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ALBANIAN HELSINKI COMMITTEE

**FINALIZED
IN MARCH
2025**

REPORT

ON THE MONITORING OF THE HIGH PROSECUTORIAL COUNCIL AND THE HIGH JUSTICE INSPECTOR

FOR THE PERIOD JANUARY – DECEMBER 2023

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This report was drafted in the context of the initiative “Civil Society against corruption, from a local challenge to a European response,” supported financially by the European Union. The positions, opinions, findings, conclusions, and recommendations expressed in this report are the responsibility of the Albanian Helsinki Committee and are not considered to reflect the positions of the European Union.

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ABBREVIATIONS

<i>HPC</i>	<i>High Prosecutorial Council</i>
<i>HJC</i>	<i>High Judicial Council</i>
<i>HJI</i>	<i>High Justice Inspector</i>
<i>COUNCILS</i>	<i>High Judicial Council and High Prosecutorial Council</i>
<i>Special Court</i>	<i>First Instance Court against Corruption and Organized Crime</i> <i>First Instance Court against Corruption and Organized Crime/ Appeals Court against Corruption and Organized Crime</i>
<i>ECtHR</i>	<i>European Court for Human Rights</i>
<i>ECHR</i>	<i>European Convention for Human Rights</i>
<i>Law on Governance</i>	<i>Law no. 115/2016 “On the governing bodies of the justice system,” amended.</i>
<i>Law on Status</i>	<i>Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” amended.</i>

INTRODUCTION

This monitoring report, prepared by the Albanian Helsinki Committee (AHC), provides an analysis of the administrative acts issued during 2023 by the High Prosecutorial Council, regarding the career development of prosecutor magistrates, including disciplinary procedures initiated by the High Justice Inspector on these subjects. Pursuant to efforts to strengthen the rule of law and increase the independence of the judiciary and prosecution office, the actions and decisions made by these key justice institutions play a decisive role in shaping the career of judges and prosecutors and the protection of their status.

This report seeks to evaluate the compliance of these administrative acts with legal standards and their impact on the career meritocracy and professional growth of the magistrates. The goal of the report, through analyzing the selected acts is to highlight in a constructive manner, among others, some deficiencies in terms of recruitment, parallel movements, promotions, and transfers of prosecutors that may be reviewed and assessed in order to provide a career system for prosecutors, in harmony with the values of their transparency, predictability, and efficiency. In this regard, the purpose is to advocate positively with the monitored institutions and take concrete measures both in terms of needed legal improvements and in terms of the manner of efficient management and organization of legal procedures.

In all the proposed recommendations, AHC aims at assisting the justice institutions in order to help create a career system in the organization of the prosecution office that is as close as possible to citizens' expectations. In this regard, AHC has highlighted how important has been the impact of the vetting process and the implementation of the new judicial map on the activity of the justice system, which is currently faced with the creation of high vacancies in the judicial and prosecutorial systems.

In the context of the vetting process, which was realized in the first instance by the Independent Qualification Commission, from February 8, 2018, until October 31, 2024, it results that for magistrates who serve as prosecutors at different instances of the system, there were 166 decisions for confirmation, 115 decisions for dismissal, 26 decisions for interruption of the process, 1 decision to drop the process, 17 decisions to conclude the process without a final decision, and 2 decisions for suspension from office. Approximately, only 50% of prosecutors who underwent this process were able to pass it successfully, while the Special Appeals College, which carries out vetting in the second instance, continues the process of reviewing complaints filed by subjects or Public Commissioners, a competence that has now been passed to the head of the Special Anti-Corruption Structure, starting from January 1, 2025.

One difficulty with a direct impact has been the dissolution of courts in accordance with the new judicial map, which led to the reorganization of the prosecution office at judicial districts, namely from 22 such to 13 of them since May 2023, and a reorganization of the prosecution offices of appeals of general jurisdiction, from 6 to only 1 such from February 2023.

Besides the career development of prosecutors, AHC has aimed at monitoring also the level of accountability of the governing institutions of the justice system, based also on the findings

presented in the latest reports of the European Commission, which address a series of deficiencies and recommendations for further improvement of the rules and procedures for the appointment and career development of magistrates. In concrete terms, in its latest report from October 2024, which measures Albania's progress toward EU accession, the European Commission underscores that in general, the efficiency of the Councils in the appointment, promotion, transfer, and evaluation of magistrates is very low, which impacts the quality and efficiency of the judiciary at all levels. The European Commission underscores that the HPC has carried out only one evaluation from the start of justice reform in 2016, which is disturbing. The coordination between the two Councils is viewed as poor. Their coordination with the Ministry of Justice, the High Justice Inspector (HJI) and other judicial institutions on key judicial policies and their systemic follow-up to operational conclusions also remains weak.¹

It is worth emphasizing that every finding in this report is based on the collection of data available on the official websites of the institutions, such as normative by-laws, decisions, regulations, collective and individual administrative acts, written and audio process-verbals, announcements of plenary meetings of the High Prosecutorial Council and the High Justice Inspector.

As a monitoring and independent organization, AHC hopes that the problems stated through this report and the concrete recommendations to address them by the responsible institutions will encourage the promotion of accountability of the justice institutions and support for the highest possible standards of integrity and professionalism. The major goal is to provide as constructive recommendations as possible that help toward implementing the most impactful reform possible in the justice system in Albania.

At the round table on November 25, 2024, AHC promoted a 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 report, in its draft version. Also, in the context of constructive debate, the institutions monitored in this report were given the opportunity to provide their comments and suggestions, which, in respect of the principle of independence and transparency of AHC, have become part of this report, where deemed as fair.

¹ For more, please see: https://neighbourhood-enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf, see p. 29

EXECUTIVE SUMMARY

As emphasized in the latest European Commission for Albania for 2024, AHC considers that it is necessary to increase the efficacy of the Councils for the appointment, improvement, transfer, and evaluation of magistrates, which affects the quality of the judiciary/prosecution office and their efficiency at all levels.

Preliminary data of the vetting process point to a high number of prosecutors who were dismissed, resigned, or for whom the vetting process was interrupted for reasons/causes envisaged by law, precisely about 50% of them.

During the monitored period, the majority of the decision-making of the Council has to do with the approval of individual administrative acts; notable here are mainly the acts that have to do with: appointments in office, approval of reports on the verification of assets and integrity of candidates to be accepted into the initial training program of the School of Magistrates, for academic year 2023-2024; as well as assignments to office through the procedure of parallel movements. The dynamism and activism of the Council to respond to the needs of the prosecutorial system with all the mechanisms and legal tools envisaged in the law on the status of judges and prosecutors, in our opinion needs to be raised and strengthened considerably.

Data in the field that AHC has collected from some of the visits conducted in the prosecution offices of general jurisdiction indicate that still, six years from the functioning of the new governing institutions of the justice system, the system is still in “abnormal” working conditions. The increase of quotas for admission into the School of Magistrates is only one of the solutions being realized in practice year after year. Nevertheless, in spite of the alleviating effects that this solution has had on reducing the judicial backlog, in the sense of standards of justice and especially those of due legal process, this should not be viewed as the only solution.

Furthermore, we consider that there is a need for the Council to approve the appropriate mechanisms that strengthen the internal integrity of its members and prevent potential cases of conflict of interest or influences that may be perceived as corporatist. Regarding these issues, it is necessary to further improve the instruments of transparency before the public and to approve without delay the entire regulatory framework of by-laws for internal procedures for the functioning of the Council, assignments, prevention of conflict of interest, collection and processing of statistics from the prosecutorial system, etc.

Another very important element to be highlighted in terms of the transparency and accountability of the HPC vis-à-vis the public is the lack of reasoning and lack of accompanying published decisions with the relevant reports on which their issuance was based. With regard to the reasoning

of the individual administrative acts of the Council, this is an obligation that derives from article 19/2 of the Law on Governance. On the other hand, AHC positively views the fact that the HPC has guaranteed good transparency of its plenary sessions through the publication of audio recordings and transcribed process-verbals.

Pursuant to the fulfilment of legal obligations to approve regulatory by-laws, we notice that the HPC (during the period covered by this report) has approved only seven regulations from the entirety of acts that it needs to approve. In this context, AHC views HPC's activity as having low dynamism, which does not fully respond to the principles of the rule of law (effective implementation of legislation) and the expectations of the public. As mentioned in the monitoring report for 2022, with regard to the Justice Cross-Sector Strategy, the lack of by-laws creates risks for the implementation of legal provisions based on different interpretations. With regard to the contents of approved acts, AHC judges that the Council should review, to the extent possible, the relevant regulations, ensuring that these provide clarity in terms of the envisaged criteria and procedures, thus avoiding any room that may create premises for subjectivism and abuse, even to the detriment of due legal process.

An important concern is also the lack of ethical and professional evaluations of prosecutors, depriving the latter of the opportunity to advance in their careers on the basis of their professional capabilities and ethics, and weakening the objective of professionalism of the judiciary, which is aimed through its governance by the Council. Rightfully, the High Court has judged that ethical and professional evaluation, on one hand, serves to improve the professional ethics and capabilities of magistrates and, on the other hand, serves to make the differentiation between magistrates in order to avoid the subjectivity of the bodies whose competence it is to develop the career of the magistrate. In this context, AHC considers that the HPC should carry out on time and without dragging out the ethical and professional evaluation of prosecutors.

On the other hand, with regard to the oversight and inspection activity, the High Justice Inspector, in spite of the lack of human resources, has had the opportunity to play a higher role in the justice system through the conduct of other thematic and institutional inspections, besides the inspections that the law requires to be conducted in a periodical manner. In order to increase HJI's impact, AHC has considered that the Councils too should be more proactive, by being the ones to initiate requests for inspections.

Issues are also noticed in terms of the appointment, transfer through parallel movements, and promotions of prosecutors. For the purpose of economy of time, the appointments of prosecutors conducted during the period under monitoring were conducted in groups, although the law does not recognize such a practice. Although this does not produce any legal effect or consequence, it is important that the Council does not create such extra-legal practices or precedents.

Parallel movements (appointments), as one of the mechanisms for the development of the magistrate's career, should be done in accordance with the Law on the Status. In this regard, AHC considers that added attention should be demonstrated also regarding the transfer of prosecutors to prosecution offices where family members of theirs carry out their duties. Although we may not be facing circumstantial incompatibility, in public, the perception may be created about the existence of a conflict of interest and the lack of meritocracy, thus undermining the efforts for

increasing public's trust in the justice institutions, as one of the leading reasons for carrying out justice reform.

