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The albanian justice reform in the framework of the european integration process

INTRODUCTION; The internationalization of the reforming process; The mechanisms strengthening the independence of the justice system; Accountability mechanisms for judges and prosecutors; Specialized courts. Temporary measures. The vetting processes; The new judicial culture; Conclusion..

1. Introduction

From 2016 onwards, Albania has undertaken a profound reform in the judiciary, in order to increase public trust in it. During these 30 years of democratic transition, Albania has tried several times to reform the judiciary. This was targeted through organic laws that were adopted in the framework of the basic law "On the main constitutional provisions" (1991). In 1992, the Constitutional Court of Albania was established for the first time and the new organization completely separated the justice system from the tradition of "popular courts" during the monist regime

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(1944-1990)[2]. This institutional reform was immediately accompanied by measures to replace former judges and prosecutors with new ones, who were going to be trained with short-term (6-month) courses. However, not many years later, the need to re-evaluate their knowledge turned into an emergency issue. In 1998, the Constitution of Albania was adopted and entered into force by popular referendum, establishing new provisions for the reconstruction of the judiciary. The new legislation on the organization of the judiciary and the prosecution in Albania was drafted on this basis. Simultaneously (1998-99), a reform of the re-evaluation of skills for judges was attempted, from which there were no changes in the composition of the courts. Practically, the assessment was carried out on the basis of the legislation in force[3], in the form of a knowledge test for all judges with up to 10 years of work experience. However, the judges who were dismissed by the decision of the High Council of Justice, due to failing this test, were reinstated by the decision of the Constitutional Court, which concluded that "*the evaluation of the exam result only, regardless of the work results of the judge and his theoretical and practical contribution in the legal field, is an unconstitutional stance that goes beyond the content of the Constitution*"[4].

Successful formulas and ideas in the judiciary from the best constitutional experiences of European and American democracies, were received. The constitutions of consolidated democracies in Europe and the United

[2] Law no.7561, 29.04.1992 "On some changes to the law no.7491, 29.04.1991 'On the main constitutional provisions'".
[3] Law no. 8436, 28.12.1998, "On the organization of the Judiciary in the Republic of Albania"
[4] Decision of the Constitutional Court of Albania (CC) no. 59, 1999

States mostly influenced the constitution of 1998 in Albania. In addition, the system was drafted with international assistance, in particular the opinions of the "European Commission for Democracy through Law" (Venice Commission)[5]. In this frame a question is raised: Why is this reform necessary? Various studies argue that the judicial reforms are deemed a key element for the accession of Albania and the Western Balkans to the EU as a process mainly driven by EU assistance[6]. Meanwhile, the recent vetting law for judges and prosecutors in Albania is considered to have "*vital importance for the political future of Albania, determining how quickly and expedite will be its accession path to the EU and how much credibility will be gained vis-à-vis the Albanian people over the judiciary system*"[7].

However, the causes are found within the country and its judicial system, which is affected by various crises, such as corruption, corporatism and politicization of the judicial system[8]. Although the formulas were successfully realized, they were not fully appropriated in Albania, because of the problems the judiciary faces there. The new democratic formulas

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[5] See: The Venice Commission opinions on the respective draft constitutions. Select in website: http://www.venice.coe.int/WebForms/documents/by_opinion.aspx?lang=EN

[6] Ardit Memeti, "*Rule of law through judicial reform: A key to the EU accession of the Western Balkans*", published in: "Contemporary Southeastern Europe, 2014 1(1), available at: http://unipub.uni-graz.at/cse/periodical/pageview/138917

[7] *An Analysis of the Vetting Process in Albania. Policy Analysis* - No. 01/2017; available at: http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf

[8] *Anti-Corruption Reloaded: Assessment of Southeast Europe*, cited, footnote no. 2, pg.75-76; see also: A. Gashi, B. Musliu, "Justice System reform in Kosovo", available at: http://kli-ks.org/wp-content/uploads/2015/05/Justice-reform-in-Kosovo-RAPORTI-FINAL-ANGLISHT.pdf, Pristina 2013, pg. 5

offered by post-communist constitutions failed, especially the self-government of the judiciary. In Albania, "…*the analysis points out that recognition and implementation of the ethics of judges and prosecutors is low…While in practice it is concluded that the system fails to 'nail' corrupt judges and prosecutors*"[9]. The 2015 progress report of the European Union for Albania emphasized the following: "*The functioning of the judicial system continues to be affected by a high degree of politicization and poor inter-institutional cooperation. The independence and impartiality of the High Court is still not fully guaranteed*"[10].

