressed by the HJI because, based on the principle of institutional continuity, the surpassing of reasonable time for addressing the complaint was a result of the responsibility of institutions (*Article 283, paragraph 9 and paragraph 11 of Law no. 115/2016*).

In AHC's assessment, in respect of the principle of continuity of jurisdiction of the new justice institutions, it is the responsibility of the HJI and the HJC to conduct disciplinary proceedings on magistrates and resolve carryover cases, according to article 117 of Law no. 115/2016. Therefore, AHC suggests to the HJC to review through the "*Temporary commission for the review of archived complaints of the HJI*" every practice of the HJI for closing down disciplinary proceedings on carryover cases, which were on a waiting list as a result of the reforming of the institutions. This position is important for evidencing the practice being created based on the negative precedent, the HJC has made some decisions to accept the HJI request to close down disciplinary proceedings due to the expiry of the statute of limitations on the causes of the alleged violation.<sup>104</sup>

#### *10.1. Comments by the HJC:*

It is worth emphasizing that the Commission for the Review of Complaints against decisions of the HJI to archive or drop investigation on a judge, in any case, its decision-making is based on the legal provisions as follows: Article 18 of the Regulations of the Temporary Commission establishes that: "*The boundaries for the review of the complaint are within the subject and causes presented therein.*" Meanwhile, article 26 of the same Regulations, in keeping with the provisions of article 62, paragraph 13, of Law 115/2016, envisage that: "*At the conclusion of the review of the complaint, the Commission decides: a) to refuse the complaint as unfounded; b) to invalidate the decision of the High Justice Inspector and, depending on the case, ordering the High Justice Inspector to verify the archived complaint or continue the investigation on a judge.*" Based on this review case, it is considered that: In reference to legal provisions in article 122 and 123 of Law no. 96/2016, upon verification of the complaint, the HJI may only proceed in one of these two ways: a) decide to start disciplinary investigation on the judge, or b) archive the request. One of the conditions that needs to be met at the moment when the decision is made "On the start of the disciplinary investigation on the judge" is that of the lack of the expiry of the statute of limitations of the disciplinary violation, a condition envisaged in article 117 of law no. 96/2016, according to which, disciplinary proceeding's statute of limitations expires within five years. The expiry deadline begins from the moment when the alleged violation is committed. Although article 123 of law no. 96/2016 does not envisage expressly the stop to the start of disciplinary proceedings due to the expiry of the statute of limitations, this conclusion is reached based on the interpretation of the two provisions of the law as follows:

-Article 123, paragraph 1, of law no. 96/2016 which envisages: "*The High Justice Inspector begins the investigation if there is reasonable suspicion that the violation may have been committed, based on the collected facts and evidence, which justify the start of the investigation.*"

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<sup>104</sup> Decision of the HJC no.717, dated 06.12.2023 on the assignment of the rapporteur and the hearing session for the disciplinary proceedings on the magistrate; Decision of the HJC no. 702/2023, "On the invalidation of the decisions no. 304 dated 14.02.2013 and no. 354 dated 19.07.2013 of the former High Council of Justice."



- Article 134 of law no. 96/2016, which envisages: *“The High Justice Inspector closes down the investigation, if it is proven that the claims are unfounded or the collected evidence and results of the investigation lead toward the conclusion that: a) the evidence is insufficient to prove the commission of the disciplinary violation; b) the case has been a subject of previous investigation that has been closed down or for which there has been a final decision, in the context of the disciplinary proceedings; c) **the case’s statute of limitations has expired at the time when the investigation has been, due to the expiration;** ç) the magistrate’s status has concluded, based on the envisaged criteria, in letters “b” and “ç”, of paragraph 1, article 64, of this law or the magistrate does not exercise his/her functions in a permanent manner, according to the provisions of article 67 of this law; d) the magistrate has passed away.”*

The lack of the possibility for the disciplinary violation’s statute of limitations to expire should exist not only at the moment of the submission of the complaint, but also at the moment until the HJI makes a decision to start the disciplinary investigation. Due to the legal inability to continue the verification until the start of the disciplinary investigation, as long as the facts presented by the petitioner have to do with events that took place beyond the five-year period of the expiry of the statute of limitations, it is right that the complaint is archived. This is the case in which the expiry of the statute of limitations extinguishes the right of the disciplinary body to administratively investigate the disciplinary violation claimed to have been committed by the magistrate because a certain time has passed since the time when the disciplinary violation was committed.