A concern that has been repeated also in European Commission reports on Albania has to do with the promotion of the candidate holding the position of head of one of the prosecution offices of general jurisdiction, while that individual appears to still be undergoing the vetting process. A similar precedent with elements that weaken public trust in the justice system was the one that led to the interruption of the mandate, though a function elected by the Assembly, of the former head of the HPC, for whom the Special Appeals College interrupted the vetting process in May 2024. Stemming from this precedent, for AHC, it is disturbing that the Council makes decisions to promote prosecutors without waiting for the vetting process to have run its full course. As a result, AHC considers that it is necessary to strengthen the internal ethical integrity of every member of the Council, so as not to create reasonable perceptions of elements of corporatism in the activity of the HPC in the eyes of an impartial public observer.

Given that disciplinary proceedings during 2023 were very scarce, AHC notices that the governing bodies of the prosecutorial system, namely the HPC and HJI, need to intensify their activity, which would enable the preservation of a fair balance between guaranteeing the independence, professionalism, and meritocracy of prosecutors and the mechanisms that guarantee their accountability. To date, accountability and responsibility in the judicial and prosecutorial systems has been realized through the activity of the vetting bodies, which have been tasked with the process of transitory re-evaluation. Nevertheless, as a transitory and extraordinary process, vetting may not replace the mechanisms in force for disciplinary responsibility, such as the HJI and the Councils, which have a permanent and not temporary nature in the justice system.

METHODOLOGY

In order to achieve the objectives of this study, a series of techniques were combined for the collection, processing, and analysis of data in a quantitative and qualitative manner.

The report analyses the legal framework in force, with regard to the organization and functioning of the governing bodies of the justice system, in particular with respect to the dynamics of the conduct of meetings of the High Prosecutorial Council (HPC), transparency on its official website, by-laws, appointments and promotions, as well as the disciplinary procedures initiated toward prosecutors. In this spirit, we also applied the comparative method, which aims at highlighting the problems deriving from the existing practice, while keeping in mind legislation in force, as well as the manner in which this legislation, in AHC's assessment, should be implemented, in the spirit of justice reform.

AHC remains engaged to ensure that its research studies are carried out according to the highest standards of professional ethics and, where possible, the principles of scientific research. In this context, in the course of this research study, AHC took care to carry out a research in a way that shows responsibility and quality, in keeping with the best research practices.

This research relies on the principle of impartiality, oriented toward constructive critique. Fairness in the development and communication of data is restricted to the entirety of information reviewed below.

Analysis of acts of the HPC was realized in accordance with:

Law no. 76/2016 *"On some additions and amendments in law no. 8417, dated 21.10.1998, 'Constitution of the Republic of Albania,' amended*

Law no. 115/2016 *"On the governing bodies of the justice system," amended*

Law no. 96/2016 *"On the status of judges and prosecutors in the Republic of Albania," amended*

Law no. 95/2016 *"On the organization and functioning of the institutions for fighting corruption and organized crime," amended*

Law no. 97/2016 *"On the organization and functioning of the prosecution office in the Republic of Albania," amended.*

As was emphasized in the introductory part of this report, in the context of constructive cooperation, the institutions monitored in this report, HPC and HJI, were given the opportunity to consult and provide their feedback and suggestions in writing. In respect of the independence and transparency of AHC, consultation with these institutions was made part of this report, where deemed right and reasonable.

1. PRIORITIES

By decision no. 317, dated 29.12.2020, the HPC approved its Strategic Plan for the period 2021 - 2024.² The plan serves as a roadmap for the priorities of the Council's activity. Its strategic objectives are ensuring independence, accountability, transparency, efficiency in administering the prosecutorial system in the Republic of Albania, as a function of improving the performance of the criminal justice system and increasing public trust in the system.

With the purpose of reporting progress achieved in the implementation of its Strategic Plan, the Council established a responsible structure and the periodicity of the evaluation toward the implementation of this plan. Nevertheless, based on research on the official website of the Council, it is not possible to identify whether this body monitored the implementation of the strategic plan as established. This is the case as the progress report on the periodical evaluation is not public. As a function of increasing transparency, but also accountability before the public, it is suggested that at least the annual progress report for the implementation of the Strategic Plan is made public and accessible for everyone.

Referring to the action plan, the Council envisaged 21 activities, part of which is also the drafting and approval of some regulatory acts. As long as their implementation or not, at least from a formal standpoint, is easily measurable, we are referring to this category of activities to assess in appearance the level of implementation of the action plan. This is the case due to the fact that the analysis of the Strategic Plan and the action plan do not represent in essence the purpose of this monitoring, although it does contribute to its completion. Thus, referring to the action plan, it results that the Council envisaged the drafting and approval of four regulatory acts³ and some other acts,⁴ which appear to have been realized beyond the envisaged deadlines, as is analyzed hereinafter. Nevertheless, as noted also by the European Commission in its latest progress report on Albania, the normative framework of the two Councils has some deficiencies. The rules for anonymity regarding the appointment of magistrates, career development, and their accountability should further match the principle of transparency.⁵ The EC recommends the undertaking of decisive steps by the HJC and HPC to ensure the consolidation, publication, reporting, sustainability, and credibility of statistics that are given throughout the judicial system, all based on a consolidated regulatory framework.⁶

² For more, please see: https://klp.al/wp-content/uploads/2021/03/PLANI-STRATEGJIK-2021-2024_KLP.pdf.

³ These acts include the regulations for the criteria and procedures for granting unpaid leave; regulations for early retirement, Code of Ethics; as well as the regulations for initial and continued training for other civil employees of the prosecution office.

⁴ These acts include the informing manual on interaction of the Ethics Advisor; preparation of the curriculum for initial training of other civilian employees at the prosecution office; preparation of the curriculum for the initial training for chancellors; and the preparation and approval of the annual program for the evaluation of the ethic and professional activity of prosecutors.

⁵ For more, please see: https://neighbourhood-enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf, p.29.

⁶ Ibid, p.32.

Mid-term expenses of the HPC are reflected in a special chapter of the Strategic Plan. However, it is difficult to understand how this framework of expenses is linked with the envisaged activities, as they are reflected on the basis of items, such as: salaries, current, internal capital, foreign capital, and extra-budgetary. Taking into consideration the fact that costs are an integral part of strategic planning processes, which in essence supports and ensures the implementation of the strategy, it would be suggested that the Council carry out/envisage more clear and objective costing, to the extent possible, of the action plan. This would be as a function of increasing transparency before the public, for informing or understanding limitations, even if these were of a financial nature, that the Council has for the successful realization of its strategic objectives.

As the institution that was the last to be established in the new architecture of governing institutions of the justice system, the High Justice Inspector, by means of order no. 134, dated 20.12.2023, drafted and approved the Strategic Plan and Action Plan of the office of the Inspector for 2023-2025,⁷ whereby one of the four objectives for the following three years is the increase of transparency and access of the public to HJI activity.

For monitoring the implementation of the Strategic Plan and for measuring the level of realization of each objective, the HJI established measurable, specific, and attainable indicators. Although it is understandable that the indicators for the most part are quantitative ones, it is suggested that the Inspector assess the possibility to identify also qualitative indicators. This is due to the fact that in spite of, for instance, the number of training programs conducted in the framework of building the professional capacities of inspectors, it is important to understand how much this has served to increase the performance of the institution in the process of addressing complaints on magistrates, the increase of credibility of the public in the mission that the HJI has for guaranteeing the start of fair and lawful disciplinary proceedings on magistrates, etc.

2. DYNAMICS OF THE CONDUCT OF COUNCIL MEETINGS

During the monitored period, January – December 2023, the HPC approved a total of 406 acts, and conducted a total of 33 meetings. Based on the consulted data, it results that the Council respected the legal provision⁸ for organizing at least one plenary meeting every month, except for the month of August.

Plenary meetings were summoned by the Chair and, in his absence, by the Deputy Chair,⁹ in accordance with provisions in paragraph 1, article 164, of law no. 115/2016 “*On the governing bodies of the justice system*,” amended (hereinafter referred to as the “Law on Governance”). These meetings were held in the presence of at least seven members, thus ensuring the necessary quorum.¹⁰

⁷ For more, please see: <https://ild.al/sq/2023/12/27/plani-strategjik-dhe-plani-i-veprimit-te-zyres-se-inspektorit-te-larte-te-drejtësisë-2023-2025/>.

⁸ Article 164, paragraph 1, law no. 115/2016 “*On the governing bodies of the justice system*,” amended.

⁹ Article 158 of law no. 115/2016 “*On the governing bodies of the justice system*,” amended.

¹⁰ Article 166, paragraph 1, of law no. 115/2016 “*On the governing bodies of the justice system*,” amended.

During the monitored period, the majority of decisions made by the Council has to do with the approval of individual administrative acts, where of note are the acts that have to do with: appointments to office, approval of reports on the verification of assets and the integrity of candidates to be admitted to the program for initial training for the School of Magistrates, for the academic year 2023-2024, and appointments to office through the procedure of parallel movements. The typology of these individual administrative acts points to the issue of human resources, which the prosecutorial system is being faced with, especially after the re-organization of the new judicial map. This is clear testimony to the fact that even after 6 years after the functioning of the new institutions of the justice system, the system is still in “abnormal” working conditions in spite of new appointments.

3. TRANSPARENCY ON THE OFFICIAL WEBSITE

3.1 High Prosecutorial Council

After becoming familiar with the HPC Regulations on communication with the media, in October 2023, AHC highlighted with concern elements of restrictions to freedom of speech, elaborated in the form of reflecting the purpose of the journalist in their request for information, and the discretion envisaged for the Council itself to determine on rescinding accreditation for the journalists committing violations. In AHC’s assessment, envisaging these elements is in contravention with the minimum standards envisaged by article 10 of the ECHR and elaborated in the judicial practice of the ECtHR; as a result, the HPC was asked to take measures to revise these regulations.¹¹ AHC did not receive any reaction or position from the HPC on the concerns it had raised and the recommendations submitted for these regulations. As a function of the important role that civil society stakeholders have in terms of monitoring institutions and participating in public and institutional life, especially with regard to the Councils where a representative of civil society represents one of the five non-magistrate members, cooperation and transparency of these institutions vis-à-vis civil society assumes special significance.

In accordance with the principle of transparency and accountability, which derives from article 167 of the Law on Governance, the internet website of the HPC contains a section dedicated to plenary sessions, where announcements for plenary meetings, audio recordings of plenary sessions,¹² process-verbals and decisions made during the respective meetings are published. The announcement for plenary meetings appears to be accompanied by the publication of the agenda of the meeting; the agenda is also communicated at the start of the plenary session by the Chair or deputy Chair. Adding new issues to the agenda of the meeting for the day appears to have become an ordinary procedure.

Also, for the purpose of guaranteeing transparency for the public, it results that the Council approves in its plenary meetings the process-verbals that are made available to the public,¹³ through their publication in the same rubric. The fact that the process-verbals of the meetings are accompanied by the respective audio recording and are found together in the rubric “Plenary

¹¹ For more, please see: <https://ahc.org.al/deklarate-per-shtyp-rregullorja-e-keshillit-te-larte-te-prokurorise-cenon-standartet-minimum-te-lirise-se-shprehjes>.

