

JUDICIAL REFORM IN ALBANIA: CHALLENGES AND OPPORTUNITIES TOWARDS THE EU

by

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Abstract

This study examines the judicial system in Albania in accordance with the EU standards, and its challenges, mainly corruption as an issue of political character and the necessity to implement a new draft reform in judicial system. It discovered that a corrupted, inefficient judiciary has existed for many years in Albania and recently the Albanian authorities, in cooperation with European Union and other international actors, are trying to finalize the creating the new draft reform. The thesis briefly points some of the reasons behind this issue, as political influence on the judicial system, lack of efficiency in the organization of the courts and loss of the trust in the judges and prosecutors in the country. It also analyses about the objectives of the new draft reform and further recommendations from the EU in the fight against corruption. This study finds that new draft reform faces difficulty to be implemented since most of the politicians and other judicial officials are part of the corrupted cases and this prevents the progression of the judicial system and results the deterioration of the standard of living in the country.

Keywords: *Judicial System, Corruption, Draft Reform, Courts, Political Influence, European Union*

Abstrakt

Ky studim shqyrton sistemin gjyqësor në Shqipëri si faktori kryesor për të përparuar drejt BE -së, sfidat e këtij sistemi, kryesisht përhapjen e korrupsionit si një çështje me karakter politik dhe nevojën për të zbatuar një projekt reformë të re në sistemin gjyqësor. Për shumë vite në Shqipëri ka ekzistuar një sistem gjyqësor joefikas, i korruptuar dhe kohët e fundit autoritetet shqiptare në bashkëpunim me Bashkimin Evropian dhe aktorët e tjerë ndërkombëtarë janë duke u përpjekur që të kalojnë draftin e reformes në drejtësi. Tema flet shkurtimisht për disa nga arsyet që e kanë shaktuar këtë çështje, si influenca politike në sistemin gjyqësor, mungesa e efikasitetit në organizimin e gjykatave dhe humbjen e besimit tek gjyqtarët dhe prokurorët në vend. gjithashtu janë analizuar për objektivat e draftit të reformës së re dhe rekomandime të mëtejshme nga BE-ja në luftën kundër korrupsionit. Ky studim konstaton se drafti i reformës i ri përballet me vështirësi për t'u zbatuar pasi shumica e politikanëve dhe zyrtarëve të tjera gjyqësore janë pjesë e rasteve të korruptuar dhe kjo e pengon përparimin e sistemit gjyqësor dhe shkakton përkeqësimin e standardit të jetesës në vend.

Fjalët Kyçe: *Sistemi Gjyqësor, Korrupsioni, Draft Reforma, Gjykatat, Influenca Politike, BE.*

Dedication

This thesis is dedicated to my parents for their love, encouragement and endless support. I also want to dedicate and make part of my success my beloved brother for accompanying me through this journey. I am really grateful to my family since they have been the biggest strength for my achievements all the time. All I have and will accomplish are only possible due to their love and sacrifices.

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Declaration Statements

1. The material written in this thesis has not been submitted in part or wholly for any qualification or any academic award other than that for which it is now submitted.
2. The Program of advanced study of which this thesis is part has consisted of:
 - i. Research Methods course during the undergraduate and other courses during the Master Degree study
 - ii. Examination of professional book on this subject, some thesis guides from Epoka University and other universities abroad, as well as government publications and European Union Reports.

Ersida Kojku

June 2016

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List of Abbreviations

CC	Constitutional Court
CEPEJ	European Commission for the Efficiency of Justice
CPI	Corruption Perceptions Index
CPT	Venice Commission, European Committees for Preventing Torture
DP	Democratic Party of Albania
ECTHR	European Court of Human Rights
EURALIUS	European Assistance Mission to the Albanian Justice System
FRIDE	Foundation for International Relations and Foreign Dialogue
GRECO	Group of States against Corruption
HCJ	High Council of Justice
MoJ	Ministry of Justice
MS	Magistrate School
NJC	National Judicial College
OSCE	Organization for Security and Co-operation in Europe
SP	Socialist Party of Albania

Chapter One: Introduction

1.1 Introduction

Recently implementation of the new draft judicial reform has become an issue in Albania. The government is preparing to make changes in the Constitution during the summer of 2016 as part of an effort to reform the judiciary, widely regarded in the country as the most corrupt field. Concretely, the judicial reform has become a major challenge for the whole society in Albania and mostly a responsibility for the government. This study has an importance by the fact that a corrupted judicial system can prevent the economic and political development. Because of the country's big effort to integrate into the European Union the new draft reform has strengthen the collaboration of the Albanian authorities with the EU member states to put in practice all the recommendations. A transparent and efficient judiciary is the main factor for the integration that is why it deserves a proper study and attention. What we actually see as a problem of the judiciary in Albania is the fact that different governmental bodies through the years were aware of the critical situation in the country, but none of them has taken real actions to prevent the corruption. Today the EU has warned the Albanian authorities that if they will not implement the new draft law till the summer of 2016 the country will go in pre - election process. Lately The EU and US ambassadors Romana Vlahutin and Donald Lu demand quick approval of the government to change the constitution otherwise they will dishonor the relationship with the European Union, United States and the people who elected them (BIRN, 2016).

Guaranteeing the judicial independence and the rule of law remains a challenge for Albania. The overall political stalemate in the country is created by the judicial system since it still in an incomplete format. Some laws are not revised yet such as: The Law on the Administrative Courts, The Administration of Judiciary and The Judicial National Conference. Even if it was noticed a positive development to protect the rights of the citizens, actually it is relevant that the main challenge in the judicial system for the Albanian authorities and EU actors would be to decrease the corrupted cases and enable the independence of the judiciary from the class of politics. Corruption is found deeply in the society of Albania, affecting negatively the economic sector and political

development of the country. Yet the political will and the institutions capacity to fight corruption in the country remained weak. In parallel with this issue the goal of Albania to integrate into the European Union adds the responsibility and pressure of the country to ensure the establishment of the new draft reform. The inspections of the new draft reform are related mostly to the application of effective courts, creation of transparent cases, increasing of professionalism and improve the structure of judges and prosecutors. European Union is an important actor to support and strengthen the necessity to implement the draft reform to have a more efficient, transparent and independent judiciary in Albania.

In the second chapter the structure and organization of the court system in Albania will be described in general. It will be a brief analysis of how the judiciary functions in Albania. There will be treated the main challenges that the judicial system faces and has forced the Albanian authorities together with the help of the EU actors to increase the efforts for the implementation of the new draft reform successfully.

The third chapter will give a clear picture that goes in further details with the last 10 years EU reports on Albanian case, more specifically on the challenges and changes that the judiciary could face during each particular year. By referencing to EURALIUS, European Commission reports and World Justice Project the chapter aims to present the situation of the judicial system in an explanatory as much as with a critical eye. This will be illustrated with real examples and numbers to understand if the judicial system has made improvement through the years or it has stand on the same level as it continues to be today. The chapter will try to answer the following questions:

- I. What were the reasons that even during a democratic system after 1992 the country was not able to stop corruption and undertook more efficient measures for the judiciary?
- II. What are the reasons of the current critical situation where the political leaders and other high officials face difficulties to agree with each other on the objectives of the new draft reform?

This chapter will also present some recommendations that the Albanian politicians should take in consideration in order to improve the country's judiciary.

In the fourth chapter there will be given the strategy of the new draft reform. The objectives that this draft aims to fulfill will be analyzed along with the performance of the two main groups that contribute in the establishment of the reform: the majority and opposition. The chapter will focus on listing the main objectives of the draft reform that aim to decrease the level of corruption and gain the citizen's trust and give them the opportunity to contribute and support the realization of the reform. It will suggest some possible solution of fighting the main challenges in Albania especially that of corruption. Initially looking at the situation, many solutions can be suggested but all are considered fruitless and long process as far as corruption exists for many years in the country. The main actors to undertake actions are the government on one side which should find the ways and elements to fight corruption and establish efficient rules for the judiciary and on the other side the EU members who should be sure that the Albanian authorities are demonstrating the improvement of the judiciary by real actions.

The fifth chapter gives an answer to the research question as a conclusion. It will examine opinions and advices about the critical situation in Albania where the authorities have two choices of either implementation of new draft reform or the pre – elections. That is why this study's purpose is to give at least a decent contribution to the identification of the challenges with the judiciary in Albania, the ways how to improve it and then live space to the other studies complement to this specific work that will analyze the results and expectations reached whether the new draft would establish or not.

1.1.1 Research question and Hypothesis

Research question

The main research question for this study is formulated as follows:

- What are the reasons of implementing a new draft reform in the judicial system of Albania and its consequences in the rule of law?

There will be also two subsidiary questions to find an appropriate answer for the main research question:

- What will be the key impacts of the new draft reform in the Albanian legal system?
- How much non-transparent and corrupted judicial system is perceived as a problem for the development of democracy and society in the country?