Analyzing the problems faced by the judiciary shows that the crisis of the judiciary is also a crisis of democracy. The judiciary progress is closely linked to the implementation of the constitutional principles of the separation of power and guarantees of protection for human rights. The political interference and the judicial politicization affect the judicial system, weakening it. In addition, conflicts of interest and corruption cases have destabilized judicial effectiveness and public trust of the judiciary system.

The years 2015 and 2016 we can call a "constitutional period", from the point of view of the constitutionalist Bruce Ackerman, who distinguishes such a period from the periods of "ordinary politics". The people were mobilized to support the justice reform enthusiastically. All political forces

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[9] *An Analysis of the Vetting Process in Albania. Policy Analysis* - No. 01/2017; available at: http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf

[10] See: European Commission, "Albania 2015 Report", available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_albania.pdf pg. 52

succumbed to this enthusiasm and despite the debates and disagreements gave different opinions on the progress of the reform and never expressed any complaint against the reform itself. However, this period lasted until the summer of 2016, after the approval of the constitutional amendments with 100% of the votes in the Parliament. Subsequently, differences in the attitudes of political forces showed the deep distrust among political forces.

Further below we will focus on some aspects of the reform that is being carried out in Albania, based on the constitutional changes of 2016.

2. The internationalization of the reforming process.

When we talk about the internationalization of the process, we have in mind that the justice reform in Albania is a part of the so-called "European model" of justice reforms in Western Balkans[11]. There is even a "Western Balkans model" of judicial reform of the countries undergoing European integration, which is part of the "European Union model". In addition, analyzing the whole process of the reform, we can see that the international factor is present, and its role is relevant at all its stages of the

[11] See: Anastasi, Aurela, Reforming the Justice System in the Western Balkans. Constitutional Concerns and Guarantees (June 19, 2018). Workshop No. 18, of the 10th World Congress of Constitutional Law (IACL-AIDC); 2018 SEOUL 18-22 June 2018, Available at SSRN: https://ssrn.com/abstract=3198787 or http://dx.doi.org/10.2139/ssrn.3198787

reform process, in both political and technical level. In this process, we clearly find four important phases:

1. the analyzing of the situation and designing the strategy of the reform;
2. designing draft laws and drafting, and consulting on the new legislation;
3. approving the legislation with a broad political consensus;
4. implementing the new legislation.

The international factors seem to be not only external supporters but also internal, as part of the working groups of the reform, or as part of the institutions for implementing the reform. For example, experts of international missions in Albania were a part and co-head of the working groups for drafting legislation amendments for the judicial reform[12]. Thus, for example, high-level experts and technical experts were attached to the special parliamentary pluralist Commission for Justice Reform, divided into 7 committees created for the preparation of constitutional amendments and new laws[13].

Now, during the reform implementation, the International Monitoring Operation (IMO), established by the Annex of the constitutional amendments of 2016, is actively working. This body is composed of judges

[12] See: High level experts of the Justice reform; available at: http://www.reformanedrejtesi.al/ekspertet.

[13] Of the 24 high-level experts, 1/3 of them were experts from international organizations from the EU Euralius Mission, the US OPDAT mission, the Council of Europe (Venice Commission) and the OSCE-ODHIR. The 7 commissions established for drafting laws were chaired by two co-chairs, one of whom was an expert of international organizations.

and prosecutors as representatives of Albania's international partners, from the EU and the USA. It was doing the monitoring of the competent bodies for the vetting process, the reevaluation of the judges and prosecutors, which are the Commission, the Court, and the public commissioners.