¹² Article 176, paragraph 2, of Law no. 115/2016 “*On the governing bodies of the justice system*,” amended.

¹³ Article 96, paragraph 3, of Law no. 115/2016 “*On the governing bodies of the justice system*,” amended.

Sessions” simplifies and makes it practical for the user to have access at the same time to the written summary of the session and the respective audio recording. Nevertheless, there are sporadic cases¹⁴ when process-verbals are missing in the published audio recordings, given that they should be approved by the members during the following plenary session.

It is worth emphasizing that although the rubric “Plenary Sessions” is divided into sub-categories of administrative decisions/acts, it results that HPC decision-making is published according to the order of plenary meetings during which these decisions were made and not categorized specifically, as envisaged by paragraph 1, article 189 of the Law on Governance. The HPC envisaged a specific rubric dedicated by by-laws, under the rubric “Legislation,”¹⁵ thus being only partially in conformity with the law, as long as there appears to be no division or categorization in accordance with its requirements.

Another very important element to be highlighted with regard to transparency and accountability of the HPC before the public is the lack of reasoning and accompaniment of published decisions with the relevant reports on which the issuance of such decisions is based. With regard to the need to reasoning the individual administrative acts of the Council, this is an obligation deriving from article 190/2 of the Law on Governance, with regard to the status of prosecutors or civil employees of the prosecutorial system, which are made public on the official internet website of the Council.

Based on the research study, it results that there was no publication of opinions by minority members,¹⁶ in accordance with article 164, paragraph 9, of law no. 115/2016, amended. The legal provision itself makes it optional for the possibility of drafting and publishing the minority opinion as well. However, based on the perspective of transparency and accountability before the public, as it pertains to the diversity of the views of members for certain decisions, it would be recommendable that the Council take a more proactive position with regard to the publication of minority opinions.

On the other hand, the engagement of the Council to adjust to the trends of technology development and interaction of the public, through the use of social platforms as Facebook, Twitter, and YouTube, which enable broader and more accessible information for the public, deserves positive acknowledgement.

3.2 High Justice Inspector

With regard to the HJI, the internet website of this institution is well-organized and provides diverse information on the activity of the Inspector’s office. The website has been designed in a user-friendly manner and clearly guides users to access the information that he/she is interested in.

¹⁴ For more, please see: <https://klp.al/2023/03/16/seanca-plenare-nr-163/>; <https://klp.al/2023/04/13/seanca-plenare-nr-167/>.

¹⁵ For more, please see: <https://klp.al/category/akte-nenligjore-te-klp/>.

¹⁶ Example: Decision for the refusal of ethical professional evaluation, upon request for accelerated evaluation for prosecutors Aida Cakaj and Urim Buci. In cases when the Council makes individual administrative decisions, regarding the professional status of certain prosecutors or certain officials of the prosecution office administration, the minority member may request that his/her opinion is attached to the decision of the Council. In this case, the member is responsible for drafting and submitting the minority opinion within a deadline set by the Council for publishing the decision. For more, please see: <https://klp.al/wp-content/uploads/2023/03/pv-21.03.2023.pdf>.

The page, aside from easy access, also contains a sample form for complaints, accompanied by instructions; it contains valuable information on filling out the form, provides graphically illustrated the review procedure for a complaint by the HJI, thus further serving both transparency and guidance for the public.

4. REGULATORY ACTS

4.1 High Prosecutorial Council

During the monitoring period, it results that the Council had slow activity of work with regard to completing the framework of by-laws, taking into consideration the fact that the Council only drafted seven regulations¹⁷ of the entirety of acts that it should approve, according to law.

Pursuant to article 35, paragraph 5, of the Law on Status, by decision no. 70, dated 30.03.2023, the Council approved the Regulations *“On the establishment of rules and reasons for allowing the candidate for magistrate to be appointed in the following year.”* Based on this provision, among others, the Council stipulated in article 5 of the Regulations the legal conditions or causes, for which the graduate is allowed to be appointed in the following year. Thus, letter “c” of this article envisages that, *“The request for the appointment as magistrate in the following year may be done due to any other legitimate interest, in cases of extraordinary measures, as well as in case of need and emergency, for a period of up to 12 months, certified by relevant documents.”* The use of the phrase “any other legitimate interest” gives the Council broad room for discretion and therefore subjectivity, to assess situations on a case-by-case basis, thus creating premises for favoring decision-making. In these circumstances, it is suggestible that the Council clarify and clearly classify the other legitimate interests, which, for instance, may be defined in an exclusive manner, excluding the narrowly personal interests of a candidate.

Another act approved during the period January – December 2023 that is of significance due to this research is the Regulation *“On the criteria and procedures for the promotion of prosecutors to the Special Prosecution Office against Corruption and Organized Crime.”*¹⁸ One of the most important aspects of this decision has to do with the Special Commission for the Verification of Assets and Integrity (hereinafter referred to as the “Special Commission” that is established and functions at the Special Prosecution Office. This Special Commission, based on article 6,

¹⁷ During the monitoring period, by chronological order, the following by-laws were approved: Decision no. 70, dated 30.03.2023 *“On the approval of the Regulations ‘On the establishment of rules and reasons for allowing the candidate for magistrate to be appointed in the following year;’”* Decision no. 303, dated 19.09.2023 *“On the approval of the regulations ‘On the criteria and procedure for promotion of prosecutors at the Special Prosecution Office against Corruption and Organized Crime;’”* Decision no. 304, dated 19.09.2023 *“On the approval of the regulations ‘On the establishment of rules and procedures for reducing the workload for prosecutors;’”* Decision no. 305, dated 19.09.2023 *“On the approval of the regulations ‘On granting unpaid leave;’”* Decision no. 380, dated 20.11.2023 *“On the approval of the regulations ‘On the ethical and professional evaluation of the heads of prosecution offices of general jurisdiction;’”* Decision no. 386, dated 30.11.2023 *“On the approval of the regulations ‘On the establishment of the procedure and degree of financial treatment of the prosecutor for serving on the delegation scheme, for temporary transfer, for temporary assignment, and assignment to a special case;’”* Decision no. 405, dated 28.12.2023 *“On the organization and functioning of the administration of the High Prosecutorial Council.”*

¹⁸ Decision no. 303, dated 19.9.2023, of the High Prosecutorial Council *“On the approval of the regulations ‘On the criteria and procedure for the promotion of prosecutors at the Special Prosecution Office against Corruption and Organized Crime.”*

paragraph 5, of Law no. 95/2016 “On the organization and functioning of institutions for fighting corruption and organized crime,” whose duty it is to conduct the verification of security, before assignment to duty or appointment of candidates for prosecutor to the Special Prosecution Office. The only legal provision on the manner of functioning of this Special Commission is found in article 6, paragraph 6, of law no. 95/2016, according to which, the Special Commission carries out the necessary verifications on assets and integrity, in accordance with legislation in force. In AHC’s evaluation, not envisioning the general rules of procedure for the functioning of this Special Commission, as well as of the rights recognized to parties that are involved in the procedure or the manner in which these rights are guaranteed and exercised, though envisaged *sui generis* in the Administrative Procedure Code, creates very broad discretionary room for the Special Commission. As a result, the premises are created for infringement of the guarantees for due legal process and the right to privacy of the involved subjects. It is worth emphasizing that according to article 148/dh, paragraph 2, of the Constitution, the constitution-maker has stipulated that, the other criteria for the selection of prosecutors of the special prosecution office, and for the transparent and public procedure of appointment, are established by law. On the other hand, neither the lawmaker nor the High Prosecutorial Council, as the body assigned by law for issuing regulatory acts, have approved necessary provisions for the proper functioning of this Special Commission, in order to fulfil the constitutional criteria of juridical certainty.

The High Prosecutorial Council, though created on 19.12.2018,¹⁹ and had the obligation that in reference to article 174, paragraph 1, of the Law on Status, to approve the regulatory acts within a period of time between three months and one year from its establishment, AHC notes that it has not approved during the period under monitoring (2023), the rules for the establishment of criteria, conditions, and procedures of assigning the appointees to assigned posts, and the assignment of prosecutors, in accordance with article 174, paragraph 5, of the Law on Status, are realized through the application of legal provisions on a case-by-case basis. Based on the situation in which the prosecution system is in, when during the period under monitoring there were 212 prosecutors in office from 341 prosecutors envisaged by the staffing structure,²⁰ the need to approve the regulatory act that establishes the criteria, conditions, and procedure for assigning appointees to seconded positions is not urgent,²¹ however, its approval would serve the fulfilment of the legal provision that derives from article 174 of the Law on Status.

In order to fulfil the needs of institutions within the justice system or of international organizations, in the context of international engagements that the Republic of Albania has undertaken through the signing and ratification of international agreements, during the monitoring period nine magistrates have been seconded to positions of non-magistrates.²² In all of these cases, in the

¹⁹ Decision no. 1, dated 19.12.2018 of the High Prosecutorial Council “*On the creation of the High Prosecutorial Council.*”

²⁰ General Prosecutor, *Report of the General Prosecutor on the State of Criminality for 2023*, Tirana, 2024.

²¹ In reference to article 40, of the Law on Status, the appointed may be assigned by the Council to a seconded post in an institution in those cases when the number of requests to be assigned to the position is higher than the number of vacancies for magistrates.

²² Decision no. 41, dated 23.02.2023, of the High Prosecutorial Council; Decision no. 42, dated 23.02.2023, of the High Prosecutorial Council; Decision no. 43, dated 23.02.2023, of the High Prosecutorial Council; Decision no. 44, dated 23.02.2023, of the High Prosecutorial Council; Decision no. 45, dated 23.02.2023, of the High Prosecutorial Council; Decision no. 51, dated 06.03.2023, of the High Prosecutorial Council; Decision no. 127, dated 07.06.2023,

conditions of the lack of regulations on the criteria and procedure of secondment, the HPC has relied on the explanatory reports prepared by the Commission for Career Development at the HPC, based on article 53, paragraph 2 and 6, and article 54, of the Law on Status, as well as on some provisions of the Law on Governance. Article 58 of the Law on Status has authorized the HPC to approve the rules on seconding as above, which, among others, should include the maximal length of each secondment, which is no longer than five years, as well as different provisions for different cases; the maximal number of periods during which the prosecutor may be seconded; and the recognition of results of evaluation and rules on adjusting provisions for ethical and professional evaluation. The lack of the regulatory act on secondments raises questions about too broad a discretionary room for the HPC on said decision makings. The lack of regulations on the deadline and periods for which the secondment is done may lose its purpose and harm the professional development of the magistrate or create obstacles in the operations of the prosecution office where the magistrate exercises his/her functions. Likewise, lack of clear, unified criteria and the procedure on how the evaluation of candidates expressing an interest to be seconded is done, infringes upon the principle of legal certainty that may weaken the public's trust in justice.