#### *10.2. Comments by AHC:*

AHC considers that, in respect of the principle of legal certainty and the principle of institutional continuity, the practice of closing down disciplinary proceedings on carryover cases, initiated by the previous justice institutions (HCJ and MoJ), should be avoided. Article 134 of the law no. 96/2016 envisages that: “The High Justice Inspector closes down the investigation if it is proven that the claims are unfounded or if the collected evidence and the results of the investigation lead toward the conclusion that: ...**c) the case’s statute of limitations has expired at the time when the investigation began, due to timeline...**”. This article is implemented in a normal situation, when the case’s statute of limitations has expired at the moment of the investigation started by the previous justice institutions (namely the Ministry of Justice and the High Council of Justice). As long as carryover proceedings have not had any reasons for the expiry of the statute of limitations at the time of their review by the old justice institutions, article 134 of law 96/2016 may not be applied for objective causes that are linked with extraordinary situations due to profound institutional reforms that led to the creation of new institutions of the HJI and the HJC. In the circumstances when the causes for the delays are not linked directly with the carryover disciplinary proceedings, but are the institutional responsibility of the new justice institutions in respect of the principle of institutional continuity, there is no room for the application of article 134 to justify the archiving of the carryover proceedings with the argument that the causes for the violation have

expired. In this regard, to correct this practice, it is recommended to the HJC to review upon its own initiative every archived practice, according to article 99 of law no. 115/96 “On the governance of the governing institutions of justice,” with the purpose of considering the annulment, amendment, and completion of HJI decisions to close down disciplinary proceedings, according to the requests that were on the waiting list due to the reforming of the institutions.

## **B. Regarding the findings on the activity of the HJI**

### *1. Findings of AHC in the report*

AHC notes that for disciplinary proceedings carried over from the previous justice institutions (*High Council of Justice* and the *Ministry of Justice*), the HJI has followed as a practice the archiving of requests or the closing down of proceedings, arguing that the causes for the violations’ statute of limitations have expired, according to the previous law. AHC considers that this practice is not just as, in respect of the principle of institutional continuity, surpassing the reasonable time for the received complaint was the result of the responsibility of the institutions and not because of the petitioners.<sup>105</sup>

#### *1.1. Comments by HJI*

This notice by AHC is unfounded as the HJI, upon receiving the practices carried over from the previous institutions competent for the investigation and disciplinary proceeding of magistrates, transferred from the HCJ, MoJ, and the HPC, conducted a process of categorization. This process aimed precisely at evaluating each received practice’s phase and procedural status. With the human resources it had at the time, HJI categorized each practice according to a priority order whereby, among others, it established the criterion of chronology of when the request was registered, the procedural phase where the practice was at the time, and other criteria that would help conclude the review of the complaints.

The HJI inherited a high number of 2104 complaints, at different procedural phases, which even according to the transitory provisions of law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended, concretely article 170 thereof, should have been finalized by the previous disciplinary bodies themselves. Not only was the HJI transferred initiated practices, but not the same standard was applied, with regard to human resources, especially inspectors, as requested by the provisions made in article 168, paragraph 3, of law no. 96/2016. The competent bodies’ follow-up and implementation of these provisions would guarantee the passage of the processes of work and, further on, ensure institutional continuity, for the 2104 carryover practices.

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<sup>105</sup> Neni 283, pika 9 dhe pika 11 e Ligji nr.115/2016 “Për organet e qeverisjes së sistemit të drejtësisë”

The phrasing “*The HJI followed as a practice the archiving of requests or closing down of the proceedings, arguing that the violations’ statute of limitations have expired, according to the previous law,*” not only is not correct in terms of the usage of terms, but it appears to be prejudicial because the criteria and procedures for the admissibility or not of complaints are envisaged in articles 120-122 of law no. 96/2016, and archiving is applied when, after initial review, or after verification in accordance with the legal criteria for this purpose, there are no sufficient facts to justify the start of an investigation. Thus, the complaint is archived. From the unconcluded practices that were submitted to the HJC for the period 2020-2023, 26 investigations were undertaken, of which there were proposals for 11 disciplinary proceedings at the HJC. If the AHC has found such practices, please highlight the concrete cases.