Hypothesis

An independent, effective and functioning legal system is the essential characteristic of a developed democratic country.

1.2 Literature Review

The development and prosperity adopted in good governance can be pursued through a strong judiciary system of a country. That is why it should give importance to the study of judicial reform to identify the problems and the ones who are responsible for increasing the issue even more every year.

The traps of a corrupted and inefficient judiciary are realistic situations where Albania generally falls into as a reason of the old and outdated politics or because of the lacking vision in the policies of the economic development where judiciary is also integral part of it. Through years Albania has been stuck in those political traps that have intense corrupted cases in the judiciary system and the situation seems deteriorating every single day and more because of the selfishness, misrule and default of the authorities governing the country.

As it is mentioned by the analysis and conclusions of European Commission reports from 2005 till 2015 the system in Albania gone through some radical changes, however further measurements need to be established for a transparent and efficient judiciary. Albania needs to improve the management, resources and increase the cooperation with Europol, other international as well as regional actors to fight against corruption.

Nils Muižnieks, the commissioner of Council of Europe for human rights, in a report of 2014 claimed that the level of corruption is high in Albania and this prevents the proper functioning of judicial system and the trust in the judges. In this context Nils Muižnieks together with the others commissioners' recommendation, advice to depoliticize the judiciary, to make the High Council of Justice independent and the Council's members

as well should be elected by a competent majority in the parliament. Mr. Muižnieks continues with his declaration that in the national draft reform some encouraging measures have been taken, but the most important things that need to be included in the action plan for justice are the merit-based procedures, transparency in evaluating and appointing the judges (Muižnieks, 2014). Following this Joaquin Urias, the head of EURALIUS mission in Albania, underlined that in these last 4 years the justice system has continued to deteriorate. He highlights that Albania needs to amend the constitution in order to integrate into the European Union. Secondly there is a bar association, that was created to support lawyers and control any corrupted actions, but the last eleven years there is not any lawyer that has been accused for any penal cases. Furthermore, one of the main problems in Albania is the distrust and lack of vision of governments, since every single year the governments' incentives of creating new anticorruption reforms have remained at zero. Due to this case the commissioner has highlighted the need for a draft reform that can regulate the entire judicial system so that the government, international actors, civil activists and opposition can have specific roles in the rule of law (Voice of America, 2016).

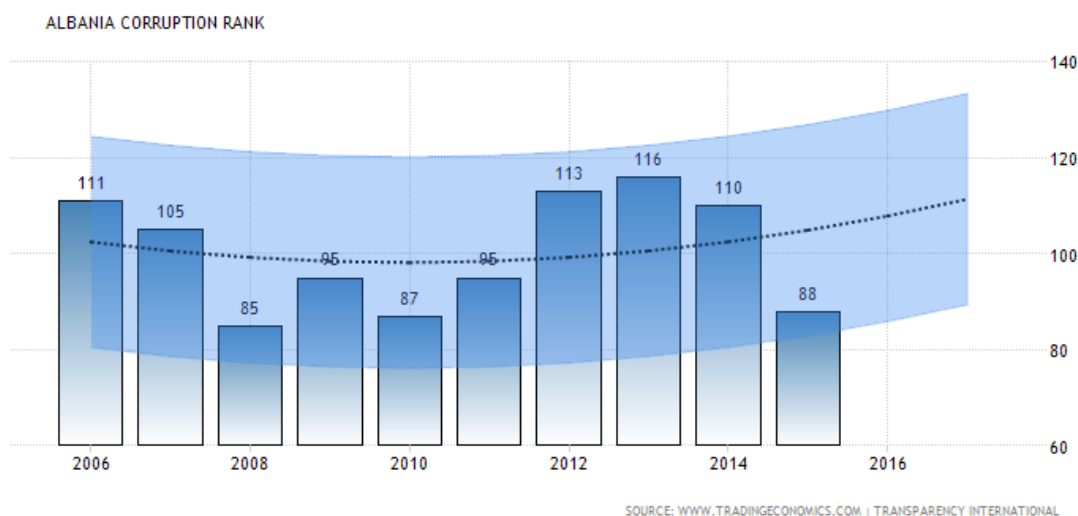
The authors Mirela Bogdani and John Laughlin in their book "Albania and the European Union" pointed out that the judicial system in Albania and its structure have undergone deep reforms and transformation to achieve a liberal democratic system and it has made some progress. However, we see today nine years back from the time this book was written that despite the development that the country has achieved the judiciary remains a concern not only for the Albanian authorities but even for the EU members that are trying to help the country to integrate into the EU. In the book the authors describe about the situation in Italy named "Tangentopoli" type, which happened in 1992 where party leaders, former prime ministers and other members of government were investigated for the corrupted actions that they were part of. The same situation is formed in Albania nowadays. The people have lost the trust in the politicians and they want the new draft reform to be completed and implemented since only in this way the corrupted politicians, judges, prosecutors will be dismissed from their office.

This book serves to the research study because aims to give more information on the Albania judiciary and the obstacles that prevent its development. Also it provides real examples, opinions and analysis that serve as stimulus to make efforts for the progression of the judicial reform in the country. Lastly it passes to analysts and authors

that even nowadays contribute on the same level with their judgments on the enforcement of law on the judicial system in Albania. Andrea Stefani one of the political analyst comments this situation as spectacular one and form of arrogance from the politicians governing in Albania, it does not matter part of which party they are. Also Ismail Kadare a really famous writer argues that the Albanian politicians in their mind have a definite answer for their question but they do not practice it since their acts are increasing corruption rather than decreasing it (Bogdani & Laughing, 2007).

Transparency International's 2005 Corruption Perceptions Index (CPI) surveyed 159 nations where more than 2/3 had a score of five out of ten (the clean score), showing reliable scale of corruption in most of the surveyed regions. According to the International Corruption Index 2005 Albania had a 2.4 score out of 10 (where 0 is the most corrupted level score), standing 126 out of 158 other countries. And in 2015 after 10 years when we see the same index it comes out that Albania ranks in 88. The following graph shows that Albanian ranking of corruption has decreased meaning that some improvements are done through the last years but still the government should undertake more concrete measures to dismiss the corrupted politicians and judges and prosecutors in Albania. "Corruption is seen as the key factor of poverty and it needs time to overcome it", claimed Peter Eigen, the Chairman of the Transparency International. Moreover, in the countries where the judiciary is corrupted the foreign investment as well is lower since they lose the trust to the national market of that country and this situation further prevents the chance to prosper. For this reason leaders must provide resources, and keep the promises that they give to improve transparency, accountability of the governance (Transparency International 2005; 2015).

Figure 1.1: Albania Corruption Rank



Source: Transparency International, 2015

In the same logic a report of the Freedom House in 2009 demonstrates that Albania has rated low score in the performance of judicial framework and corruption. The score of corruption changes within really slow values which it improved somehow from 4.25 in 2006 to 4.00 to 2007, but unfortunately in 2009 this score went back to 4.25. The ruling Democratic Party of Sali Berisha during the eight years of governing demonstrated their efforts to control the judicial system and stop the corrupted cases but it did not propose a specific strategy for the implementation of new reforms. The similar situation is again today with Edi Rama's government where everybody is waiting for the implementation of the new draft reform since only that one could be a real act rather than efforts.

Another situation that the report emphasizes is the politization of the judiciary system, there is described the case of the prosecutor Theodori Sollaku who was seeking to lift the immunity of Lulzim Basha who served as a Minister of Foreign Affairs from 2007 till 2009 and this action demonstrates that pressure has been pursued on the institutions of judiciary especially that of prosecution. This situation continues even today after seven years where the government wants to dominate the judiciary. This is an unacceptable situation since decreases the competences of the president and disables the country to be governed under democratic values. It is good to fight for the standards but actually through the years it is demonstrated that they are fighting to go backwards.

The representatives of the DP and SP in the parliament and in the recorded annual reports of the legal institutions keep repeating the corruption cases rather than finding a solution to prevent it or created ideas on how to work out to solve the problems in the judiciary. The report shows that citizens started to lose their confidence in both leading parties since they were just being critical to each other rather than cooperating and so eliminating the corruption cases in Albania. As far as the authorities in Albania could not manage to undertake necessary measurements in the judicial system the EU actors as well would continue to warn the government on the fact that reforming the judiciary is the main objective toward the integration into the European Union (Freedom House, 2009).