The HPC's slow activity in completing the framework of by-laws is analyzed also in the monitoring report on 2022, as it pertains to the Justice Cross-Sector Strategy for the period 2021-2025, which specifically mentions: *"Both Councils are yet to fulfil their obligations for issuing by-laws as envisaged by primary legislation. (...) The lack of some important by-laws creates risks for the implementation of legal provisions based on different interpretations. The processing and approval of all by-laws envisaged by primary legislation shall be a priority of the HPC."*²³

For 2023, the European Commission Report on Albania underscores: *"The HJC and HPC need to put in place clear rules of procedure for the evaluation, promotion and transfer of judges and prosecutors. The HPC needs to urgently start carrying out evaluations of prosecutors, in line with its annual plan, and adopt the necessary implementing legislation to do this. So far, no evaluations have been completed by the HPC, which is a matter of concern"*²⁴ Also, the latest report of the European Commission (October 2024) emphasizes the importance of completing the normative framework of the HPC and HJC, with the approval of internal regulations, rules on anonymity regarding the career instruments for magistrates, which respect the principle of transparency as well as the regulatory framework with regard to the publication of statistics.²⁵

During 2023, it was envisaged that 156 prosecutors would be subjected to ethical and professional evaluation.²⁶ However, based on verification on the official website, the High Prosecutorial

of the High Prosecutorial Council; Decision no. 375, dated 30.11.2023, of the High Prosecutorial Council; Decision no. 388, dated 14.12.2023, of the High Prosecutorial Council.

²³ For more, please see: <https://www.drejtesia.gov.al/wp-content/uploads/2023/05/Raporti-i-Monitorimit-2022.pdf>.

²⁴ Commission Staff Working Document Albania 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy. For more, please see: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_690%20Albania%20report.pdf

²⁵ For more, please see: https://neighbourhood-enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf, p. 29 – 32.

²⁶ Initially, the High Prosecutorial Council approved decision no. 313, dated 30.11.2022 *"On the approval of the program that determines the list of prosecutors, for which the ethical and professional individual evaluation will be conducted during 2023,"* according to which the prosecutors whose names were in the decision annex would be subjected to ethical and professional evaluation; the annex does not appear to have been published online. Meanwhile,

Council has not completed any of the ethical-professional evaluations envisioned for 2023, thus having a negative impact on the development of prosecutors' careers. This is the case because from the interpretation of the provisions of the Law on Status, it results that all magistrates who seek to be promoted, make parallel movements, should first undergo the procedures for ethical and professional evaluation. These procedures are not just a formality, but a key mechanism that ensures meritocracy and integrity in the procedures for the magistrates' promotion and career development. Failure to conclude ethical and professional evaluations impedes the career of magistrates, depriving them of the opportunity to advance on the basis of their professional capabilities and ethics, discouraging magistrates in office, and creating a perception of inequality and favoritism in the treatment of magistrates.

The improvement of the ethics and professional capabilities of magistrates not only affects the quality of their decision-making and the increase of public's trust in the justice bodies, but also establishes a high standard of accountability, holding magistrates responsible for the exercise of their duties. Likewise, the lack of the professional evaluation of magistrates opens the way to subjectivism and interferences, including political ones, in promotions linked with the development of magistrates' careers, infringing upon the independence of the justice system and the principle of meritocracy, as the essential element for the development of the magistrates' careers.

In this sense, taking into account also the causes that led to justice reform, with its main goal being to restore the citizens' trust in the justice system institutions, we consider that the HPC should act with a faster pace with regard to the prosecutors' ethical and professional evaluation. Otherwise, not only the quality of the prosecution body activity and the career development of prosecutors is put at risk, but the trust of the public in justice institutions is undermined, creating the perception of a system that does not operate on the basis of meritocracy.

Besides the failure to conclude the procedures for the periodical ethical and professional evaluation of prosecutors, another issue that we note is the evaluation through accelerated procedure.²⁷ According to article 97 of the Law on Status, upon his/her request, the magistrate, when seeking

by decision no. 1, dated 16.01.2023, "*On an amendment in decision no. 313, dated 30.11.2022 'On the approval of the program that establishes the list of prosecutors for whom an individual ethical and professional evaluation will be conducted during 2023,'*" the High Prosecutorial Council decided to remove from the list of prosecutors who would be subjected to the ethical and professional evaluation three prosecutors who had been suspended by decision of the Independent Qualification Commission, and add to the list, six new prosecutors who have no evaluation and have completed three years of work experience, publishing the list of 156 prosecutors who would be subjected to ethical and professional evaluation. Meanwhile, by decision no. 2, dated 16.01.2023 "*On an amendment in decision of the High Prosecutorial Council no. 316, dated 02.12.2022 'On the approval of the three-month planning for individual ethical and professional evaluation of 20 prosecutors, during 2023,'*" decided to change the number of prosecutors who would be subjected to ethical and professional evaluation from 20 to 25 of them.

²⁷ Thus, from nine evidenced cases of requests by prosecutors for accelerated evaluation, the High Prosecutorial Council decided to refuse seven requests and accept only two such requests. More concretely, by decision no. 66, dated 21.03, decision no. 74, dated 24.04.2023, decision no. 181, dated 22.06.2023, and decision no. 182, dated 22.06.2023, the High Prosecutorial Council decided to refuse ethical and professional evaluations upon accelerated requests by seven prosecutors. Meanwhile, by decision no. 306, dated 19.09.2023 and decision no. 307, dated 19.09.2023, the High Prosecutorial Council decided to accept a request for an accelerated ethical and professional evaluation for two prosecutors.

to be transferred or promoted and when the last evaluation is realized more than two years earlier, may ask the Council to have him/her evaluated through an accelerated procedure.

In a practice followed by the HPC when this room for accelerated ethical-professional evaluation for parallel movements,²⁸ the High Court stated in a ruling: *“In cases when finding itself before circumstances that allow the possibility for ethical professional evaluation, the HPC should take the necessary measures to realize and carry out in time the professional evaluation and base its decision-making on the basis of the evaluation.”*²⁹ In this context, the Court considered that ethical and professional evaluation, on the one hand, serves to improve ethics and professional capabilities of magistrates and, on the other hand, serves to make a differentiation between magistrates and to avoid the subjectivity of the bodies that have a competence for the development of the magistrates’ careers.³⁰ That is why, according to the Court, the professional evaluation of the magistrate is a duty for the Councils and it should be realized on time and without being dragged out.³¹

Through its Decision no. 60, dated 25.04.2023, the HPC approved the annual report of its activity. Pursuant to its mission, AHC through a dedicated legal critique addressed to the Assembly of Albania, conveyed suggestions and recommendations on improving the activity of the HPC, in accordance with the competences that the HPC enjoys. A similar practice resulted also in previous years, with a good part of resolutions of the Assembly for the Councils, include findings and recommendations identified by the Albanian Helsinki Committee.³² Among others, AHC found in its opinion on the activity of the Council for 2023 that the drafting and approval of eight of the by-laws was carried out beyond the deadline envisaged in the Strategic Plan and accompanying Action Plan, part of which were mentioned earlier in this report.

In conclusion, AHC considers that the slow process of the HPC in the approval of these important by-laws is objectively unjustified for an institution that already passed the most difficult first transitory part, thus creating theoretical premises for the infringement of the principles of lawfulness and legal certainty, in the procedures for promotions and transfers of prosecutors.

²⁸ When the HPC decided to refuse the individual ethical and professional evaluation requested through an accelerated procedure and, as a result, assigned to an announced vacant position another magistrate through the parallel procedure, although for the same magistrate the request for an accelerated ethical and professional evaluation was refused and she did not meet the criterion of years in office.

²⁹ Decision no. 00-2024-2215 (110), dated 13.03.2024 of the Administrative College of the High Court.

³⁰ Ibid.

³¹ Ibid.

³² For more information, please see: <https://klp.al/wp-content/uploads/2022/05/Rezoluta-e-KLP-se-dt.-14.6.2021.pdf>.

4.2 High Justice Inspector

With regard to the activity of the Office of the High Justice Inspector (HJI), during the monitoring period, a total of 55 acts were approved, of which, among others, fourteen orders³³ and seven decisions³⁴ appear of particular importance.

One of the most important acts approved by the HJI is the plan of thematic inspections for 2023. According to this plan, amended, during 2023, four thematic inspections were going to be carried out on the division of cases by lottery, on the practice and causes of the replacement of prosecutors, on the assignment of cases in prosecution offices, and the procedure for the announcement of the arguments in judicial decisions in the Tirana Judicial District Court (Civil Chamber) and the Tirana Administrative Court of First Instance. AHC notes that two of the four inspections included in the annual plan of inspections are mandatory inspections, in the sense that the Law on the Judiciary³⁵

³³ Order no. 27/1, dated 22.02.2023, “On the approval of the regulations ‘On the supervision of conduct by the working group for the monitoring of civil employees in the office of the High Justice Inspector’ during the electoral campaign for the local elections, may 2023;” Order no. 27, dated 22.02.2023, “On the establishment of the group for the monitoring of the conduct of civil employees in the office of the High Justice Inspector during the electoral process;” Order no. 33, dated 28.02.2023, “On the approval of the plan of recovery from disasters of the office of the High Justice Inspector;” Order no. 94, dated 12.09.2023, “On obtaining periodical information from chairpersons of courts and heads of prosecution offices regarding judicial activity and the activity of prosecution offices;” 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 – list application – platform, for 2023;” Order no. 101, dated 02.10.2023, “On the approval of the complaint form, revised, and instructions on filling it out;” 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 365 platform form – list application, for 2023;” Order no. 106, dated 05.10.2023, “On the approval of statistical forms and the methodology of collection and processing of statistical information regarding complaints/cases ex officio addressed to the office of the High Justice Inspector;” 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. 122, dated 06.11.2023, “On the approval of the integrity plan of the office of the High Justice Inspector 2023-2025”; Order no. 122/1, dated 27.12.2023, “On the manner of monitoring, reporting, and implementing the integrity plan of the office of the High Justice Inspector 2023-2025”; Order no. 134, dated 20.12.2023, “On the approval of the strategic plan and accompanying action plan of the office of the High Justice Inspector 2023-2025”; Order no. 134/1, dated 29.12.2023, “On the manner of implementation, monitoring, and reporting of the strategic action plan and action plan of the office of the High Justice Inspector 2023-2025”; Order no. 146, dated 29.12.2023, “On the approval of the risk strategy and action plan for minimizing risks in the office of the High Justice Inspector.”