Law no. 115/2016 “On the governing bodies of the justice system,” amended, has envisaged also the complaint tool against HJI decision-making, for archival and closing down of investigations. These decisions, from the start of the activity of the HJI, have not been challenged in any case, in other words, have not been sent back for review by the standing commissions in the Councils for the review of complaints against decisions to archive and close down the investigation by the HJI. Referring to the above, this paragraph and the conclusions reached in it, should be revised based on the above comments.

## *1.2. Comments by AHC*

AHC refers precisely to the cases when, for the review of complaints carried over from the HCJ and the General Prosecution Office, or the Ministry of Justice, the HJI decided to archive or close down the investigation, arguing that for these cases, the statute of limitations had expired, the subject of disciplinary proceedings, due to the time of over five years that passed by for their review as a result of the reforms of the new institutions. One such instance has been analyzed in this report.<sup>106</sup> With regard to these cases, AHC shares a different assessment and it suggests to the HJI to change its legal arguments in order to continue the review of carryover cases by not calculating the deadlines that the HJI needed due to the constitutional judicial reform. This is so because the reforming of new institutions may not represent a legal cause that obstructs the institutional continuity for the review of carryover cases.

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<sup>106</sup> For instance, Decision of the HJC no. 723, dated 07.12.2023, “On the closing of the disciplinary proceeding initiated toward magistrate {...}, serving as judge at the first instance court of general jurisdiction in Durrës.”

## *2. Findings in the AHC report*

It is necessary to develop the most effective inter-institutional coordination possible between the HJI and the HJC, for the management of the dragging out of plenary sessions on disciplinary proceedings, due to the repeated absence of the judge who is the subject of such proceedings. Such coordination should have in focus also the integration of data on disciplinary proceedings.<sup>107</sup> To that end, AHC considers that the HJC should publish process-verbals and administrative acts on disciplinary proceedings in a rubric dedicated to disciplinary proceedings, in order for the website users to be as oriented as possible for finding information. In order to ensure the integrated management of data on the disciplinary proceedings of judges, the HJI is encouraged to create on its official website a register with data on the handling of complaints and administrative disciplinary investigations.

### *2.1. Comments by the HJI*

The office of the High Justice Inspector, from its creation as a new institution that built everything from the start, including the internet website, has paid special attention to broadcasting to the public its activity, not only in the context of obligations for transparency, but as an institutional objective to present every information related to its activity, in a simplified and sensitizing manner, as part of the legal education that the HJI needed to do from day one, precisely because it was a brand new institution. In a systematic manner, the internet website reflects information on the functioning and constitutional role of the High Justice Inspector, through simplified forms of communication, sharing data in graphic, audio-visual, narrative (news-like) and statistical ways. Statistical information is complete, easily accessible, and is updated every Monday with the data processed after each week of work, thus: 1- with the number of administered complaints, 2- those reviewed, 3- those in the process of review, 4- complaints in the process of verification after initial review, 5- number of realized investigations, and 6- number of requests for proceedings. These data comprise the activity of the HJI from the day it began to function. Not only during 2023, but even during the period when the HJI has exercised its functions, there was no request, complaint or claim, regarding the presentation of information on statistics, or the ease of searching information on the website. The creation of a register on this matter is viewed as unnecessary. Where is the lack of transparency in this case?

### *2.2. Response of AHC to the HJI comments*

In this finding, AHC encourages the HJI that besides the publication of statistics, it also fulfills the creation of a register on requests and cases that move on for disciplinary investigation, up to the