In the book of “Global Corruption Report of 2007” it is highlighted that in many parts of the world corruption is destroying justice. The book offers a close view of the judicial corruption challenges. There are analyzed 37 countries case studies and some substantial recommendations for political powers, prosecutors, judges, lawyers, and businesses. One of those corrupted countries that they have been included in their report is Albania. It is difficult to neglect the negative consequences that the corrupt judiciary brings to a state; it diminishes economic growth, trade, and human development. In Albania representatives of different parties send a straightforward message that the corruption in this country is tolerated, is something that everybody is aware of it. That’s why it is not easy to change the legal framework since most of the officials especially the judges and politicians themselves will be the first one in risk and lose if they implement measurements that prevent corruption. First of all in a corrupted justice system is distorted the role of a judge who has the duty to protect the rights of citizens, civil liberties and to assure fair trails. In Albania the level of corruption is high; the ones that lose mostly are the ordinary citizens who do not have enough money to pay the corrupted judges and prosecutors. And the well-connected and rich citizens dominate over the ordinary ones. In order to tackle this problem there needs to be structured the judicial system and not only changing the ethics and taking into consideration the recommendation from the international actors but to put further efforts to establish those measurements. There is a need for concrete measures to demonstrate the reality and put aside the rhetoric part of the politicians that try to comfort the citizens that they are really working on improving the judicial system in Albania (Transparency International, 2007).

1.3 Methodology

This is a political study related to the challenges of judicial reform and its consequences in the legislative process and society in Albania. It is a qualitative analysis of primary and secondary materials such as reports, legal documents, articles and official declarations of high officials related to the topic. This study tries to analyze the current situation of judicial system in Albania by relating it to the information in judiciary of the last 10 years. Political affiliation and the imperfection of the law are the main factors that cause the corrupt practices of the judicial system. The study displays the extent of the political influence on judicial review and as well as its impact on the legal framework in the country.

Further the paper focus on the consequences that a corrupted judicial system has for the stability of national democratic institutions and also presents recommendations and strategies that are essential for further improvements of the system.

The paper provides an explanatory topic by defining the importance of the judicial system in the legal framework of Albania, explaining its function, the judicial authorities' behavior, and explanations of the challenges that the system faces.

Chapter Two: Structure and Functions of the Judiciary System in Albania

2.1 Introduction

Albanian court system is composed of the High Court, Constitutional Court, Courts of First Instance, the Courts of Appeal and Courts of Felonies. All of these courts deal with administrative, criminal and commercial cases. There are 346 judges and 226 assistant judges in the system of justice divided into the High Court, six Courts of Appeal, twenty-nine District Courts and one Military Court of Appeal. Article 135 of the Constitution presents the organizational structure of these courts. The Constitution considers the High Court as the highest power in the judicial system and this court establishes the procedures of appointment of the judges and their duration term. According to article 145 judges are subject only to the laws and Constitution as well as independent while adjudicating various cases. The independence of the judiciary is provided in different articles. If a law comes in contradiction with the Constitution is not applied. In this case the judges should deliver the case to the Constitutional Court whose verdicts are obligatory for all other courts (Kritzer, 2002).

2.2 Structure and Organization of the Courts

The content of the following paragraphs is taken from the publications of:

- ✓ Albanian Constitution Approved by the Albanian Parliament (1998)
- ✓ The World Law Guide, Albanian Courts and Cases (1996 -2011).
- ✓ Legal System of the World from Political Encyclopedia (2002).
- ✓ Judicial Reform Index for Albania Volume IV (2008).
- ✓ Court Organization and Court Administrators' EU/Council of Europe Support to Efficiency of Justice (2016).

2.2.1 High Court

High Court is organized in compliance with law no. 8588 date 15/3/2000 in the codes for civil and criminal procedure. The President with the consent of the parliament appoints 17 judges that need to operate in this court for nine-year term. The High Court operates in criminal cases and civil panels such as administrative, commercial, labor and family cases. After the termination of judicial examination the court should proclaim the decisions no later than 30 days. There are five judges in the panel that hears the cases and give opinions to change or unify the judicial practice. High Court serves as the Court of Appeal for the lower cases and for some other serious offence cases that has exclusive judgment.

2.2.2 Constitutional Court

This court was created on the basis of law no. 8577, date 10/2/2000 and makes interpretation of the Constitution approved by the government and parliament. It has nine judges who appointed by the President for a term of nine years and they do not have the right to be reappointed. This court reviews constitutionality of the laws, international agreements or normative acts of local and central bodies. The judicial review over the constitutional matters may be initiated by the Prime Minister, President and 1/5 of parliamentary members. According to the Constitution the decision that are taken by the Constitutional Court are final and have to be implemented. This court formally is outside the judicial system and even though is independent from the government it still rules some of the organizations, political parties and their activities. The decisions that this court takes are superior to all other courts and cannot be reviewed by other bodies.

2.2.3 Courts of Appeal

Albania has one Military Court of Appeal and six Courts of Appeal. This court is founded in five regions namely Durres, Gjirokastra, Korca, Shkodra, Tirana, Vlora, and reviews all complaints that do not agree with the verdicts of the Courts of First Instance. It composed by ninety-seven members as a support staff and forty-seven judges who are nominated by the President and High Council of Justice. The judges of this court stay in the position till they leave or arrive at the age of sixty-five or are suspended from the office.

2.2.4 Courts of First Instance

These courts have a general jurisdiction and are the basic for the judiciary. In these courts there are 341 secretaries, 226 assistant judges and 302 judges. They have a workload since deal with all the criminal and civil cases. The criminal courts deal with criminal cases except those of the military cases and the civil courts deal with commercial, administrative cases. Parts of these courts are also the Military Courts that deal with prisoners of war and military crimes. They are organized in 36 jurisdictions in all the country. Their jurisdiction is proposed by the Minister of Justice together with the High Council of Justice and approved by the president. These courts' verdict is done by a panel of three judges. In order to be part of these courts a judge should have a really good reputation, full legal competences, at least 25 years old and have no criminal record.

2.2.5 The High Council of Justice (HCJ)

This is another important part of the judiciary and has fifteen members such as the President, Minister of Justice, Chief of the High Court, three members that are elected from the assembly, and nine other judges are elected from any level of courts. The council decides on the disciplinary measures of the judiciary, to dismiss the judges of the court of appeal and first instance courts. It proposes the appointment of the judges of the appeal and first instance courts to the President. This court also can appoint and dismiss the deputy chief and chief of the First Instance Courts, Courts of Appeal and as well can transfer their judges.

2.2.6 Courts of Felonies (Serious Crimes Courts)

It was established in 2004 in order to make the judiciary more efficient towards the organized crimes. The Courts of Felonies have jurisdiction over the cases involving criminal organizations, armed gangs, and crimes related to robbery, terrorism, human trafficking, and some other serious political crimes. These courts are composed of a deputy chief judge, chief judge and judges in a term of nine years. Moreover the Courts of Felonies investigate cases of sequestration, confiscation, and precautionary disciplinary measures.

2.3 Conditions of Service of Albanian Judiciary

2.3.1 Qualifications

There are some specific criteria for the judges to be appointed to the district courts. First they need to have Albanian citizenship, no criminal convictions, higher legal education, professional abilities and moral qualities. In 2008 for the first time it was required that the judges should be graduates of Magistrate School (MS). However the High Council of Justice (HCJ) made an exception to appoint 10% of the total judges that meet other requirements, additional qualifications to be a judge. The judges that are appointed on the Serious Crimes Courts must have at least an experience of 5 years of work in the Courts of First Instance. While the members that serve on the Court of Appeal should have worked around seven years in the Courts of First Instance and as well the candidates of the High Court must be a prominent jurist with fifteen years of work or ten years' experience as a judge. Also the Constitutional Court requires jurists with at least 15 years of experience. According to the degree that they earn the judges are familiar with the international law norms and the European convention. Generally the younger judges graduated from the MS are more familiar to the convention than the older ones. Similarly the young generation presents more clearly arguments or complaints for certain cases to create a strong judicial process in accordance with the European criteria (American Bar Association, 2008).

2.3.2 Tenure of Judges

The President appoints judges of the Courts of Appeal, Courts of First Instance, and Courts of Felonies on the proposal of the HCJ. The Judges that are appointed to Serious Crimes Court after the termination of nine years work in this court again have the right to be reappointed (Article 20), while the judges of the Courts of Appeal and the Courts of First Instance have indefinite tenures. The judges are part of the office until they are dismissed for a particular cause, in case they complete their fixed terms, reach the mandatory retirement or resign. The court where they are working claims the tenure of a judge. The judges from the Constitutional Court and High Court are elected by the President with the consent of the Assembly for a term of 9 years and cannot be reappointed (Articles 125.2; 136.3). However a judge from the High Court after completing his/her term in this court has the right to be appointed to the Court of Appeal (Article 7.2). The High Court judges should reach their sixty fives to be retired

(Article18) and for the judges from the Constitutional Court is 70 years old (Article139).

2.3.3 Training

Under the current legislation the qualifications to become a judge are rigorous and this came as a result of an insufficient legal training and professional mechanisms that it used to be before in the law faculty. Since 2000 the new judges had to be graduated from the School of Magistrate, which is a three years school program, where the first year is assigned on lectures, the second year is offered training in different courts and the last year they apply on work practices supervised by a judge in the courts. At the time of training the judges in order to seek a more convenient location can be transferred among the courts, not in their consent but in the requirement of a judicial organization (Article 21). Meanwhile a judge can be transferred in a court of lower or same level if the court where they sit is closed (Article 42). The advancement of training in the school of law was important and necessary since it establishes clear standards and requirements for the available positions of chief judge and judges at the Courts of Appeal and Courts of First Instance. Also at the time that the training program functions well the evaluation and appointment process of judges has not to be subjective but to focus in what a judge have been accomplished rather than with whom a judge is familiar with (Constitution of the Republic of Albania,1998).