³⁴ Decision no. 6, dated 24.02.2023, “On the approval of the plan of inspections for 2023;” Decision no. 6/3, dated 13.04.2023, “On an amendment in decision no. 6, dated 24.02.2023 of the High Justice Inspector’ for the approval of the plan of inspections for 2023;” Decision no. 7, dated 24.02.2023, “On the approval of the annual admission plan, for 2023, for positions part of the civil service, in the office of the High Justice Inspector;” Decision no. 7/1, dated 24.03.2023, “On the establishment of positions as part of the civil service that will be announced for year 2023, for the office of the High Justice Inspector, following the completion of the process of restructuring;” Decision no. 13, dated 18.04.2023, “On opening the procedure of admission in the mid-level leadership category also for other candidates from outside the civil service, for 2023;” Decision no. 53, dated 02.10.2023, “On some amendments in decision no. 38, dated 08.06.2021 ‘On the approval of procedures and rules for evaluation of ethics and the professional activity of inspectors,’ amended;” Decision no. 65, dated 09.11.2023, “On the procedure of election, appointment, and manner of exercising competences by the deputy High Justice Inspector.”

³⁵ Article 25, paragraph 4, of Law no. 98/2016 “On the organization of the judiciary in the Republic of Albania,” amended.

and the Law on the Prosecution Office,³⁶ tasks the HJI to carry them out at least once every year. Taking into consideration the mandatory requirements of the law and the fact that, of the four inspections conducted, only one of them was concluded in 2023,³⁷ while the three other inspections were concluded in 2024,³⁸ we may say that the number of inspections is relatively low. Regarding HJI inspections, it is worth emphasizing in this analysis also the conclusion of the European Commission in its latest report for Albania (2024), according to which the HJI capacities for conducting high-quality inspections should be increased.³⁹

Nevertheless, this finding of AHC about the low number of institutional and thematic inspections may be taken partially with some reservation, especially in the circumstances of the lack of human resources in the HJI staffing. This lack has also been highlighted by the Assembly of Albania, which due to the lack of interest to be inspector and the length of time for the procedures, decided to reduce the number of inspectors from 26 to 20 inspectors.⁴⁰ In this situation, it is possible that the Councils play a more active role by helping the HJI through the initiation of requests for institutional and/or thematic inspections. This would be pursuant to legal requirements, referring here to article 194, paragraph 4, of the Law on Governance, but above all, as a function of improving and standardizing the work of courts and the prosecution offices; these improvements would affect better governance of the judiciary/prosecution office and also for increasing the public's trust.

Another act that is worth highlighting among the acts issued by the HJI is decision no. 65, dated 09.11.2023, *"On the procedure for the selection, appointment, and exercise of competences by the Deputy High Justice Inspector."* According to article 205, paragraph 2, of the Law on Governance, the Deputy High Justice Inspector should have been appointed within 30 days from the election of the latter, after the opinion was obtained from the General Meeting of Inspectors, among inspectors with at least 3 years of work experience as inspectors and who have received an evaluation of at least "very good" in their last evaluation of professional and ethics performance as inspectors. Meanwhile, although the High Justice Inspector was appointed in 2020,⁴¹ the Deputy High Justice Inspector has not been selected even during the monitoring period, when four magistrate inspectors and seven non-magistrate inspectors,⁴² exercised their duties effectively at the HJI. This was the result of none of the inspectors meeting the legal criteria required for the Deputy Inspector, such as the work experience of at least three years as an inspector and the "very good" ethical and professional evaluation, which in reference to article 212 of the Law on Governance, is conducted

³⁶ Article 49, paragraph 6, of Law no. 96/2016 *"On the organization and functioning of the prosecution office in the Republic of Albania."*

³⁷ Inspection Report *"On the procedure of announcement and arguments of judicial decisions of the First Instance Court of General Jurisdiction Tirana (Civil Chamber) and the Administrative Court of First Instance,"* of the High Justice Inspector, no. 1172/12 prot., dated 29.09.2023.

³⁸ For more, please see: <https://ild.al/sq/legjislacion/raporte-inspektimesh-tematike/>.

³⁹ For more, please see: https://neighbourhood-enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf, p. 30

⁴⁰ Decision no. 10/2023, dated 16.02.2023, of the Assembly of Albania *"On some additions and amendments to Decision of the Assembly no. 28/2020 'On the approval of the organizational structure, staffing, and classification of salaries of the personnel of the High Justice Inspector.'"*

⁴¹ Decision no. 2/2020, dated 20.01.2020 *"On the election of Mr. Artur Metani as High Justice Inspector."*

⁴² High Justice Inspector, *Report on the work of the office of the High Justice Inspector for the period 01.01.2023 – 31.12.2023*. For more information, please see: <https://ild.al/sq/2024/05/10/raport-per-punen-e-zyres-se-inspektorit-te-larte-te-drejtise-per-periudhen-01-01-2023-31-12-2023/>.

by the Commission for Appointment and Evaluation, a commission that consists of only members who have received at least “very good” in their last two ethical and professional evaluations as inspectors or magistrates. In this regard, the HJI office has begun the process of ethical and professional evaluation of magistrates, a process that is ongoing, for the purpose of establishing the Commission of Appointment and Evaluation, whose establishment would serve the needs of the institution.

During the years, the completion of the nucleus unit, the body of inspectors, with 10 inspectors and the opening of vacancies creates the possibility to hold the General Meeting of Inspectors. Having said that, taking into consideration the fact that in cases when the General Meeting of Inspectors is called for cases that require decision-making, as an analogy, the provisions of legislation that regulates the decision making of collegial bodies⁴³ is applied, indicating the fact that the decision-making is based on the principle of the necessary quorum. Through its decision-making, the HJI has demonstrated a proactive approach as progress in the completion of the body of inspectors enables guaranteeing the necessary quorum so that the General Meeting of Inspectors is officially called and is able to make decisions. This proactive approach appears from the drafting and approval of the Internal Regulations for the Organization and Functioning of the Office of the Inspector, followed by the Regulations for the Procedure of election, appointment, and the manner of exercise of competences by the Deputy High Justice Inspector (pursuant to article 204, paragraph 1, letter g, of the Law on Governance).

5. APPOINTMENTS, PARALLEL APPOINTMENTS, AND PROMOTIONS

5.1 Appointments

During the monitored period, the HPC made 26 decisions⁴⁴ for the appointment of magistrate candidates, of the prosecutor profile, who graduated from the School of Magistrates in 2023.

Based on the analysis of documentation that is the subject of this research study, it results that referring to the meeting minutes of the plenary session⁴⁵ as well as the audio recording,⁴⁶ the approval of individual draft acts of appointment was realized through the reporting in group of reports for all 26 candidates, which were the ones to meet the legal criteria. The rapporteur of the case mentioned in the meeting that the approval as a group of these draft acts is done for the purpose of saving time, as long as the relevant reports are the same. It results that the members participating in the plenary session voted to approve the draft acts unanimously and without any discussions. After their appointment in group, the HPC continued with the assignment of magistrates assigned to office in the plenary meeting of 10.07.2023, fulfilling the legal obligation of assigning to office within a one-month deadline from the moment when the list of graduates was published as well as the fulfilment of other legal requirements envisaged by paragraph 4, letter a of article 35 of the Law on Status.

⁴³ Article 17, paragraph 2, of Order no. 119, dated 12.07.2021 “*On the approval of the internal regulations for the organization and functioning of the office of the High Justice Inspector.*”

⁴⁴ From decision no. 203, dated 27.06.2023 up to decision no. 233, dated 27.06.2023. For more, please see: <https://klp.al/2023/07/06/vendime-te-marra-nga-klp-ja-ne-daten-27-06-2023/>.

⁴⁵ For more, please see: <https://klp.al/wp-content/uploads/2023/07/Procesverbali-i-dates-27.06.2023.pdf>.

⁴⁶ For more, please see: <https://klp.al/2023/06/27/seanca-plenare-nr-176/>.

5.2 Parallel appointments

In reference to article 43, paragraph 1, of the Law on Status, the High Prosecutorial Council organizes at least every three months, the procedure of parallel appointments for posts that are vacant or are expected to become vacant within three months. Magistrates exercising their functions in prosecution offices of the same level as the position that is vacant, seconded magistrates who have worked earlier in prosecution offices of the same level as the position that is vacant, may participate in the parallel appointment procedure; also, for vacant positions at the appeals level, magistrates may be invited to participate if they have the professional experience required by law and if they have served for at least four years in the delegation scheme, of which, for one year they are assigned at an appeals level position. Each magistrate may apply for no more than three vacant positions in the process, otherwise, candidacies that are logged earlier are valid.

In the context of the theoretical analysis of parallel appointments, it is worth mentioning that magistrates who have a disciplinary measure in force or those who do not have at least one year of experience in the past five years in the relevant field of law, are exempt from the right to run for the vacant positions for parallel appointments.

Based on the interpretation of article 43, paragraph 7, 8, and 9, of the Law on Status, it results that the procedure for parallel appointments was opened initially by evaluating with priority only candidates who have or meet the criteria to have two evaluations. If there are such candidates available, the race is only among them, not including other candidates in the competition. In the absence of candidates who have or are in conditions that they may have two evaluations, the procedure is opened for magistrates who do not have or may not have two evaluations, but who have or may have one evaluation. In this case, the competition is only among candidates who have or may have one evaluation.⁴⁷ In the absence of candidates who have or may have one evaluation, the procedure is opened for magistrates who do not have and may not have one evaluation. In this case, the Council bases its evaluation of the candidates on the ranking in the list of graduates from the School of Magistrates.

For the period January 1 – December 31, 2023, the HPC decided to assign 29 prosecutors to posts in another prosecution office⁴⁸ through parallel appointment. The first procedure for the parallel

⁴⁷ Decision no. 00-2024-2215 (110), dated 13.03.2024 of the Administrative College of the High Court.

⁴⁸ Decision no. 18, dated 16.01.2023 of the High Prosecutorial Council; Decision no. 93, dated 09.05.2023 of the High Prosecutorial Council; Decision no. 123, dated 29.05.2023 of the High Prosecutorial Council; Decision no. 124, dated 29.05.2023 of the High Prosecutorial Council; Decision no. 125, dated 29.05.2023 of the High Prosecutorial Council; Decision no. 126, dated 29.05.2023 of the High Prosecutorial Council; Decision no. 128, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 129, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 129, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 130, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 131, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 132, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 133, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 134, dated 07.06.2023 of the High Prosecutorial Council; Decision no. 234, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 235, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 236, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 237, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 238, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 239, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 240, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 241, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 242, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 243, dated

appointment was opened by decision no. 67, dated 21.03.2023, thus being conducted within the three-month deadline that was envisaged by law. The second and third procedure for parallel appointments was opened by means of decision no. 92, dated 09.05.2023 and decision no. 285, dated 17.07.2023, in the second month of the deadline prescribed by law. Meanwhile, the fourth procedure for parallel appointments was opened by means of decision no. 319, dated 20.10.2023, in respect of the three-month deadline, calculating this deadline from the moment when the third procedure had been opened.