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<sup>107</sup> Data respecting the criteria for disciplinary proceedings by category such as, reservations, suspensions, dismissals (articles 100-116 of the law on status)

moment of the HJI coming out with a decision on how they are to be resolved. These data are important in terms of guarantees for the management of disciplinary processes, especially with regard to the most normal possible timeline, based also on the requirements of procedural justice for this procedure. Disciplinary proceedings begin at the institution of the HJI and then proceeds at a plenary meeting of the HJC. AHC considers that it is necessary to reflect data on the subject and nature of complaints up to the encountered violations in cases of decisions to issue disciplinary measures on the magistrate. For this, both institutions are encouraged to coordinate among themselves in order to enable continued monitoring of hearing sessions to highlight causes for their postponement. For this, AHC has recommended not only a cooperation agreement between the two institutions, but also management of statistical data on these hearing sessions, which should be published respectively for each phase, in order to enable access to data on the timeline, nature of violations, and the reasoning of the decisions. This recommendation is a shared one for both institutions and the HJC accepted it and expressed its will to publish data on disciplinary proceedings in the future in a rubric dedicated exclusively to these proceedings. In the same spirit, the institution of the HJI is encouraged to publish in a special register data on disciplinary investigations. **AHC views as necessary the need for coordination of measures between the two institutions, for access to data on the nature and subject of disciplinary investigations and plenary sessions of the HJC, for the improvement of transparency from the standpoint of respect for the standard of due legal process. Furthermore, they help with transparency before the public and the creation of public trust in the justice institutions.**

### *3. Findings in the AHC report*

Lastly, the institution of the HJI, though faced with the administration of 2340 complaints, including those carried over from the previous year, the volume of work covered by this institution for 18 disciplinary proceedings does not fulfill, in AHC's assessment, the standards of accountability and responsibility of the judiciary. We base this conclusion also on the comparison of the average volume of the caseload of judges during one year, which according to the report of the HJC for 2023, reaches 841 cases per judge.<sup>108</sup>

#### *3.1. Commends by the HJI*

Regarding the evaluation of the AHC on the low number of investigations during 2023 when compared to the number of complaints, we recall that it is essential to understand clearly that a disciplinary investigation begins after reasonable suspicions that the claimed violation may have been committed. It is precisely the accurate qualification of facts and actions that are the cause for a disciplinary investigation is the difference between denounced complaints/information that are

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<sup>108</sup> See annual report of the HJC, page 93.

archived and those that are investigated. The investigation of disciplinary violations by magistrates moves in parallel with respect for the independence of magistrates, as a balance that gives value to the rule of law.

The conducted disciplinary investigation did not have as a goal the investigation of a high number of magistrates, but the review of the legitimate interests of the complainer and the magistrate on which there was an investigation, judging in a proportional manner by documenting all evidence and presented testimonies on one hand and by respecting the rights of the magistrate that is the subject of the investigation on the other hand. For each investigated case, the High Justice Inspector has conducted the review of documentation, which depending on the case has its own volume, has evaluated testimonies and has clarified circumstances that led to the start of the investigation, so that the conclusions of investigative actions may be complete and incontestable.

The standards of the EU and the ECtHR require objective, impartial investigation according to due legal process, with proposals attributed to the conduct of the magistrate during the exercise of his/her duties and outside it, in accordance with established standards and not necessarily a high number of investigations to create a statistical effect.

Due to the interconnection between them, AHC comments on this point shall be integrated into the comments on the following finding at item no. 4.

#### *4. Findings in the AHC report*

Some of the key priorities that the HJC has established in its strategic documents, such as: annual performance reports for 2023, the strategic plan for 2022-2024, as well as the reports of standing committees for 2023, which are at the focus of AHC's monitoring, are as follows:

##### *a) Promotion and disciplinary responsibility of judges*

Although filling the vacancies in the courts has been the main objective of the HJC through the promotion of judges through parallel appointments, promotions, or secondments, it results that disciplinary proceedings have not had the same trend. Thus, it was found that the HJI and the HJC did not have sufficient productivity in guaranteeing the accountability of judges given that the total number of complaints for disciplinary procedures administered by the HJI is considerably disproportionate vis-à-vis disciplinary proceedings concluded with a request for initiation (of proceedings) at the HJC.

##### *4.1. Comments by the HJI*

**Comment page**, “Regarding the phrasing “it was found that the HJI and the HJC did not have sufficient productivity in guaranteeing the accountability of judges given that the total number of complaints for disciplinary procedures administered by the HJI is considerably disproportionate vis-à-vis disciplinary proceedings concluded with a request for initiation (of proceedings) at the HJC.”