2.4 Quality, Education and Diversity of Judges

2.4.1 Code of Ethics

The code of ethics in judicial system serves to address some issues such as inappropriate judicial acts, conflict of interest and the judges should be familiar with this code during their tenure. The graduates from the Magistrate School indicated that they had to study the code of ethics during the first and second year of the school. In December 2000 the National Judicial College (NJC) adopted a code of ethics that have rules on the fairness of the prosecutors and judges, extrajudicial activities and functions of the judiciary. Still the sitting judges are not obliged to take ethic trainings, both Ministry of Justice and the High Council of Justice (HJC) has not created opportunities

to maintain detailed knowledge on this code. This creates concerns on their behavior if the judges are acting in accordance with the law or against it.

2.4.2 Appointment Process

The judges in Albania are appointed based on the performance in law faculty, passage of an exam, professionalism, training, reputation, and experience. According to Article 12.1 of the Constitution the President with the consent of the assembly and suggestion of the HCJ appoints the members of the Courts of First Instance, Courts of Appeal, and Courts of Felonies.

2.4.3 Minority and Gender Representation

According to the Article 18 of the constitution the individuals that are in the nominees of the judiciary are not discriminated on the basis of religion, language, race, political affiliation, ethnicity, economic condition, social status and religious beliefs. In Albania has not been kept any statics on religious or ethnic affiliations among the judges in the judicial system. At the same time the Magistrate School does not put any restrictions on its applicants who have different religious or ethnic backgrounds. Similarly Albania has proved that a professional woman can reach in high position of work without any discrimination. In 2014 OSCE would support the woman's public and political participation for the upcoming local elections of 2015. There were organized some particular activities that could enhance the gender equality in the country. The number of woman serving as judge and prosecutor increased and it is reported from the OSCE and also some other official documents that woman who are part of the judiciary are less corrupted than the men who serve at the same offices of the judicial system (OSCE, 2014).

2.5 Problems of Judiciary System

2.5.1 Political Influence

One of the challenges of the Albanian judiciary has been the distrust and absent visions of the government. Through the years the EU claims that there is a need for a reform that can regulate the entire judiciary so that the government, international officials, civil activist and opposition leaders can have specific roles on the judiciary and respecting its

independence. One of the main concerns of the officials in Albania is the use of government expenses for their own interests and this disables to support the budget of the judicial institutions. It is good to fight for standards but in Albania for years have been fighting all the time to go backwards rather than making any positive changes. Without being critical on this the following chapters will show the exact situation. The European Union is really concerned with the influence of the politics over legislation, youth political organizations, new programs, policy at both local and national levels in Albania. They claim that the political stalemate should not be a barrier for the adoption of measures and reforms in the parliament especially the current one in judicial reform.

2.5.2 Corruption

Corruption in the judiciary of Albania remains a widespread and a serious problem. This happens for some reasons. First there are low salaries for the personnel of courts and judges and this pushes them to set a case based making corruption rather on merits based. There is not a specific law that can restrict or is against the judges that does not work in accordance with the law. There is not a program to train the judges and give them power to dismiss any politicians, officials that go against the law. However the main concern in Albania is the corrupted judges, prosecutors that are not even able to stop the bribery and corrupted acts of politicians but also free of acting to fulfill their interest rather than putting order in the country. In case a judge is making corruption the High Council of Judges (HCJ) decides for the disciplinary measure against him/her. According to Article 32 of the constitution a judge will be put under disciplinary measures or dismissed in case of: seven or more days being absent in the workday without justifications; obtaining indirectly or directly favors or gifts given because of their duty; refusing to declare the wealth, property everything they obtain; refuse to establish disciplinary measures and failure to withdraw from a trial and apply high court decisions under procedural codes. While serious violations of a judge that can strengthen the corrupted cases are considered: the repeated and unjustified procedural actions; failure to respect the solemnity rules; default of the ethics and regulations of court; implicate insulting expressions in the decisions of a court process; detection of formal proceedings, secret acts, as well as impeding the functions of the inspectorates.

Table 2.1: Albanian Corruption Ratings and Democracy Scores

Nations in Transit Ratings and Averaged Scores										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Judicial Framework and Independence	4.5	4.5	4.25	4.25	4.5	4.25	4	4	4.25	4.25
Corruption	5.5	5.25	5	5.25	5.25	5.25	5	5	5	5
Democracy Score	4.42	4.25	4.17	4.13	4.04	3.79	3.82	3.82	3.82	3.93

Source: World Development Indicators, 2011.

As noticed from the table above it is seen that from the years 2001 to 2010 the level of corruption and the independence of the judicial system from the other political actors have not change so much. It has stayed somehow stable meaning that the government did not do further efforts to change some reforms in the judicial system that could decrease the level of corruption in the country. The democracy score as well has not further changed and this is a direct answer to one of the questions that when the judicial system is inefficient, not transparent and corrupted the democratic development of that country as well does not make further progress and at the same time prevents the economic and political development. If parties and politicians tolerate illegality then the citizens will began to find the illegal acts as the proper ones that can fulfill their interests. For this reason the government should select representatives that rule the country in accordance with the law where everybody is equal and whose rights are guaranteed. But this is not promising in Albania, and the EU emphasizes that an efficient legal system is one of the main criteria to be part of the EU. A well-functioning legal system includes a transparent judiciary and low level of corrupted cases. In Albania the high unemployment, lack of investment, lack of security, low salaries, absence of political stability increases the level of corruption in the country. Also bribery is another challenge that is found in most of the institutions that deal with public service, tariffs, education, health care and the worse thing is that the judiciary system does not have enough power to prevent these cases but the more convenient way is to corrupt the judges and close the cases. This kind of routine by paying with money everything, education, health, a job place is being part of people's every day normality. Regarding this situation in my point of view corruption became more acceptable, as a necessity thing where everyone can practice it in Albania. The altitude of citizens in this case is that since everybody, especially politicians and judges do it, for them is a normal

practice. The judiciary that should condemn and investigate these acts is not doing anything for it. Corruption is seen as a phenomenon of well generating the more it is spread, the less the citizens are willingly to report it to the authorities. When the judicial system does not work properly the corrupted judges and prosecutors are in greed and mania to abuse for profits and get involved in the network of corruption (FRIDE, 2010).

2.5.3 Lack of Efficiency

Most of the time, the work of the judges in Albania is compromised since they carry excessive caseloads, and scheduled dozen of hearings in a day. The HCJ has adopted a system that enables the exchanging of judges to create a sustainable structure of courts so that the judges could not complain of having more cases than necessary to hear. Another problem that the judges assign is the electronic case assignment system that does not take into account all the distributed cases but only the closed cases. Furthermore, regarding the staff records, each court should have sufficient support staff to handle legal research and documentation. The judges of the Courts of Appeal and the Courts of First Instance generally have secretary to maintain the case file, while in the other court judges do not have any assistant to do the research and maintain legal tasks. The law provides two legal assistants for each judge in the High Court but due to the budgetary limitations there is not possible to have more than one assistant who must be equivalent with a nominee from the Court of Appeal and Court of First Instance. According to article 20 of the Constitution a court has a secretariat, budgetary office and another office to keep the documents and archives of the preceding cases, but not all of them have IT officers and public relation office. So these courts complained and requested that all the offices according to their functions should be filled with the necessary staff. Another serious issue in the courts is the retention of the secretariats because of their low salary, as the judges claim that as soon as secretariat becomes well experienced at the courts, they find other alternative job outside the courts that give them higher salary. So a corrupted judiciary is not only created by the judges but by the whole court staff since each of them working there has the access to the court documents and files and have opportunities for corruption. So behind of all of this, there is workload of a government before three years that of Sali Berisha and nowadays that of Edi Rama both not effectively enough to encompass and establish a rule of law that enables a well-functioning judiciary. Also some judges claim that they are overloaded on cases such as in a typical day they do nine to thirteen hearings and to avoid this

problem the HCJ can delegate from other courts judges to hear those specific cases. The Council of Europe has emphasized that this is not the right solution since the judges waste time in operating in two courts and this impact their work. They have recommended that the judges should be appointed upon an adequate number and quality in order not to fill the courts with unnecessary staff but as well to complete them with professional ones (Council of Europe, 2016).