Of 29 decisions of the HPC, three of them were appealed to the Administrative Court of Appeals, precisely for one position in the Prosecution Office at the Elbasan First Instance Court of General Jurisdiction, and two positions in the Prosecution Office at the Prosecution Office at the First Instance Court of General Jurisdiction in Tirana.⁴⁹ In two of these cases,⁵⁰ the Administrative Court of Appeals decided to accept the lawsuits while in another,⁵¹ it was decided to drop the adjudication. In the circumstances when the explanatory reports of the Commission for Career Development are not published, in the following part, for purposes of this research, we'll look at an analysis of two of the decisions of the HPC, which were judicially challenged.

In one instance, in interpretation of the Law on Status and the Regulations *“On the transfer of prosecutors through the procedure of parallel appointment,”* the HPC reached the conclusion that the secondments that are considered an added value for the effect of transfer, are those that are linked with the entry into force of the Law on Status. On the other hand, the challenger, who had exercised her functions as an inspector at the Ministry of Justice from 2003 until 2019 when the HPC assigned her as a prosecutor at the Prosecution Office at the Elbasan First Instance Court, claimed that the period of secondment to the Ministry of Justice should have been reflected during the review and evaluation of her candidacy. The Administrative Court of Appeals, arguing that the position of the HPC zeroed the prosecutors' careers before the entry into force of the Law on Status, because it dictated that the history of the institution of the prosecution office began on the day of entry into effect of the Law on Status, decided to accept the lawsuit.⁵²

From the standpoint of the authors of this research, this decision of the Administrative Court of Appeals was taken by wrongly implementing the material law for two reasons. First, although it is true that the history of the prosecution office does not begin with the entry into force of the Law on Status, the secondment and delegation scheme are two different legal mechanisms vis-à-vis the meaning they had according to the legislation that organized the judicial system and the prosecution system, before the entry into force of the Law on Status. In reference to Law no. 8737, dated 12.02.2001 *“On the organization and functioning of the Prosecution Office in the Republic of Albania,”* amended, secondment was done to other prosecution offices, by the General Prosecutor and only in those instances when a prosecution office was not functioning normally,

03.07.2023 of the High Prosecutorial Council; Decision no. 244, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 245, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 246, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 247, dated 03.07.2023 of the High Prosecutorial Council; Decision no. 373, dated 30.11.2023 of the High Prosecutorial Council; Decision no. 374, dated 30.11.2023 of the High Prosecutorial Council.

⁴⁹ The High Prosecutorial Council, *Annual Report 2023*, Tirana, 2024.

⁵⁰ Decision no. 86-2023-663, dated 13.06.2023 of the Administrative Court of Appeals; Decision no. 86-2023-811, dated 28.07.2023 of the Administrative Court of Appeals.

⁵¹ Decision no. 86-2023-635, dated 06.06.2023 of the Administrative Court of Appeals.

⁵² Decision no. 86-2023-663, dated 13.06.2023 of the Administrative Court of Appeals.

while the right of prosecutors to serve as legal advisors and in leadership or executive levels of juridical-professional structures was regulated exclusively by Law no. 8678, dated 14.05.2001 *“On the organization and functioning of the Ministry of Justice,”* amended, which in these instances used the term “admission” and not “secondment.” Secondly, the specific professional experience required by the Regulations *“On the transfer of prosecutors through the procedure of parallel appointments”* is not linked with being a first instance prosecutor, but with the concrete and effective exercise of duties at that instance. Therefore, experience as a seconded prosecutor is considered professional experience at the first instance regarding the benefits deriving from the status of the magistrate at this instance. The decision-making of the High Court resonates under the same reasoning as it decided on 18.09.2024 to reject the lawsuit.⁵³

In the other instance, the HPC, after having announced the vacancies for the procedure of transfers by means of the parallel appointment, in spite of the request of two prosecutors to conduct an accelerated evaluation, had decided to reject the requests, and then ranked the candidates although one of them met the legal conditions to have an ethical and professional evaluation and the other did not. After addressing the Administrative Court of Appeals by a lawsuit, the later decided to invalidate the administrative acts of the ranking of the candidates and the assignment of the other prosecutor to office.⁵⁴ In contravention to article 43 of the Law on Status, which establishes the rules for parallel appointments, it was noticed that the HPC had equaled a candidate who did not have an ethical and professional evaluation, in spite of the legal possibility to have one such, with a candidate who did not have any ethical and professional evaluation, as he did not meet the legal conditions to have one such, allowing the candidates to compete between them, although the competition should have stopped and be conducted only among those who have an ethical and professional evaluation, even in the sense of the legal opportunity to have one such. The High Court too confirmed this position when it stated: *“In any case, the conduct of the ethical and professional evaluation should be understood and implemented as an effective legal opportunity to legally have two or one evaluation. If the applying candidates in this procedure factually did not have an ethical and professional evaluation conducted, this does not mean apriori, in the meaning of this law, that the candidates have no professional evaluation. The purpose of the law is that in any instance, when the legal opportunity exists, evaluation should be realized so that meritocracy based on professional evaluation bears the weight of ranking. If there is a legal possibility for the candidate to have a professional evaluation, the law gives priority to this candidacy and this professional evaluation and, as a result, it is the HPC that should respond to this legal criterion by conducting one or two evaluations depending on the legal conditions.”*⁵⁵ Moreover, the High Court maintained the position that: *“The HPC should not have continued with giving points and the ranking, at the same time, both for the suing party and the third person. Both candidates may not run together for this procedure because, as mentioned above, referring to article 43 of the law no. 96/2016, the suing party does have the opportunity for an evaluation, while the third party does not have and may not have an evaluation at the time of running for the position. In the sense of the law, having an ethical professional evaluation has to do not only with the existence de facto of a concluded evaluation for the candidate, but also with the existence of*

⁵³ For more, please see: <https://gjykataelarte.gov.al/sq/lajme/publiku/informacion-i-ceshtjeve-administrative-date-18.09.2024>. Until the date of the publication of this research study, the decision of the High Court has not been published with the arguments and, therefore, is not a subject of the analysis.

⁵⁴ Decision no. 86-2023-811, dated 28.07.2023 of the Administrative Court of Appeals.

⁵⁵ Decision no. 00-2024-2215 (110), dated 13.03.2024 of the Administrative College of the High Court.

the legal opportunity that the candidate have an ethical professional evaluation. In this sense, the concept of having or not one or two professional evaluations is not linked with the de facto existence, conducted or concluded of these evaluations, at the time of application, but with the legal opportunity to have an evaluation, in the meaning of the law itself.”⁵⁶

In the other cases of transfers by the parallel appointment process, besides respect for procedural aspects, it should be emphasized that the alerts raised in different media outlets drew the attention of AHC because they refer to cases of members who are prosecutors and judicial police officers, appointed in the same prosecution office of general jurisdiction, with family ties among them and with functionaries of the Assembly, a situation that undermines public trust in the justice system.⁵⁷ Although in these cases the public position of the HPC has been that there is no environmental incompatibility prohibited by the Law on Status,⁵⁸ AHC judges that as a function of public trust, the responsibility for proving the opposite on any suspicion of public weight for corporatism in the process of appointments and promotions in the justice system only lies with the Council. Also, such cases should be evaluated not only in the context of environmental incompatibility, according to provisions of the Law on Status, but also in the context of the Law no. 9367, dated 07.04.2005 “*On the prevention of conflict of interest in the exercise of public functions,*” amended. In light of this law, taking into consideration that in the case in question, a prosecutor was transferred through the parallel appointment procedure to a prosecution office where the husband of the sister and the wife of the brother of the transferred subject exercised their duties, while the brother exercised the functions of a judicial police officer, creating in public the perception that private interests may affect the carrying out of official duties and responsibilities of prosecutors in an unfair manner, in spite of the decentralized prosecution office system. In a small country like Albania, we consider that the situation should not be addressed by the Council in a black-and-white background, as we should not forget that for many more years, until the consolidation of the system, the causes that forced the country to reform the justice system, including inappropriate influences in the system. This matter should be handled with appropriate care and the completion of necessary normative acts with rules that strengthen the prevention and addressing of conflicts of interest, without infringing upon the binding standards for prosecutors’ careers.

5.3 Promotions

In reference to article 47, paragraph 1, of the Law on Status, a promotion is: (i) moving from one position in the judicial system or the prosecutorial system, to another position of a higher instance; (ii) moving from a position of general jurisdiction to a position in one of the special courts or the Special Prosecution Office; (iii) moving from a position as a magistrate to the position of the court chair or head of a prosecution office; and (iv) moving from a seconded position or a position in the delegation scheme to a position of a higher instance than the position held prior to the secondment.

⁵⁶ Decision no. 00-2024-2215 (110), dated 13.03.2024 of the Administrative College of the High Court.

⁵⁷For more, please see: https://ahc.org.al/wp-content/uploads/2023/12/Raporti-i-te-Drejtave-te-Njeriut_-Versioni-Shqip.pdf.

⁵⁸ For more, please see: <https://klp.al/wp-content/uploads/2023/07/Procesverbali-i-dates-27.06.2023.pdf>.

Based on the above, during the monitored period, it results that the HPC made only two decisions for promotions of prosecutors,⁵⁹ although it announced several vacancies for heads of prosecution offices at first instance courts of general jurisdiction.⁶⁰

In the first case, that of the promotion to the position of head of the Prosecution Office at the Saranda First Instance Court of General Jurisdiction, the HPC qualified two candidates who meet the conditions for running for this post,⁶¹ of whom, it was later decided to promote to the post Mr. Kledian Llaho.⁶² Meanwhile, in the other case, that of promotion to the position of head of the Prosecution Office at the Fier First Instance Court of General Jurisdiction, six candidates were qualified who meet the conditions for running for the post,⁶³ of whom four candidates continued to compete for the post.⁶⁴

Regarding the first procedure, although the HPC in its activity has been led by the principle of functionality, it is worth mentioning the fact that the candidate promoted to the post, Mr. Llaho, according to information published on the internet website of the institutions responsible for the transitory re-evaluation, resulted to be still in the vetting process.⁶⁵ In the context of recommendations of the European Commission in its annual progress reports on Albania, AHC continues to find that the HPC did not wait for the decision-making of the vetting bodies in order to continue with the promotion of magistrates (prosecutors) to the posts, thus giving priority to the right of the competing subject to career development.

The same finding applies especially in the case of the former chair of the High Prosecution Council, Mr. Alfred Balla, who was elected as HPC member from the civil society ranks and was appointed head of the HPC in 2022; the SAC interrupted the transitory re-evaluation process on Mr. Balla in May of 2024.⁶⁶ Furthermore, by means of this decision based on article G of the Annex of the Constitution and letter “b,” of paragraph 1, of article 66 of law no. 84/2016, “*On the transitory re-evaluation of judges and prosecutors in the Republic of Albania*,” the SAC decided to stop his appointment as a judge or prosecutor of any level, member of the High Judicial Council

⁵⁹ Decision no. 29, dated 30.01.2023, of the High Prosecutorial Council “*On the appointment of Mr. Kledian Llaho, through the procedure of promotion, to the position of head of the prosecution office at the Saranda First Instance Court*,” Decision no.136, dated 07.06.2023, of the High Prosecutorial Council “*On the promotion to the position of head of the Fier first instance court of general jurisdiction of Mr. Eljon Mustafaj*.”