The analysis made by the AHC is wrong because for every submitted disciplinary proceeding, the number of complaints that gave rise to the proceedings should have been seen, but not the total number of all complaints, which for the overwhelming part, are not based on the criteria stipulated by the law for admitting them. For instance, for a disciplinary proceeding that is presently at the HJC, there have been a total of 11 complaints by different subjects. Therefore, this analysis should be change in order to analyze in a qualitative manner the ratio of complaints that are founded and have given rise to the investigation and then the proceedings, and therefore the issuance of accurate and founded conclusions.

The High Justice Inspector, in the standards established for disciplinary investigations and proceedings, for every raised claim, analyzes and proves the facts that are attributed to the behavior of the magistrate. It is a fact that all these standards have been left in force when the measures proposed and accepted by the HJC have been subjected to adjudication by the Special Appeals College to the Constitutional Court.

#### *4.2. Comments by AHC*

The primary goal of the constitutional judicial reform has been precisely to break the myth of impunity toward magistrates, which also created the need for a profound institutional reform of the justice institutions, for the creation of special institutions for the disciplinary investigation of magistrates. The results achieved by the HJI toward the investigation of cases are an insufficient quantitative indicator toward the materialization of the shared institutional responsibility with the HJC and HPC to enable the most coherent and effective investigation possible of magistrates, compared to the former justice institutions such as the HCJ, MoJ and the GPO. AHC reaches this conclusion taking into consideration a number of factors, such as the complaints of citizens about dragging out judicial processes, unjustified delays in publishing the arguments of reasoned judicial decisions, the results of the vetting process whereby about half of the judges and prosecutors were found with problems, mainly in terms of assets, but also vis-à-vis the criterion of proficiency, as well as the previous conduct of disciplinary proceedings by former justice institutions that were responsible at the time.

AHC wishes to emphasize that the disciplinary responsibility of magistrates, according to the new legislation, should not aim at kicking them out, if the violations are not serious, but at implementing proportional measures with a deterring effect that help strengthen their careers,

accountability, professionalism, and the public service they should provide citizens in a responsible manner.

## *5. Findings of AHC*

Based on the analysis of the selected acts, AHC notes with concern a consolidated practice of the HJC and the HJI to close down disciplinary proceedings due to the expiry of the statute of limitations, when the case was initiated by the Ministry of Justice, in reference to the previous law. Thus, according to one case<sup>109</sup> of disciplinary proceeding toward a magistrate in 2012, the Ministry of Justice had proposed the disciplinary measure “dismissal from duty” before the High Council of Justice;<sup>110</sup> it results that this case was concluded in 2023, after 11 years, because the statute of limitations on the disciplinary violations had expired.<sup>111</sup> During the period of eleven years, the following actions were undertaken to address this case:

- Suspension of the request of the Minister of Justice until the conclusion of the review;<sup>112</sup>
- Sending the case for competence to the HJI;<sup>113</sup>
- Sending the case for competence to the HJC to verify whether the causes for the suspension have ceased to exist;<sup>114</sup>
- Decision of the HJC to complete the conditions for the cease of the causes of suspension to exist;<sup>115</sup>
- Assigning a rapporteur and the hearing session by the HJC;
- Request by the HJI to conclude the disciplinary proceeding due to the expiry of the statute of limitations of the violations.

From this case, it is worth highlighting that the HJIC has now created a consolidated practice of analogous cases, deciding to archive requests or close down proceedings. AHC considers that this practice is not just, referring to cases for the closing down of disciplinary proceedings carried over

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<sup>109</sup> Decision of the HJC, no. 723, dated 07.12.2023, “On closing the disciplinary proceeding initiated toward magistrate {...}, serving as a judge at the first instance court of general jurisdiction in Durrës ”

<sup>110</sup> By letters no. 4281/3 prot., dated 01.10.2012 and nr. 6127/17, dated 26.10.2012

<sup>111</sup> Based on articles 147,147/a, of the Constitution of the Republic of Albania, articles 117, 139 and 172 of Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended, articles 86, letter “e”, articles 97, 98 and 100 of Law no. 115/2016 “On the governing bodies of the justice system,” amended, and on article 104 of the Administrative Procedure Code of the Republic of Albania.