Chapter Three: Albanian Judiciary System under the Observation of the EU

3.1 Introduction

Albania recently has a political situation that prevents to undertake important reforms especially to implement the new draft in judiciary to decrease the corrupted cases. This is considered as the most important priorities of Albania in democratic values to integrate in EU. Due to this case it was necessary to cooperate with representatives of EU delegation. The European Commission for the Efficiency of Justice (CEPEJ), the Group of States against Corruption (GRECO), the Venice Commission, European Committees from Preventing Torture (CPT) and the European Court of Human Rights (ECTHR) together with the Albanian authorities are in action to facilitate the judicial system and to meet more closely the European standards. Through the cooperation with EU delegation Albania can improve the legislation, disciplinary system for prosecutors and judges, and also to set the politics apart from the judiciary. It needs to be ensured that those measures and procedures are based on objective criteria and applicant's merits in line with the Council of Europe. Measures that strengthen the efficiency, accountability and the independence of judiciary in Albania are included in the European progress reports for Albania. In this context the following paragraphs will present different effects of different aspects of EU observation from 2005 to 2015.

3.2 Enlargement Strategies in Fighting Drug Trafficking, Organized Crime and Terrorism

3.2.1 Drug Trafficking

The reports show that Albania during those years has made progress in fighting drug trafficking but still further work needs to be done. Through the crossing border of Albania there are transported illegal drugs, money laundry and the state does not have the capacity and enough training to undertake effective investigations. In May 2004 for the period 2004 to 2010 there was approved a national drug strategy. Through these further investigations there can be noticed the corrupted cases of the judiciary, police

and public administration staff related to the trade of illegal drugs. Albania in June 2006 signed with EU the Stabilization and Association Agreement. In September 2007 an Agreement of Visa Facilitation was assigned as well. Both of the agreements strengthened the interaction with EU and helped to undertake further economic and political agreements. Albanian traffickers have strong connections with international networks mainly with Italy and Greece but the government has improved the cooperation with other countries to fight these dealers. But one problem that remains unsolved is the crossing border conditions that cannot control the transportation of these illegal products going in and out of Albania since the expertise is still limited. The law on financing of terrorism and money laundering was established in September 2008. Moreover, in 2009 Albania in collaboration with the local government adopted an action plan to limit the cannabis cultivation. The village of Lazarat remained still a difficult place to prevent the cannabis and the police are not able to access in this region and finish the process successfully (European Commission, 2005-2009).

3.2.2 Fighting Against Organized Crime and Terrorism

Even though there have been some progress on the departments dealing with organized crime and effectiveness of police, Albania still needs to improve the management, transparency, resources and increase the cooperation with Europol, international and regional actors. In September 2004 there was established the anti - mafia package for fighting the terrorism and organized crime. This package consists of laws that provide legal definition of human trafficking and criminal organization. Also it provides other investigative means such as the abuses in the office, corruption as well as co-operation with terrorist authorities. Albania needs to increase the investment in the Financial Intelligence Unit (FIU) and IT for further investigative procedures. In 2007 there has been introduced new investigative and tactical equipment, increasing the capacity of the police to address the organized crime. The cooperation between the Interpol Tirana and their offices in the neighboring countries on tackling theft and dealers has been improved. The fight against organized crimes is one of the priorities to enter in EU but this issue is still a problem in Albania. There is a lack of cooperation between the enforcement of law, the prosecution and the judiciary. As well the case investigation and reporting between the police and the prosecutor is another concern since their investigative capacity remains weak. There is not adopted yet a national strategic plan to fight terrorism and organized crime. The joint investigation can help to increase the

cooperation between the authorities of different countries. For example six people were extradited from Albania and thirty – seven more others were returned since October 2008 until June 2009. The collaboration agreements to fight the organized crime were signed with France, Bosnia and Herzegovina, Kosovo, Norway, Denmark and Iceland, while there is still an informal cooperation with European Justice. Even though there have been some improvements in the witness protection still its lack hinders investigation and remains problematic for the rule of law in Albania (European Commission, 2005-2009).

3.4 Renewed EU Support to the Fundamental Rights and Judiciary in Albania

In the area of fundamental rights and judiciary the EU aims to develop the security, freedom and justice of the union. The establishment of an efficient and independent judicial system is an important factor for Albanian integrity in EU and for this there should be adjusted high standards and impartiality of the courts in accordance with the rule of law. The Albanian judiciary should avoid the power of external influences and guarantee training for the judges, prosecutors, fair trial procedures and adequate financial resources for the courts. Albania likewise the member states of EU firstly have to fight corruption, which is the main aim of the new draft reform since it is a threat for the whole Albanian society and stability of democracy in this country.

Here in Albania the HCJ does not have competences over the High Court and this disconnection within each other weakens the judiciary independence. As I emphasized in the second chapter the reassignment as well as the appointment of the judges of the Court of Appeal and the Courts of First Instance is done by the President under the HCJ proposal. However, the HCJ during the proposal apart from the disciplinary matters does not give reasoned decisions, there are no provisions or procedures for candidates and this lack of transparency and other mechanisms of judicial review increase the possibility of corruption and political interference. There is a lack of coordination and a degree of overlap between the Minister of Justice and the inspectorates of the High Council of Justice. So on one side the disciplinary measures that are undertaken by the

Minister are launched without balance and control mechanisms and on the other side the HCJ is doing the evaluation of judges without transparency.

The prosecution system in Albania is highly centralized and open to political influence and this is shown from the fact that the general prosecutor is selected by the President in regards to the consent of majority to the assembly and the other prosecutors are proposed by the general prosecutor and appointed by the President. One good thing that needs to be noticed is that the Magistrates School is in charge of continuous and initial training of prosecutors and judges. Also most of the judicial offices have computerized management system to allocate all the cases of civil and criminal procedures. However, the courts do not have enough financial and human resources especially the Courts of First Instance. This problem slows down the court proceedings and increases the trial sessions for the particular cases. Albania continues to be part in Group of States against Corruption (GRECO) to fight corruption since April 2001. From that time Albania has adopted several anticorruption laws and measures but what they need to do is to implement the anticorruption plan and establish as well agencies and institutions to fight corruption. But the main problem stands on the deficiencies of the legal framework, where the public officials (including MPs, judges, and ministers) prevent the investigation of corruption and the gaps in administrative capacity and institutions. There is no evidence for the corrupted cases that are prosecuted, investigated and adjudicated since the resources on fighting corrupted acts are still limited.

In 2012 some progress was done to achieve a transparent and independent judicial system. In September 2012 the HCJ approved a set of rules that enables the transfer of judges in cases where there is a workload and also the action plan 2011- 2013 on fighting corruption continued in different areas and sectors. But there was little progress on access to justice and also the procedures on free legal aid were not implemented yet. The Magistrate School had problems in budgetary allocations and in 2015 the authorities decided to close it. In 2012 it was implemented a constitutional reform that limited the judges immunity but that reform needs to be ensured. And also on the same year it was conducted disciplinary measures against 28 customs employees mostly for bribery. The budget of the courts increased from 2012 to 2013 to an amount of 77 million, which represents 2.6% of the state budget, and 0.8% of the GDP. The problem is that the influence and political pressure does not change which prevents every single year the merit based and transparent criteria for dismissals or appointment of judges.

The social media played an important role to provide the citizens the information in corruption as well as they increased the contact points such as email addresses, green lines to complain and report abuses (European Commission, 2010 - 2015).

3.5 Recommendations

Considering the overall transparency and efficiency of the verification process on complaints the judicial system of Albania in cooperation with Ministry of Justice (MoJ) and High Council of Justice (HCJ) have to undertake procedures with detailed methods and rules that guarantees the verification of complaints in line with the European countries. It is recommended to divide the responsibilities and duties between the Ministry of Justice and High Council of Justice during the investigation and verification process and also they can set up the same procedures and registers for tracing and recording complaints. In order to assure an appropriate communication between the HCJ and MoJ there should be adopted a database system for searching and inserting the information, data related to the complaints and all of these procedures are done to increase the efficiency of judiciary (Turco, 2011).

The commissioner of Council of Europe for human rights Nils Muižnieks advises that the authorities in Albania in collaboration with EU member states can investigate and prosecute all the corrupted cases in the judiciary. In the national reform plan there have been taken some encouraging measures but the most important thing that needs to be included in the action plan for justice are the merit-based procedures and transparency in evaluating and appointing the judges. There should be avoided all the ineligible political interference in the judicial functioning and the members of the Council of Justice as well should be elected by a competent majority in the parliament. This also prevents the Minister of Justice to be involved in the decisions of disciplinary procedures against the judges. All the judgments of the courts should be effectively, fully and promptly implemented and the authorities should persist all the problems of the judicial proceedings and in this regard to find the effective remedies. Lastly it is recommended by the European Commission that the detainees and juveniles should have access to a doctor, and a lawyer and assure that during the criminal proceedings there should be always present psychologists (Council of Europe, 2014a).