⁶⁰ Decision no. 91, dated 09.05.2023, of the High Prosecutorial Council “*On the announcement of vacant positions for heads of prosecution offices at the first instance court of general jurisdiction, through the procedure of promotion*.”

⁶¹ Decision no. 153, dated 27.06.2022, of the Prosecutorial Council “*On the qualification of candidates that meet the conditions for running for promotion to the position of head of the Saranda Prosecution Office at the first instance court of general jurisdiction*.”

⁶² Decision no. 29, dated 30.01.2023 of the High Prosecutorial Council “*On the appointment of Mr. Kledian Llaho, through the procedure of promotion, to the position of head of the prosecution office at the Saranda First Instance Court*”.

⁶³ Decision no. 152, dated 27.06.2022 “*On the qualification of candidates that meet the conditions for running for promotion to the position of head of the Fier Prosecution Office at the first instance court of general jurisdiction*.”

⁶⁴ The High Prosecutorial Council decided to interrupt and terminate the procedure for the verification of assets and integrity for one of the candidates due to his dismissal by the Independent Qualification Commission, by decision no. 547, dated 06.07.2022, while another candidate withdrew from the competition for the procedure.

⁶⁵ For more, please see: <https://kpa.al/ceshtje-juridiksioni-rivleresimi-2023/>.

⁶⁶ For more, please see: <https://kpa.al/njoftim-vendimi-239/>.

or the High Prosecutorial Council, High Justice Inspector, or General Prosecutor for a period of 15 years.

AHC considers that it is necessary to strengthen the integrity and impartiality of each member of the Council, in order to not create reasonable perceptions among the public about elements of corporatism in its decisions. In the two instances above, one notices the fact that the decision-making was approved in a plenary session unanimously by the participating members, without having not only discussions, but no dissent views/votes, which would make a positive contribution to the institution's internal democracy.

AHC reiterates that the coordination of procedures for prosecutors' careers with the vetting process has been and remains an immediate need to be addressed by the HPC, as a way to certify and better guarantee the legitimacy of candidates for leading positions, and to enable the effective implementation of principles that are at the foundation of justice reform with regard to deserved accountability, responsibility, and professionalism of judges and prosecutors.

6. DISCIPLINARY PROCEDURES TOWARD PROSECUTORS

Pursuant to articles 123, paragraph 1, and 124, paragraph 1, of the Law on Status, the HJI begins disciplinary investigation if there are reasonable suspicions that there may have been a disciplinary infringement, based on evidence that justify the start of investigations, or upon its own initiative, when based on essential data and facts that result from credible sources, on the basis of which the reasonable doubt arises that the infringement may have been committed.

Based on the consulted data, it results that on the basis of these norms, during the period January – December 2023, the HJI appears to have approved 18 decisions for disciplinary proceedings; such proceedings have investigated claimed infringements for 25 magistrates, of which only in two instances, the disciplinary proceedings began upon initiative.⁶⁷ Against the background of the investigated magistrates, it results that the number of judge magistrates is about five times higher than the number of investigated prosecutors.⁶⁸ Out of four disciplinary investigations on prosecutors, it appears that only for one of them, the HJI has decided to send the request for proceedings to the HPC, while the investigative procedure continued for the other three prosecutors. Meanwhile, it is notable that the HJI has addressed the entire backlog of 1072 complaints that had not been addressed.

With regard to decision makings that are the focus of this research, it is worth emphasizing that during the monitored period, the HPC approved some acts that have to do with the disciplinary progress of magistrates and their suspension from office, of which only three decisions for assigning disciplinary measures.

⁶⁷ High Justice Inspector, *Report on the work of the office of the High Justice Inspector for the period 01.01.2023 – 31.12.2023*. For more, please see: <https://ild.al/sq/2024/05/10/raport-per-punen-e-zyres-se-inspektorit-te-larte-te-drejtewise-per-periudhen-01-01-2023-31-12-2023/>.

⁶⁸ Referring to *Report on the work of the office of the High Justice Inspector for the period 01.01.2023 – 31.12.2023*, of the 25 magistrates who were investigated, four of them are prosecutors while the rest of them are judges.

In two instances, the HPC approved unanimously the decision for the approval of the disciplinary measure of “Dismissal from duty” of subjects of disciplinary proceedings due to the existence of a final judicial decision, which declared them guilty of the commission of a criminal offense.⁶⁹ These decisions were the result of the verification of conditions envisaged in article 148/d, paragraph 2, letter “b”, of the Constitution of the Republic of Albania, and article 104 of the Law on Status. In the other instance, the HPC decided unanimously the suspension from office of the subject of proceedings because the Special Court for Corruption and Organized Crime had issued the restrictive personal security measure of “arrest in prison”⁷⁰ for him.

In one instance, the HPC decided to suspend the disciplinary proceedings that had been initiated toward a prosecutor, because it found that the magistrate is under another administrative process, such as the transitory re-evaluation process for which there was yet a final decision to be issued.⁷¹

As may be noticed based on the data that have been analyzed above, in all three instances of the issuance of disciplinary measures, the cause for issuing them is linked with the existence of a final judicial criminal decision, or a personal security measure, and not to any of the other causes that lead to the emergence of disciplinary responsibility.

Given that the disciplinary proceedings toward prosecutors during 2023 are very scarce, AHC notes as in the case of disciplinary proceedings toward judges that, besides the fact that the HJI currently exercises its activities with limited human resources, it pursues a modest number of proceedings that are finalized with the start of investigations of disciplinary measures. Compared to the number of administered complaints, which include those carried over from previous years (2340), the volume of work that the HJI bears is far from the expectations of the public and the principles of accountability of the judiciary.

To date, accountability and responsibility of the judicial system and the prosecutorial one has been enabled thanks to the activity of the vetting bodies, which have been tasked with the process of transitory re-evaluation, which may not replace the mechanisms in force of disciplinary responsibility that have a permanent and not a temporary nature, in the justice system. For this purpose, the HPC needs to undertake a more proactive role toward identifying the problems in the functioning of the prosecution offices, which may be addressed in the form of suggestions for thematic or institutional inspections; these, though linked mainly with addressing problems and the taking of measures that improve the system in its entirety, contribute to creating a prosecutorial system that is more responsible.

⁶⁹ Decision no. 31, dated 30.01.2023, of the High Prosecutorial Council “*On assigning the disciplinary measure toward magistrate Edmond Kariqi, with the job of a prosecutor at the prosecution office at the Lushnje judicial district court;*” Decision no.284, dated 17.07.2023, of the High Prosecutorial Council “*On assigning the disciplinary measure toward magistrate Sali Hasa, with the job of a prosecutor at the prosecution office at the first instance court of general jurisdiction in Saranda.*”

⁷⁰ Decision no.292, dated 31.07.2023, of the High Prosecutorial Council “*On suspension from office of the prosecutor Xhevahir Lita*”.

⁷¹ Decision no. 19, dated 16.01.2023, of the High Prosecutorial Council “*On the suspension of the disciplinary proceedings initiated toward the magistrate, who holds the job of a prosecutor at the prosecution office at the first instance court.*”

AHC considers that the governing bodies of the prosecutorial system, namely the HPC and HJI, need to intensify their activity in order to enable the preservation of a fair balance between guaranteeing independence, professionalism, and meritocracy of prosecutors vis-à-vis the mechanisms that serve to guarantee their accountability and responsibility.

Is worth emphasizing in this regard also the recommendation of the European Commission in its latest progress report on Albania (2024) that the Councils, HJI, and the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) should make further efforts in their activity through the control of assets and, where possible, checking the integrity of magistrates and candidates for magistrates. These controls should be in accordance with the highest standards of the vetting process.⁷²

⁷² For more, please see: https://neighbourhood-enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf , p.30.

RECOMMENDATIONS

For the purpose of addressing some problems highlighted during the monitoring of the activity of the High Prosecutorial Council and the High Justice Inspector, and to contribute toward the improvement of the activity of these institutions as a function of their fulfilment of duties that the Constitution and the law have assigned to these bodies, AHC has drafted a series of recommendations that may be found below:

Recommendations for the High Prosecutorial Council:

1. For the purpose of increasing transparency and accountability, AHC recommends to the High Prosecutorial Council to publish the annual progress report on the implementation of its Strategic Plan and its accompanying action plan, as this would serve positively to effective oversight of the public on justice and, on the other hand, the Council itself would be realizing its own obligation for accountability. Furthermore, AHC suggests realizing financial costing that is clearer and more objective, to the extent possible, of the Action Plan.
2. AHC suggests to the HPC to complete the entire necessary and mandatory framework of normative acts, thus respecting the principles of juridical certainty, of lawfulness, and equality in the law and before the law.
3. AHC recommends to the HPC that, in the context of fulfilling its obligations for transparency and accountability, and based on the obligations of article 190/2 of the law on the governing bodies of the justice system, it publishes its individual administrative acts regarding the status of prosecutors, accompanied by the respective reasoning, as well as publish the minority opinions.
4. AHC suggests revising the regulations of the High Prosecutorial Council for communication with the media, in order to guarantee the obligations that derive from article 10 of the ECHR and the judicial practice of the ECtHR regarding freedom of expression and media freedom.
5. The appointment, promotion, and disciplinary proceedings toward prosecutors are of fundamental significance not only for preserving the rule of law and democratic principles, but also for ensuring the integrity, independence, impartiality, and professionalism in the justice system. In this context, the High Prosecutorial Council, as the responsible body tasked by the Constitution and the law, for the appointment, promotion, and assignment of disciplinary measures toward prosecutors, should guarantee complete transparency before the public on claims about appointments of prosecutors as a result of interferences or interests of a corporatist nature.
6. AHC recommends to the High Prosecutorial Council to encourage the development of internal democracy regarding career development and, in particular, regarding the promotion of prosecutors, avoiding the approval as a group of certain cases that are linked with the individual status of the career of prosecutors.

7. In the context of career development for prosecutors, it is recommended that the High Prosecutorial Council harmonize procedures for the development of prosecutors' careers with final decision-makings of the vetting process, as a way to certify and guarantee better the legitimacy of candidates who are promoted in the career of the prosecutorial system.
8. AHC considers that the High Prosecutorial Council should evaluate and take measures that aim at encouraging healthy competition in the system, for the purpose of enabling the selection of candidates with the highest possible integrity and professional profile for promotions.
9. The High Prosecutorial Council should play a more active role in initiating requests for institutional and/or thematic inspections, in order to help improve and standardize the work of the prosecution offices.