<sup>112</sup> Upon request of the MoJ no. 486 prot., dated 23.01.2013, as well as based on request no. 486/1 prot., dated 10.07.2013

<sup>113</sup> By letter no. 3696/1 prot., dated 30.06.2023

<sup>114</sup> By letter no. 2170/1 prot., dated 28.07.2023, protocolled in the Council no. 3696/2 prot., dated 31.07.2023,

<sup>115</sup> High Judicial Council, by decision no. 702 dated 30.11.2023 decided: “1. Invalidation of decisions no. 304 dated 14.02.2013 and no. 354 19.07.2013 of the High Council of Justice “On the suspension of the disciplinary proceedings until the conclusion of the judicial review in the higher instance courts.”



from the previous justice institutions (*High Council of Justice* and the *Ministry of Justice*). According to the HJI, this practice is justified because the statute of limitations causes of the violations has expired, which they occurred when law no. 9877, dated 18.02.2008 “On the organization of the judicial power in the Republic of Albania” was in force.<sup>116</sup>

### *5.1. Comments by the HJI*

**Comment page 29**, rubric “7. Disciplinary procedures toward judges,” paragraphs five and six, regarding the closing of disciplinary proceedings because of the expiry of the statute of limitations, when the case has been initiated by the Ministry of Justice in 2012. HJI has become aware of these proceedings and the fact of the suspension of the proceedings by the MoJ, from a communication with the HJC in June 2023, asking the HJC for the conduct of a process on verifying the existence or the ceasing to exist of the cause of the suspension. Following the reasoning by the HJC on the ceasing to exist of the cause for the suspension, which had to do with the conclusion of the review of the case in the higher instance courts, the HJC decided to invalidate the HJC decision on the suspension and to continue the proceedings, notifying the HJI on this. Based on an analysis of the provisions of the applicable law when the claimed violations took place, on disciplinary violations committed by magistrates, law no. 9877, of 18.02.2008 “On the organization of the judicial power in the Republic of Albania” was in force; article 34, paragraph 2 of it envisaged that: “The start of the disciplinary proceedings may be done no later than one year from the date when the violation was stated by body that has the right to start this proceeding, but no later than 5 years from the date when the violation was committed.” The HJI concluded to close down the proceedings as the violation’s statute of limitations had expired. The expiry of the statute of limitations of the disciplinary proceedings of the magistrate was envisaged in article 34, paragraph 2, of law no. 9877, dated 18.2.2008 “On the organization of the judicial power in the Republic of Albania,” which stipulated that the start of the disciplinary proceedings may be done no later than five years from the date when the violation was committed. The same principle that is linked with the expiry of the statute of limitations on the disciplinary proceedings on the judge in terms of legal certainty, is also envisaged in law no. 96/2016. Referring to article 117 of this law, “The statute of limitations expires within five years and the deadline for the expiry begins from the moment when the claimed violation took place.” Furthermore, this provision envisages also the case that when the High Justice Inspector obtains data after five years from the time when the claimed violation occurred, he/she does not start an investigation due to the expiry of the statute of limitations.

Law no. 9877, dated 18.02.2008 “On the organization of the judicial power in the Republic of Albania,” amended, there is no analogous provision as that of article 126 of law no. 96/2016 “On

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<sup>116</sup> At the time when the claimed violations took place, for disciplinary violations committed by magistrates, law no. 9877, dated 18.02.2008 “On the organization of the judicial power in the Republic of Albania” was in force and it stipulated in article 34, paragraph 2, “The start of the disciplinary proceedings may be done no later than one year from when the violation was stated by the body that has the right to start this proceeding, but no later than five years from the date when the violation was committed.”

the status of judges and prosecutors in the Republic of Albania,” amended, which envisages in paragraph 5 that: “The suspension of investigations interrupts the deadlines for the expiry of the statute of limitations envisaged by article 117 of this law, for the High Justice Inspector.”

Per the above, it results that the claimed violations for which the disciplinary proceedings on the magistrate began, and which have to do with judicial decisions for 2009 and 2012, have their statute of limitations expired. The expiry of the statute of limitations eliminates the right of the disciplinary body to investigate and issue decisions on disciplinary measures for the magistrate because a long time has passed since the commission of the disciplinary violation, a deadline calculated from the moment when the claimed violation was committed. Respecting the deadline envisaged for the conduct of disciplinary proceedings is a function of guaranteeing the principle of legal certainty.