There are various cases in Balkan countries where international assistance is mandated by law, setting up bodies and their competences during the implementation of this reform. Discussing this issue, the Special Parliamentary Commission for the Judicial Reform in Albania paid attention to the experiences in Bosnia and Herzegovina and Kosovo. The commission stressed that "*the level of participation of international observers and monitors has achieved even the executive competencies*"[14]. However, Bosnia and Herzegovina and Kosovo had special political and social conditions, because of the post-war crises. In this case of a particular need, the special attention of international factors is understandable. In Kosovo, for instance, the Independent Commission of Judiciary and Prosecutors was established as a temporary body in 2009 to reevaluate the judges and prosecutors, headed by independent international leaders. At the beginning, this commission was composed of only international members, but later, many judges and prosecutors in Kosovo, who passed the

[14] *Procesverbal i Komisionit të posacëm parlamentar për Reformën në Drejtësi*, available at: http://reformanedrejtesi.al/sites/default/files/procesverbal_date_23.05.2016.pdf; pg. 22.

evaluation process became members of the commission[15]. The country does not have the same conditions as Bosnia and Herzegovina and Kosovo. However, "*The involvement of the international community in this process is constitutionally foreseen - it was considered crucial for the credibility of the process by the Albanian legislator*"[16].

There has been criticism regarding the establishment of this body. For example, among the political government factors within Albania, the following opinion was expressed: "*In relation to the provision under article …which reads that the testing is carried out under the oversight of the European Commission, we wish to draw your attention to the fact that the process of assessing the qualifications of the incumbents is the responsibility of domestic institutions. As Albania aspires to EU membership, we need to demonstrate that our institutions are fully capable of carrying out such responsibilities*"[17]. Even the Venice Commission has raised concerns about the impossibility of the Albanian Constitution to guarantee the existence and well-functioning of this mechanism, because that is dependent on the international members' goodwill. "*In addition, the existence and proper functioning of this mechanism will depend on the good will of foreign powers and international organizations, and this is not something which*

[15] *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions,* "Organization for Security and Co-operation in Europe" MISSION IN KOSOVO, January 2012, pg. 14, available at: https://www.osce.org/kosovo/87138?download=true

[16] See: *Most frequently asked questions on the International Monitoring Operation*, available at: https://eeas.europa.eu/delegations/albania/20144/most-frequently-asked-questions-international-monitoring-operation_en

[17] See: *Executive Summary of the Justice Reform by the Socialist Movement for Integration*, available at: http://www.euralius.eu/images/Justice-Reform/Propozimet-e-LSI-per-Ref-Drejtesi.pdf

a national Constitution may guarantee"[18]. According to the interim Opinion of the Venice Commission, "*It is most unusual for a national Constitution to introduce in the constitutional system of checks and balances a figure or an organism which is nominated from outside the country, and which is ultimately responsible not before the democratically elected bodies within the country but before a foreign government or an international organization*"[19].

In frame of these concerns, it would be reasonable to examine the functions and competencies of this body. The IMO has two essential features: consulting and technical professional expertise. Practically, the IMO has set up an effective group of international judges and prosecutors, who monitor and offer professional expertise for the independent vetting bodies. Thus, the IMO does not represent any external political or decision-making body, which could interfere with the political power or in the balance issues between powers. These facts are proven even from the means with which the IMO exercises its functions and competencies. Theoretically, it seems to be a case of the cross-judicial fertilization phenomenon. It sounds like a type of constitutional diplomacy. In addition to these reasons, I think this body was called by the Albanian Constitution as an international guarantee for the progress of the vetting process and the reform of the judicial system. In the framework of this body, experienced international observers can support a strict process,

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[18] See: CDL-AD(2015) 045, Venice Commission, "Interim Opinion on the draft constitutional amendment on the judiciary of Albania"; available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)045-e, paragraph130;

[19]Supra, CDL-AD(2015) 045, Venice Commission…

free from corruption and political intervention. In addition, it is very important to implement this formula carefully, with respect to international standards, the due process of law, privacy and other human rights for judges, prosecutors and all other vetting subjects. However, the IMO should perform its tasks within the framework of international agreements in force. Therefore, the IMO remains an international body from the outside, which is more in keeping with its monitoring role, impartial and trustworthy. If this body had been integrated in the Albanian constitutional bodies, it would lose its performance for which it was called from the public and the framers. It is not the first time that the Albanian Constitution calls for a guarantee by international bodies. The IMO simply can be ranked amongst the international bodies mentioned explicitly or implicitly in the Albanian constitution[20].