Furthermore they criticize the fact that the Albanian judges use the over-reliance on remand during trial and they recommend this as the last measure to be taken and instead they can use other options to detention. In order to guarantee the citizens' high quality it is recommended to look into the redistribution of the judges so that all the courts in different cities have the necessary staff number and also the judges are not work - loaded. Moreover, this redistribution must be done in a way so that courts have relatively new and experienced judges. Most of the graduates from the Magistrate School do not want to live Tirana and go to work in the courts of the other cities but to provide justice to citizens in all parts of the country the judges have sometimes to sacrifice to go in other places. Another problem that the judges have emphasized is the difficulty that they have to secure the witness testimony, and due to this case the EU has recommended to the Ministry of Justice to provide a stronger legislation that enables courts to find witnesses. In cases that the testimony does not appear there must be taken serious measures or even to take default judgments against the parties that do not come in a particular time period (Council of Europe, 2014b).

In view of the final draft reform the Venice Commission recommends appropriate models or proportionate system that would give the opposition influence over the High Council of Justice (HCJ), Specialized Qualified Chamber (SQC) and Independent Qualification Commission (IQC) in case they do not agree with the majority. The draft as well should specify the process during which the chief special prosecutor is appointed and also the accountability manners in her/his regard. The prosecutors and judges under the vetting process should have the right to complain to Constitutional Court (CC) when their fundamental rights are violated. Also there should be clarified the power of the international actors who observe the situation they have procedural right but not powers to undertake decisions. The Venice Commission rehearse that the reform on judicial system should not stop at the level of Constitution, it will be required to implement a whole package of laws that can regulate the operation judiciary in more details. They emphasize on their contribution to this legislative work and have high hopes that the reform will be attended with constructive adherence and dialogue to the European best practices and values (EURALIUS, 2016).

3.6 General Evaluation of the Draft Reform: External Forces' Decisions are being Endorsed for a Progressive Judicial System in Albania

As John Locke states that the government of a state has to serve the people and does not have its own sovereignty. Due to this case a government should promote goods to the public, protect their rights and if they are not able to do so the people have to right to dismiss it and replace with another new government. He claims that a state should have separate legislative, judicial and executive branch. At the same time Rousseau highlights that the sovereign of a state is the voice of all people acting together. Locke being considered as the father of modern democracy in his political theories discusses that a democratic system includes the division of power, equality of men and the right that they have to rebellion if their government dismisses the democratic values. Rousseau on the other side is skeptical about the feasibility of a democratic state since he thinks that when the sovereign and government are the same body and does not act on the purpose of people's will or for the common good then there is a high possibility that the representatives will corrupt rule of law and ruin the state (Carlton, 2014).

Based on the hypothesis of the two philosophers we see that Albania as a state has started to restrict its democratic values since the corruption is high, there is not an independent and transparent judiciary, the political representatives have high influence on the judicial system and are seeking their interest rather than protecting citizens' rights and decreasing the corruption level in the country. The interference of the international actors in the country shows that Albanian politician cannot control the challenged situation created in the country just by them. As far as the external forces give direction to what to do the country is in a bridge of sovereignty, like they are not able to undertake measurements without the help and recommendation of international actors. So as far as the Albanian authorities are asking help from the international actors these last ones have the right to undertake measurements and define recommendations and rules to strengthen the democratic values of Albania particularly for the current situation by restructuring the judicial system through the reform in such a way that could decrease the corruption level and increase the efficiency and transparency of this system. However as Albania currently is a candidate state to European Union, as EU has its own rules and regulations they have preconditions and criteria to accept in their family the candidate states. The unique characteristic of the European Union is that even though they are all independent sovereign countries, they have collected some

those sovereignty in order to benefit and strengthen their power. This means that the member states delegate all together to take decisions on specific situations democratically on their joint interests. As EU has the power and right to eradicate decisions it can be considered acceptable to put measurements and have some expectations from all official candidate states.

The integration in the European family would increase the security bring benefits since the country will start to practice the EU standards of working. So the Albanian authorities can be partly considered sacrificing to accept the recommendation from the European Commission and other international actors to implement the new draft reform that would strengthen the country in various aspects. The main supporters of this draft are the EU actors since there are not any other NGO that could orientate and support the Albanian authorities to implement the draft. Being part of the European Union is a challenge since they require moral persistence, social dedication and institutional discipline. In this regard since the EU emphasizes that they will support Albanian authorities in the implementation of this reform, then the government has to encourage and promote dialogue with all the bodies that play important role for this draft reform. At the same time since they are taking help from the outside actors Albania authorities have to prove to them that they have the political will and the capacity to progress the reform process (Rakipi, 2012).

Chapter Four: Strategy for the New Draft Reform in the Judicial System

4.1 Introduction

In January 2014 Albania together with the Venice Commission addressed the concern for a judicial reform that could enable accountability, professionalism and independence in the judicial system. Also in this year it was approved the amendment for the penal procedures that was implemented in 2012 to restrict the corrupted actions of MPs, prosecutors, judges and other senior officials. In the Magistrate School the admission process for the students was suspended until the academic years of 2015-2016 and this happened since the professors in this school started to be corrupted and the ones that would graduate would not be selected on merit based. In order to help the judiciary in decreasing the corruption level it was the best option to close the school for a particular time. In relation to accountability of the duties and responsibilities the Minister of Justice has been dominating to undertake disciplinary procedures in judiciary, which runs adversely to EU standards. And this is one of the measures that the Venice Commission advises to change.

The school of lawyers that was set up in September 2013 started to work out really well. This was a good opportunity for the students who studied law since they had more options to find job in their profession in lawyer's offices, attorneys or in administrative offices. The number of cases that are investigated for passive and active corruption is increased from October 2013 to June 2014 by 33% and at the same time the convictions by the Courts of First Instance reduced by 5% and those of Courts of Appeal increased by 23%. As like as in the other years still in 2014 there was not much progress regarding the specialized staff, training sufficient resources that need to provide to improve the efficiency of judiciary and to develop at the same time the records of investigations, convictions, prosecutions of corruption cases at all levels (European Commission, 2014).

4.2 A New Draft Reform in Judicial System after 25 years of Transitional Albania

25 years ago Albania could be liberated from the communist regime. A dictatorial regime prevented the development of the country in many aspects including here even the judicial system. Albania in 1991 had the priority to establish necessary laws and institutions to create a democratic state. During this time the Albanian government started to restructure the judicial system at all levels. Furthermore the constitution that was adopted in 1998 changed and improved more the provisions on the organization and functioning of the judiciary. Since the collapsed of the regime the Albanian judicial system implemented and changed various laws and rules for the development of the system such as 2005 the assembly gave the National Justice Council significant roles in the selection of the judges, and in 2008 there were introduced Law no. 9877 on the organization of judicial power, but it was never implemented a draft reform with the changes in the constitution. This new draft judicial reform that the Albanian authorities are waiting to implement is the first draft that would make changes in the constitution to set up new norms and rules on the appointments of judge, to make changes in the structure and duties of the courts. That is why there has been given a high importance to the implementation of this reform since it is waiting to do changes to the system as a whole and not only some specific laws as it has been till now in Albania.

There is not so much to be said about the changes in judicial system after the communist system died since all they had to do was the restructuring of courts and the constitution did not change from the time it was adopted. Even though from time to time it had been necessary to make some changes in the system by decreasing the corruption level and increase the efficiency of the judiciary the Albania authorities have not taken further efforts to do those changes. Due to this case the consequences that will bring this new draft reform are considered to be high and bring major changes for the functioning of the judiciary in Albania (Albanian Assembly, 2015). Not only Albania but as well the EU members that are supporting it hopes that after the implementation of this reform the judicial system of Albania will change the whole legal process of this state by decreasing decriminalization, corruption, improving the institutions framework in the rule of law and strengthening the integration process to EU.

The content of the following paragraphs show the strategy of the new draft reform and is taken from the publications of:

- ✓ Ad Hoc Parliamentary Committee in Albania on Justice System Reform (2015).
- ✓ Opinion of Venice Commission for the Formulation of Constitutional Draft Amendments (2015).
- ✓ Analytical Document from the Ministry of Justice on the Draft of New Reform (2015).
- ✓ Consolidation of the Justice System in Albania EURALIUS IV (2016).

4.3 The Judicial System According to the Constitution

The purpose of the new judicial draft reform is to establish an oriented, professional, fair, credible and independent judiciary that can help Albania to integrate into the European family.

In the past 25 years the poor quality of legislation remains as one of the main factors to facilitate the implementation of this reform. Over times in Albania the laws that were drafted are imported from foreign laws without subjecting them to the real possibilities and needs of the country. As result of these different legal systems, the Albanian legislation is not harmonized, remains in disoriented transition and lacking coherence. This lack of harmonization comes as result of the undertaken measurements that are inconsistent to each other and use concepts of uncertain terminology. This reform aims to realize some of the following objectives:

Objective 1. To preserve the roles that the President of the Republic has in guarantying collaboration of constitutional institutions and in justice system. The opposite will take place in the taken decisions if a simple majority elects the President.