## *5.2. Comments by AHC*

AHC has highlighted this practice also in other reports, on issues for which it has also pursued the legal route of complaints, after initially filing complaints with the HJC. AHC reiterates its independent opinion that complaints administered within the legal deadline at the former inspectorate of the High Council of Justice, the former High Council of Justice, the General Prosecutor, and the Ministry of Justice, should have continued to be addressed by the HJI, because based on the principle of institutional continuity, the surpassing of the reasonable time for addressing the complaint came as a result of the responsibility of institutions (*Article 283, paragraph 9 and paragraph 11 of law no. 115/2016*). In AHC’s assessment, in respect of the principle of continuity of the jurisdiction of the new justice institutions, the HJI and the HJC are responsible for disciplinary proceedings on magistrates and for resolving carryover cases, according to article 117 of law no. Nr.115/2016.

## *6. Findings in the AHC report*

During this year, all presented requests have been in the review phase by the Council. According to the report on the strategic plan, the reason for the slow pace of addressing complaints is the lack of the staff of 11 inspectors in this institution. In any case, AHC considers that besides the fact that this institution currently exercises its activity with limited human resources, on the other hand, it pursues a modest number of procedures that are finalized with the start of investigations of disciplinary measures, precisely 18 such for 2023. Although the institution administers 2349 complaints, including those carried over from previous years, the volume of work that the HJI covers for 18 disciplinary proceedings is far from expectations, if we compare it for instance with the average caseload or volume of judges during one year, which for 2023 was at 841 cases per judge.

**Finding:** During 2023, the HJI appears to have addressed 2340 complaints, of which 1268 are complaints submitted to the HJI and 1072 are complaints from the backlog (*carried over from before the creation of the HJI*). After the review of complaints, the HJI approved 1631 decisions, of which:

- 1061 decisions to archive upon initial review of 1616 complaints;
- 552 decisions to archive upon verification of 707 complaints;
- 16 decisions for disciplinary investigations upon review of 17 complaints;
- 2 decisions for disciplinary investigations initiated with the initiative of the HJI.

#### *6.1. Comments by the HJI*

**Page 30**, on the low number of 18 investigations, regarding this comment, the low number of proceedings compared to the high number of complaints is not an indicator; the main reason is presented in the arguments for paragraph three on page 9 of the AHC report. All bodies competent for disciplinary proceedings are led in their work by the principles sanctioned in article 100 of law no. 96/2016, specifying those claims that meet the legal conditions to justify an investigation. The high number of complaints is not an indicator of the number of investigations but of the high need to sensitize the public regarding the claims that bring a cause for disciplinary proceedings.

The same may be said of the conclusions that should emerge from the causes for archiving complaints that were not evaluated in this report. It is emphasized that the high number of complaints is not an indicator for investigations but how much they are founded on the criteria and procedures established in the law.

The drafters of the report did not take into consideration the analysis of the causes for the archiving, which is a result also of claims that:

- Claims that do not represent disciplinary violations;
- Action/inaction that are subject of control by higher instances of the judicial system;
- Subjects that are not within the scope of work of the HJI (chancellor/ judicial secretary/ judicial police officers/ lawyers/ bailiffs, experts, etc.);
- Magistrates dismissed by the vetting process and, therefore, there is no more subject for the review of claims;
- Magistrates who have retired or have resigned.

#### *Comments by AHC*

Regarding this comment by the HJI, AHC reiterates the same argument reflected in paragraph 4.2 of this report (part of this same annex).

## **7. Findings by AHC**

### *7.1. Comments by the HJI*

**Comment, page 31, rubric “...HJI is making constant efforts to reform internal work processes, in accordance with legal obligations, but also as a function of transparency of the activity. The processing of statistical information generates data updated at the start of every week on the number of complaints reviewed and those under review, conducted investigations, and the number of requests for disciplinary proceedings, and the publication of announcements on every decision for proceedings issued by the Councils. See clarification at “**Comment page 9**, “Disciplinary proceedings,” paragraph two, sentence four.”**

The legal obligation of the HJI is to notify the parties in process, according to every decision-making that is its competence, in the context of the review of complaints, disciplinary investigations and disciplinary proceedings, thus guaranteeing the principles of due process. The progress of the disciplinary investigation has a confidential character and is conducted appropriately, in a balanced and proportional manner, guaranteeing the protection of the integrity and standing of the magistrate against unfounded accusations.