3. The mechanisms strengthening the independence of the justice system.

Analyzing the constitutional mechanisms *within a narrow* perspective is important for the reform process. This perspective includes the new bodies that are set up and changes in existing bodies. For example, a

[20] For this issue see: Anastasi, Aurela, Reforming the Justice System in the Western Balkans. Constitutional Concerns and Guarantees (June 19, 2018). Workshop No. 18, of the 10th World Congress of Constitutional Law (IACL-AIDC); 2018 SEOUL 18-22 June 2018, Available at: SSRN: https://ssrn.com/abstract=3198787 or http://dx.doi.org/10.2139/ssrn.3198787

possible classification can be found in the Albanian justice reform analysis, by Richard Albert and co-authors[21]. Based on this classification, we can divide the institutional changes into three groups: reforming existing institutions, creating new institutions, and transitioning institutions for reform purposes. Other classifications are stated in various reports by national and international organizations,[22] which are based on classification of institutions by their content and by their impact on judicial power. However, these findings are not exhaustive.

Making a comparative analysis, we observe that, in general, the mechanisms established by the reforms are not completely new. Most continue to function in countries that are now members of EU, such as Rumania, Bulgaria and Croatia. A common measure was the reform that strengthened the independence and the effectiveness of the organs of the judicial government, such as the High Judicial Council and the High Prosecutor Council. In addition, reform mechanisms related to the status, integrity and the accountability of judges are included[23]. The challenge is how to make them work effectively and to stabilize the judiciary in these countries.

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[21]See: Richard Albert & others, *Constitutional Reform in Brazil: Lessons from Albania*? Boston College Law School, legal studies research paper series, research paper 453 May 1, 2017, available at: file:///C:/Users/anastaau.BC/Downloads/SSRN-id2960734.pdf

[22] See *Anti-Corruption Reloaded: Assessment of Southeast Europe*, cited.

[23] In this framework, the 2016 amendments of the Albanian Constitution, of the 2013 Montenegro constitution, and the 2018 draft amendment of the Serbian constitution, are compared. See also: *Anti-Corruption Reloaded: Assessment of Southeast Europe*, cited, footnote no. 2, pg. 77, 80, 81.

One of the methods implemented in the reform was reorganization of the government bodies of the justice system. Thus, the high judicial and prosecutor councils, which in some countries are separated into two organs (the High Judicial Council and the High Prosecutor Council) were strengthened[24]. There was a change in their composition, as well as in the procedures and the appointments to the bodies. The goal was to increase the effectiveness and their independence in decision making.
Another feature of the reform was removal of the role of minister of justice in these bodies. In the past, the minister of justice played an active role. The position was considered a means of balance between powers, against corporatism in judicial government bodies. However, the minister lost this position. In Albania, the minister of justice is no longer a member of the High Council of Justice or a member of the High Prosecutor Council[25]. The 2013 constitutional changes in Montenegro foresaw the minister responsible for judicial issues as an *ex officcio* member of the High Council of Justice, but the minister cannot be its head[26]. In Serbia, the minister of justice is no longer a member of the High Council of Justice but can be a member of the High Prosecutor Council[27]. Perhaps, these reactions of new reform of the justice system reflect the problems caused

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[24] The Western Balkans there is in place separate councils as High Judicial Councils and High Prosecutor Council.
[25] The Amendment of the Constitution of Albania no.76/2016, available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)064-e, art.147 and 149;
[26] *Anti-Corruption Reloaded: Assessment of Southeast Europe*, cited, pg.71
[27] See: Draft amendments to the Constitution of the Republic of Serbia, amendment XII and XXVI, available in: http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2018)015-e

by political interference in judicial bodies, which is considered an encroachment on judiciary independence[28]. The minister's participation in these bodies should have been one of the most effective mechanisms of control against corporatism among judiciary bodies and judges. It does not seem to have happened, and the causes should be analyzed. However, this is related to the incapability of the political instruments in these transitional democratic countries, in which the state activity is very politicized. Thus, this mechanism was not able to fulfill this important mission.