Recommendations for the High Justice Inspector:

1. The AHC recommends to the High Justice Inspector to increase the number of institutional and thematic inspections and their quality, in order to improve and standardize the work of the courts and prosecution offices, in order to have a direct impact on increasing the efficiency of services that they offer to citizens and, therefore, the level of the public's trust in the justice system.
2. AHC suggests to the High Justice Inspector to undertake a more proactive role regarding the disciplinary proceedings of magistrates, by reviewing within the legal deadlines all the complaints and by initiating, on its own initiative, disciplinary proceedings on magistrates based on data and facts that are publicly known.

ANNEX 1

As a function of transparency, objectivity, and impartiality, and appreciating the positive spirit of cooperation that AHC has had with the High Prosecutorial Council and the High Justice Inspector, presented in this annex are some of the comments and recommendations for which these institutions provided relevant remarks or comments. Some of their comments and remarks, which were considered valid by the authors of this report, have been reflected directly in its text.

Meanwhile, presented in the annex are those comments or remarks for which AHC shares an opposing evaluation, and has accompanied them with the respective arguments.

High Prosecutorial council

1. AHC Finding

The mid-term expenses of the HPC are reflected in a separate chapter of the Strategic Plan. Nevertheless, it is difficult to comprehend how this framework of expenses is linked with the envisaged activities, as they are reflected on the basis of items, such as: salaries, current, internal capitals, external capital, and out of the budget. Taking into consideration that cost estimates are an internal part of strategic planning, which in essence supports and ensures the implementation of the strategy, it would be suggested that the Council had realized/envisaged a clear and objective cost estimation, to the extent possible, of the action plan. This would be as a function of increasing transparency before the public, to ensure information and understanding of limitations, even of a financial nature, that the Council has in the process of successfully realizing its strategic objectives.

1.1. HPC Comments

The High Prosecutorial Council currently publishes the register of realizations of public procurements, which contains detailed information on the purchases, tenders, and relevant expenses, as well as reports for monitoring expenses, requested by the Ministry of Finance and the Directory of the Treasury/Budget, which reflect the division of funds by category and realized expenses, thus fulfilling the legal requirements for financial reporting. In order to address the AHC recommendations, the High Prosecutorial Council will integrate the register of procurements and reports for monitoring expenses in a detailed matrix, which will be directly linked with concrete activities and strategic objectives, and that will include the concrete activity of the Action Plan for each expense, the related strategic objective and expected results, as well as success measurement indicators. Besides existing reports, the HPC will also develop a new report that clearly links realized expenses with strategic objectives and concrete activities, thus indicating the interconnection between the used funds and the results.

1.2. AHC Comments

AHC positively evaluates the engagement and financial transparency of the High Prosecutorial Council in publishing the register of realization of public procurements and the expense monitoring reports, as well as the fulfillment of legal obligations with regard to financial reporting. The initiatives that are planned to be undertaken in the context of addressing recommendations of this

report represent a very positive step toward the public's understanding and evaluation of the way in which public funds are used.

2. AHC Finding

The fact that there are no general rules envisaged for the procedure of the functioning of the Special Commission for the Verification of Assets and Integrity, which is established pursuant to article 6 of law no. 95/2016, as well as of the rights of the parties involved in the procedure are recognized or the manner in which these rights are guaranteed and exercised, although envisaged *sui generis* in the Administrative Procedure Code, creates a very broad discretionary space for the Special Commission, thus creating premises for an infringement of the guarantees for due legal process and of the right of the involved subjects to privacy. In the evaluation of the authors of this research, the High Prosecutorial Council enjoys the competence to envisage general rules for the functioning of this Commission, toward the principles that should guide the Special Commission in its activity.

2.1. HPC Comments

On the basis of law no. 96/2016, the Special Commission has drafted and approved the regulations for its functioning. The lawmaker has not granted the High Prosecutorial Council any legal competence to interfere with the process of the verification of assets and the integrity of the candidates for prosecutors in the Special Prosecution Office, and such an interference by the Council, in the absence of discretion expressed in the law, might be perceived as interference with the activity and independence of this special structure. Furthermore, the regulations *“On the criteria and procedure for the promotion of prosecutors to the Special Prosecution Office against Corruption and Organized Crime,”* has been drafted with the assistance of the “OPDAT” mission, as a body that has an important procedural role in the process of the creation and completion of SPAK.

2.2. AHC Comments

In the evaluation of the AHC, the High Prosecutorial Council, although it does not enjoy competences in terms of the verification of the assets and integrity of candidates for prosecutors for the Special Prosecution Office, in the context of the legal obligation to approve the regulations on the criteria and procedure for the promotion of prosecutors at SPAK, enjoys the legal competence to envisage general rules or principles, which should guide the procedure of the functioning of the Special Commission, including here the procedural rights of subjects, recognized during the procedure for the verification of assets and integrity.

3. AHC Finding

In relation to the recommendations of the European Commission in its annual progress reports on Albania, AHC continues to find that the HPC has not waited for the decision-making of the vetting bodies, when it comes to the promotion of magistrates (prosecutors), thus giving priority to the right to career development of the competing subject. The same finding is valid especially for the case of the former head of the High Prosecutorial Council, Mr. Alfred Balla, who was elected HPC member from the ranks of civil society, and was appointed as head of the HPC in 2022, and for

whom the process of transitory re-evaluation was interrupted on 21.05.2024 by the Special Appeals College.

3.1. HPC Comments

The High Prosecutorial Council could not link the mandate of Mr. Balla, as a member elected from the ranks of civil society by the Assembly, with the conclusion of the process of transitory re-evaluation, to which he was subjected in his capacity as former legal advisor at the High Court. Moreover, Mr. Balla was a sole candidate and the finding of AHC does not have grounds in the legal basis.

3.2. AHC Comments

The concern raised in the report is mainly linked with the need for a rigorous respect for the standards of integrity and of the vetting process for all leadership positions in the prosecutorial council and its governance. The fact that Mr. Balla was the sole candidate in this procedure does not serve as a justification for the lack of in-depth analysis on the influence that such decision-making could have on the public's perception of the integrity of the institution. In this context of the integration process and the recommendations of the European Commission, the election of Mr. Balla as HPC Chairperson, although he had been elected as member from civil society ranks, may be perceived as an avoidance of these recommendations.

4. AHC Finding

AHC considers that it is necessary to strengthen the integrity and impartiality of each member of the Council, so that no reasonable perceptions are created among the public about elements of corporatism in the Council's decision-making. This finding of AHC has been made in the context of the procedure for promotions, whereby in both highlighted cases, the decision-making was approved in the plenary session unanimously by the participating members, in the absence not only of discussions, but even of dissent views/votes, which would make a positive contribution to internal democracy in the institution.

4.1. HPC Comments

The counter-arguments of the High Prosecutorial Council elaborate that the approval of decisions unanimously does not demonstrate a lack of integrity or impartiality of the members of the Council, but it demonstrates that the law has been clear and that there have been no legal alternatives to justify different positions. On the contrary, subjection to the law, demonstrates high moral and professional integrity, beyond the personal evaluations that each of the members of the HPC may have had for these cases.

4.2. AHC Comments

It is true that the unanimous approval of certain decisions may reflect the proper implementation of legal provisions; however, the concern raised by AHC has to do with public perception and the need to promote internal democracy and transparency in decision-making processes. The fact that

there were no discussions or opposing views/votes in the highlighted cases, although the law may have been clear, does not rule out the possibility for critical analysis and the expression of alternative views, which are essential for a functional internal democracy. Open and well-argued debate, even when the decision is unanimous, contributes to strengthening public trust in decision-making processes and strengthens the perception of corporatism. In this framework, we consider that preserving integrity and impartiality is not only a matter of respecting the law, but also a process that should reflect the pluralism of views and the freedom to express them inside the institution.

High Justice Inspector

1. AHC Finding

In terms of monitoring the implementation of the Strategic Plan and measuring the level of realization of each objective, the HJI established measurable, specific, and attainable indicators, which for their most part are quantitative objectives. In this context, AHC has suggested that the High Justice Inspector assess the possibility of identifying also qualitative indicators, in order to evaluate how much the fulfilment of quantitative indicators has also contributed to qualitative ones, such as for instance, increase of the institution's performance, increased public trust in the HJI mission, etc.

1.1. HJI Comments

Although it found AHC's finding to be just, the HJI judges that the results are clearly readable in terms of concluding the backlog of carryover complaints and the inspections, completing not only two inspections from 2022, but also approving the first annual plan of inspections. In the evaluation of the HJI, the work results have been achieved thanks to continued efforts to establish the standards that guide the work in the institution, but also investing, through quality training, in the human capital that the office of the High Justice Inspector possesses, a challenge that HJI has been faced with from the moment when it was created.

1.2. AHC Comments

The completion of handling the inherited backlog of complaints, as a legal obligation, has AHC's positive evaluation; however, this aspect should be taken with some reservation due to the high number of cases that have been archived compared to the number of cases for which disciplinary proceedings have been sought at the High Prosecutorial Council, a ratio that raises question marks on some important aspects, such as the causes for archiving. In the circumstances of a lack of information on these aspects, including the manner of proceedings for each case, etc., it is difficult to evaluate whether the decisions for archiving complaints were founded on objective and fair criteria. Also, the approval of the annual plan of inspections represents a fulfilment of the functional duties that the High Justice Inspector has, in reference to article 204, paragraph 1, letter "dh," of the Law on Governance.

2. AHC Finding

During the period January – December 2023, the HJI approved 18 decisions for disciplinary investigations; among these are investigations into pretended violations for 25 magistrates, of which only in two cases the proceedings was started by initiative. At the conclusion of the investigation, the HJI submitted requests for proceedings to the Councils on six magistrates, of which only 1 magistrate was a prosecutor.

2.1. HJI Comments

The HJI states that, taking into consideration that for 2023, of six requests for disciplinary proceedings, two of them were initiated upon initiative, it is to be appreciated that these requests represent $\frac{1}{3}$ of the cases of disciplinary proceedings requested by the HJI. Further on, the HJI clarified that the disciplinary investigations that were realized did not aim at punishing magistrates, but at reviewing the lawful interests of two subjects (the petitioner and the magistrate who was investigated), judging in a proportional manner and documenting all testimonies presented on one hand and respecting the rights of the magistrate who was the subject of the investigation.

2.2. AHC Comments

The fact that the number of requests initiated by the HJI represents $\frac{1}{3}$ of the cases for which disciplinary proceedings were requested at the Councils is to be appreciated; however, it deserves to be kept in consideration with some reservation as the relatively low number of requests for disciplinary proceedings, compared to the high number of requests (including those carried over from previous years) may dictate the need, among others, for a detailed external analysis on the investigation conducted by the HJI. AHC finds it fitting to reiterate that disciplinary proceedings do not aim to punish magistrates, but it does serve also as a preventive mechanism, to ensure accountability for magistrates, the public's trust in justice, the rule of law, and the promotion of ethical standards, and one that is conducted in accordance with applicable legislation.