However, as a function of continued improvement, the creation of a register will be kept in mind in the future.

Also, in the same place, regarding the phrasing “*The only documents that provide information are the annual performance reports and monthly newsletters, which do not provide sufficient statistical data.*” The concept of the evaluation does not stand as the annual report of the HJI is the most important document, which reflects the entire activity of the institution during one calendar year. The annual report is presented to the Assembly of Albania and is exhaustive in terms of information. Meanwhile, monthly newsletters convey, with protocol accuracy, every statistical data of work processes, from the review of the complaint to the request for disciplinary proceedings during one month of work. However, if in AHC’s assessment there are deficiencies, would it be possible to specify what data are missing from the annual report or the monthly newsletter, so that we keep it in mind?

### *7.2. Comments by AHC*

In order to guarantee the principle of due process, in the context of the review of complaints, the disciplinary investigation, and disciplinary proceedings, AHC reiterates the need for coordination

of statistical data by the two institutions, HJC and HJI, on publication on the official website of a register with respective data on procedures followed by each institution, within their scope of competence. AHC lauds the fact that both institutions, the HJC and the HJI, have expressed a clear will to enable the creation of relevant registers that would help with the transparency of statistical data on the disciplinary investigations and proceedings of magistrates. AHC considers that annual work reports as well as monthly newsletters are important documents that provide an introduction of the activity of the HJI through figures regarding the number of complaints, decisions, and the nature of violations. However, from the standpoint of a detailed analysis on transparency before the public as the holders of the right to file complaints as well as of the procedural aspects of the disciplinary investigation process, AHC considers that it is necessary to ensure additional data that would enable a quality analysis on the nature of issues presented to the HJI through complaints, the length (timeline) of the disciplinary proceedings, as well as the manner in which procedural rights of the parties are respected.

## *8. Findings in the AHC report*

AHC has highlighted that the complaints administered within the legal deadline at the Inspectorate of the High Council of Justice, the High Council of Justice, the General Prosecutor, and the Minister of Justice, should continue to be treated by the HJI because, based on the principle of institutional continuity, the surpassing of the reasonable time for addressing the complaint has come as a result of the responsibility of institutions (*Article 283, paragraph 9 and paragraph 11 of law no. 115/2016*). In AHC's assessment, in respect of the principle of the continuity of the jurisdiction of the new justice institutions, it is the responsibility of the HJI and the HJC to conduct disciplinary proceedings of magistrates and resolve carryover cases, according to article 117 of law no. 115/2016. Therefore, AHC suggests to the HJC to review through the "*Temporary commission for the review of complaints archived by the HJI*," every practice of the HJI for closing down disciplinary proceedings on carryover cases, which were on a waiting list due to the reform of institutions. This position is important for avoiding the practice that is being created based on the negative precedent; the HJC has made some decisions to accept the HJI request to close down the disciplinary proceeding due to the expiry of the statute of limitations of the causes of the claimed violation.<sup>117</sup>

### *8.1. Comments by the HJI*

**Comment page 43**, for the rubric "10.2. Comments by AHC," the first sentence, which notes the avoidance of the practice of closing down disciplinary proceedings on carryover cases.

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<sup>117</sup> Decision of the HJC no.717, dated 06.12.2023 on the assignment of the rapporteur and the hearing session for the disciplinary proceeding on the magistrate; Decision of the HJC no. 702/2023, "On the invalidation of decisions no. 304 dated 14.02.2013 and no. 354, dated 19.07.2013, of the former High Council of Justice."

Can we receive the cases that represent a practice, in AHC's assessment? Based on our data, there appears to be no closed practice, without being subjected to an analysis of the law, the status, and circumstances of the facts for the encountered violation and argued according to law, for each conducted investigation. In spite of this, the High Justice Inspector, in its notification for the complaining party on the decision to archive the complaint, informs him/her also on the right to complain, how and where to file a complaint against the decision, together with the deadline by which the complaint should be filed. We would like a concrete evidencing of the cases.

## *8.2. Comments by AHC*

Regarding this comment by the HJI, AHC reiterates the same argument, reflected in paragraph 5.2 of this report (part of this annex).