As long as there is not a more appropriate formula for the balance and control of judicial government bodies, lay members from outside remain necessary to neutralize the corporatism of judges and prosecutors. Analyzing the measures taken by the justice reforms, we notice that these countries resolved this issue through the plural composition of these bodies, including prominent lawyers from outside the system. In Albania, based on the new amendments of the Constitution in 2016, the two government councils for judges and prosecutors are composed of 11 members. Six members are elected by judges and prosecutors of all levels of the courts, while five are elected by the Parliament from other lawyers and academics. Based on this draft amendment, the number of judges is equal to that of the lay members in the two government bodies. The composition of the High Council of Justice and of the High Prosecutor Council in Kosovo represents an example of pluralism. However, because

[28] See: CDL-AD (2015)045, Venice Commission, cited, paragraph 62

of the historical and social development of the country, these bodies have some differences, which are reflected in the quotas for minorities and the membership of international missions. There is a consolidated opinion that "*this parity between judicial and lay members would avoid both the risk of politicization and the risk of self-perpetuating government of judges*"[29]. This point has been emphasized many times by the Venice Commission, but other factors impact the success of this formula. First, this plurality should be real. For example, in Serbia, the Venice Commission has emphasized that the appointments of the High Judicial Council members create a deceptive pluralism.[30] Further, another important factor is represented by the procedures and bodies for selecting and appointing members. While, based on these reasons, the Albanian formula that provides that the majority of members should be elected by the judiciary, it seems to be weaker, except in cases where the law seeks a qualified majority in decision-making. In addition, in all the Western Balkan countries in the European integration process, the search for a new constitutional balance

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[29] See: CDL (2012)051-e; Draft Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro. Paragraph 20; available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL(2012)051-e

[30]"*By contrast, the composition of the High Judicial Council seems flawed. At first sight, the composition seems pluralistic. There are 11 members...This appearance of pluralism is, however, deceptive. All these members are elected, directly or indirectly, by the National Assembly… The six judges are not to be elected by their peers but by the National Assembly, the lawyer not by the Bar Association but by the National Assembly, the professor not by the law faculty but by the National Assembly. The judicial appointment process is thus doubly under the control of the National Assembly: the proposals are made by the High Judicial Council elected by the National Assembly and the decisions are then made by the National Assembly itself. This seems a recipe for politicization of the judiciary and therefore the provisions should be substantially amended*" CDL-AD(2007)004 -Opinion on the Constitution of Serbia, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)004-e paragraph 70.

is creating a common formula for the High Judicial Councils, the so-called European model of judicial councils: "*There are five approaches to judicial administration known today, which are the model of the Ministry of Justice; the judicial council model; the courts service model; the hybrid model and the socialist model*"[31].

Thus, what are the guaranties that the lay members can protect against politization and corporatism on judicial government bodies? It is difficult to find a response for all the countries. However, there is the experience of Montenegro, where the plurality of the structure is estimated as a possibility of having a more professional and less politicized body. "*Thus, on the one hand, having in mind this rearrangement of the structure of the Judicial Council, it could be expected that appointments and dismissals of judges would be more professionalized and less politicized*"[32]. Therefore, monitoring of its effectiveness is needed for Albania, to find the right conclusions and lessons that should be learned.

New formulas for the status and appointment of judges are other relevant mechanisms for strengthening judicial independence. There are deep changes in the constitution aiming at the transparency of the selecting, nominating and appointing processes for judges or other officials of the justice system. However, implementing the new formulas offered by the reforms is a challenge, because the current experience has shown that the progress of the appointment of judges and/or other judicial authorities

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[31] See: Denis Preshova & others, "*The effectiveness of the 'European model' of judicial independence in the western Balkans: judicial councils as a solution or a new cause of concern for judicial reforms*", Centre for the law of EU external relations, CLEER PAPERS 2017/1.