Objective 2. Reframing of institutions that linked to the judiciary such as the High Council of Justice (HCJ), the High Court, and the Prosecutor's office. It needs to be guaranteed a system that enables effective information to the citizens as well as accountable one. It is expected to give the High Court the main duties especially to guarantee the interpretation of the law. All the rules that adjust the methods of appointments, functioning and duties of the HCJ will need to be reviewed. If the

constitutional formula will be reviewed then it will be a more efficient, independent prosecutor's office.

Objective 3. It should be guaranteed the effectiveness and independence of the Constitutional Court that tries to protect the rights of the citizens and give them options to give their contribution in strengthening the administration of the judiciary.

Objective 4. The Constitutional Court should be responsible to establish the rule of law, neutralize the power of judiciary, democracy, legal certainty, and supremacy of the Constitution. Due to this fact the new draft reform will increase the effectiveness and efficiency of this constitutional body at the legal level and in this way to strengthen the rule of law.

4.4 Power of the Judiciary

Judiciary is the main responsible body for the rule of law as well as developing democracy. The appropriate functioning of this power is the development of democracy in the country and the main condition to be part of EU. The new draft aims to address all the problems that prevent functioning of this power through legislative interventions and necessary constitution.

Objective 1. Strengthening the effectiveness and access of the judiciary by restructuring the courts and other judicial bodies according to the recommendation of the European standards. This reorganization should be in order to increase the number of participants of the groups and institutions responsible for judicial maintenance , increase the adjustment of factual and legal domination of higher courts over the lower courts, strengthen the speed of the adjudication and provide proportionate distribution of the caseloads per judge and per court.

Objective 2. The key goal of this draft is to guarantee the effectiveness and independence of the High Court since this court constitutionally has the authority to change or unify the judicial practice. The High Court checks the procedural law and the material of the lower instance courts and if this court does not function properly then all the court process will be ineffective and create problems in the legal level of the country.

Objective 3. It aims to resolve all the problem that the analysis of the judiciary has highlighted such as: to disable the fragmentation of the responsibilities of the judicial system in too many hands; to give the high council of justice the right to manage more capacities and competences in governance (e.g. budget, judicial administration, training etc.); to strengthen the responsibilities of the National Judicial Conference (NJC) on ethical codes; to enable the selection of professional and high quality members of the HCJ; to clarify the administration and management of the courts and specify the rights that the Minister of Justice have over the judicial bodies.

Objective 4. To guarantee an effective status of the judge, accountability and responsibility in accordance with European standards. There should be a solution for the problems that are related to the status of judges their disciplinary measures, evaluation and appointment process as well as financial treatment. The judge's status is essential for the judiciary system; they serve as the main purpose of the impartiality of judges and the independence of the judiciary.

Objective 5. For a developed democracy the transparency of the judicial system is a distinctive characteristic. The openness and the access of justice to the citizens through surveys and other essential communication methods are basic conditions for an operative judicial system. The court hearings, the notification of parties, announcements of decisions and the reasonable deadlines for the adjudication should be accessible to the public and media. A transparent judicial system is not only important to gain the trust of the citizens but as well to increase professionalism, responsibility and quality in decision-making.

Objective 6. Another important aim of the draft concerning the judicial power is to create a proper function and organization of the administration personnel (not judges) of the judiciary. There needs to create good conditions of information technology systems in seventeen courts and create no possibilities to leave the work or even make corruption acts. This shows a significant component of an independent organization of the judicial institutions from the other parts of the political bodies.

Objective 7. To increase the cooperation of the Albanian judiciary with the experts of the European state. Through this collaboration the courts and the judges of Albania will be constrained by their recommendations and will try to take further measurements to

enforce the system. Albania law will see a challenging evaluation in the judiciary being continually and irreversibly toward the concepts, principles and regulations of EU.

Objective 8. The phase of executing the judicial rulings and arbitration decisions is seen as the ultimate stage for a progressive judiciary. That is why this process needs concrete actions and decisions from the courts and other judicial bodies that are responsible. So it is necessary to guarantee the effectiveness of this phase and selects the proper people that will do it since the decisions that will affect the whole rule of law.

4.5 Measures in the Fight against Corruption

The new draft reform in judicial system contains arguments and hypothesis that could help the experts to find ways on decreasing the level of corruption. For a while the international monitors as well as the public opinion have noticed a lot of corrupted prosecutors and judges and the thing is that the Albanian authorities have done nothing yet to catch and dismiss them from the office. Albania years in row have been ranked as the most corrupted country in the EU and the most corrupted institution they claim is judiciary. Based on the surveys that address the corrupted cases, public opinion believes that business ties, monetary interest, personal ties of prosecutors and judge, political pressures and interests, influence processes.

Objective 1. Encouraging the citizens to participate in the fight against corruption, since they are the main victims as they are forced to get a just decision from the judiciary or even paying money to the judges and prosecutors for their cases. The new draft aims to increase the opportunities of the citizens to report the corruption cases and expand the institutional and legal mechanisms to fight the corruption. To guarantee the protection for the individuals who report in the judiciary the corrupted cases and increase the inclusion in curricula of graduate and university programs that study corruption and the negative consequences that it brings in the society. The law on corruption needs to be reviewed and also to create a specialized program to investigate the corrupted cases.

Objective 2. To create a corps of prosecutors and judges with professional integrity and with high ethical – moral norms. So regarding the evaluation process the new draft reform aims: to use complicated criteria and effectiveness during the evaluation process; to strengthen the disciplinary measures for the prosecutors and judges that violate the

law; to review the publication of final decisions on ethical codes for prosecutors and judges in official websites and make them mandatory subjects in the law schools and magistrate school; as well as to oust from the judiciary the prosecutors, judges, and police officers with criminal precedents.

Objective 3. The corruption can be prevented by raising the responsibility of prosecutors and judges and reinforcing criminal investigations in their administrative assets.

4.6 Criminal Law

Today we face sophisticated and new forms of criminal cases, which necessitate increasing the effectiveness of the agencies that fight criminality and enable the improvement of legislation. Part of the draft reform deals also with the criminal justice law, it focuses to realize these main objectives:

Objective 1. There is a need for a specialized structure for anti-corruption cases, which includes courts, police and prosecutor's office, and an information system that will inform all the registered and initiate cases accurately and clearly.

Objective 2. To assure an independent process for the appointment, transfer, promotion and disciplinary measures for prosecutors. The appointment of the prosecutors should be based on their qualifications, experience of work, skills and moral norms.

Objective 3. In the current judiciary in Albania judicial police has an important role in the investigation of criminal cases and as a result their structure and organization should be improved with efficiency to fight corruption and organized crime. At the time that the country has a well-organized state police and other tasks force the easier it is to catch and investigate the criminal offences.

Objective 4. The Albanian criminal law for the first time was approved in 1995, but since then it has faced challenges and at the same time it has lost its coherence. As result in the new draft it is highlighted that the criminal code should be improved in order to be harmonized with EU standards.

Objective 5. The criminal Justice system should strengthen the protection of juvenile's rights, since they represent a vulnerable category in the system. Today in the judiciary

there are serious of problems with juveniles and the draft aims to take concrete measures for this.

4.7 Final Opinion of Venice Commission on the Revised Draft

The Venice Commission proclaim that the draft of the reform is important since it contains the amendments that are necessary for Albania to integrate in EU and undertake provisions in judicial system to cleanse the system from the corrupt, incompetent and linked to the crime prosecutors and judges. The new draft has been improved more in 2016; all the proposals and the criticisms that are done by the commission are in more details. One of the main concerns in the draft was the composition of HCJ. It was proposed to have 6 judicial members and 5 lay members, the later selected by the peer-judges and the former ones by the parliament on a 3/5th of the majority votes. The opposition was against this proposal since the government has more than 60 % seats and this enables it to appoint its people and take under control the judicial system. While the opposition proposed that only 2/3 of the majority in the parliament should contribute to appoint the judicial bodies. The Venice Commission proposes that only 2/3 of the majority in the parliament should contribute to propose amendments and to amend the constitution. It also recommended that the professional requirements for the candidates that will be elected should be chosen by the civil society and legal staff (including prosecutors) on an open and transparent procedure (Article 136/a). The draft of the reform requires the candidates to pass and evaluation of their background and assets and also to have graduated the Magistrate School. Another provision that appears in Article 136 p.2 enables the President to reject a candidate approved by the HCJ but it does not claim whether the president may do this for insufficient qualifications of candidate, or violation of nomination rules. The commission is positive on the decision to constitutionalize the judge's disciplinary liabilities (Article 137 and Article 140). The Minister of Justice under the revised draft reform is not anymore part of disciplinary tribunal but is a privileged petitioner to investigate a prosecutor and judge into a disciplinary breach. The commission recommends that Constitutional Court should decide about the disciplinary measures for their judges (Article 128). Three judges of the Constitutional Court should be elected by the parliament, three by the president and three by the joint decisions of high

administrative court and high court so the appointment from different institutions helps the judiciary to stay independent from political actors (EURALIUS, 2016).