[32] *Anti-Corruption Reloaded: Assessment of Southeast Europe*, cited, pg. 80.

has depended on parliamentary will or that of other nomination bodies, which, in most cases, are subordinated to the political opportunity.

4. Accountability mechanisms for judges and prosecutors.

This was a strategic goal of the judicial reform. "Instead, creating mechanisms for and ensuring judicial accountability, has emerged as a most pressing issue, as the newly gained independence of the judiciary was not matched by putting in place an adequate mechanism for accountability. As a result, observers have noted an increase, rather than a decrease, of corruption in transition countries' judiciary in the 1990s, as judges now had a larger say and more discretion within the economy"[33]. In this framework, judges' and prosecutors' immunity from the criminal process, as well as the mechanisms of their disciplinary liability, was subject to constitutional changes. Thus, the reforms have restricted or removed judges' immunity from the criminal process and have consolidated their immunity related to the function. Judges' immunity has been removed in Kosovo and Albania[34]. However, protection from arrest through authorization of the corresponding councils remains in other countries. This mechanism was adopted in the 2013 reform in

[33] *Supra*, fq. 82.

[34] The Constitution of the Republic of Albania as amended in 2016, supra, note 27, article 137 and the Constitution of the Republic of Kosovo, available at: http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf, Article 107

Montenegro and is in the newly drafted constitutional amendment in Serbia[35].

5. Specialized courts.

The establishment of specialized courts and prosecutor offices for investigating and prosecuting corruption cases involving senior state officials is also one of the most important measures in the reforms. In Albania, these bodies are provided by a constitutional amendment (no. 76/2016), while in other cases these bodies are mandated by law. Even those mechanisms are not new because similar bodies were created in other countries, which are now new members of the European Union. One of the most prominent bodies is the anti-corruption agency in Croatia (USKOK)[36]. However, not every country in Southeast Europe has established specialized courts. "*Most SELDI*[37] *countries have found no reason for creating specialized courts dealing with corruption; they apply the general criminal procedure to it. Some have specialized prosecutions and courts for organized crime*[38]. The specialized courts are more effective for fighting corruption at high official levels. Ordinary courts have often avoided punishing high-level

[35] Draft amendments to the Constitution of the Republic of Serbia, amendment XII and XXVI, available in: http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2018)015-e

[36] Shih: *Mission Report of Euralius*, available at: http://www.euralius.eu/annexes3pr/Annex%20152%20USKOK%20Mission%20Report%20EN%202016%2004%201.pdf

[37] SELDI (Southeast Europe Leadership for Development and Integrity).

[38] *Anti-Corruption Reloaded: Assessment of Southeast Europe*, cited, pg. 88.

corruption, statistically reporting the judgments of corruption cases for low-level officials.

6. Temporary measures. The vetting processes.

The reevaluation and reappointment of judges and prosecutors as a temporary measure are several of the most radical measures in the judicial reform. The aim is to establish a new reevaluation method, different from the periodic evaluation of judges and prosecutors, that functions in the full system, within a short period of time and gives faster results[39].

7. The new judicial culture.

Several provisions of the laws approved in the frame of justice reform in Albania aimed at detaching political influence from the judiciary are currently provided for in the Constitution and especially in the laws on the organization of the judiciary and the status of judges. However, their successful implementation depends not only on formal sanctions, but also on judicial culture. There are plenty of cases where culture dominates beyond formal rules. This tendency is confirmed in Albania, but also in other countries of the world. We also need to discuss the "European judicial culture", which is an increasingly hot topic thanks to judicial reforms that have been carried out in many EU and non-EU countries.

[39] See: Aurela Anastasi Reforming the justice system…, cited.