In the draft, the Article 148 ensures the establishment of an independent investigation unit and prosecutor office to fight the organized crimes and corruption. In the recent years in Albania the specialized offices that are independent from prosecution office in investigating corruption cases has been common and the Venice Commission has support them. Moreover, Article 135 in the draft provides that judiciary can create a court of appeal and a specialized first instance court to adjudicate the corruption of officials, judicial staff, judges and their close family members as well as organized crime. With regard to the measures to investigate prosecutors and judges the Venice Commission claims that such measures are necessary for Albania to protect itself from corruption and have a justified judicial system. The new version of the draft is explained in a precise way so that can be understood from all the individuals that are affected by vetting.

Additionally, the Venice Commission emphasizes that the independence and integrity of the current ombudsman and its office should not call into question, but to continue to undertake transparency and efficiency in the judicial process. The Venice Commission wants to avoid the political stalemate that is created in the country by giving both the opposition and the majority an alternative way on the decisions that they take. The revised draft restricts a complaint by a prosecutor or judge who has been dismissed from the offices of constitutional court by vetting process. The revised draft restricts the prosecutors and judges that are dismissed from the constitutional court by vetting process to present a complaint. The Venice Commission claims that this is a really serious limitation since it prevents the judges and prosecutors express themselves against a decision that and up their job and career. The commission according to Article 131 of revised draft has recommended that this case should be reconsidered by enabling the dismissed prosecutors and judges to present a complaint to the court about the violation of their rights.

Chapter Five: Conclusions

To conclude this study is not easy, because of having too much facts, findings, and analysis during the development of the work, and at the end I came out with three arguments: the first one is about the continuity of working on the judicial reform and I have demonstrated with examples and analysis. My second argument is that there have been moments where the judicial system somehow might have changed but the establishment of the reform failed. The third argument is that through the years especially the last 10 years the judiciary in Albania did not show any steady progress to establish active prosecutions, investigations and final convictions to decrease the level of corruption. As stated in the first chapter, the study aims to give answer to some questions where the most relevant one was if an inefficient, non-transparent and a corrupted judicial system was an issue of politics and society in Albania. This study through different descriptive analysis has achieved some results that can be considered as a response to this question. Political affiliation matters in the case of increasing the corrupted acts. This was proved by the examples showing that the politicians are part of the network of organized crime in Albania especially during the last years there have been some records of arrested politicians such as:

- The Mayor of Kavaja, Elvis Roshi was arrested on 13 June 2016 with the request of the Prosecutor's Office on charges of falsifying documents.
- The Former Minister of Labour and Social Affairs, Spiro Ksera has been arrested on suspicion of stealing and through abuse of office at the end of his term in 2013.
- The Former Mayor of Vlora Shpetim Gjika was arrested in February 2015 for alleged offenses such as falsification of documents; abuse of power; illegal construction, and actions that prevented to find out the truth.
- The Christian Democratic Former Deputy Mark Frroku was arrested in April 2015. He was accused of murder committed in Belgium, while in Albania on the accusation of money laundering and refusal to declare assets (OraNews; Lajme.al, 2015).

In Albania the social interactions are mostly under the influence of the customary and family codes rather than governed by the law. To this regard the challenges in the judicial system in Albania have been present for a long time. It may be more dishonorable for a prosecutor or judge to ignore the interest of their relatives than to act strictly with the law. So the rule of law is not much important as the relationship that the individuals have. So when the judges protect each of their own family members, the corrupted cases increases and justice in the place get worse. The ethical behavior is not rewarded, meaning that the judges will have a positive evaluation at the time they make favor to somebody and the ones that are acting in accordance with the law are being ignored. The personal influence has been dominated over the merit for years in Albania where to find a job priority is not anymore the examination and competition program but that can be employed all the citizens that are relatives, friends to the representatives of government or even by bribery process. So if we think critically how a judicial system can function good if we still have government who is corrupted and people that are voting for those representatives are not doing any efforts to stop this but they still keep voting the same people knowing that they are not ruling the country in a good way. That's why probably the implementation of the new draft would change a lot of things for this country and awareness the people that as most of the European members have done Albania can do the same if the country fights against corruption and enhance the rule of law.

This thesis has set out some keynotes that try to give a broader picture of judicial system in Albania:

- ✓ Creating an efficient and transparent judicial reform is a process that never can be totally covered. Judicial systems occupy a central position in the rule of law and political system and it would be difficult to find all progressive forms that can improve the system.
- ✓ Mostly the discussion about a corrupted judiciary is political since the system is administrated by the representatives that we elect and if they are not eligible enough with the law the system will face difficulties as well in establishing the necessary reforms for a developed country. Every study or records in judicial system may not be accurate since it might have forms of corruption that are undeclared or hidden but the important thing is to have a reform that restricts and take necessary measures for the improper and corrupted actions.

- ✓ There is created a political struggle for the implementation of the new draft reform in judiciary and this situation seems to be more rhetoric rather than realistic. Both of the parties in Albania majority and opposition wants the integration of Albania in EU and both wants to fight corruption and finalize the new draft reform in judiciary. The rhetoric side of this is that they are using these statements of assessing and fighting corruption to gain credit and votes during the electoral session. Through years we have not seen any further improvements in the judicial system from both leading parties that of Ex - Prime Minister Sali Berisha before and now that of Prime Minister Edi Rama.
- ✓ In contemporary democracies, judicial system occupies a central position among public institutions as autonomous and independent branches of the governments. So a corrupted judiciary is an obstacle for economic development and damage the democracy of a country.

As a summary can be claimed that the society and politics are the most important factors that can prevent the corrupted judiciary. They need to collaborate with each other to create an efficient and transparent judicial system. On the one hand the politics should offer people detailed information on the judicial process, to improve the fairness of courts and increase the number of professional and trustful judges, prosecutor and lawyers to help the ordinary citizens and put justice in the country. On the other hand, the civil society must contribute more in their participation on the drafting of national policies and as well strengthening the incentives to dismiss all the corrupted politicians, judges, prosecutors that prevent the progression of the new draft reform in the judicial system.

The future of this country is promising since all of Albanians have a common goal to be part of European Union. To be part of the EU today the main requirement is the establishment of the new draft reform in the judicial system that should be adopted within the June of 2016. The adoption of this reform will become a direct influential power for the authorities of Albania and raise the living standards of the citizens.

As I stated above the judicial system is the main foundation of good governance and for this reason I think that the authorities, the majority part together with the opposition, should sit together and agree to implement the new reform as soon as possible. The

implementation of this reform is a must since it is considered to change somehow the legal system of Albania and decrease corruption that has been preventing the development of the country for years. Since the adoption of the constitution the judicial system has faced different challenges both in terms of the character and causes that have challenged the judiciary as a whole. That's why there is a need for an ongoing reform to put order in the system and support the development of the society. In my point of view the dynamics for an economic and social developments as well as the problems in the judiciary has strengthen the efforts to implement the new draft reform. The problem is that the society is not deeply integrated in the decisions taken for this reform, the government has not given them so much access to do this. Now it is a little bit late to make manovers to integrate a big part of the society that should have been done ages ago. Still the expectations for the reform are high since the EU actors are behind it and forcing the Albanian authorities to agree on their conditions and implement. Only in this way it would increase the system integrity, independence, efficiency, reliability, transparency, accountability and responsibility. Recently the European and other international representatives, after investigating the situation in Albania, have noticed that the citizens have lost their trust in their politicians and institutions where they rule. I can say that the citizens are even informed for the corrupted actions and the politicians who are part of the corruption and organized crime but the thing is that they are not able to do anything as they do not have any power in their hand. The only thing that they can do is change their behavior by not voting the politicians that do not deserve to represent them from both main parties either SP or DP and they can do this if the reform will not be implemented and the country will go in pre-elections. Moreover the European Union together with the United States actors have proved that in the Albanian institutions the level of corruption is high they even have demonstrated it with examples of the politicians, judges and prosecutors that have been arrested before and still the FBI and other police tasks are arresting the official authorities that are part of the organized crime network. With this I want to claim that there is not any other chance to increase the efforts for EU integration, there are only two ways and we cannot escape from them either to implement the reform and dismiss all the corrupted actors from the politics and system or to stay in the situation that Albania is today where most of the people does not even have food to eat and place to sleep. The main goal of the draft reform is to create an independent, professional, efficient and transparent judicial system and open the negotiations with the European family. Due to this case I think that there are a lot of

other citizens like me whose desire is to implement the draft. But on the other side with the analysis that I have done in the chapters above I come out with an argument that as far as most of the politicians themselves are part of the organized crime and corruption this draft will continue to face difficulty. Today both of the parties are working hard to agree and adopt the draft, the hopes are high but the reality is bitter it can be nothing else to say except to wait and see the results of what will happen by the enigmatic situation that is created in the country.

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