However, this is a very broad discussion and we will briefly focus on some aspects that help us better understand the "judicial culture" in the context of implementing the justice reform. Firstly, the "judicial culture" is a theoretical concept. The analysis and generalization of its content is a contribution of university departments to the development of justice. John Bell's definition helps us understand the essence, as it is a very broad concept. According to him, "judicial culture" includes "*characteristics that form the way in which the work of a judge is evaluated within specific legal systems.*" The greatest contribution that theorists can make to the development of judicial culture is precisely the exchange of best cultural experiences in relation to these characteristics, in order to establish a good judicial culture. Just like legal culture in general, judicial culture also faces anti-cultural elements. Thus, although the justice reform was able to raise the whole public opinion against corruption in the judiciary, cases of corruption in its ranks have been identified during the most intensive years of its implementation, while simultaneously many judges and prosecutors were being dismissed. This means that public enthusiasm is not enough, not only because an anti-corruption culture in the judiciary has not yet been formed, but also because the anti-cultural elements are very resilient. Let us illustrate this with an example. I.e., the law "On the organization and functioning of the Constitutional Court" explicitly provides for disciplinary liability of judges in case they do not notify the President of the Court or the competent bodies of interference or other forms of inappropriate influence by political officials. However, compliance with this provision is initiated entirely by the judge himself, who must report

these interventions. If we browse the tradition of the Albanian judiciary in these 30 years, we notice that such behavior is not part of the judicial culture. To this date we have not encountered any case where a judge has denounced or simply reported inappropriate interference coming from any political official, or from any senior official of the country. We can similarly conclude on many other provisions provided in the organic laws. For example, a judge of the Constitutional Court bears disciplinary responsibility in case he intervenes and exercises inappropriate influence towards his colleague, i.e. another judge. To this date, we have never registered any reports on such cases. In these circumstances, we agree that the establishment of these provisions in law is not a consequence of practical need, since such practices have not existed at all in our judicial culture. However, they are important mechanisms to guarantee the independence and impartiality of the judge and the court. Therefore, we expect that the mandatory implementation of these provisions will create a new judicial culture, where judges report interference by the politics or by fellow colleagues. The more we delve into these issues, the more we realize that constitutional and legal mechanisms are very important to guarantee the independence and impartiality of the court. This is clearly stated in the opinions of the Venice Commission regarding the justice reform, as well as in the decision of the European Court of Human Rights for "Xhoxhaj versus Albania".

Constitutional amendments and laws on the justice reform have established a number of mechanisms aimed at an independent and uncorrupted judiciary. Nonetheless, their implementation in practice

depends on several factors, among which the very important judicial culture. Thus, for instance, although the justice reform found formulas that limited the power of political bodies to appoint judges, it did not completely sever their participation in the appointment. This does not mean unconstitutionality. On the contrary, in many democracies political bodies participate in the appointment of judges, acting as balancing powers. However, I would like to put forward the need to create a new culture of relations between judges and bodies that have appointed them. Among other things, the so-called "culture of ingratitude" has attracted my attention. When I refer to the ingratitude towards the political body that has selected and appointed the incumbent judge, I mean the professional attitude of the judge and distancing when the bodies that appointed him intervene to resolve court cases or when they become parties to the trial themselves. For example, the decision of the Assembly to dismiss the President of the Republic is awaiting trial by the newly composed Constitutional Court. The concern raised in this case is related to the fact that currently, all newly appointed judges in the Constitutional Court have been selected by the President of the Republic and the Assembly; both of them being subjects of this constitutional judgment. However, judges shall not use methods of favorable judgment and reasoning or hold positions that express their gratitude to the bodies that have appointed them. This culture consists in respecting the principle of impartial trial, which is a legal obligation.

In conclusion, I would like to emphasize that we expect the implementation of the mechanisms of this reform to consolidate the

Albanian judicial culture, reforming it on a sound basis in the framework of a new "European judicial culture", which is being established through judicial reforms.

8. Conclusion.

The main issue of the justice reform is to reform the judiciary into an independent system free of corruption and political pressure in order to win the public's trust. This reform cannot meet all public expectations, but it is important to insist on having a judiciary that will discover and punish corruption even at high official levels. International support is welcomed as a constitutional guarantor. There is a "Western Balkans model" of judicial reform of the countries undergoing European integration, which is part of the "European Union model". There is a lack of doctrinal analysis in this field, which has remained a domain of non-government organization (NGO) reports. However, theoretical analysis and a new "reform reasoning" would be very helpful.